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14 Attorneys for Plaintiffs

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 THERESA SWEET, CHENELLE
18 ARCHIBALD, DANIEL DEEGAN, SAMUEL
19 HOOD, TRESA APODACA, ALICIA DAVIS,
20 and JESSICA JACOBSON on behalf of
21 themselves and all others similarly situated,

22 *Plaintiffs,*

23 v.

24 MIGUEL CARDONA, in his official capacity
25 as Secretary of the United States Department
26 of Education, and

27 THE UNITED STATES DEPARTMENT OF
28 EDUCATION,

Defendants.

Case No. 19-cv-03674-WHA

**PLAINTIFFS’ NOTICE OF MOTION
AND MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL COMPLAINT**

HEARING DATE: APRIL 29, 2021

(Class Action)

(Administrative Procedure Act Case)

1 To Defendants and their attorneys of record:

2 PLEASE TAKE NOTICE that on April 29, 2021, Plaintiffs will and do hereby move the
3 Court pursuant to Rule 15(d) of the Federal Rules of Civil Procedure for an order granting leave
4 to file a Supplemental Complaint.

5 This motion is based on the accompanying memorandum of law, documents attached
6 hereto, the record in this case, and any such additional evidence that the Court may consider.

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1 **I. INTRODUCTION**

2 On June 25, 2019, Plaintiffs initiated this lawsuit as a proposed class action against the
3 Department of Education (the “Department”) and its then-Secretary Elisabeth DeVos, alleging that
4 the Defendants had violated Section 706 of the Administrative Procedure Act (APA) by unlawfully
5 withholding or unreasonably delaying action on Plaintiffs’ applications for borrower defense
6 (“BD”) to repayment of their student loans. *See* Complaint, ECF No. 1. After the Court certified a
7 nationwide class of over 160,000 federal student loan borrowers in October 2019, the Parties
8 entered into a settlement agreement which provided, *inter alia*, that the Department would resolve
9 all pending borrower defense applications by issuing final decisions within 18 months. *See* Order
10 Granting Preliminary Settlement Approval, ECF No. 103 at 2-3. Before final approval of the
11 settlement agreement, however, counsel for Plaintiffs discovered that both before and since the
12 settlement agreement had been signed, the Department had been issuing “alarmingly curt” *pro*
13 *forma* denial notices to tens of thousands of class members. *See* Order Denying Class Settlement,
14 to Resume Discovery, and to Show Cause (“Discovery Order”), ECF No. 146 at 5.

15 Acting on this information, the Court denied final approval of the settlement agreement
16 and ordered further discovery, allowing Plaintiffs to inquire “broadly” into three categories of
17 information: “[t]he development and use of the form denial letters”; “[t]he extent to which the
18 difficulty of reviewing borrower defense applications actually caused or justified the Secretary’s
19 eighteen-month delay”; and “[t]he extent to which the Secretary has denied applications of students
20 who have attended schools subject to findings of misconduct . . . and the rationale underlying those
21 denials.” *Id.* at 16. The Court further ordered that “[a]t the end of this discovery period, the class
22 shall move for summary judgment as to the lawfulness of the Secretary’s delay and the lawfulness
23 of the perfunctory denial notice.” *Id.*

24 During the discovery period, Plaintiffs uncovered additional evidence demonstrating the
25 illegality of the Department’s perfunctory denial notices and the process that the Department used
26 to arrive at those denials. Accordingly, Plaintiffs now seek leave to file a Supplemental Complaint
27 to add claims that the Department’s use of boilerplate denial letters violated section 555(e) of the
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1 APA, and that the Department’s process of adjudicating borrower defense applications violated
2 section 706(2)(A) of the APA and the Due Process Clause of the U.S. Constitution. A copy of the
3 proposed Supplemental Complaint is appended to this motion as Exhibit A.¹

4 **II. LEGAL STANDARD**

5 Federal Rule of Civil Procedure 15(d) provides in relevant part: “On motion and reasonable
6 notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out
7 any transaction, occurrence, or event that happened after the date of the pleading to be
8 supplemented.” Fed. R. Civ. P. 15(d). “Rule 15(d) is intended to give district courts broad
9 discretion in allowing supplemental pleadings. The rule is a tool of judicial economy and
10 convenience. Its use is therefore favored.” *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988) (citing
11 Fed. R. Civ. P. 15, advisory committee’s note). “In fact, supplemental pleadings are deemed so
12 useful in facilitating efficient judicial administration that the Ninth Circuit has recommended that
13 they be allowed ‘as a matter of course.’” *Pratt v. Rowland*, 769 F. Supp. 1128, 1131 (N.D. Cal.
14 1991) (quoting *Keith*, 858 F.2d at 474) (granting motion to supplement).

15 “In deciding whether to permit a supplemental pleading, a court’s focus is on judicial
16 efficiency.” *G.P.P., Inc. v. Guardian Prot. Prod., Inc.*, No. 1:15-CV-00321-SKO, 2020 WL
17 2732042, at *4 (E.D. Cal. May 26, 2020). Among other things, courts also consider “the
18 relatedness of the original and supplemental complaints,” “whether supplementation would
19 impose undue prejudice on the opposing party,” and “whether the supplement would be futile.” *Id.*
20 (listing other factors and collecting cases).

21 **III. ARGUMENT**

22 The new allegations set forth in the proposed Supplemental Complaint are related to
23 Plaintiffs’ original claims and predominantly concern events that occurred after the initial
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25 ¹ Per the schedule ordered by the Court on March 10, 2021, ECF No. 191, Plaintiffs are to file the
26 present Motion on or before March 19, 2021. Defendants’ opposition shall be filed on or before
27 April 16, 2021, and Plaintiffs may file a reply on or before April 23, 2021. *Id.* at 3. If Defendants
28 do not oppose this Motion, they shall alert the Court no later than April 9, 2021. *Id.* Defendants’
response shall be filed within 30 days of an order allowing the supplemental pleading. *Id.*

1 Complaint was filed. The new allegations will not unduly prejudice Defendants, and are not futile.
2 Most importantly, the Court has extensive knowledge of the complicated history of this case, so
3 considering Plaintiffs’ initial and supplemental claims together will promote judicial economy.
4 The Court should therefore grant this motion to supplement.

5 **A. The Allegations in the Supplemental Complaint Are Based on Events That**
6 **Occurred After the Filing of the Initial Complaint.**

7 Plaintiffs’ claims in the proposed Supplemental Complaint are almost entirely based on
8 events that “happened after the date” the initial Complaint was filed, on June 25, 2019. Rule 15(d)
9 therefore governs.

10 Specifically, Defendants began developing the boilerplate form denial letters in the fall of
11 2019, *see* [Proposed] Supplemental Complaint ¶ 289, and began sending these denial notices en
12 masse in 2020, *see id.* ¶¶ 322-334 — months after the initial Complaint was filed. The Department
13 also began developing its unlawful policies governing the adjudication of borrower defense claims
14 in or around the summer of 2019, *see id.* ¶¶ 98-120, and Plaintiffs did not learn the true nature and
15 scope of these policies until they were able to obtain documents and depose Department officials
16 during the discovery period that this Court ordered in October 2020.

17 To the extent that Plaintiffs’ proposed Supplemental Complaint includes allegations
18 regarding events that took place before June 25, 2019, it is because Plaintiffs likewise did not learn
19 of the events described in those allegations until the discovery period. Plaintiffs include those
20 allegations here because they provide key context for the events of 2019 and 2020, as well as some
21 events described in the original Complaint.

22 **B. The Allegations in the Supplemental Complaint Are Related to the Original**
23 **Complaint, and the Court’s Consideration of All Claims Together Will Be**
24 **More Efficient.**

25 Plaintiffs’ claims in the proposed Supplemental Complaint are related to the claims set
26 forth in the initial Complaint. Like the original Complaint, the proposed Supplemental Complaint
27 alleges that the Department’s handling of borrower defense claims violates the Administrative
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1 Procedure Act. This alone is sufficient to meet the “minimal test” of relatedness. *Pratt*, 769 F.
2 Supp. at 1131 (citing *Keith*, 858 F.2d at 474). But the Supplemental Complaint is more than just
3 minimally related to the original Complaint. It alleges a continuation of the same course of
4 conduct, by which the Department refused to adjudicate borrower defense claims on the merits, in
5 derogation of its legal duties. The Department’s policies took different forms over time, but the
6 end result was the same: members of the class still have not received proper decisions on the merits
7 of their borrower defense applications.

8 Because the “transaction[s], occurrence[s], [and] event[s]” (Fed. R. Civ. P. 15(d)) alleged
9 in the proposed Supplemental Complaint are related to Plaintiffs’ original claims, permitting
10 supplementation will promote judicial economy. Courts permit supplementation when doing so
11 will enable them to “settle the entire controversy . . . in [a] single action, as opposed to requiring
12 [plaintiffs] to file a separate action that will consume administrative and judicial resources having
13 to open a new case, randomly assign it . . . and initiate Rule 16 scheduling as if this were a new
14 case.” *G.P.P.*, 2020 WL 2732042, at *4 (cleaned up) (quoting *San Luis & Delta-Mendota Water
15 Authority v. U.S. Dept. of Interior*, 236 F.R.D. 491, 501 (E.D. Cal. 2006)). In this case, the Court
16 appears to have anticipated the efficiencies to be gained when it ordered the parties to explore both
17 the original allegations *and* “[t]he development and use of the form denial letters” during the
18 discovery period. Discovery Order at 16. The Parties have done just that: among other things,
19 counsel for Plaintiffs have discovered that the Department started developing the form denial
20 notices at some point in the fall of 2019, *see* [Proposed] Supplemental Complaint ¶¶ 289-292; that
21 the form denial notices included false and misleading statements about the Department’s decision
22 process, *see id.* ¶¶ 297-317; and that the Department had implemented policies to systematically
23 deny tens of thousands of borrower defense applications regardless of evidence, *see id.* ¶¶ 98-288.

24 Supplementing the complaint will permit the Parties to continue to expedite a full
25 resolution of their dispute by addressing both Plaintiffs’ original allegations and the supplemental
26 allegations at summary judgment. Indeed, the Court appeared to anticipate that the entire dispute
27 would be resolved concurrently when it ordered that Plaintiffs “shall move for summary judgment
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1 as to the lawfulness of the Secretary’s delay and *the lawfulness of the perfunctory denial notice.*”²
2 Discovery Order at 16. Accordingly, there will be no undue delay of resolution if the proposed
3 Supplemental Complaint is filed. *See McColm v. San Francisco Hous. Auth.*, No. C 06-07378 CW,
4 2008 WL 5054203, at *2 (N.D. Cal. Nov. 24, 2008) (finding no undue delay when plaintiff filed
5 motion to supplement within the deadline set in the case management order, discovery was yet to
6 be completed, and the trial date was one year in the future).

7 **C. The Proposed Supplemental Complaint Will Not Prejudice Defendants.**

8 Courts freely give leave to file supplemental pleadings “absent a showing of prejudice to
9 the defendant[s].” *Keith*, 858 F.2d at 475. The Defendants can claim no such prejudice here.³

10 In light of the clear instructions in the Court’s Discovery Order, the Defendants cannot
11 claim unfair surprise in facing claims concerning the form denial letters or the process or reasoning
12 behind the Department’s mass denials of borrower defense claims. Moreover, the Parties already
13 briefed the Court on many of the legal issues surrounding the perfunctory denial notices in the
14 lead-up to the Court’s denial of final approval of the settlement agreement. In their motion to
15 enforce the settlement agreement, Plaintiffs presented arguments that the form denial notices
16 violated section 555(e) of the APA, the Due Process Clause of the U.S. Constitution, and
17 Department regulations. *See Pls.’ Mot. to Enforce Settlement Agreement*, ECF No. 129 at 9-16.
18 Plaintiffs’ additional claims in the proposed Supplemental Complaint are thus not unexpected;
19 rather, they formalize and expand upon these prior arguments. Lastly, the Department has actively
20

21 ² In their response to the Court’s Order to Show Cause, the Defendants signaled that they would
22 oppose any effort by Plaintiffs to move for summary judgment based on the form denial notices.
23 *See Defendants’ Response to October 19, 2020 Order to Show Cause*, ECF No. 150 at 2 n.1 (“Nor
24 have Plaintiffs moved to amend their complaint to include new claims about the sufficiency of the
25 Department’s denial notices. The claim in their complaint thus remains the basis for determining
26 the proper scope of the present litigation—including scope of discovery, class certification, and
27 relief.”). Although Plaintiffs are of the view that the matters on which the Court ordered discovery
28 are well within the scope of the operative Complaint, granting leave to file the Supplemental
Complaint will have the benefit of avoiding tangential litigation about the proper scope of
summary judgment briefing and potential relief.

³ As of the date of this filing, Defendants have not yet determined whether they will oppose this motion.

1 participated in discovery regarding the form denial letters and the Department’s decision-making
2 process, which are the focus of the proposed Supplemental Complaint. This is not a case where
3 the added claims would require Defendants to change their legal strategy in the middle of
4 discovery. *Cf. Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)
5 (denying amendment because the new claims “would have greatly altered the nature of the
6 litigation”).

7 Additionally, no further discovery will be required for Plaintiffs to adequately prosecute
8 these proposed supplemental claims, beyond what this Court already ordered following the
9 February 24, 2021 hearing in this matter.⁴ Indeed, if supplementation of the complaint is not
10 permitted, then Plaintiffs would likely have to bring these claims in a separate suit, which “would
11 force them to duplicate” the discovery that is nearly finished in this case. *Lyon v. U.S. Immigr. &*
12 *Customs Enf’t*, 308 F.R.D. 203, 215 (N.D. Cal. 2015) (granting motion to supplement). The
13 Defendants therefore can claim no prejudice to the schedule or resolution of this litigation as a
14 result of Plaintiffs’ supplemental claims.

15 **D. Plaintiffs’ New Claims Are Not Futile.**

16 Finally, the claims in the proposed Supplemental Complaint are not futile. A supplemental
17 claim is futile “only if no set of facts can be proved . . . that would constitute a valid and sufficient
18 claim or defense.” *Verinata Health, Inc. v. Sequenom, Inc.*, No. C 12–00865 SI, 2014 WL
19 1931069, at *3 (N.D. Cal. May 14, 2014); *see also G.P.P.*, 2020 WL 2732042, at *6 (holding
20 “allegations are sufficient to survive a Rule 12(b)(6) motion to dismiss and thus the proposed
21 supplemental complaint is not futile”).

22 Here, Plaintiffs seek leave to assert three supplemental claims:

23 (i) That the Department failed to include in its form denial notices a legally adequate “brief
24 statement of the grounds for denial,” as required under the APA, *see* 5 U.S.C. § 555(e) (“Prompt
25 notice shall be given of the denial in whole or in part of a written application, petition, or other
26 _____

27 ⁴ Plaintiffs also reserve all rights regarding their pending subpoena to depose former Secretary
28 DeVos, currently the subject of litigation in the Southern District of Florida.

1 request of an interested person made in connection with any agency proceeding. Except in
2 affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by
3 *a brief statement of the grounds for denial.*” (emphasis added));

4 (ii) That the Department’s ‘presumption of denial’ policy, which mandated the denial of
5 all or almost all BD applications that fall outside of certain exceedingly narrow and secretive
6 categories, is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law
7 under the APA, *see* 5 U.S.C. § 706(2)(A) (“The reviewing court shall hold unlawful and set aside
8 agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion,
9 or otherwise not in accordance with law.”); and

10 (iii) That the Defendants have deprived class members of their constitutionally protected
11 property interests without due process of law by failing to consider their BD applications on the
12 merits, by failing to provide borrowers with a neutral decision-maker, by failing to provide
13 constitutionally adequate denial notices, and by failing to inform borrowers about how to challenge
14 the agency decision in federal court, *see* U.S. Const. amend. 5 (“No person shall be . . . deprived
15 of life, liberty, or property, without due process of law.”).

16 The factual allegations in the proposed Supplemental Complaint state valid claims on each
17 of these counts. Plaintiffs have provided extensive and detailed allegations, backed up by
18 documentary and testimonial evidence, that the Department’s perfunctory denial notices and the
19 process that the Department used to arrive at those denials were both in violation of law. Because
20 Plaintiffs allege proper elements of the three additional claims, these claims are not frivolous, and
21 the proposed Supplemental Complaint is not futile.

22 **IV. CONCLUSION**

23 For the reasons set forth above, Plaintiffs respectfully request that the Court GRANT
24 Plaintiffs’ motion for leave to file the proposed Supplemental Complaint.

1 Dated: March 18, 2021

2 Respectfully submitted,

3 /s/ Eileen M. Connor
4 Eileen M. Connor

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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 THERESA SWEET, CHENELLE
14 ARCHIBALD, DANIEL DEEGAN, SAMUEL
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15 themselves and all others similarly situated,

16 *Plaintiffs,*

17 v.

18 MIGUEL CARDONA, in his official capacity
19 as Secretary of the United States Department
of Education,

20 and

21 THE UNITED STATES DEPARTMENT OF
22 EDUCATION,

23 *Defendants.*
24

Case No. 19-cv-03674-WHA

**[PROPOSED] SUPPLEMENTAL CLASS
ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(Class Action)
(Administrative Procedure Act Case)

PRELIMINARY STATEMENT

1
2 1. Plaintiffs’ Class Action Complaint for Declaratory and Injunctive Relief in this action (ECF
3 No. 1) (“Complaint”), filed on June 25, 2019, alleged that the United States Department of
4 Education (“Department”) and its Secretary¹ (together, “Defendants”) abdicated their
5 responsibility to decide borrower defense applications on the merits, leaving over 160,000
6 borrowers in limbo, some for over four years, in contravention of the Administrative Procedure
7 Act.

8 2. The Defendants’ brazen policy of inaction caused members of the certified class of
9 borrowers to lose wealth and opportunity that they will never recover, along with causing
10 significant emotional distress and associated physical harm.

11 3. Between June 2018 and December 2019, the Department did not issue a single borrower
12 defense decision.

13 4. Then, in the spring and summer of 2020 — after Plaintiffs and Defendants had entered into
14 a settlement agreement — the Department suddenly ramped up a practice of sending borrowers
15 “alarmingly-curt denial notices” on their borrower defense claims, in an effort to “clear the
16 backlog” of applications and to appear as if they were adjudicating claims on the merits. *See* Order
17 Denying Class Settlement, to Resume Discovery, and to Show Cause (“Discovery Order”), ECF
18 No. 146 at 5.

19 5. But this flurry of denials — now numbering over 128,000 — is a smokescreen. The
20 Department did not actually restart the borrower defense adjudication process that, as detailed in
21 Plaintiffs’ initial Complaint, it had unlawfully halted. Rather, Defendants began a new process of
22 sending boilerplate denial notices to as many applicants as possible, without adjudicating claims
23 on the merits. *See* [https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-](https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-data)
24 [data](https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-data) (latest decision totals as of 11/30/2020).

25
26 ¹ For most of the time period at issue in this Supplemental Complaint, the Secretary of Education
27 was Elisabeth DeVos. Ms. DeVos resigned her position on January 7, 2021. Miguel Cardona was
28 confirmed as Secretary of Education on March 1, 2021.

1 6. The form denial notices and subsequent discovery about the Department’s adjudication
2 practices and procedures have demonstrated that, since the Complaint was filed, the Department
3 has not remedied its unlawful policy of refusing to issue decisions on the merits of borrower
4 defense claims. Instead, it has added new legal violations: (1) adopting a policy of near-automatic
5 denial of borrower defense applications regardless of the factual or legal merits of an individual
6 application, in violation of section 706(2) of the Administrative Procedure Act (“APA”), 5 U.S.C.
7 § 706(2), and the Due Process Clause of the U.S. Constitution, amend. 5; and (2) issuing unlawful
8 denials of borrower defense applications in violation of section 555(e) of the APA, 5 U.S.C. §
9 555(e).

10 7. The Defendants have refused to decide borrower defense applications on the merits and in
11 accordance with applicable law since February 2017.

12 8. The Department’s refusal to process borrower defense applications on the merits, and its
13 web of policies and procedures designed to reach “no” on nearly every application, remain in place
14 to this day.

15 9. The harm to borrowers from the Defendants’ actions is imminent and ongoing. Borrowers
16 who have received denial notices, which do not represent decisions on the merits, have not been
17 fully informed of their rights. There is no reconsideration process in place. And members of the
18 class face the threat of being thrust back into repayment, which would be economically
19 catastrophic.

20 10. Plaintiffs submit this Supplemental Complaint to update and conform their claims to the
21 nature of Defendants’ present unlawful conduct.

22 **JURISDICTION AND VENUE**

23 11. This Court has jurisdiction over this case, including this Supplemental Complaint, for the
24 reasons set forth in ¶ 11 of the Complaint.

25 12. This Court is authorized to grant the relief requested in this case, including in this
26 Supplemental Complaint, for the reasons set forth in ¶ 12 of the Complaint.

27 13. Venue is proper in this judicial district for the reasons set forth in ¶ 13 of the Complaint.

PARTIES

14. Plaintiffs incorporate Paragraphs 15-21 of their Complaint (ECF No. 1) as if set forth fully herein.

15. Pursuant to Federal Rule of Civil Procedure 25(d), Secretary Cardona has been substituted for Elisabeth DeVos in his official capacity as Secretary of the United States Department of Education.

SUPPLEMENTAL ALLEGATIONS COMMON TO THE CLASS

16. Plaintiffs incorporate Paragraphs 24-235 of their Complaint (ECF No. 1) as if set forth fully herein.

I. The Department’s Policies in Support of Mass Denials

A. May 2017: The Genesis of the “No Decisions” Policy

17. The Department’s policy of refusing to issue decisions on BD applications was in place for a significantly longer period of time than Plaintiffs alleged in their original Complaint. In fact, with the exception of a single type of claim for a single six-month period (detailed *infra*), the Department had a “no decisions” policy in place for approximately 31 months — from May 4, 2017, through December 11, 2019.

18. The Defendants have denied the existence of a blanket policy governing the cessation of issuing borrower defense decisions. *See* Class Certification Order, ECF No. 46 at 7 (“[Defendants] complain that plaintiffs do not allege any facts regarding some explicit order from on high within the Department”); Defs.’ Opp. to Pltfs.’ Mot. for Class Cert., ECF No. 38 at 10 (arguing that Plaintiffs’ claims are “founded on erroneous speculation that the Department has made a universal decision not to grant or deny any pending borrower defense claims,” and that Plaintiffs “identify no such policy [of inaction], written or otherwise”); Defs.’ Mot. for Summ. J., ECF No. 63 at 19 (“Thus, it is simply not the case that the Department is engaged in a policy of total inaction with respect to borrower defense claims.”).

19. However, there *was* such an order from “on high.”

1 20. In or around May 2017, then-Secretary DeVos signed a memorandum dated May 4, 2017,
2 from then-Acting Under Secretary James Manning (the “Manning Memo”), which recommended
3 several action items on borrower defense. DOE00002144.

4 21. The Manning Memo stated that Under Secretary Manning had established a Borrower
5 Defense Review Panel (the “Review Panel”) “to examine the claims and background information
6 and make recommendations on how to resolve the pending claims and proceed in the future.” *Id.*

7 22. The Manning Memo described a process by which the Review Panel had sought to rescind
8 the approvals of over 16,000 borrower defense (“BD”) applications that had been granted by the
9 previous administration, but for which the borrowers’ loans had not yet been discharged. The
10 Review Panel reluctantly concluded that there was no “appropriate basis for taking any actions
11 other than to approve discharge.” *Id.* at -2145.

12 23. Accordingly, the Manning Memo recommended that Secretary DeVos proceed with
13 discharge of these loans, which the Secretary did, signing her name to the memo along with the
14 handwritten phrase, “with extreme displeasure.” *Id.* at -2147.

15 24. As to the borrower defense process generally, the Manning Memo observed that,
16 previously, the borrower defense regulation had been “often liberally applied in the light most
17 favorable to the borrower,” raising “significant concerns.” The Manning Memo also complained
18 that “[f]lexible interpretations of state law most favorable to student borrowers also appear to have
19 been used to circumvent any requirement that the claimant directly prove damages.” Thus,
20 “[g]oing forward, we should establish a balanced process with clear and objective standards that
21 require strong evidence of harm or damages to the student.” *Id.* at -2145.

22 25. Neither the Higher Education Act (HEA) nor the 1995 borrower defense regulations in
23 place at the time of the Manning Memo required a borrower defense claimant to “directly prove
24 damages.”

25 26. Neither the HEA nor the 1995 borrower defense regulations in place at the time of the
26 Manning Memo set out or required a “strong evidence of harm or damages” standard.

1 27. To the contrary, the 1995 borrower defense regulations required only that the borrower
2 assert “any act or omission of the school attended by the student that would give rise to a cause of
3 action against the school under applicable state law.” 34 C.F.R. § 685.206(c)(1).

4 28. Neither the HEA nor the 1995 borrower defense regulations in place at the time of the
5 Manning Memo prevented the Department from construing state law in a light favorable to the
6 borrower.

7 29. The Manning Memo recommended that Secretary DeVos direct Under Secretary Manning,
8 the Review Panel, and the Internal Control Unit of the Department’s Chief Financial Officer to
9 work with Federal Student Aid (“FSA”) to develop “interim procedures” to handle pending BD
10 claims until new, permanent borrower defense regulations were implemented — the latter of which
11 would “take at least a year.” DOE00002144, at -2146.

12 30. Under Secretary Manning asked Secretary DeVos to “direct no additional claims be
13 approved until these interim procedures are finalized.” *Id.*

14 31. Under Secretary Manning also recommended that Secretary DeVos request the
15 Department’s Office of Inspector General (“OIG”) to “conduct an independent and comprehensive
16 review” of the BD program. *Id.* at -2145 to -2146.

17 32. In a deposition on December 17, 2020, Mr. Manning denied that he had written this
18 memorandum and stated that he did not recall who wrote it. Manning Dep. 67:16 – 68:6.

19 **B. Spring 2017 Through Summer 2019: “No Decisions” Policy Remains in Place, With**
20 **One Temporary Exception**

21 33. After then-Secretary DeVos signed the Manning Memo, she requested that OIG conduct a
22 review of the borrower defense process, as the memo had recommended.

23 34. On May 4, 2017, the date of the Manning Memo, the Department’s Borrower Defense Unit
24 (“BDU”) stopped adjudicating any BD claims. *See* OIG Report, appended to Nevin Decl, ECF 56-
25 4, at AR 512.

1 35. While the OIG investigation was ongoing, the BDU was instructed to stop developing
2 memoranda on whether additional categories of BD claims qualified for discharge. *Id.* at AR 509,
3 515.

4 36. While the OIG investigation was ongoing, the BDU spent a significant amount of time
5 responding to requests from OIG. Nevin Dep. 134:1-11.

6 37. OIG issued its report on December 8, 2017. *See* OIG Report, AR 496.

7 38. The OIG report recommended, among other things, that the Chief Operating Officer
8 (“COO”) of FSA “[r]equest approval from the Acting Under Secretary to resume the review,
9 approval, and discharge processes for claims qualifying under the seven established categories” –
10 referring to approval criteria developed under the previous administration for certain BD claims
11 from borrowers from Corinthian Colleges, Inc. (“CCI”) and ITT Technical Institute (“ITT”). *Id.*
12 at AR 516.

13 39. OIG also recommended that the COO of FSA “[r]equest approval from the Acting Under
14 Secretary to resume consideration and determination of whether additional categories of claims
15 with common facts qualify for discharge.” *Id.* at AR 516.

16 40. OIG required the Department to develop a corrective action plan in response to its report.
17 *Id.* at AR 498.

18 41. The BDU resumed adjudication of one specific category of BD applications on or about
19 October 30, 2017: applications from borrowers who attended CCI schools and made BD claims
20 based on CCI’s misrepresentations of its job placement rates (“JPRs”). Nevin Decl., ECF No. 56-
21 4 ¶ 59.

22 42. In December 2017, the Department resumed processing relief for approved CCI JPR claims
23 under its newly announced “partial relief” methodology. *Id.* ¶¶ 62-63.

24 43. At this time, the Department was “focused” on CCI JPR claims, and did not resume
25 adjudication or processing of BD applications from any other school(s) or that asserted any other
26 types of claims. Nevin Dep. 138:13 – 139:3.

1 44. BDU Director Colleen Nevin believes that, at some point after the OIG report was issued,
2 there may have been a “conversation” about the resumption of work on other types of claims
3 between then-Under Secretary Manning and then-Chief Enforcement Officer of FSA Julian
4 Schmoke. Nevin Dep. 140:12-22.

5 45. However, the CCI JPR applications “were exceeding” what the limited BDU staff was
6 “able to adjudicate,” and thus the BDU did not at this time approve or deny any BD applications
7 other than CCI JPR claims. Nevin Dep. 141:16-25.

8 46. BDU Director Nevin had requested additional staff for the BDU multiple times, but each
9 time her requests were denied, and she was not given a reason. Nevin Dep. 145:3-9.

10 47. In spring 2018, litigation in the case *Calvillo Manriquez v. DeVos*, No. 17-cv-07210-SK
11 (N.D. Cal.),² challenged the Department’s December 2017 “partial relief” methodology. That case
12 concerned *only* borrowers who had made BD claims based on CCI’s JPR misrepresentations,
13 because those were the only borrowers subject to the new “partial relief” methodology.

14 48. In May 2018, the court in *Calvillo Manriquez* issued an injunction that prevented the
15 Department from applying the “partial relief” methodology to *Calvillo Manriquez* class members,
16 because the Department’s use of Social Security data to apply the methodology violated the
17 Privacy Act. *See Order, Calvillo Manriquez*, No. 17-cv-07210-SK (N.D. Cal. May 25, 2018), ECF
18 No. 60.

19 49. The *Calvillo Manriquez* injunction affects a specific subset of borrowers and the
20 application of a specific methodology. First, it applies only to members of the *Calvillo Manriquez*
21 class, who are a subset of BD applicants with certain JPR claims who attended certain programs
22 during certain periods of time at schools owned by CCI. Second, the injunction prevents the
23 Department from using Social Security data to determine percentages of relief; using a different
24 formula would be permissible.

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27 ² Members of the class in *Calvillo Manriquez* are not class members in this case. *See Order on*
28 *Class Certification*, ECF No. 46 at 14.

1 50. BDU Director Nevin admitted that, under the *Calvillo Manriquez* injunction, the
2 Department could have issued grants of 100% relief for CCI JPR claims, or any amount of relief
3 for any other type of claim. Nevin Dep. 149:23 – 150:1.

4 51. BDU Director Nevin testified that, as of August 2019, there had not been any discussion
5 within FSA about granting 100% relief to any class of claims. As of December 9, 2020, BDU
6 Director Nevin could not recall any instances of 100% relief being granted on any application since
7 the *Calvillo Manriquez* injunction went into effect. Nevin Dep. 150:23 – 151:2, 160:23 – 161:5.

8 52. Despite the limited scope of the *Calvillo Manriquez* injunction, the Department repeatedly
9 cited it as a reason that it could no longer make BD application decisions, stating that because the
10 specific CCI JPR partial relief methodology was on hold, all borrower defense decisions would
11 be, too. *See, e.g.*, DOE00007209, at -7213, -7214.

12 53. Once the Department devised a new partial relief methodology, however, it acknowledged
13 that “the injunction does not prevent the Department from utilizing the new methodology to
14 process borrower defense applications for borrowers that are not part of the class that has been
15 certified in *Calvillo Manriquez*, including non-JPR Corinthian claims and claims filed by
16 borrowers who attended other institutions.” DOE00013647, at -648.

17 54. The Department ceased issuing *any* borrower defense decisions, including CCI JPR
18 decisions, on or about June 12, 2018.

19 55. The Department did not issue another borrower defense decision until December 11, 2019.

20 56. Thus, except for an approximately 6-month period of processing CCI JPR claims (from
21 December 2017 through May 2018), the Department’s “no decisions” policy on BD applications
22 remained in place for over 31 months, from May 4, 2017, through December 11, 2019.

23 57. Meanwhile, members of the Department continued to express open hostility toward
24 borrower defense.

25 58. A set of talking points created by or for Diane Auer Jones, then the Principal Deputy Under
26 Secretary of the Department, described “[m]any” BD claims as “‘stab in the dark’ efforts to get
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1 loans forgiven because a student didn't like a particular instructor or because, in general, the
2 student feels like the education wasn't what they expected it to be." DOE00007289, at -7290.

3 59. The same document also claimed that:

- 4 i. the 2016 BD regulations "enabled activists to destroy an institution financially by
5 making accusations against it" (*id.* at -7289);
- 6 ii. the 2016 BD regulations "denied institutions due process rights" and wrongly put
7 the Department in the position of "being accuser, judge and jury" of a school
8 against which BD applications are filed, "of course playing this role with other's
9 people's money" (*id.* at -7291);
- 10 iii. the Department unfairly "force[d] Corinthian Colleges out of business" (*id.* at
11 -7290);
- 12 iv. the Department has "never itself validated" that Corinthian made widespread job
13 placement rate misrepresentations (*id.* at -7290);
- 14 v. borrower defense was intended to be only a "last resort" for borrowers in default
15 (*id.* at -7290);
- 16 vi. borrower defense "eliminates any level of personal responsibility in selecting a
17 school or program that meets the needs of the student" (*id.* at -7291);
- 18 vii. borrower defense results in unfair outcomes where "taxpayers who didn't have
19 the luxury of going to college are[] stuck with the bill for those who did" (*id.* at
20 -7291);
- 21 viii. the Department's new 2019 BD regulations would ensure that "specious claims
22 can be more quickly removed" (*id.* at -7291); and
- 23 ix. the Department's new 2019 regulations would ensure that the BD adjudication
24 process "requires something more than hearsay evidence to find a school guilty"
25 (*id.* at -7291).

26 60. An internal Department memorandum from 2018 showcased a dismissive stance toward
27 the validity of BD claims based on omissions, likening such claims to statements like, "[m]y school
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1 never told me that underwater basket weavers don't get paid well." How to Review a Borrower
2 Allegation in a One-off or Small Batch Application at 2.

3 61. An internal memorandum recommending the adoption of the Department's 2019 partial
4 relief methodology (discussed *infra* ¶¶ 318-321) argued that calculations for partial relief should
5 uniformly be based on a family size of one, "because decisions borrowers make regarding their
6 family size are not the responsibility of the institution." DOE00013647, at -649.

7 62. That memorandum ultimately recommended a methodology that would provide full relief
8 to a successful BD applicant only if the earnings "imputed" to that borrower based on group data
9 were within the lowest 2.5% of earnings for graduates of "similar" programs. *Id.* at -651.

10 63. The Department's 2019 partial relief methodology has resulted in "grants" or "approvals"
11 of BD claims in name only. For example, the Department has "granted" 0% loan cancellation to
12 some borrowers from ITT who are deemed to have an "eligible" borrower defense application —
13 *i.e.*, who are found to have been subject to actionable misrepresentations.

14 64. As of August 2020, 17 individuals with "eligible" applications had been "granted" 0%
15 relief. Letter from K. Davis to E. Connor, Connor Dec., ECF No. 108-2, at 9.

16 65. The Department has never explained how or why a "grant" of 0% relief should be
17 considered an "approval" of a BD claim and not a denial.

18 **C. Summer 2019: The Backlog and the Excuses**

19 66. Plaintiffs filed their Complaint in this case on June 25, 2019. At that time, it had been
20 approximately one year since the Department had issued a borrower defense decision.

21 67. In an internal presentation dated August 21, 2019, the Department reported that, at that
22 time, over 177,000 BD applications were awaiting adjudication. DOE0009509, at -9510.

23 68. Between the collapse of CCI in spring 2015 and August 21, 2019, the Department had only
24 approved BD applications for borrowers associated with two school groups: CCI and ITT.³ As of
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26 ³ The Department had also granted a single group borrower defense application, from the
27 Massachusetts Attorney General asserting claims on behalf of Massachusetts students of American
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1 August 21, 2019, only 70 applications from ITT had been approved, while over 450 had been
2 denied. *Id.* at -9513.

3 69. BDU Director Nevin testified that it was still true as of December 9, 2020, that the only
4 individual (non-group) BD claims that had been granted since 2015 were for borrowers with claims
5 against CCI and ITT schools. Nevin Dep. 50:5-12.

6 70. As of August 21, 2019, the BDU had determined that nearly 11,000 BD applications should
7 be denied. These denials represented applications from over 1,400 schools, including over 4,800
8 denials from CCI. DOE0009509, at -9510, -9513.

9 71. As of August 21, 2019, approximately 27,700 BD applications from CCI borrowers had
10 been approved but not yet assigned relief. *Id.*

11 72. In a slide in the August 21, 2019 presentation titled “Why Are BD Applications on Hold?”,
12 the Department stated that “[n]o relief methodology” had been “developed for non-CCI claims.”
13 *Id.* at -9514.

14 73. Also in the slide titled “Why Are BD Applications on Hold?”, the Department stated that
15 there had been a “[p]olicy decision (spring 2018) to not issue denials until approvals could also be
16 issued.” *Id.*

17 74. The Department’s policy was that approvals could not be issued until a new relief
18 methodology was in place.

19 75. The Department stated elsewhere in the August 21, 2019 presentation that “[a] decision on
20 the relief methodology would result in the ability to proceed with” the already-denied applications.
21 *Id.* at -9512.

22 76. Diane Auer Jones, then the Principal Deputy Under Secretary of the Department, testified
23 in her November 20, 2020 deposition that “a decision had been made . . . that we would not issue
24 denials if we were not also issuing approvals.” Jones Dep. 174:5-7.

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26
27 Career Institute. The BDU recommended approval of that group claim in a memorandum dated
28 January 4, 2017. *See* DOE00006206, at -6305.

1 77. Likewise, Mark Brown, then the COO of FSA, testified in his December 15, 2020
2 deposition that “we were not issuing denials until we had a methodology so that we could do all at
3 the same time, both approvals and denials.” Brown Dep. 134:13-16; *see also id.* 110:1-17.

4 78. The BD Work Plan for November 2019 stated that “OUS [the Office of the Under
5 Secretary] has requested that FSA hold off on processing the adjudicated borrower defense
6 applications until November 30 with the intent being that FSA would process the following all at
7 the same time: - 6,000+ ‘ineligible/denied CCI applications – 990 CCI non-JPR approvals using
8 the new tiered relief methodology – 70+ ITT approvals using the new tiered relief methodology[.]
9 Additionally, OUS has directed that we adjudicate and process another 20,000+ CCI applications
10 by November 30.” DOE00006893.

11 79. COO Brown also testified, however, that there was “confusion” in 2019 about the
12 Department’s directive that the BDU should not issue borrower defense decisions. He stated that
13 Under Secretary Jones had initially told him that she “didn’t believe they [the Department] had
14 told the BD unit” to stop issuing decisions, and that she was “not sure why” the BDU was not
15 sending out decisions. Brown Dep. 106:6 – 107:10.

16 80. BDU Director Nevin testified that following the *Calvillo Manriquez* injunction, “there was
17 a hold put on approvals and the Department made the decision to not issue denials until they could
18 send out approvals as well, and so that coincided with the June 2018 – I think that’s – that’s when
19 they put the brakes on, essentially.” Nevin Dep. 147:12-20.

20 81. BDU Director Nevin testified that she did not know who decided to delay all BD decisions
21 (including denials) until a new methodology was developed. Nevin Dep. 147:21 – 148:3.

22 82. COO Brown testified that he did not know who decided to delay all BD decisions
23 (including denials) until a new methodology was developed, but the decision was communicated
24 to him by Under Secretary Jones. Brown Dep. 110:18-21.

25 83. Under Secretary Jones testified that she did not know who decided to delay all BD
26 decisions (including denials) until a new methodology was developed, and that she might not have
27 even been in the meeting where this decision was reached. Jones Dep. 174:8-19.

1 84. Under Secretary Jones testified that the reason for the “no denials until approvals” policy
2 was that “if the only decisions being issued were denials, that that could be misreported by the
3 media to make borrowers believe that we were not going to approve valid claims and the chilling
4 effect would be that, you know, if somebody has a valid claim, they could have been discouraged
5 from filing them.” Jones Dep. 174:25 – 175:6.

6 85. But in fact, when the Department did start issuing BD decisions in December 2019, they
7 denied BD claims at a rate of over 95% in the first month, and nearly 90% after eight months. *See*
8 Discovery Order, ECF 146 at 5.

9 86. Also in the slide titled “Why Are BD Applications on Hold?”, the Department stated that
10 “[n]o processing systems” were “available” for BD applications “from summer 2018 to present
11 due to platform development and migration.” DOE0009509, at -9514.

12 87. In another internal presentation, dated August 14, 2019, the Department represented that
13 there were “Three Significant Challenges and Corresponding Projects to Facilitate Elimination of
14 the Backlog of Pending [BD] Applications.” DOE00003437, at 8.

15 88. The first “challenge” listed was that “[t]he 2016 regulation added new procedural
16 requirements to the application review process, including notice to the school of the borrower’s
17 allegations.” This reportedly required updates to the BDU’s technology platform. *Id.* at 8.

18 89. In fact, however, in the next 16 months after this presentation, the BDU only provided such
19 notice to four schools. Nevin 72:23-73:14.

20 90. The second “challenge” listed in the August 14, 2019 presentation was that additional
21 staffing was needed to adjudicate the backlog of claims. DOE00003437, at 9.

22 91. Prior to August 2019, BDU Director Nevin had requested additional staffing multiple
23 times. She made these staffing requests to Julian Schmoke, then the Chief Enforcement Officer at
24 FSA. BDU Director Nevin did not know “how regularly he submitted” these staffing requests to
25 political leadership at the Department. Her understanding was that her staffing requests, if
26 submitted, went to Secretary DeVos’s chief of staff. Each time, her requests were denied. Nevin
27 Dep. 25:8-27:18, 145:3-9.

1 92. BDU Director Nevin testified that she did not know the reasons why her requests for
2 additional staff were denied: “That’s above my pay grade.” Nevin Dep. 145:3-9.

3 93. As of August 21, 2019, the Department stated that it was “in the process of hiring over 60
4 term appointments” to aid the Borrower Defense Unit (“BDU”) in adjudicating the “backlog” of
5 BD applications. DOE0009509, at -9515.

6 94. The third “challenge” listed in the August 14, 2019 presentation was that approvals were
7 “on hold pending a relief determination.” The Department stated that “[t]he vast majority of the
8 ‘approved but pending relief’ applications are from borrowers who attended” CCI schools;
9 meanwhile, “[f]or non-Corinthian approvals, there currently is no existing relief approach and the
10 Corinthian methodology is inapplicable, so a new tiered relief methodology is required.”
11 DOE00003437, at 10.

12 95. The August 14, 2019 presentation did not mention the “no denials until approvals” policy.

13 96. As of August 21, 2019, the Department’s internal documents did not reflect that the
14 difficulty of reviewing BD applications was the reason for the delay in issuing BD decisions.

15 97. To the contrary, BDU Director Nevin testified: “[T]he pace of the adjudications was
16 affected by various things that made it difficult, but that didn’t mean that they couldn’t be issued.
17 That was related to a decision up the food chain.” Nevin Dep. 224:10-14.

18 **D. Summer and Fall 2019: Development of ‘Presumption of Denial’ Policy**

19 98. In or around the summer of 2019, the Department adopted a policy of ‘presumption of
20 denial’ as a means of clearing its backlog of BD applications. This policy assumed that all borrower
21 defense applications should and will be denied, unless they meet an exceedingly narrow set of
22 requirements (explained *infra* ¶¶ 258-288).

23 **a. Quotas, Metrics, and Procedures Lead Inexorably to Denial**

24 99. As of summer 2019, FSA viewed its mandate with respect to borrower defense as “clearing
25 the backlog” of BD applications, and it set aggressive quotas to achieve that goal.

26 100. Secretary DeVos set the goal of quickly eliminating the backlog. Nevin Dep. 101:21-23.
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1 101. Concerned about “the sheer volume” of the backlog and that BD cases “were not
2 moving,” FSA COO Brown undertook to hire more attorneys to adjudicate claims. Brown Dep.
3 46:16-49:13.

4 102. “FSA targeted to build capacity to adjudicate 5,000 applications per week with an ultimate
5 objective of less than 5,000 claims on hand by late Fall 2020.” FSA 2020 Annual Report at 95; *see*
6 *also* Nevin Dep. 101:21-102:1 (“Mark Brown . . . set a target of us for 5,000 adjudications per
7 week.”).

8 103. In addition, FSA set a productivity requirement that “[t]rained reviewers must review, on
9 average, a minimum of 5 cases per hour.” Borrower Defense Claim Review Productivity
10 Requirements, Incentives and Support Plan – 2020, DOE00008693; *see also* Training Binder –
11 Borrower Defense to Repayment (July 2019), DOE00006206, at -6327 (same).

12 104. FSA also limited the time that reviewers could spend on a school-specific analysis
13 memorandum to two hours, and instructed that reviewers should “review evidence at a reasonable
14 rate,” subject to spot checks for whether reviewers were “over reporting hours spent on evidence
15 review.” DOE00006206, at -6327.

16 105. Reviewers were warned that “[f]ailure to meet the above metrics will result in remedial
17 action including, but not limited to, probation, re-training, moving back to 100% QC, hoteling at
18 FSA or Sullivan Cove during work hours, or termination from the project at the discretion of the
19 Director of Borrower [D]efense.” *Id.*

20 106. BDU employees or contractors who fell behind the target pace of application review faced
21 the possibility of negative performance reviews and even termination. For example, the Borrower
22 Defense Claim Review Productivity Requirements, Incentives and Support Plan – 2020 provided
23 that “[t]he metrics of Trained Reviewers who do not meet the Required Metrics for the proceeding
24 pay period will be monitored very closely by their Supervisors and the Director of Borrower
25 Defense (“Heightened Monitoring”) . . . For Trained Reviewers on Heightened Monitoring for
26 more than two pay periods, the Reviewer and his or her Supervisor will meet with the Director of
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1 Borrower Defense to discuss the Reviewer’s failure to meet the requirements of the attorney/law
2 clerk position.” DOE00008693-94 (footnote omitted).

3 107. FSA assessed its performance with respect to the goal of “clearing the backlog” solely
4 based on speed of adjudications. FSA did not set any targets or measure any metrics regarding
5 whether adjudications accurately assessed the evidence or correctly applied the relevant law.

6 108. BDU Director Nevin testified that “[i]n a perfect world, we would review all of the
7 evidence relating to the school before adjudicating a single case,” but the BDU instead proceeded
8 to adjudicate cases before completing the review of common evidence relating to a school because
9 “we were directed to move forward at a very accelerated pace,” and this was “the only way to hit
10 the metrics.” Nevin Dep. 100:14 – 101:17.

11 109. Front-line reviewers of BD applications are empowered to reject an application, but not
12 to approve it (with the exception of CCI JPR claims). Nevin Dep. 204:24-206:25; DOE00006206,
13 at -6435 to -6436; DOE00008841, at -8842.

14 110. If front-line reviewers believe a BD application might be eligible for relief, they must
15 elevate it to senior BDU attorneys for further review.

16 111. BDU Director Nevin testified that it was “too complicated” for a front-line reviewer to
17 determine if a BD application should be approved. She did not, however, believe that it was too
18 complicated for a front-line reviewer to determine whether a claim should be denied. Nevin
19 206:11-18, 207:1-17.

20 112. BDU Director Nevin wrote in an internal memorandum that one purpose of the BDU’s
21 quality control procedures was to ensure “that no new type of claim is approved without the
22 involvement of multiple attorneys.” DOE00008841.

23 113. That memorandum also stated that “[t]he bar for new approvals is high,” and new
24 approval types will only be adopted with the assent of “a majority of the senior attorneys and the
25 [BDU] Director.” *Id.* at -8842 to -8843.

1 114. Any protocols that set parameters for the *denial* of BD applications can be approved by a
2 senior BDU attorney, but any protocols that set parameters for the potential *approval* of BD
3 applications must be elevated to the BDU Director. DOE00006974.

4 115. Any BD applications that are set aside for further review under the BDU’s potential
5 approval criteria did not count toward backlog clearance targets. Nevin Dep. 178:4-8.

6 116. An internal BDU memorandum (which, according to metadata, was created by BDU
7 Director Nevin in April 2019) asserted that the historical BD approval rate for CCI borrowers
8 making JPR claims—calculated by the Department to be “about 67%”—was “dramatically higher
9 than we expect to see for all other claims,” and that “[o]ur data to date suggests that the approval
10 rate [for other claims] is likely to be approximately under 10%.” The memorandum does not
11 specify what this “data” consists of. DOE00009291.

12 117. On information and belief, the Department had no factual basis to support an estimate
13 that, on a full and fair assessment of the merits of each application, only 10% of BD claims other
14 than CCI JPR would qualify for borrower defense relief under the applicable regulations and state
15 law.

16 118. The same memorandum stated that “for applications from borrowers who attended
17 schools that have fewer than 20 applications pending, our data to date indicates that the approval
18 rate will be under 5% and may be as low as 2-3%.” DOE00009291.

19 119. On information and belief, the Department had no factual basis to support an estimate
20 that, on a full and fair assessment of the merits of each application, under 5% of BD claims from
21 schools with less than 20 BD applicants would qualify for relief under the applicable regulations
22 and state law.

23 120. In another internal memorandum, dated August 18, 2019, BDU Director Nevin wrote that
24 “[t]he majority of applications will be denied – based on either the insufficiency of the borrower’s
25 allegations or the lack of sufficient evidence to support the borrower’s application.”
26 DOE00008841, at -8842.

27 121. The BDU adopted a practice of using “adjudication” as a synonym for “denial.”
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b. Disregarding Sworn Borrower Allegations

122. As part of the ‘presumption of denial’ policy, the Department adopted a policy and practice of disregarding borrower allegations, even though the allegations in BD applications are made under penalty of perjury.

123. BDU Director Nevin testified that a borrower’s sworn statements alone will never be enough to warrant approving a borrower defense application. Nevin Dep. 95:24-96:4, 97:4-9.

124. Training materials provided to BD application reviewers likewise reflected that statements made by borrowers in their applications did not constitute “evidence” in support of those applications. DOE00006206, at -6399 to -6433; DOE0006016, at -6020.

125. The Department’s policy of disregarding sworn statements by borrowers applied both to individual applications and more broadly: Even where dozens or even hundreds of borrowers made similar allegations against a school, the Department did not consider these similar statements to constitute “common evidence” that could weigh in favor of approval, or even as common evidence suggesting the need for further investigation.

126. For example, over 500 borrowers from Strayer University filed BD applications citing misrepresentations regarding the school’s employment prospects, program costs, and enrollment tactics. Despite finding, among a sample of 50 claims, that many borrowers reported similar experiences (*e.g.*, 43 of 50 claims raised a program cost allegation, and of those, 25 alleged misrepresentations about the cost of attendance), BDU discounted these allegations as “individual experiences, frustrations, or misunderstandings.” DOE00012658; DOE00012664.

127. Similarly, allegations from 119 borrowers against Morris Brown College made “very consistent” claims that the school pressured prospective students to enroll, inflated job prospects for their graduates, and misrepresented several aspects of their programs such as the tuition, quality of its instructors, and the ease with which credits could be transferred. The BDU, however, refused to credit these claims, concluding that there was “insufficient” evidence of a “pattern or practice of misconduct.” DOE00011746; DOE00011738.

1 128. This policy of disregarding borrower testimony was a change from prior practice. When
2 the Department developed its approval criteria for certain CCI and ITT claims in 2016 and early
3 January 2017, it relied extensively on borrower statements.

4 129. For example, in its “Recommendation for Everest/WyoTech Borrowers Alleging Transfer
5 of Credit Claims” memorandum, dated October 24, 2016, the BDU stated that “[h]undreds of
6 student applications reviewed to date provide corroborative evidence that Everest admissions
7 personnel regularly made misleading oral representations about transferability.” In support of the
8 finding that Everest personnel made widespread misrepresentations, the BDU listed a sampling of
9 averments from BD applications. DOE00000196, at -197 to -199.

10 130. The memorandum also cited borrowers’ statements from BD applications to support the
11 finding that Everest’s representations were false and the finding that students derived no value
12 from an Everest education. *Id.* at -204, -213.

13 131. Likewise, in its “Recommendation for Corinthian Borrowers Alleging That They Were
14 Guaranteed Employment” memorandum, dated January 9, 2017, the BDU stated that “[i]n BD
15 applications, borrowers who attended Heald, Everest, and WyoTech consistently allege, each in
16 their own words, that Corinthian staff orally promised, guaranteed, or otherwise assured them that
17 they would be placed in jobs.” DOE00007866.

18 132. Again, the BDU relied on averments from BD applications to support the finding that
19 misrepresentations occurred with “pervasiveness and consistency.” *Id.* at -7867.

20 133. The BDU similarly relied on borrower testimony from BD applications to support the
21 findings in its memorandum titled “Recommendation for ITT Borrowers Alleging That They Were
22 Guaranteed Employment – California Students,” dated January 10, 2017. DOE00009399; *see id.*
23 at -9400 to -9403.

24 134. These memoranda were re-reviewed by the Department in December 2017, and the
25 Department affirmed that it would continue to rely on the findings in these memoranda as a basis
26 for adjudicating BD claims.

1 135. In the school-specific memoranda that it developed in 2019 and 2020, however, the BDU
2 has consistently concluded that dozens or even hundreds of allegations by borrowers alleging the
3 same school misconduct do not constitute “evidence to establish a pattern or practice of this type
4 of misconduct.”

5 136. For example, reviewing the claims of 375 borrowers from Carrington College, the BDU
6 noted that nearly all the applications — over 80 percent — alleged that the school had
7 misrepresented its employment prospects. Yet the BDU concluded that the borrowers had failed
8 to provide “any supporting evidence . . . to establish a pattern or practice of this type of
9 misconduct.” DOE00010364; DOE00010368.

10 137. Similarly, in a May 2020 memorandum regarding BD allegations against Universal
11 Technical Institute, the BDU did not consider it significant that 87% of BD applications from that
12 school (522 out of 601) made employment prospects allegations. DOE00012873, at -875.

13 138. As another example, eighteen students from Eagle Gate College “all specifically claimed
14 they were guaranteed jobs and that the programs they were interested in had a 100% placement
15 rate.” Despite noting this “peculiar” trend, the BDU recommended “adjudication” (denial)
16 because, “unfortunately,” most of the misrepresentations were made verbally. DOE00010738; *see*
17 *also* DOE00011953 (recommending denial where “the few borrowers that do state an adequate
18 claim for misrepresentation, allege that the misrepresentations took place in the form of verbal
19 communications with school administrators and were not supported by any additional evidence”).

20 139. This practice of disregarding borrowers’ accounts of oral misrepresentations is a
21 significant change from the BDU’s analysis of allegations against CCI and ITT in 2016 and 2017,
22 in which the BDU focused on and credited the prevalence of oral misrepresentations.

23 140. The BDU’s school-specific memoranda never analyzed whether oral misrepresentations
24 would suffice to state a claim under applicable state law, as required under the 1995 borrower
25 defense regulations.

26 141. Oral misrepresentations are frequently actionable under state consumer protection laws.
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1 142. Often, the BDU's reviewers note that borrowers make consistent reports of a specific type
2 of misrepresentation, but the reviewers then conclude that there is no consistent pattern of alleged
3 misconduct because the claims are not common to a specific campus or time period.

4 143. For example, the BDU acknowledged that 19 borrowers' claims against Grantham
5 University about transferability of the school's credits were "frequent enough to evaluate further,"
6 but then recommended "adjudicating" (*i.e.*, denying) these claims "[d]ue to the lack of prevalent
7 theme for these individual claims" and purported absence of "commonality among the programs
8 or enrollment year." DOE00011006.

9 144. By contrast, in the BDU's CCI guaranteed employment memorandum dated January 9,
10 2017, the BDU had concluded that similar claims of misrepresentations from BD applicants
11 spanning multiple campuses and time periods *corroborated* the conclusion that misrepresentations
12 were common and consistent across the school group (rather than showing a lack of commonality).
13 DOE00007866; *see id.* at -7868 to -7870; *see also* DOE00009399 at -9400 to -9403 (same in ITT
14 California memo).

15 145. In at least some cases, the BDU appears to have set claim sampling criteria for its
16 reviewers that require or permit the reviewers to pull BD applications from different campuses,
17 programs of study, and/or time periods within a school or school group when considering whether
18 there may be "common evidence" supporting such applications. *See, e.g.*, DOE00012664
19 (sampling 50 claims from Strayer University that spanned enrollment dates from 1997 to 2019, in
20 seven program areas).

21 146. In other instances, the BDU's memoranda do not specify the campuses, time periods, or
22 program areas represented by samples pulled from a school's BD applicant pool. *See, e.g.*,
23 DOE00012873; DOE00010364.

24 147. For this reason, any supposedly observed lack of commonality between campuses,
25 program areas, and time periods may be due to the sampling criteria, not to the nature of the claims
26 themselves.

1 148. Dozens of the BDU's school-specific memoranda contain no summary or analysis
2 whatsoever of the allegations made by borrowers against that school.

3 149. Across all the school-specific memoranda in Plaintiffs' possession, the BDU rejected the
4 applications of over 4,500 borrowers without providing any analysis whatsoever of those
5 borrowers' claims. *See, e.g.*, DOE00010297 (denying applications of 37 students); DOE00011569
6 (same for 36 students); DOE00012822 (35 students); DOE00012087 (34 students); DOE00011207
7 (33 students).

8 150. The Department's policy of refusing to credit sworn borrower allegations in BD
9 applications is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
10 law.

11 ***c. Secret Rules About Allegation Specificity***

12 151. The BDU applied rules to judge the sufficiency of borrower defense allegations that were
13 not communicated to borrowers and that could not have been anticipated by borrowers when they
14 filled out their BD applications.

15 152. Whether an application "fails to state a legal claim" is secretly a threshold question. When
16 an application is denied for "failure to state a legal claim," no evidence is reviewed. Nevin Dep.
17 204:24-205:18; AR 495 ("Standard Protocol" for BD application review).

18 153. The BDU has never informed borrowers how to successfully "state a legal claim," or that
19 if they do not succeed in doing so, their application will be denied, and no evidence will ever be
20 reviewed.

21 154. The BDU trained reviewers to deny claims based on specific deficiencies in statements
22 of legal claims that were never explained to applicants.

23 155. For example, if a borrower stated in their BD application that their school made a
24 misrepresentation, but failed to explicitly state that they relied on that misrepresentation, the
25 application would be denied for "failure to state a legal claim." Nevin Dep. 85:8-20.

1 156. This is true even when the context of the borrower's application indicates that the
2 borrower did in fact rely on the misrepresentation, or when the applicable state law (not identified
3 by the BDU in any case) does not include a reliance element.

4 157. As another example, a document titled "How to Review a Borrower Allegation in a One-
5 off or Small Batch Application" provides examples of "Employment Prospects allegations" that
6 do and do not "potentially state a claim." Acceptable types of allegations include: "My school told
7 me I would make \$60K a year upon graduation, but I only made minimum wage"; "My school
8 said they were fully accredited, but when I graduated I was not eligible to get a job in my field of
9 study"; and "My school told me that once I got this degree I could immediately get hired as a
10 nurse; that's not true. I need to have one year of clinical work before I can be hired." Unacceptable
11 allegations, which "should be denied for failure to state a claim," include: "The school promised
12 me a job"; "There were no jobs available in my program when I graduated"; "I thought that I would
13 get a job, but I'm working fast food instead"; and "My school told me 85% of graduates have a
14 job upon graduation, but I didn't have a job upon graduation." How to Review a Borrower
15 Allegation in a One-off or Small Batch Application at 2-3 (produced in response to Interrogatories
16 17-18).

17 158. The BDU has never informed borrowers that, as the training document provides, "In order
18 to allege a misrepresentation that states a claim under state law the borrower must allege both a
19 representation and the falsity of that representation in their application. Further, the falsity alleged
20 must match the representation." *Id.* at 1.

21 159. The BDU considered the following statement a "Career Services allegation[] that
22 potentially state[s] a claim and therefore should be denied only if there is insufficient evidence to
23 support the allegation": "My school told me they would provide resume help and have job fairs,
24 but they never did either of those things. All they did was send me links to job postings." *Id.* at 6.

25 160. However, the statement "My school promised me that they had great career services, but
26 it wasn't useful" "should be denied for failure to state a claim," *id.* at 6, regardless of whether the
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1 BDU has in its possession common evidence of specific misrepresentations about the career
2 services office, or whether the student provided extrinsic evidence of promises made and not kept.

3 161. According to Department policy, *not even* evidence can overcome an allegation that does
4 not meet this secret threshold: *e.g.*, if a student stated “The school promised me a job” (one
5 “element of a misrepresentation”), it would not matter if the student provided evidence of both that
6 misrepresentation and the fact that they did not get the job as promised. Their claim would not
7 make it past this secret standard. Nevin Dep. 204:24-205:18; Nevin Decl, ECF No. 56-4, at AR
8 495 (“Standard Protocol”).

9 162. The BDU considered “My school told me one price but then I was charged a higher price”
10 to be a “Program Cost and Nature of Loan allegations that potentially state[s] a claim.” How to
11 Review a Borrower Allegation in a One-off or Small Batch Application at 4.

12 163. However, the BDU considered the allegation “My school didn’t let me know that there
13 were additional fees in addition to tuition” as an insufficient “Program Cost and Nature of Loan
14 Allegations that Do[es] Not State a Claim and therefore should be denied.” *Id.*

15 164. Nowhere does the BDU inform applicants or explain that only certain types of program
16 costs are relevant in order to “state a claim” regarding program cost misrepresentations.

17 165. This same document states that “[p]ure omissions without the student alleging that the
18 school had a duty to inform the student of the pertinent information” are “Allegations that Do Not
19 State a Claim and therefore should be denied for failure to state a claim.” *Id.* at 2.

20 166. The BDU has never informed borrowers that to successfully “state a legal claim” for
21 omission, they must both allege the omission and the existence of a duty, or that if they do not
22 succeed in doing so, their application will be denied, and no evidence will ever be reviewed.

23 167. As one example of how this policy was applied, a BDU memorandum assessing claims
24 regarding Concorde Career Institute stated: “Some applicants have made allegations about not
25 being able to obtain employment because the school that they attended was not accredited. The
26 applications reviewed however do not indicate that the school told them they were accredited and
27 that it turned out to be false.” DOE00010571.

1 168. The BDU has never informed borrowers that they must allege a “duty to inform” in order
2 to “state a claim” based on a misrepresentation by omission, nor has it suggested what sources a
3 borrower might consult to identify or derive a “duty to inform.”

4 169. Overall, the training that BDU attorneys receive regarding the wording of allegations
5 shows that if borrowers did not phrase the allegations with all the “elements” or with the required
6 specificity—even if personal or common evidence was clear—their claims would be denied and
7 the evidence would never be reviewed.

8 170. Borrowers were never informed of how to phrase their allegations or the necessary
9 elements of their claims.

10 171. The Department’s policy of applying strict, legalistic standards to the wording of
11 borrower defense applications without informing borrowers of those standards is arbitrary,
12 capricious, an abuse of discretion, or otherwise not in accordance with law.

13 ***d. Secret, Undefined “Supporting Evidence” Policy***

14 172. Hundreds of memoranda prepared by the BDU consistently show that BD applications
15 are rejected as a matter of course when, according to reviewers, “the borrowers fail to provide any
16 supporting evidence.” *See, e.g.*, DOE00010341 (dismissing claims of 437 borrowers regarding
17 Career Point College for lack of supporting evidence); DOE00012862 (same for 55 applications
18 regarding Unitech Training Academy); DOE00010339 (same for 51 applications regarding Career
19 Institute of Health and Technology).

20 173. The BDU’s claim review protocol states that an application should be “denied without
21 further investigation” where “[t]here is no corroborating evidence of the misrepresentation.”
22 DOE00006016, at -6020.

23 174. This policy requiring borrowers to submit “supporting evidence” in order to be considered
24 for approval stands in stark contrast to the Department’s own BD application form(s).

25 175. As of the date of this Supplemental Complaint, there were two BD application forms
26 available on the Department’s website. *See* <https://studentaid.gov/sites/default/files/BD-General->
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1 Application-Form.pdf (OMB No. 1845-0163); [https://studentaid.gov/sites/default/files/borrower-](https://studentaid.gov/sites/default/files/borrower-defense-application.pdf)
2 [defense-application.pdf](https://studentaid.gov/sites/default/files/borrower-defense-application.pdf) (OMB No. 1845-0146).

3 176. One version of the form states: “While you are not required to submit documentation with
4 your application to be considered for discharge, we recommend that you do so.” BD App. Form,
5 OMB No. 1845-0163.

6 177. This is false. In fact, the Department’s internal policy is to **require** an application to attach
7 supporting documentation in order to be considered for approval, unless the application happens
8 to fit within an exceedingly narrow set of criteria that are not communicated to borrowers (detailed
9 *infra* ¶¶ 258-288).

10 178. The other version of the standard BD application form states: “To apply, you must
11 complete, sign, and submit this form to the U.S. Department of Education for review. You may
12 attach additional documents, such as transcripts, enrollment agreements, and promotional
13 materials from your school.” BD App. Form, OMB No. 1845-0146.

14 179. This is misleading. In fact, the Department does **not** consider it sufficient for an applicant
15 merely to “complete, sign, and submit this form” in order to be considered for approval.

16 180. Further, the Department does **not** consider transcripts or enrollment agreements to
17 constitute relevant evidence when it assesses a BD application. Nevin Dep. 182:6-19.

18 181. The Department did not have a standard borrower defense application form available until
19 on or about December 31, 2016. Nevin Decl., ECF No. 56-4 ¶ 30.

20 182. Before that date, borrowers had no guidance from the Department as to what constituted
21 a viable BD application.

22 183. Many of the Class Members in this action submitted their BD applications before a
23 standard form was available.

24 184. The Department has never communicated to borrowers that they must submit supporting
25 documentation in order for their BD applications to be considered for approval.

1 185. The Department has never communicated to borrowers what kind of documentation
2 would be sufficient to support an approval of a BD application. Nevin Dep. 96:5-97:3, 183:23 –
3 184:1.

4 186. The Department has not developed any internal policy or training regarding what specific
5 kinds of documentation would be sufficient to support an approval of a BD application. Nevin
6 Dep. 96:5-15, 104:11 – 105:18.

7 187. BDU Director Nevin testified that front-line reviewers are “not weighing evidence” when
8 they review BD applications. Nevin Dep. 104:20-21.

9 188. Even when borrowers *have* submitted substantial evidence along with their applications,
10 the BDU has concluded that no evidence exists to support their claims.

11 189. For example, students from Meridian University provided extensive evidence to support
12 their allegations, submitting emails regarding coursework, letters of withdrawal, and school
13 materials regarding fieldwork and internships. The BDU concluded, however, that “there does not
14 exist evidence to substantiate borrowers’ claims.” DOE00011608.

15 190. As detailed *supra*, the BDU routinely refused to credit students’ own sworn statements as
16 “supporting evidence.” For example, in a memorandum analyzing 41 BD applications from
17 students at Mattia College, the BDU initially categorized applicants’ signed and emailed
18 statements as “evidence,” but then concluded that there was “no evidence to support [the]
19 allegation[s].” DOE00011572.

20 191. To date, the Department has never approved a BD application based on evidence that a
21 borrower submitted along with their application. Nevin Dep. 108:17-24.

22 192. Indeed, between the spring of 2015 and December 9, 2020, the Department had never
23 approved an individual (non-group) BD application for any borrower who took out loans in
24 connection with attendance at a school other than CCI or ITT. Nevin Dep. 50:5-12.

25 193. Neither the HEA nor the 1995 or 2016 borrower defense regulations require borrowers to
26 submit supporting evidence in order for their BD claims to be considered for approval.
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1 194. The Department’s policy of requiring borrowers to submit supporting evidence without
2 informing borrowers of that requirement is arbitrary, capricious, an abuse of discretion, or
3 otherwise not in accordance with law.

4 195. The Department’s policy of requiring borrowers to submit supporting evidence without
5 specifying what kinds of documentation are adequate to support approval is arbitrary, capricious,
6 an abuse of discretion, or otherwise not in accordance with law.

7 *e. Disregarding Common Evidence and Maintaining Deliberate Ignorance*

8 196. The BDU has also consistently disregarded, or chosen not to look into, other potential
9 sources of evidence to support BD allegations.

10 197. The BDU’s school-specific memoranda have disregarded evidence of government
11 investigations, including investigations that resulted in penalties for the schools.

12 198. For example, the BDU dispensed with 205 applications alleging misrepresentations by
13 Empire Beauty School, despite evidence that the Department’s own Administrative Actions and
14 Appeals Service Group (AAASG) had initiated debarment of four admissions officers on charges
15 of falsifying documents to obtain federal financial aid, creating and/or accepting fraudulent high
16 school diplomas and GEDs, and making materially false statements on federal student loan
17 applications. The Empire Beauty School memorandum also noted the existence of a settlement
18 between the school and the Massachusetts Attorney General’s Office over allegations that the
19 school failed to provide job placement rates to prospective students and engaged in excessive
20 recruitment calls. Despite describing this evidence in detail, the memorandum nevertheless
21 concludes “there is insufficient evidence to suggest that [the school] engaged in widespread
22 conduct of a type that would warrant borrower defense relief.” DOE00010774; DOE00010783;
23 DOE00010792; DOE00010795.

24 199. As another example, in a memorandum recommending the “adjudication” (denial) of 525
25 applications concerning Everglades University, the BDU acknowledged and then ignored a
26 settlement agreement between the school and the State of Florida over alleged violations of
27 Florida’s Unfair Trade Practices Act. The “Assurance of Voluntary Compliance” signed by the
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1 school did not admit guilt, but did establish “disclosure policies in several areas, including the
2 transfer of credits,” and required Everglades to offer a “retraining program for students who
3 attended [the school] during the ‘relevant period’ of 1/1/2008-10/25/2012.” Even though more
4 than one hundred BD applicants attended the school during the “relevant period” and raised claims
5 directly related to issues covered by the settlement agreement, the BDU nevertheless concluded
6 that “the borrowers fail to provide any supporting evidence and FSA is not otherwise in possession
7 of evidence to establish a pattern or practice of this type of misconduct.” DOE00010818;
8 DOE00010826; DOE00010834.

9 200. The BDU similarly found “no evidence” to suggest that Universal Technical Institute
10 engaged in widespread misrepresentations despite the Department itself having made nine findings
11 of noncompliance at the school, including a finding that UTI “did not provide its students with the
12 required disclosure regarding cost of attendance.” Notably, 450 BD applications raised a program
13 cost allegation. This memorandum also acknowledged investigations of UTI conducted by the
14 Department of Justice and the Massachusetts Attorney General’s Office, but the BDU failed to
15 acquire evidence from either office. DOE00012873.

16 201. The BDU’s school-specific memoranda have disregarded evidence of lawsuits against the
17 schools, including where a government office is a party.

18 202. For example, in a memorandum concerning schools owned by Education Management
19 Corporation (“EDMC”), the BDU described in detail two *qui tam* lawsuits and two securities class
20 actions against EDMC, and conceded that the allegations in these four lawsuits “may be relevant
21 to borrower defense.” These lawsuits included, *inter alia*, allegations that EDMC schools used
22 “aggressive enrollment quotas,” had “inadequate career services employee staffing,” and engaged
23 in “predatory recruitment practices, including knowingly enrolling students who could not
24 complete the program.” The BDU concluded, however, that all BD applications from EDMC
25 schools relating to enrollment dates between July 1, 2003 and December 31, 2008 should be
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1 rejected,⁴ because the BDU “does not currently have any documents or evidence to substantiate
 2 the claims made in these lawsuits” for that date range. In particular, the BDU claimed that it was
 3 unable to review “millions of pages” of documents produced to the Department of Justice in one
 4 of the *qui tam* cases — in which the Department of Justice and various states had intervened, and
 5 which had resulted in settlement. DOE00009626, at -9627 to -9630.

6 203. The same EDMC memorandum also described investigations of EDMC by the
 7 Pennsylvania and Iowa Attorneys General’s Offices, and noted that the BDU had obtained
 8 evidence from those offices, some of which did “relate to the [time] period at issue” (7/1/2003 –
 9 12/31/2008). The BDU dismissed this evidence, however, because it reportedly “did not possess
 10 the underlying data and internal policies to assess the accuracy of [EDMC’s] representations.” *Id.*
 11 at -9627.⁵

12 204. As another example, the BDU found “insufficient evidence of widespread misconduct at
 13 Suburban Technical School to warrant further investigation” despite the reviewer noting *United*
 14 *States v. Premier Education Group, L.P.*, No. 11-3523, 2016 WL 2747195 (D.N.J. May 11, 2016),
 15 a *qui tam* False Claims Act lawsuit against the school’s parent company, Premier Education Group,
 16 which alleged, *inter alia*, material misrepresentations made to secure Department of Education
 17 funding. The memorandum failed to investigate or analyze the case’s relevance to borrowers’
 18 claims. DOE00012673.

19 205. In the *Premier Education* ruling cited by the BDU reviewer, the trial court denied the
 20 defendants’ motion to dismiss relators’ claims about job placement rates and transferability of
 21

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 23 ⁴ The BDU made one extremely narrow exception to this finding: applications making
 24 “professional licensure allegations relating to psychology masters and doctorate level programs at
 Argosy University” could be held for further investigation. DOE00009626, at -9630.

25 ⁵ All redactions in this Supplemental Complaint represent allegations relating to documents that
 26 are the subject of an ongoing process under the Protective Order in this matter, by which Plaintiffs
 27 have challenged certain confidentiality designations. Plaintiffs expect this process to be resolved
 28 by the time the Court rules on Plaintiffs’ motion for leave to file this Supplemental Complaint. If
 the Court grants Plaintiffs leave to file, Plaintiffs will file these allegations and the supporting
 document(s) either without redactions or under seal, as appropriate.

1 course credits. *Premier Educ. Grp.*, 2016 WL 2747195, at *21. In doing so, the court stated:
2 “Relators identify the various tactics employed to carry out each violation, such as miscounting
3 successful job placements, falsifying employment records, and instructing students that their
4 credits would be transferrable to any other college or university or to any other school offering a
5 similar career program. Relators identify specific individuals at various PEG schools responsible
6 for committing such violations at each school, as well as the senior PEG representatives from
7 whom they received instructions to do so.” *Id.* (internal citations omitted). Thereafter, the parties
8 settled claims regarding Suburban Technical School with Department of Education consultation.
9 *See* Letter from Counsel for the U.S. at 1, *Premier Educ. Grp.*, No. 11-3523 (D.N.J. Jun. 4, 2019),
10 ECF No. 222 (“The United States has been apprised by counsel for Relators and for defendants
11 that they have reached agreement on the revised settlement agreement language. The Department
12 of Education . . . , however, is still reviewing the proposed language including the draft release
13 language concerning administrative consequences.”); Letter from Counsel for the U.S. at 1,
14 *Premier Educ. Grp.*, No. 11-3523 (D.N.J. Jun. 18, 2019), ECF No. 224 (“[T]he parties have been
15 provided a new draft of the government’s proposed settlement agreement incorporating changes
16 required based, in part, on input from the Department of Education.”); Order at 1-2, *Premier Educ.*
17 *Grp.*, No. 11-3523 (D.N.J. Aug. 7, 2019), ECF No. 229 (in order of dismissal with prejudice,
18 “surviving claims . . . concerning certain specified conduct by Defendants at [*inter alia*] Suburban
19 Technical School campuses shall constitute the ‘Covered Conduct’”).

20 206. The reviewer who drafted the Suburban Technical School memorandum, and the senior
21 BDU attorney who reviewed it, also ignored additional readily available evidence of misconduct
22 by Premier Education Group. *See, e.g.*, Jeanette DeForge, “Agreement with AG Forces Premier
23 Education Group Out of Massachusetts; Salter College, Others, to Forgive \$1.6M in Student
24 Debt,” *MassLive* (updated July 14, 2019), [https://www.masslive.com/news/2019/07/attorney-](https://www.masslive.com/news/2019/07/attorney-general-agreement-to-shut-down-5-colleges-statewide-cancel-students-debt.html)
25 [general-agreement-to-shut-down-5-colleges-statewide-cancel-students-debt.html](https://www.masslive.com/news/2019/07/attorney-general-agreement-to-shut-down-5-colleges-statewide-cancel-students-debt.html).

26 207. As another example of ignoring relevant litigation, the BDU concluded that there was
27 “insufficient evidence of widespread misconduct” by Mountain State University, despite noting
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1 that over 400 individual lawsuits and four class action lawsuits had been filed against the school
2 in state and federal court. DOE00011761.

3 208. Similarly, in its review of BD claims relating to Micropower Career Institute, the BDU
4 acknowledged that three of the school's senior executives were prosecuted and found guilty of
5 defrauding the United States of \$1 million in education grant funds through a student aid fraud
6 scheme and of running a student visa fraud scheme that generated \$7.4 million in illegal revenues.
7 The reviewer specifically noted that the Department's OIG "was involved in the investigation and
8 created a report which could provide further insight if needed," but then proceeded to recommend
9 that the claims be adjudicated (denied) *without even reviewing the OIG's report*, because "these
10 allegations are unsupported by evidence attached to the borrowers' applications." DOE00011644.

11 209. The BDU found "insufficient evidence of widespread misconduct" in multiple instances
12 where school officials were convicted of fraud. *See, e.g.*, DOE00010957, DOE00010958,
13 DOE00010963 (former director of school convicted and sentenced to prison for "us[ing]. . . a high
14 school 'diploma mill' owned and operated by his wife to make students eligible for federal student
15 aid when they otherwise would not have been qualified" and for "us[ing] the name and social
16 security number [sic] of students to collect student aid even after the students left the institution");
17 DOE00012629 (former owner of school sentenced to prison in 2019 and forced to pay nearly
18 \$300,000 to former students, the Department, and the Department of Veterans Affairs, which she
19 had kept in financial aid refunds).

20 210. In a memorandum reviewing BD claims related to Berkeley College, the BDU noted that,
21 following an extensive two-year investigation, the New York City Department of Consumer
22 Affairs sued the school for violations of New York consumer protection law, and that this lawsuit
23 was "currently pending in New York State court." The BDU acknowledged that borrowers'
24 applications raised similar claims against the school for alleged misrepresentations about academic
25 grants, credit transfers, and employment prospects, but concluded that the BDU was "not in
26 possession of evidence related to this case." The memorandum did not note any effort to obtain
27 such evidence from the New York City Department of Consumer Affairs. DOE00010089.

1 211. In an unusual result, the Berkeley College memorandum concluded that the school should
2 be “provided notice of these allegations.” However, as of December 9, 2020 — three months after
3 the memorandum was approved by a senior BD attorney — the Department had not actually
4 provided notice to or requested documents from Berkeley College. Nevin Dep. 72:23-73:14.

5 212. Moreover, before the memorandum was written, the BDU had *already* rejected 11 BD
6 applications from Berkeley College (with 80 still pending). DOE00010089.

7 213. The BDU’s school-specific memoranda have disregarded evidence of violations of the
8 Department’s own regulations.

9 214. For example, in a memorandum reviewing 493 applications related to Remington
10 College, the BDU noted the existence of the following before concluding that there was
11 “insufficient evidence of widespread misconduct . . . to warrant further investigation”: four internal
12 Department investigations in 2012, 2013, and 2017, all of which identified issues with financial
13 aid administration at certain Remington campuses and one of which mentioned a “failure to meet
14 the minimum academic year definition for the Medical Assisting program” at the Mobile, Alabama
15 campus; a 2012 Senate Report that recognized “a pattern of complaints for transferring of credits,
16 program cost and nature of loans, and admissions and urgency to enroll against Remington
17 College”; a 2016 settlement with the U.S. Attorney’s Office for the District of Hawaii to resolve
18 False Claims Act violations related to educational benefit payments for beneficiaries who were not
19 enrolled in a VA approved program; and a 2010 undercover investigation by ABC News finding
20 that “prospective and enrolled students of Remington College with criminal records were told by
21 Remington College recruiters that they would be able to work in law enforcement.”
22 DOE00012245.

23 215. As another example, the BDU disregarded a Department OIG report indicating that two
24 campuses of Florida Career College were involved in fraudulent production of high school
25 diplomas and misrepresentation of high school graduate status. Glossing over substantial news
26 coverage of an FBI raid of those campuses and a pending student lawsuit alleging predatory
27 admissions practices and false promises of job placement, the BDU concluded that the 374
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1 borrower applicants “fail to provide any supporting evidence.” DOE00010870; DOE00010871;
2 DOE00010875.

3 216. Likewise, in evaluating BD claims regarding the Iverson Institute, the BDU concluded
4 that a Department of Education Final Program Review Determination “did not relate to [borrower
5 defense]” even though it found that the school enrolled students without a high school diploma
6 and enrolled students receiving Title IV funds in unapproved programs, resulting in the school
7 losing eligibility to participate in the Title IV program. The BDU recommended “adjudication”
8 (denial) of all claims even though borrowers’ allegations “are generally consistent with one another
9 and reveal a pattern of misconduct by the school,” because “there is no evidence to support them.”
10 DOE00011254; DOE00011255; DOE00011259.

11 217. In many cases, the BDU has appeared to consider a school’s denial of wrongdoing in
12 connection with a settlement agreement to constitute evidence that no wrongdoing actually
13 occurred.

14 218. For example, the BDU disregarded a settlement from a suit alleging the Lawton School
15 misrepresented job placement rates and educational services to students, stating “[the owners] did
16 not admit any fault in the Settlement Agreement. As such, there is insufficient evidence to warrant
17 further investigation” DOE00011421; DOE00011422; DOE00011426.

18 219. In many cases, the BDU has concluded that a school’s known misrepresentations to
19 auditors or to the Department itself did not raise any need to investigate whether the school made
20 misrepresentations to borrowers.

21 220. For example, the BDU noted two Department of Education Program Reviews finding that
22 Brookline College misrepresented its job placement rates to the auditor, but concluded that “there
23 was no evidence to suggest that Brookline made the same misrepresentations to students.” The
24 BDU apparently ignored that 65 BD applicants made career services allegations, including about
25 job placement promises. DOE00010201.
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1 221. The BDU has consistently concluded that no further investigation is necessary into
2 schools’ potential misrepresentations even after the BDU has been put on notice of the potential
3 existence of evidence that would support borrowers’ allegations.

4 222. Although the BDU is authorized to request evidence from schools against which BD
5 claims are pending, the Department had only contacted four schools to gather information in
6 connection with borrower defense inquiries as of December 9, 2020. Nevin Dep. 72:23-73:14.

7 223. An internal Department memorandum (which, according to metadata, was created by
8 BDU Director Nevin in April 2020), stated: “Since notice to the school *creates additional burdens*
9 *on the school* and also delays the adjudication process, the preliminary review is intended to
10 *eliminate unnecessary notices to schools* where there is no evidence for schools to refute (and,
11 therefore, *no benefit to the school* in receiving the notice).” DOE00004321.

12 224. From early 2017 until approximately fall 2019, the Department had a policy in place that
13 all communications between the BDU and other federal or state agencies had to be cleared through
14 the Office of Policy and other Department officials outside of FSA. Nevin Dep. 69:14 – 70:16,
15 233:1-16.

16 225. As a result, for approximately two and a half years, the BDU did not contact the offices
17 of any state attorneys general to inquire about evidence that those offices had collected and, in
18 some cases, even sent to the BDU in the course of their investigations of schools for misconduct
19 potentially relevant to borrower defense. Nevin Dep. 69:14 – 70:16.

20 226. The BDU has refused to adjudicate group applications submitted by state attorneys
21 general based on evidence collected during investigations by those attorneys general.
22 DOE00002342.

23 227. The BDU can, in theory, leverage FSA’s Investigations Unit to follow up on information
24 about potential school wrongdoing that may be relevant to borrower defense. However, the
25 Investigations Unit has suffered “major attrition” since 2017, and thus the BDU has not been able
26 to work with that unit on many BD-related cases. Nevin Dep. 66:1 – 68:2.

1 228. For example, if the BDU had information that a school had misrepresented its job
2 placement rates for a certain program during a certain period of time, the BDU would *not* be able
3 to ask the Investigations Unit to look into whether that same school had made similar (or other)
4 misrepresentations at other times or in other programs, unless perhaps it happened to be a very
5 recent misrepresentation at a currently open school. Nevin Dep. 70:17 – 71:21.

6 229. According to BDU Director Nevin, “due to attrition and, I think, policy decisions, I don’t
7 think that there was much of anything that came out of those investigations [by the Investigations
8 Unit] that was referred to BD.” Nevin Dep. 67:24 – 68:2.

9 230. When BDU Director Nevin was acting head of the Investigations Unit in 2018, she
10 “raised” to then-Chief Enforcement Officer Julian Schmoke that “we needed to step up
11 investigations,” but “it was kind of the same scenario as borrower defense.” Nevin Dep. 68:12 –
12 69:3.

13 231. In many cases, the BDU appears to have concluded that if evidence is not readily available
14 with a simple Google search, then that evidence either does not exist or is not worth pursuing.

15 232. For example, the BDU acknowledged that it was aware of multiple lawsuits against
16 Beckfield College “for various claims of deception and misrepresentation,” but it declined to
17 analyze the outcomes or relevant evidence from these suits because “the Kentucky Courts website
18 no longer shows any pending cases against Beckfield.” DOE00010045. *See also* DOE00011707
19 (concluding borrowers “have not provided enough evidence” after reviewer “could not locate” an
20 applicant’s complaint on the Missouri Attorney General’s website); DOE00010571, -10573
21 (concluding borrowers did not provide “any sufficient evidence” after reviewer was “unable to
22 access the court documents” for two complaints filed against the school “without creating a login”
23 for the court website).

24 233. The BDU’s claim review protocol states that the BDU may “[c]onduct additional
25 investigation of claim or claims where warranted by size of affected group, ability to develop
26 extrinsic evidence, and other operational considerations.” DOE00006016, at -6020. “Other
27 operational considerations” are not defined.

1 234. Neither the HEA nor the 1995 or 2016 borrower defense regulations limits relief to BD
2 applicants based on the total number of BD applications from the applicant's school.

3 235. Neither HEA nor the 1995 or 2016 borrower defense regulations limits relief to BD
4 applicants based on the ease of collecting evidence regarding the applicant's school.

5 236. The Department's policy of disregarding potential common evidence in support of BD
6 applications, including but not limited to similar allegations made by multiple borrowers, is
7 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

8 *f. Failure to Apply Legal Standards*

9 237. The 1995 borrower defense regulations provide that a borrower may assert, as a defense
10 to repayment, "any act or omission of the school attended by the student that would give rise to a
11 cause of action against the school under applicable state law." 34 C.F.R. § 685.206(c)(1).

12 238. The Department has acknowledged, in its BD claim review protocol guidelines, that state
13 law "governing alleged misrepresentations and material omissions" provides the controlling
14 standard. DOE00006016, at -6018.

15 239. Yet for BD applications concerning loans subject to the 1995 regulations, the Department
16 did not apply state law in deciding whether a BD application stated a claim for relief, in violation
17 of the 1995 regulations.

18 240. The Department has previously represented that the need to analyze and apply state law
19 was a significant factor in its delay in deciding BD applications. *See, e.g.*, Defs.' Mot. for Summ.
20 J., ECF No. 63 at 18-19; *see also* DOE00007269. This representation was false.

21 241. The BDU's school-specific memoranda almost never mention state law. Over 150 of the
22 memoranda do not, on their face, even identify the state(s) where the school is located. *See, e.g.*,
23 DOE00010647 (noting allegations "do not . . . violate[] state law" but not identifying states where
24 school is located); DOE00012560 (same); DOE00012388 (same).

25 242. The school-specific memoranda never engage in choice-of-law analysis (except,
26 reportedly, in one specific memorandum concerning ITT, *see infra* ¶¶ 267-271).

1 243. BDU Director Nevin testified that BD applications “aren’t being denied based on, you
2 know, not being able to fulfill a specific element of a particular state law or a specific element of
3 the 2016 regulation. . . . [T]he [denial] letters, so the ones that have gone out so far, we haven’t
4 issued any denials that were based on kind of an application of specific elements of, you know,
5 state law where there could be a different answer in California versus Nebraska.” Nevin Dep. 79:6-
6 20.

7 244. BDU Director Nevin also testified, however, that front-line reviewers are not permitted
8 to approve BD applications in part because “[y]ou’d have to understand what the elements of the
9 claim are, and that’s dependent on the regulation and the state law.” Nevin Dep. 206:11-22.

10 245. In some cases, the BDU’s memoranda explicitly apply standards that are *not* related to
11 whether the borrower would have a cause of action under state law. For example, with respect to
12 Charlotte School of Law (“CSL”) — a for-profit law school that lost its accreditation from the
13 American Bar Association (“ABA”) and was terminated from federal student loan programs —
14 the BDU determined that any borrower who separated from the school before February 24, 2015
15 should have their BD application “adjudicated” (denied) because that was “the earliest date that
16 CSL was on clear notice of the gravity of the ABA’s ongoing investigation into its compliance.”
17 DOE00002528, at -2529. This was despite noting that the ABA uncovered wrongdoing at CSL
18 dating back to at least a year earlier. *Id.*

19 246. The Charlotte School of Law memorandum does not analyze or even mention the law of
20 North Carolina, where the school was located. The memorandum does not (and, on information
21 and belief, could not) explain how a wrongdoer’s “notice” of an investigation into its wrongdoing
22 supplies the standard for whether an applicant has a viable claim under applicable state law.

23 247. The Department has stated that the “legal threshold for eligibility” for a BD application
24 is “preponderance of the evidence,” and has maintained that the BDU “[m]ust base decisions
25 granting or denying relief on a record sufficient to withstand court scrutiny.” DOE00006016, at -
26 6018.

1 248. In fact, however, the BDU’s school-specific memoranda never analyze what evidence
2 state law would require under a “preponderance of the evidence” standard.

3 249. In particular, the BDU’s memoranda never justify the BDU’s wholesale rejection of
4 borrowers’ sworn statements in their BD applications when assessing the evidence that a court
5 might consider in establishing a preponderance.

6 250. The BDU’s school-specific memoranda also never analyze whether particular state laws
7 require proof of reliance to state a claim for certain types of misrepresentations.

8 251. Nonetheless, BD claim reviewers are permitted to deny a BD application based on a “lack
9 of reliance.” DOE00006186 (showing claims in “Flagged for Denial” status with “Decision
10 Reason” listed as “Lack of Reliance”); *see also* Nevin Dep. 85:8-20.

11 252. The Department’s policy of failing to identify or apply state law to borrower defense
12 allegations pursuant to the 1995 regulations is arbitrary, capricious, an abuse of discretion, or
13 otherwise not in accordance with law.

14 253. The borrower defense regulations published in 2016 (which did not become effective until
15 October 16, 2018) provided that a borrower may assert, as a defense to repayment, that “the school
16 or any of its representatives, or any institution, organization, or person with whom the school has
17 an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or
18 admissions services, made a substantial misrepresentation in accordance with 34 CFR part 668,
19 subpart F, that the borrower reasonably relied on to the borrower’s detriment when the borrower
20 decided to attend, or to continue attending, the school or decided to take out a Direct Loan.” 34
21 C.F.R. § 685.222(d)(1). “Substantial misrepresentation” is defined as “[a]ny misrepresentation on
22 which the person to whom it was made could reasonably be expected to rely, or has reasonably
23 relied, to that person's detriment.” 34 C.F.R. § 668.71(c). “Misrepresentation” is defined as “[a]ny
24 false, erroneous or misleading statement an eligible institution, one of its representatives, or any
25 ineligible institution, organization, or person with whom the eligible institution has an agreement
26 to provide educational programs, or to provide marketing, advertising, recruiting or admissions
27 services makes directly or indirectly to a student, prospective student or any member of the public,
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1 or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes
2 any statement that has the likelihood or tendency to mislead under the circumstances. A statement
3 is any communication made in writing, visually, orally, or through other means. Misrepresentation
4 includes any statement that omits information in such a way as to make the statement false,
5 erroneous, or misleading. Misrepresentation includes the dissemination of a student endorsement
6 or testimonial that a student gives either under duress or because the institution required the student
7 to make such an endorsement or testimonial to participate in a program.” *Id.*

8 254. An internal Department document (which, according to metadata, was created by BDU
9 Director Nevin in November 2018) estimated that, at the time of the document, less than 5% of
10 pending BD applications would be subject to the 2016 regulations. DOE00004316, at -4320. At
11 the time, this percentage would have represented approximately 7,900 claims, out of 158,110
12 pending. *See* Nevin Decl., ECF No. 56-4, at AR 397 (borrower defense application statistics as of
13 12/31/2018).

14 255. The BDU’s school-specific memoranda never discuss the substantial misrepresentation
15 standard.

16 256. The Department has nonetheless argued that implementation of the 2016 regulations was
17 a reason for the delay in issuing borrower defense decisions. *See, e.g.,* Defs.’ Mot. for Summ. J.,
18 ECF No. 63 at 10.

19 257. The Department’s policy of failing to identify or apply the substantial misrepresentation
20 standard to borrower defense allegations pursuant to the 2016 regulations is arbitrary, capricious,
21 an abuse of discretion, or otherwise not in accordance with law.

22 ***g. Exceedingly Narrow “Common Evidence” Categories Used to Exclude***
23 ***Applications***

24 258. The Department has identified only an exceedingly narrow subset of BD applications that
25 might — but will not necessarily — qualify for borrower defense relief.

26 259. For schools that have any potential approval criteria, the BDU’s protocol has been to
27 examine whether an application alleging claims against that school meets those pre-determined
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1 criteria, usually based on whether the borrower’s claims relate to a specific campus, educational
2 program, and/or time period. If the application meets those criteria, it is set aside, purportedly for
3 further review.

4 260. If an application does not meet the pre-determined criteria, the application is
5 “adjudicated”—which, in practice, means that it is denied. Nevin Dep. 204:24-206:22.

6 261. With respect to CCI, the Department has continued to apply approval criteria that were
7 established prior to January 20, 2017. These criteria allow for the approval of BD applications that
8 allege CCI made misrepresentations at specific campuses, within specific periods of time,
9 regarding JPRs, transfer of credits, or guaranteed employment. *See* DOE00000196;
10 DOE00013704; DOE00013708; DOE00007866.

11 262. The Department has denied thousands of BD applications from CCI borrowers that do
12 not meet the specific parameters for campuses, time periods, and nature of allegations that were
13 set out in those prior memoranda, despite ample evidence that CCI engaged in widespread
14 misrepresentations at other campuses, at other times, and regarding other topics.

15 263. With respect to ITT, the Department has continued to apply approval criteria that were
16 established prior to January 20, 2017. These criteria allow for the approval of BD applications that
17 allege that ITT made misrepresentations regarding guaranteed employment at its campuses in
18 California from 2005 through ITT’s closing. DOE00009399.

19 264. The January 10, 2017 memorandum setting out the ITT approval criteria noted that
20 “guaranteed job misrepresentations were evident throughout ITT’s campuses nationwide,” but the
21 BDU at that time recommended approval only for California-based claims because “California law
22 has already been thoroughly analyzed by the Department for the same claim in connection with”
23 CCI. DOE00009399, at n.1.

24 265. By contrast, in a November 2019 memorandum regarding the Department’s new partial
25 relief methodology, Deputy Under Secretary Jones and COO Brown asserted, with respect to ITT,
26 that “the Department had no evidence of widespread misrepresentation that would have qualified
27 a class of borrowers for BD relief. Therefore, it will be up to borrowers to provide evidence of the
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1 alleged misrepresentation, and the Department will be required to review those claims based on
2 applicable State consumer protection law.” DOE00013647, at -13654.

3 266. In April and May 2020, the BDU issued three memoranda that *rejected* potential approval
4 criteria for BD applications alleging that ITT made misrepresentations regarding (1) conduct prior
5 to 2005; (2) educational services; or (3) program cost or nature of loans. *See* “The Borrower
6 Defense Unit’s Ongoing Investigation of ITT Tech Before and After 2005,” dated April 2, 2020;
7 “ITT Technical Institute – Adjudication of Educational Services Allegations,” dated May 20,
8 2020; “ITT Technical Institute – Adjudication of Program Costs and Nature of Loan Allegations,”
9 dated May 20, 2020 (all produced in response to Interrogatories 17-18).

10 267. On December 9, 2020, BDU Director Nevin testified that the BDU had recently
11 completed a new protocol to evaluate ITT employment prospects claims for campuses outside of
12 California. Nevin Dep. 43:3-15.

13 268. As of the date of this Supplemental Complaint, Plaintiffs do not have access to the
14 memorandum that BDU Director Nevin mentioned in her testimony.

15 269. BDU Director Nevin testified that, for non-California ITT employment prospects claims,
16 the BDU had decided to apply a rebuttable presumption that the applicable law under the 1995
17 regulations would be the law of the state where the borrower resided at the time of their separation
18 from the school. Nevin Dep. 52:21 – 53:1.

19 270. BDU Director Nevin admitted that there are “some challenges with the data,” and that
20 “we have to, you know, basically piece it together.” Nevin Dep. 54:5-15.

21 271. There was disagreement within the Department regarding whether the choice of law
22 decision for ITT employment prospects claims should be made by the BDU or by political
23 appointees in the Office of the Under Secretary. Nevin Dep. 56:2-17.

24 272. The BDU’s adjudication protocol for ITT reflects that the Department has reviewed
25 evidence regarding ITT from the Attorneys General of Iowa, Massachusetts, and New Mexico.
26 *See* “ITT Technical Institute – Evidence Considered Protocol” (produced in response to
27 Interrogatories 17-18). However, on information and belief, the Department has not analyzed
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1 whether ITT borrowers have stated a claim based on violations of the laws of any of these three
2 states.

3 273. From the summer of 2019 through December 24, 2020, the BDU created at least 760
4 memoranda concerning allegations against specific schools or school groups. Of these, only 23
5 memoranda (3%) found that potential approval criteria were warranted for certain, often extremely
6 narrow categories of claims.

7 274. For example, the BDU concluded that all BD applications from EDMC schools relating
8 to enrollment dates between July 1, 2003 and December 31, 2008 should be rejected, except for
9 “professional licensure allegations relating to psychology masters and doctorate level programs at
10 Argosy University,” which would be subject to further investigation. DOE00009626.

11 275. Similarly, the BDU concluded that over 1,500 BD applications relating to schools owned
12 by Anthem Education Group, LLC — which operated seven brands in 15 states and online —
13 should be rejected, except for claims relating to campuses in Minnesota, because “the only relevant
14 evidence BDU has obtained” came from the Minnesota Attorney General. DOE00009519.
15 Notably, this memorandum acknowledged that the Minnesota Attorney General had requested
16 group BD relief for students who attended Anthem campuses in Minnesota; the BDU has not
17 adjudicated that group application.

18 276. As another example, the BDU limited its potential approval criteria for Lacy Cosmetology
19 School to applications that made allegations regarding accreditation of the Advanced Cosmetology
20 program between July 1, 2009 and June 30, 2011. This was despite the memorandum also
21 acknowledging that (i) in 2011, the Department itself had made 18 findings against Lacy
22 Cosmetology School in a Program Review (the BDU claimed that only one of these findings, the
23 Advanced Cosmetology accreditation, was relevant to borrower defense); (ii) a default judgment
24 had entered against the school in a False Claims Act lawsuit alleging misuse of Title IV funds, in
25 which the United States had intervened; and (iii) a news article reported that the United States
26 Attorney who handled the False Claims Act matter suggested that borrowers may want to file for
27 borrower defense following that judgment. DOE00011396.

1 277. As of December 9, 2020, *none* of the BDU’s analyses of potential approval criteria had
2 actually resulted in a protocol for approving claims from a particular school, other than
3 employment prospects claims from ITT. Nevin 49:9-19.

4 278. The BDU will proceed to “adjudicate” (deny) BD applications from a particular school
5 before it completes its assessment of “common evidence” relating to that school. Nevin 99:16 –
6 101:17.

7 279. At least 260 of the BDU’s school-specific memoranda indicate that cases from that school
8 were adjudicated (denied) before the memorandum was written.

9 280. In this litigation, the Department filed a document summarizing the schools or school
10 groups for which certain BD applications had been set aside for further analysis and eventually,
11 possibly, approval. Defs.’ List of Schools, Attachment to Filing in Response to Judge’s Inquiry,
12 ECF No. 145-2. This is the only time and the only location where the Department has made public
13 its current criteria for potential BD application approval under so-called “common evidence.”
14 Nevin Dep. 183:7-17.

15 281. As of December 9, 2020, none of the BD applications that had been set aside for further
16 analysis under these “common evidence” categories had ever been approved or denied. Nevin Dep.
17 178:5-8. On information and belief, as of the date of this Supplemental Complaint, all of these
18 applications remain pending.

19 282. Borrowers who have loans associated with schools for which the BDU has defined
20 “common evidence” categories have no way of knowing, when they submit their BD applications,
21 whether they fall within or outside that school’s “common evidence” categories.

22 283. Borrowers who have loans associated with schools for which BDU has defined “common
23 evidence” categories have no way of knowing, if their BD applications are denied, whether the
24 reason for denial is that they fell outside a “common evidence” category.

25 284. Schools contacted by the Department in connection with borrower defense inquiries
26 receive details about the allegations against them, and have the opportunity to respond to each
27 individual application. For instance, the Department notified Capella University that “[w]e
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1 currently have approximately 250 borrower defense applications that make allegations regarding
2 Capella University . . . For each such application, we will email a separate notification (the ‘School
3 Notice Email’) and a password-protected copy of the borrower’s application to the President, Chief
4 Financial Officer, and Financial Aid Officer of record for your school . . . The School Notice Email
5 will also provide your school an opportunity to submit responses to borrower defense applications,
6 either individually or collectively, with instructions for how to do so.” DOE00004939 at 1; *see*
7 *also* DOE00009378; DOE00009380; DOE00009383; DOE00009386.

8 285. By contrast, borrowers are not given the opportunity to review or respond to evidence
9 submitted by the schools to the Department in response to these inquiries. Nevin Dep. 77:12-17.

10 286. In developing the BD regulations that were promulgated in 2019, the Department focused
11 on providing “due process rights for institutions” (schools), rather than for borrowers.
12 DOE00007269, at -7270.

13 287. The Department’s policy of excluding BD applications from potential approval based on
14 “common evidence” categories without informing borrowers about the existence or definitions of
15 those categories is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
16 law.

17 288. The Department’s policy of creating “common evidence” categories based on the
18 narrowest possible interpretation of evidence, including by disregarding evidence contained in
19 borrowers’ sworn statements in BD applications, is arbitrary, capricious, an abuse of discretion, or
20 otherwise not in accordance with law.

21 **E. Fall 2019: Development of the Form Denial Notices**

22 289. Meanwhile, at some point in the fall of 2019, individuals in the Department began
23 developing form letters to send to borrowers whose BD applications were denied (the “Form
24 Denial Notices”). Nevin Dep. 87:21 – 88:3.

25 290. Defendants have declined to identify the individuals who drafted the Form Denial
26 Notices. *See* Supplemental Interrogatory Responses, Resp. to No. 16.

1 291. BDU Director Nevin testified that her team did not develop the Form Denial Notices.
2 Nevin Dep. 85:21-86:25.

3 292. Under Secretary Jones testified that she reviewed and provided comments on the Form
4 Denial Notices, but denied that she drafted the Form Denial Notices. Jones Dep. 201:13-202:17.

5 293. Form Denial Notice A (“Form A”) was designed to be sent to borrowers who applied for
6 borrower defense relief based on allegations that CCI made misrepresentations regarding its JPRs.
7 Defs.’ Resp. to Aug. 31, 2020 Order, ECF No. 116 at 2 & Ex. A.

8 294. Form Denial Notice B (“Form B”) was designed to be sent to borrowers who applied for
9 borrower defense relief based on misrepresentations by CCI relating to topics other than, or in
10 addition to, JPRs. Defs.’ Resp. to Aug. 31, 2020 Order, ECF No. 116 at 2 & Ex. B.

11 295. Form Denial Notice C (“Form C”) was designed to be sent to borrowers who applied for
12 borrower defense relief in connection with non-CCI schools that, in the Department’s view, do not
13 have any “common evidence” that might apply to the claims of multiple borrowers. Defs.’ Resp.
14 to Aug. 31, 2020 Order, ECF No. 116 at 2 & Ex. C.

15 296. Form Denial Notice D (“Form D”) was designed to be sent to borrowers who applied for
16 borrower defense relief in connection with non-CCI schools that, in the Department’s view, do
17 have “common evidence” in the Department’s possession. Defs.’ Resp. to Aug. 31, 2020 Order,
18 ECF No. 116 at 2-3 & Ex. D.

19 297. Each of Forms A, B, C, and D includes a section titled “Applicable Law.” In each Form,
20 this section acknowledges that the “borrower may be eligible for a discharge (forgiveness) of part
21 or all of one or more Direct Loans if the borrower’s school engaged in acts or omissions that would
22 give rise to a cause of action against the school under applicable state law.”

23 298. However, none of the Forms includes a place for the Department to identify or insert the
24 state law that actually applies to a given borrower’s claim.

25 299. In denial notices actually received by borrowers, the “Applicable Law” section does not
26 identify any applicable state law.

1 300. The Department made a specific policy decision to omit state law information from denial
2 notices sent to borrowers. A memorandum titled “School Notice Letters and Other Open Items”
3 (which, according to metadata, was created by BDU Director Nevin in September 2017) states:
4 “Policy Decision on whether state law needs to be included in adjudication notices for ineligible:
5 Does the state law have to be added to borrower decision notices? It is not currently included on
6 the letters for ineligible.” DOE0002653.

7 301. That same memorandum anticipates that applicable state law *will* be included in notice
8 letters sent to schools to notify them that their schools are named in pending BD applications. A
9 school that receives such a notice letter will then be permitted to “provide evidence to dispute the
10 state law identified,” and the “response and evidence” submitted by the school “may result in a
11 change of state law applied.” *Id.*

12 302. Under Secretary Jones testified that she had expected that the Form Denial Notices would
13 have included information about which state law applied. Jones Dep. 282:1-5. But they do not.

14 303. BDU Director Nevin testified that “there was discussion of whether or not to include state
15 law as a field” in the Form Denial Notices, “but that would have required more time for my team
16 to go back and, you know, fill in any data that needed to -- with respect to state law where it really
17 wasn’t being denied because of state law.” Nevin Dep. 91:16-22.

18 304. Forms C and D include a section titled “Why was my application determined to be
19 ineligible?” Form B includes an analogous section titled “Why was my application determined to

20 Allegation 1: [Allegation Type]

21 You allege that [Primary School] engaged in misconduct related to [Allegation Type]. This allegation
22 fails for the following reason(s): [Review Recommendation Reason].

23 Your claim for relief on this basis therefore is denied.

24 Allegation 2: [Allegation Type]

25 You allege that [Primary School] engaged in misconduct related to [Allegation Type]. This allegation
26 fails for the following reason(s): [Review Recommendation Reason].

27 Your claim for relief on this basis therefore is denied.

28 [Allegation X: Repeat as needed]

1 be ineligible for [non-JPR] allegations?” In each Form, under this heading, the Department states
2 that it “reviewed your borrower defense claims based on any evidence submitted by you in support
3 of your application, your loan data from NSLDS, and evidence provided by other borrowers.”
4 Each Form then provides a fill-in-the-blank template for each allegation, as follows:

5 305. In denial notices actually received by borrowers, each “Review Recommendation
6 Reason” is filled in with one of four phrases: “Insufficient Evidence,” “Failure to State a Legal
7 Claim,” “Other,” or, in the case of certain CCI borrowers, “Outside coverage windows.” No further
8 explanation is ever provided.

9 306. The Form Denial Notices do not explain that a borrower’s sworn statements in their BD
10 application were not considered as evidence in support of their claims.

11 307. The BDU’s school-specific memoranda demonstrate that an individual borrower’s BD
12 application is not, in fact, analyzed in light of “evidence provided by other borrowers,” despite the
13 Form Denial Notices’ statement to the contrary. *See supra* ¶¶ 125-127, 135-144, 188-190.

14 308. Form D includes a section titled “What evidence was considered in determining my
15 application’s ineligibility?” Form B includes an analogous section titled “What evidence was
16 considered in determining my application’s ineligibility for [non-JPR] allegations?” In each of
17 those sections, the Department states that it “reviewed evidence provided by you, other borrowers,
18 and the school. Additionally, we considered evidence gathered from the following sources”—
19 followed by a space for the Department to fill in the sources of “common evidence” related to the
20 borrower’s school.

21 309. In denial notices actually received by borrowers, the “evidence considered” section
22 includes descriptions such as “[State] Attorney General’s Office”; “Evidence obtained by the
23 Department in conjunction with its regular oversight activities”; and “Publicly available securities
24 filings.” *See, e.g.*, Sweet Aff. (Exhibit 3 to Connor Decl.), ECF No. 129-1 at 53; Wright Aff., ECF
25 No. 108-3 at 40. No further explanation is ever provided.

1 310. Before the Department’s October 2020 filing in this litigation (ECF 145-2), borrowers
2 had no way to find out, either before or after filing their BD applications, what categories of claims
3 the Department believes are supported by its “common evidence.” Nevin Dep. 183:7-22.

4 311. Because the Department never made its “common evidence” categories public except in
5 this lawsuit, borrowers never had an opportunity to learn about or review any of the “common
6 evidence” purportedly relied upon by the Department in denying their applications.

7 312. Forms A, B, C, and D each include a section titled “What if I do not agree with this
8 decision?” In each Form, this section is identical. It informs the borrower that “you may ask ED
9 to reconsider your application,” and provides instructions for filing an application for
10 reconsideration.

11 313. In actuality, as of December 9, 2020, the Department had no reconsideration process in
12 place. Nevin Dep. 218:22-221:9.

13 314. Forms A, B, and C state that “your loans will not be placed into forbearance during the
14 reconsideration process,” and warn that “[f]ailure to begin or resume repayment will result in
15 collection activity, including administrative wage garnishment, offset of state and federal
16 payments you may be owed, and litigation.”

17 315. Form D states that “your loans will not be placed into forbearance unless your request for
18 reconsideration is accepted and your case is reopened.” However, in practice, borrowers who
19 received Form D denials were unable to access forbearance under this provision, because there
20 was no process in place for the Department to “accept” a reconsideration application. Nevin Dep.
21 218:11-220:15.

22 316. None of Forms A, B, C, or D provides the borrower with notice of their right to challenge
23 the denial of their application in federal court.

24 317. Each of Forms A, B, C, and D fails to provide an adequate “brief statement of the grounds
25 for denial” as required by APA § 555(e).

26 **D. December 2019: Announcement of New Partial Relief Methodology**

1 318. On December 10, 2019, the Department announced a new partial relief methodology via
2 press release, which they claimed was designed to protect “students and taxpayers.” Brown Dec.,
3 ECF No. 71-3 at AR 602.

4 319. Internal guidance regarding the December 2019 partial relief methodology stated that one
5 purpose of the new formula was to “protect taxpayers from runaway costs.” DOE00000584, at -
6 597.

7 320. The new partial relief methodology used publicly available earnings data to compare
8 median earnings of graduates who asserted BD claims to the average earnings of graduates at
9 “comparable programs.” Approved applicants whose earnings were two standard deviations lower
10 than the median would receive full loan relief, while those whose earnings were lower than the
11 median but higher than two standard deviations away from the median would receive 25%, 50%
12 or 75% loan relief. Brown Dec., ECF No. 71-3 at AR 602. Under the new partial relief
13 methodology, it is possible for a borrower who asserted a meritorious BD claim to receive 0%
14 relief.

15 321. The announcement of the new partial relief methodology opened the floodgates for the
16 Department to begin issuing mass denials.

17 **II. Tens of Thousands of Class Members Receive Form Denial Notices**

18 322. In the first months of 2020, the Parties in this litigation were engaged in settlement
19 discussions.

20 323. As of January 9, 2020, the Department had issued denials for 15,256 BD applications and
21 had granted just 789 applications since announcing its 2019 partial relief methodology. *See*
22 *Discovery Order*, ECF No. 146 at 5.

23 324. The Department justified this denial rate by explaining that it was prioritizing adjudicating
24 and issuing decisions on applications with “little or no relevant evidence.” Brown Dec., ECF No.
25 140-1 ¶ 9; Defs.’ *Opp. to Mot. to Enforce*, ECF No. 140 at 10.

1 325. At this time, Plaintiffs and their counsel were not aware that the Department was applying
2 its ‘presumption of denial’ policy, or that it was denying BD applications using the Form Denial
3 Notices.

4 326. The Parties signed a settlement agreement on April 7, 2020. At that time, Plaintiffs were
5 not aware of the Department’s ‘presumption of denial’ policy or the Department’s plan to send
6 Form Denial Notices to the vast majority of Class Members.

7 327. The Parties submitted their settlement agreement to the Court for preliminary approval
8 on April 10, 2020.

9 328. The Court granted preliminary approval on May 22, 2020.

10 329. Between April 7, 2020 and August 24, 2020, the Department issued approximately 78,400
11 BD decisions to Class Members. All but 4,400 were denials, for a 94.4% denial rate. Discovery
12 Order, ECF No. 146 at 6.

13 330. During this period, no Class Member who applied for borrower defense with respect to
14 loans from a school other than CCI or ITT received an approval of their BD application.

15 331. On July 24, 2020, Plaintiffs’ counsel notified Defendants’ counsel that Plaintiffs had
16 become aware that increasing numbers of Class Members were receiving Form Denial Notices.
17 Connor Decl. in Support of Motion for Case Management Conf., ECF No. 108-2 at 6.

18 332. On August 20, 2020, Plaintiffs’ counsel moved this Court for a case management
19 conference to address Plaintiffs’ concerns regarding the Form Denial Notices. Plaintiffs’ Motion
20 for Case Management Conf., ECF No. 108.

21 333. The Court held a case management conference on August 31, 2020, and ordered
22 Defendants to provide certain types of information about BD denials since December 2019.

23 334. On September 4, 2020, Defendants submitted a filing in which they admitted that the
24 Department had denied 118,300 BD applications since December 2019, while approving only
25 13,500 applications. Defs.’ Resp. to Aug. 31, 2020 Order, ECF No. 116; *see* Discovery Order,
26 ECF No. 146 at 5.

1 335. Defendants also attached to their September 4, 2020 filing the four Form Denial Notice
2 templates. Defs.' Resp. to Aug. 31, 2020 Order, ECF No. 116, Exs. A-D.

3 336. On October 1, 2020, the Court held a remote fairness hearing over Zoom on the
4 preliminarily approved settlement, which was attended by hundreds of Class Members. Due to
5 time constraints, fourteen borrowers were selected by the Court to share their testimony. The Zoom
6 proceeding also had an active Zoom chat function for borrowers to share their experiences.

7 337. At the hearing, Class Members shared their dismay at receiving incomprehensible and
8 nearly identical form denial letters after waiting for years for a response from the Department on
9 their applications. *See* Hearing Transcript (Oct. 1, 2020); Zoom Chat Transcript, ECF No. 141.

10 338. On October 19, 2020, the Court denied final approval of the settlement agreement and
11 issued an Order to Show Cause why the Secretary should not be enjoined from issuing any further
12 denials of Class Members' BD applications until a ruling could be had on the legality of the Form
13 Denial Notices. Discovery Order, ECF No. 146.

14 339. In response to the Order to Show Cause, Defendants represented that they would
15 voluntarily cease denying Class Members' BD applications until a ruling on the legality of the
16 Form Denial Notices. Defs.' Response to Order to Show Cause, ECF No. 150 at 2-3.

17 **III. The Department's Unlawful Conduct Has Harmed Class Members**

18 340. Plaintiffs incorporate Paragraphs 236-370 of their Complaint (ECF No. 1) as if set forth
19 fully herein.

20 341. The Department's arbitrary and capricious 'presumption of denial' policy, along with its
21 denial notices that contain no explanation and a missing or withheld remedy, have wrongly denied
22 borrowers relief from loans that in many cases are actually invalid.

23 342. As a result, the Department has exacerbated harm to borrowers' credit, perpetuated their
24 untenable debt-to-income ratios, restricted their employment and education options, prevented
25 opportunities for them to develop wealth (*e.g.*, home equity, retirement), and interfered with their
26 ability to provide for their families.

1 343. Class Members have been denied job opportunities because of their debt-to-income ratios.
2 *See, e.g.*, Norton Aff., ECF No. 159 ¶ 11. Their debt loads have prevented them from being able
3 to own or rent a home or a vehicle. *Id.* ¶¶ 15, 16; DePaul Aff., ECF No. 151 ¶¶ 14-15. They have
4 not been able to invest in retirement. Norton Aff., ECF No. 159 ¶ 14.

5 344. In short, an unlawful borrower defense denial can lock the borrower into a vicious cycle
6 of financial insecurity.

7 345. Receiving a Form Denial Notice signals to the borrower that their loans will be placed
8 back into collection status from forbearance, potentially leading to unaffordable expenses,
9 default, seizing wages, and garnishing tax refunds.

10 346. For example, one Class Member, who attended the Illinois Institute of Art (“Ai”) (owned
11 by Education Management Corporation / Dream Center Education Holdings), explained that, if
12 she is sent back into repayment, she could not both pay off her student loans and financially provide
13 for her two daughters. Lezan Aff., ECF No. 155 ¶ 10.

14 347. Another Class Member, who attended Brooks Institute (owned by Career Education
15 Corp.), expressed similar concerns at the prospect of her employer garnishing her wages if she
16 goes back into repayment, sharing that she could not simultaneously have her wages garnished;
17 care for her children, two of whom have special needs; afford a home; and pay her family’s bills.
18 Norton Aff., ECF No. 159 ¶¶ 10, 13.

19 348. The confusion and despair engendered by the Department’s actions cause borrowers
20 significant psychological distress.

21 349. Class Members have experienced suicidal thoughts, intense anxiety, and trauma because
22 of the Department’s actions. DePaul Aff., ECF No. 151 ¶¶ 16, 21; Norton Aff., ECF No. 159 ¶ 22.
23 One Class Member explained, of the psychological burden of predatory student loan debt: “[I]f
24 you think there’s nothing you can do, you question what’s the point of trying.” Lezan Aff., ECF
25 No. 155 ¶ 23.

26 350. The Department’s Form Denial Notices have also left borrowers with a lack of faith that
27 their government works for them.

1 351. One Class Member shared that, “between the Department’s delays and its rubber-stamp
2 claim denials, I feel like our government is having a hand in corruption, and aiding the people who
3 want to take advantage of vulnerable students.” Lezan Aff., ECF No. 155 ¶¶ 22, 26; *see also*
4 DePaul Aff., ECF No. 151 ¶ 17; Norton Aff., ECF No. 159 ¶¶ 28, 32.

5 352. The Department’s actions, particularly as to borrowers who attended schools that the
6 Department knows engaged in misconduct, have had a tangible and negative impact on Class
7 Members’ belief that their government is acting in their interest.

8 353. The only thing preventing mass immiseration from the Department’s unlawful
9 ‘presumption of denial’ policy and Form Denial Notices has been the coincidental passage of
10 COVID-related CARES Act student loan forbearance in March 2020, and its subsequent executive
11 extensions, now effective through September 2021. But this is a temporary measure for an
12 unrelated emergency.

13 *Theresa Sweet*

14 354. On July 8, 2020, Plaintiff Sweet received a Form Denial Notice D, rejecting her BD
15 application in connection with loans she took out to attend Brooks Institute of Photography
16 (“Brooks”), a Career Education Corp. (“CEC”) school. Sweet Affidavit (Exhibit 3 to Connor
17 Decl.), ECF No. 129-1 at 51.

18 355. The reason stated for rejecting Ms. Sweet’s allegations against Brooks regarding
19 employment prospects, program cost & nature of loans, and career services was “Failure to State
20 a Legal Claim.” *Id.* at 52. The notice did not include any information about what state law had
21 been applied (if any) or what claim her allegations had failed to state.

22 356. The reason stated for rejecting Ms. Sweet’s allegations against Brooks regarding
23 educational services, transferring credits, and “other” was “Insufficient Evidence.” *Id.* at 52-53.
24 The notice did not include any information about what evidence was purportedly missing that
25 would have supported her claims.

26 357. Ms. Sweet submitted supporting evidence with her BD application. *Id.* at 24.
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1 358. The statements “Failure to State a Claim” and “Insufficient Evidence” left Ms. Sweet
2 without any way to figure out what she failed to allege, what was missing from her application, or
3 what was deficient about the evidence she submitted. *Id.* at 25.

4 359. The denial notice stated that the Department had “considered evidence gathered from the
5 following sources: NY Attorney General’s Office[;] PA Attorney General’s Office[;] Evidence
6 obtained by the Department in conjunction with its regular oversight activities[;] Publicly available
7 securities filings made by Career Education Corporation (now known as Perdoceo Education
8 Corporation)[; and] Multi-State Attorney General Assurance of Voluntary Compliance (effective
9 January 2, 2019).” *Id.* at 53. The notice did not include any information about the nature of the
10 evidence reportedly considered from these various sources, nor any explanation of why none of
11 this evidence was found to support Ms. Sweet’s allegations.

12 360. As of June 19, 2020, the BDU took the position that all BD applications from CEC
13 borrowers who enrolled in any CEC school before January 1, 2008 or after January 1, 2013 should
14 be rejected, because “none of the schools [in the CEC group] – during the specified time period[s]
15 – are the subject of a known investigation or lawsuit that would likely reveal supporting evidence
16 relevant to BD claims.” DOE00009550; DOE00009552.

17 361. As of June 19, 2020, there was evidence readily and publicly available to the BDU
18 demonstrating that this conclusion was inaccurate. For example, in 2019, CEC entered into an
19 Assurance of Voluntary Compliance with 48 states and the District of Columbia that addressed
20 CEC’s alleged violations of state laws regarding recruitment and enrollment practices, including
21 misrepresentations regarding the costs of enrollment, transferability of credits, program offerings,
22 employment prospects, and job placement rates. *See Assurance of Voluntary Compliance, In re*
23 *State of Texas & Career Education Corp.*, No. D-1-GN-19-000017 (Tex. Dist. Ct. Travis Cty.,
24 353d Jud. Dist., Jan. 2, 2019), *available at* [https://www.texasattorneygeneral.gov/](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/FINAL%20CEC%20AVC%20attached%20to%20Petition%20wCauseNo.pdf)
25 [sites/default/files/images/admin/2019/Press/FINAL%20CEC%20AVC%20attached%20to%20Pe](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/FINAL%20CEC%20AVC%20attached%20to%20Petition%20wCauseNo.pdf)
26 [tition%20wCauseNo.pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/FINAL%20CEC%20AVC%20attached%20to%20Petition%20wCauseNo.pdf). Among other provisions, the Assurance of Voluntary Compliance
27 required CEC to forego collection on nearly \$500 million in student debts. This debt forgiveness
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1 applied to students who “either (a) attended a CEC institution which was closed prior to the
2 Effective Date [January 2, 2019] or is currently scheduled to close before December 31, 2018; or
3 (b) whose final day of attendance at [American Intercontinental University] or [Colorado
4 Technical University] occurred on or before December 31, 2013.” *Id.* ¶ 116. Both of these
5 conditions apply to students who enrolled both *before and after* the BDU’s cut-off period of
6 January 1, 2008 through January 1, 2013.

7 362. There was other evidence available about CEC as well. For instance, in July 2014, the
8 *New York Times* reported that, if the Department’s new “gainful employment” regulations were to
9 go into effect, 39% of CEC’s programs would fail the gainful employment standards. *See* Kevin
10 Carey, “Corinthian College Is Closing. Its Students May Be Better Off as a Result,” *N.Y. Times*
11 (July 3, 2014), [https://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-](https://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-students-may-be-better-off-as-a-result.html?_r=0)
12 [students-may-be-better-off-as-a-result.html?_r=0](https://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-students-may-be-better-off-as-a-result.html?_r=0).

13 363. Additionally, in August 2019, the Federal Trade Commission had brought a complaint
14 against CEC, alleging that, “[s]ince at least 2012,” CEC had “used an illegal and deceptive
15 telemarketing scheme to lure consumers to their post-secondary and vocational schools.”
16 Specifically, CEC had employed “lead generators” to “deceive[] consumers into divulging their
17 contact information under the guise of providing services,” including by “pos[ing] online as
18 official U.S. military recruiters or as job-finding services and then call[ing] consumers whose
19 contact information was solicited under false pretenses.” CEC’s lead generators had also
20 “misrepresent[ed] that the U.S. military or an independent education advisor recommends the CEC
21 school being marketed.” *See* Complaint for Permanent Injunction and Other Equitable Relief, *FTC*
22 *v. Career Education Corp.*, No. 19-cv-5739 (N.D. Ill. Aug. 27, 2019), *available at*
23 [https://www.ftc.gov/system/files/documents/cases/career_education_corporation_complaint_8-](https://www.ftc.gov/system/files/documents/cases/career_education_corporation_complaint_8-27-19.pdf)
24 [27-19.pdf](https://www.ftc.gov/system/files/documents/cases/career_education_corporation_complaint_8-27-19.pdf). On October 9, 2019, the court approved a settlement in which CEC paid \$30 million to
25 the FTC and agreed to various injunctive provisions. *See* Stipulated Order for Permanent
26 Injunction and Monetary Judgment, *FTC v. Career Education Corp.*, No. 19-cv-5739 (N.D. Ill.
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1 Oct. 9, 2019), *available at* [https://www.ftc.gov/system/files/documents/cases/de_11_-](https://www.ftc.gov/system/files/documents/cases/de_11_-_stipulated_order_for_permanent_injunction.pdf)
2 [_stipulated_order_for_permanent_injunction.pdf](https://www.ftc.gov/system/files/documents/cases/de_11_-_stipulated_order_for_permanent_injunction.pdf).

3 364. Less than six months after finalizing its June 19, 2020 CEC memorandum, the BDU itself
4 acknowledged that its conclusion had been erroneous. On December 2, 2020, the BDU added the
5 following “Update” to its memoranda regarding CEC: “The Department has recently received
6 additional evidence that may require a change in our adjudication protocols for CEC and
7 potentially would support reopening some of the previously adjudicated borrower defense claims.
8 As a result, the Department has paused the adjudication of processing of CEC claims pending its
9 review of the scope of this evidence. This memo will be updated again once we have completed
10 that review.” DOE00009550; DOE00009552.

11 365. Plaintiffs do not know at this time whether this “additional evidence” would affect the
12 disposition of Ms. Sweet’s BD application.

13 366. Plaintiffs do not know at this time whether the BDU has, in fact, changed any of its
14 adjudication protocols relating to CEC or reopened any BD applications from CEC schools based
15 on this “additional evidence.”

16 ***Tresa Apodaca***

17 367. Plaintiff Apodaca has not received a decision on her BD application, which she submitted
18 in May 2015 in connection with loans she took out to attend Heald College in Roseville, California
19 (a CCI school).

20 368. Ms. Apodaca does not understand why it has taken, so far, *almost six years* to resolve her
21 BD application, given the findings by the Department and state governments that CCI engaged in
22 widespread fraud and misrepresentation.

23 369. The BDU’s memorandum “Recommendation for Corinthian Borrowers Alleging That
24 They Were Guaranteed Employment,” dated January 7, 2017, recognizes that “[i]n BD
25 applications, borrowers who attended Heald, Everest, and WyoTech consistently allege, each in
26 their own words, that Corinthian staff orally promised, guaranteed, or otherwise assured them that
27 they would be placed in jobs.” DOE00007866. Again, the BDU relied on averments from BD
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1 applications to support the finding that misrepresentations occurred with “pervasiveness and
2 consistency.” *Id.* at -7867.

3 370. Ms. Apodaca is surprised not to have received a denial notice, given how many thousands
4 have gone out to other class members. She has no idea how she would stay financially afloat if she
5 were to go back into repayment. Currently, she is not employed, her husband is employed part-
6 time for UPS, and they care for their two sons, one of whom is disabled and requires full-time care.

7 371. Ms. Apodaca and her family have suffered financial stress and an inability to plan for the
8 future because of the unresolved student loan debt hanging over them. Ms. Apodaca and her
9 husband put off having children because they wanted to wait for their financial situation to be more
10 stable and certain. Now, Ms. Apodaca is no longer able to have children for health reasons.

11 372. Ms. Apodaca has experienced a loss of faith in the Department and the U.S. higher
12 education system generally. She is terrified of sending her sons to college in the future because
13 she does not want them to experience what she has gone through.

14 ***Chenelle Archibald***

15 373. Plaintiff Archibald has not received a decision on her BD application, which she
16 submitted in February 2016 in connection with the loans she took out to attend Salter College
17 (“Salter”), a Premier Education Group school.

18 374. The Department has not produced a school-specific memorandum from the BDU
19 regarding Salter College. However, other documents indicate that the BDU is aware that Salter
20 College and its parent company, Premier Education Group, were accused of wrongdoing by the
21 Massachusetts Attorney General. *See* DOE00006042, at 9-10.

22 375. Ms. Archibald has struggled to move forward in her life and to plan for the future while
23 waiting for the Department to rule on her application. She financially supports five children and a
24 grandchild, and is currently working three jobs. She continues to pay the interest on her student
25 loans monthly.

26 376. Ms. Archibald wants to finish her degree at Worcester State University and attend law
27 school. She has paid for the program out of pocket because of her traumatizing experience taking
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1 out student loans. However, this has become financially unmanageable, and she has had to put her
2 education and her dreams of going to law school on hold.

3 377. None of Ms. Archibald’s credits that she earned at Salter College were transferable to
4 Worcester State University.

5 378. Ms. Archibald has felt stress and anxiety as she has learned of the pro forma denials that
6 have gone out. She does not think she could survive and care for her family if she had to go back
7 into repayment.

8 ***Daniel Deegan***

9 379. On May 7, 2020, Plaintiff Deegan received a Form Denial Notice D, rejecting his BD
10 application in connection with loans he took out to attend Keller Graduate School of Management,
11 a DeVry school (“Keller”). Deegan Aff., ECF No. 108-8 at 9.

12 380. The reason stated for rejecting Mr. Deegan’s allegations against Keller regarding
13 employment prospects and career services was “Insufficient Evidence.” *Id.* at 10. The notice did
14 not include any information about what evidence was purportedly missing that would have
15 supported his claims.

16 381. The notice stated that the Department had “considered evidence gathered from the
17 following sources: Evidence obtained by the Department in conjunction with its regular oversight
18 activities.” *Id.* at 11. The notice did not include any information about the nature of the evidence
19 reportedly considered, nor any explanation of why this evidence did not support Mr. Deegan’s
20 allegations.

21 382. The statement “Insufficient Evidence” left Mr. Deegan unable to understand what was
22 missing from his application. *Id.* at 2.

23 383. The BDU’s school-specific memorandum for Keller acknowledges that two groups of
24 former students sued the school under Texas law, alleging misrepresentations. Those two cases
25 were consolidated and were pending as of the date of the memorandum. The memorandum also
26 acknowledges that Keller and its parent company, DeVry, were sued separately for
27 misrepresentations under New Jersey law, in a case that settled in 2016. The BDU disregarded
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1 these lawsuits, however, and concluded that applications from Keller should be denied because
2 “[t]here was insufficient commonality of campus and/or time period to suggest a pattern that
3 warrants further investigation, and the borrowers failed to provide relevant supporting evidence to
4 establish these allegations of misrepresentation.” DOE00011331.

5 384. Indeed, the BDU’s “Evidence Considered” protocol for Keller specifies that BDU
6 attorneys reviewing BD applications from former Keller students should choose the “Standard
7 Denial with Evidence” status, after which the only option in the dropdown is “Evidence obtained
8 by the Department in conjunction with its regular oversight activities.” DOE00009585.

9 385. Notably, however, in its October 14, 2020 filing in this Court, the Department stated that
10 it had *not* denied 31 applications from Keller, representing the 31 borrowers who are plaintiffs in
11 the ongoing lawsuit in Texas. Defs.’ List of Schools, Attachment to Filing in Response to Judge’s
12 Inquiry, ECF No. 145-2 at 7.

13 386. In October 2020 at the latest, the Department was aware of common evidence from the
14 FTC investigation of DeVry, and also stated that it would “consider the Department’s 2016 Notice
15 of Intent to Limit which concluded that DeVry ‘failed to meet the substantiation requirement’ with
16 respect to the Since 1975 placement rate representation made in advertisements between at least
17 February 2008 and January 23, 2014.” *Id.* at 7.

18 387. Mr. Deegan describes the feeling of receiving a denial letter as being like finding out
19 about the loss of a family member or a serious illness. He has felt an unmanageable amount of
20 stress knowing that he can never pay off his student loan debt. Mr. Deegan thinks he would have
21 to take at least one other job and stop paying his other bills in order to keep up with his student
22 loans.

23 388. Mr. Deegan and his wife have put off having children because they would not be able to
24 afford to raise a child and pay for Mr. Deegan’s student loans. They want to start a family, but do
25 not feel they can because of the financial uncertainty of his outstanding debt.

26 *Samuel Hood*

1 389. Plaintiff Hood has not yet received a decision on his BD application, which he submitted
2 in January 2018 in connection with his loans taken out to attend ITT in Cordova, Tennessee.

3 390. He does not understand why his application is taking so long to resolve, despite findings
4 by the Department and state attorneys general that ITT engaged in widespread fraud.

5 391. In its memorandum setting out approval criteria for BD applications that allege that ITT
6 made misrepresentations regarding guaranteed employment at its California campuses, the BDU
7 noted that “guaranteed job misrepresentations were evident throughout ITT’s campuses
8 nationwide.” DOE00009399 at n.1.

9 392. The lack of resolution on his BD application has kept Mr. Hood and his family in a cloud
10 of financial uncertainty and stress. He and his wife have been denied a home mortgage because of
11 his debt-to-income ratio, and have had to spend time living at her parents’ house. Mr. Hood has
12 had to pull money out of his retirement account to pay other bills because his debt-to-income ratio
13 prevents him from qualifying for personal loans.

14 393. Mr. Hood has been surprised not to receive a denial notice yet, given what he has heard
15 about the pro forma denials received by other class members, and he has experienced intense stress
16 at the prospect of a denial. Mr. Hood financially supports his wife and three-year-old son. He is
17 barely above water as it is, and would not be able to manage student loan payments on top of his
18 other bills.

19 394. Mr. Hood has lost faith in the Department throughout his experience attending ITT and
20 waiting for a resolution on his BD application. He does not want his son to have to ever deal with
21 the Department, and he is considering home-schooling for that reason.

22 *Alicia Davis*

23 395. In January 2020, Plaintiff Davis received a 10% partial approval of her BD application
24 for her loans taken out in connection with her attendance at Florida Metropolitan University, at
25 Florida Metropolitan University (Everest College), a CCI school.

26 396. The BDU’s memorandum “Recommendation for Corinthian Borrowers Alleging That
27 They Were Guaranteed Employment,” dated January 7, 2017, recognizes that “[i]n BD
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1 applications, borrowers who attended Heald, Everest, and WyoTech consistently allege, each in
2 their own words, that Corinthian staff orally promised, guaranteed, or otherwise assured them that
3 they would be placed in jobs.” DOE00007866. Again, the BDU relied on averments from BD
4 applications to support the finding that misrepresentations occurred with “pervasiveness and
5 consistency.” *Id.* at -7867.

6 397. As part of its 2019 partial relief methodology, the Department adopted an alteration to its
7 usual partial relief formula for CCI borrowers: “Because of promises made by the prior
8 administration, and damages likely caused to those borrowers by the Department’s continuous
9 efforts to use Corinthian Colleges, Inc. (CCI) institutions as an example, the Department will
10 award no less than 10% relief to all eligible CCI Borrower Defense applicants, regardless of
11 program earnings.” Brown Dec., ECF No. 71-3 at AR 602.

12 398. The grant of 10% relief to Ms. Davis therefore represents a finding by the Department
13 that Ms. Davis was indeed subject to actionable misrepresentations by Everest, but in the
14 Department’s view, she did not suffer any harm as a result of these misrepresentations.

15 399. Ms. Davis does not understand how she could have submitted a valid BD claim but
16 received only 10% relief. Ms. Davis feels that the Department has chosen to side with fraudulent
17 actors rather than giving her application a full and fair review. She feels penalized for being a
18 victim of fraud by her school, and has lost trust in the Department.

19 400. Contrary to the Department’s conclusion that Ms. Davis suffered no harm, in fact Ms.
20 Davis’ student loans have wreaked havoc on her financial life. Ms. Davis is unable to qualify for
21 a personal loan, car loan, or home mortgage because of her debt-to-income ratio. Ms. Davis works
22 in law enforcement and has been denied jobs because of her credit. She has to rely on her husband
23 for major loans and purchases.

24 401. Ms. Davis has FFEL loans, which are not covered by CARES Act forbearance. She has
25 no idea how she will manage once she has to go back into repayment on her federal Direct Loans:
26 her loans were in default when she applied for BD and her wages could be garnished if the
27 Department resumes collection on class members’ loans.

Jessica Jacobson

1
2 402. On August 11, 2020, Plaintiff Jacobson received a Form Denial Notice D, rejecting her
3 application in connection with loans she took out to attend the New England Institute of Art
4 (“NEIA”), an EDMC school. Jacobson Aff., ECF No. 108-11 at 4.

5 403. The reason stated for denying Ms. Jacobson’s allegations against NEIA regarding
6 program cost, transferring credits, admissions, and “other” is “failure to state a legal claim.” *Id.* at
7 5. The notice did not include any information about what state law had been applied (if any) or
8 what claim her allegations had failed to state.

9 404. The reason stated for denying Ms. Jacobson’s allegations against NEIA regarding
10 employment prospects, career services, and educational services is “insufficient evidence.” *Id.* at
11 5. The notice did not include any information about what evidence was purportedly missing that
12 would have supported her claims.

13 405. Ms. Jacobson submitted an 86-page BD application with supporting evidence. The denial
14 letter gives her no understanding of what she would have had to write to establish a legal claim, or
15 why the evidence she provided was not sufficient.

16 406. The notice stated that the Department had “considered evidence gathered from the
17 following sources: IA Attorney General’s Office[;] IL Attorney General’s Office[;] CO Attorney
18 General’s Office[;] Evidence obtained by the Department in conjunction with its regular oversight
19 activities[;] Senate Hearing Testimony of EDMC career services adviser before the Committee on
20 Health, Education, Labor, and Pensions (September 30, 2010)[;] Materials, including publicly
21 available securities filings, prepared by Education Management Corporation.” *Id.* at 6. The notice
22 did not include any information about the nature of the evidence reportedly considered from these
23 various sources, nor any explanation of why none of this evidence was found to support Ms.
24 Jacobson’s allegations.

25 407. The BDU’s school-specific memorandum for EDMC / Art Institutes acknowledges that
26 there are a number of lawsuits, including two *qui tam* actions and two securities class actions,
27 alleging misconduct by EDMC such as misrepresenting program costs, employment data, and
28

1 engaging in predatory recruiting tactics. As detailed above, the BDU concluded it was unable to
2 review much of the relevant evidence. See *supra* ¶¶ 202-203. The BDU also acknowledged
3 reviewing evidence from “(i) exhibits and congressional testimony referenced in the 2021 U.S.
4 Senate committee on Health, Education, Labor & Pensions on for profit higher education, (ii)
5 marketing materials, contractual agreements, and similar documents distributed to students by
6 EDMC schools, (iii) EDMC’s SEC financial filings; and (iv) borrower applications with
7 attachments.” DOE00009626, at -9627. Ultimately, despite this evidence, the BDU concluded that
8 it “does not have evidence in its possession to substantiate the borrower defense allegations of
9 students” who attended EDMC during the period that Ms. Jacobson attended. *Id.*

10 ***Other Class Members***

11 408. Other Class Members have suffered harm similar to the named Plaintiffs.

12 409. Class Members detailed some of these harms for the Court during the October 1, 2020
13 fairness hearing. See Hearing Transcript (October 1, 2020); “Zoom chat” Transcript, ECF No. 141.

14 410. Additionally, on March 10, 2021, Plaintiffs’ counsel sent an email survey to over 5,000
15 Class Members, asking how their student loans and experiences in the borrower defense process
16 had affected them, especially during the COVID-19 pandemic.

17 411. As of the date of this Supplemental Complaint, Plaintiffs’ counsel have received 425
18 responses, spanning 42 states.

19 412. Sixty percent of respondents are parents.

20 413. Ten percent of respondents have served in the military.

21 414. Forty-four percent of respondents filed their borrower defense applications in 2017 or
22 earlier.

23 415. Respondents were split nearly equally among those who have had their BD application
24 denied and those whose applications are still pending (46% and 48%, respectively).

25 416. *Ninety-nine percent* of respondents who have received denial notices on their BD
26 applications said that they were not satisfied with the Department’s explanation of the denial.

1 417. Respondents' descriptions of their experiences receiving the denial notices echoed the
2 prevalent themes that Class Members spoke about at the October 1, 2020 fairness hearing:
3 confusion, distrust, and hopelessness. Below are examples of borrowers' responses to the question
4 "Why are you not satisfied with the explanation provided by the Department?"⁶:

- 5 • "There were mass denials for everyone who applied. My responses were not even
6 read and I got the same generic denial as everyone else who applied did."
- 7 • "After years of waiting, suddenly everyone was denied. There is no way they could
8 have reasonably looked at so many in so short a time. I honestly don't think anyone
9 actually thoroughly reviewed my application."
- 10 • "There were no details on why at all."
- 11 • "The reasons were vague. I believe that it was a quick solution to the legal matters
12 at hand."
- 13 • "Vague and form letter style. Not specific to me and my situation."
- 14 • "It does not provide a thorough answer, and I know that the school was a fraud."
- 15 • "Did not explain enough to understand the reason why. I didn't understand."
- 16 • "I'm not even sure what failure to state a legal claim means. I answer the questions
17 and provided supporting documents."
- 18 • "Denied due to 'failure to state a legal claim'. I completed my application to the
19 best of my ability, providing documentation, names, emails, and answered every
20 question on the application form provided in full. I do not have a legal degree, and
21 nowhere on the application does it show I needed to state a legal claim."
- 22 • "Denial based on dates despite predatory practices still in place during my
23 attendance. I witnessed the predatory and fraudulent activity personally. All denial
24 reasons were essentially that they were not legal arguments as if I were supposed
25 to be a lawyer."

26
27 ⁶ Minor typographical errors in survey responses have been corrected here for clarity.

- 1 • “It cited lack of evidence. But I was never showed to submit any evidence.”
- 2 • “Said I need to provide more evidence. 60 pages of evidence wasn’t enough.”
- 3 • “The explanation was brief. Simply stating that there was no evidence.
- 4 Unfortunately several federal and private law suits during my enrollment prove
- 5 predatory and dishonest enrollment practices. No information was given on how to
- 6 appeal or get information on why I was denied.”
- 7 • “Even though the company admitted in court they committed fraud with recruiting,
- 8 school numbers, finances with students loans & etc. in court, the department of
- 9 education still wouldn’t take that into consideration.”
- 10 • “Denial stated that I did not have enough evidence. Heald is closed it is impossible
- 11 to gather ‘evidence.’”
- 12 • “They said I did not provide enough documentation but did not say what
- 13 documentation was missing. I wasn’t able to find information on the documentation
- 14 required beyond brochures & enrollment records, which I provided.”
- 15 • “It said no proof of predatory lending. The predatory sales pitches and guarantees
- 16 of better employment from the school counselors were made via phone. It’s not
- 17 something I can ‘prove’, but it is the reason why I continued to pursue an education
- 18 in a degree program in a field which I am considered by healthcare companies as
- 19 unemployable.”
- 20 • “Denied for ‘no proof of claims’ – doesn’t make my statements untrue!”

21 418. Of respondents who had received a denial notice, more than half (57.8%) have not sought
22 reconsideration from the Department. Many stated that they declined to do so because they did not
23 understand or did not trust the process⁷:

- 24 • “I didn’t know I could.”
- 25 • “I am overwhelmed by the process and don’t know where to start.”

27 ⁷ Minor typographical errors in survey responses have been corrected here for clarity.

- 1 • “I was told I was only allowed one chance at it.”
- 2 • “I would like to. I called to ask for advice on what to submit and they said they
- 3 couldn’t give me any advice other than that I was allowed to resubmit.”
- 4 • “When I called about reconsideration, I was told to look into legalities I don’t
- 5 understand.”
- 6 • “I tried to find out how and was completely unable to, there is no available
- 7 information at all on what to do and I thought it was easier to try being forgiven for
- 8 disability which is profane - I genuinely looked and couldn’t find anything about
- 9 ‘reconsideration’, it is news as of this survey question that said option exists at all.
- 10 Not sure why my rights are this obfuscated.”
- 11 • “Not sure what else to explain to change the decision? I sent all the information I
- 12 had since it’s been several years since I finished school.”
- 13 • “I also don’t know ‘how’ to apply for reconsideration when I don’t know why I
- 14 was denied in the first place.”
- 15 • “I’m not sure what else to put to become eligible.”
- 16 • “I cannot afford an attorney and the letter states I did not state what laws were
- 17 broken.”
- 18 • “I thought there was no more recourse. Mrs. Devos make it very clear her and the
- 19 current administration didn’t even care to research claims and would blanket deny
- 20 everyone.”
- 21 • “I do not have faith that the Department will read the reconsideration since they
- 22 obviously didn’t read the original BD application.”
- 23 • “The process is unfair and not realistic.”
- 24 • “I felt like I simply do not have a fair chance to win.”

25 419. Class Members have been deeply affected by the COVID-19 pandemic. Eighteen percent
26 are currently unemployed, and over a third (34%) applied for unemployment benefits in the last
27 year. Fifty-four percent of respondents have either lost their job, business, or had to leave the
28

1 workforce to care for a family member, and forty-nine percent have experienced a significant loss
2 in income. Some have lost their housing or had their utilities cancelled. Many described struggling
3 with worsening mental and physical health issues. Nearly half (47%) have worked in a job that
4 requires in-person exposure to the public. Twenty-two percent have contracted the COVID-19
5 virus, and twenty-one percent have lost a loved one to the disease.

6 420. Over these hardships, the specter of student debt looms.

7 421. Seventy-four percent of respondents report experiencing mental or physical hardship
8 related to their student loan debt since February 2020.

9 422. Since February 2020, 39% of respondents have been unable to apply for or have been
10 rejected from obtaining a loan because of their student loan debt.

11 423. Since February 2020, many respondents have been denied either housing (19%) or a job
12 (10%) because of their student loan debt.

13 424. Eighty-four percent of respondents said that being forced back into repayment on their
14 student loans would negatively affect their current financial situation “a great deal.”

15 425. Eighty-three percent of respondents said that the educational program for which they
16 borrowed student loans has helped them “none at all” during the COVID-19 crisis. They borrowed
17 to attend schools such as ITT (21%), a Corinthian-owned school (12%), the Art Institute brand
18 (11%), and University of Phoenix (11%). Nearly three-quarters (72%) attended school more than
19 a decade ago.

20 426. Asked to provide their own perspectives on their situations, Class Members provided
21 responses that detailed the wide range of negative impacts from the Department’s unlawful policies
22 and practices regarding the borrower defense process⁸:

- 23 • “I applied for the borrower defense for repayment in 2015 and have submitted 2
24 applications with a significant amount of documents to support my case and still
25

26
27 ⁸ Minor typographical errors in survey responses have been corrected here for clarity.
28

1 have not received any decision on my case, these fraudulent student loans are
2 ruining my life.”

- 3 • “It’s ridiculous I haven’t received any notification in 6 years.”
- 4 • “I have stress, anxieties, panic attacks, adhd and I get no help.”
- 5 • “I wish this issue would be addressed as soon as possible carrying this burden for
6 years has really hurt my life.”
- 7 • “I haven’t been able to live my life because of this[.] I don’t want to purchase a
8 home or have children[.] [I]f my borrowers defense gets denied I would be in
9 financial ruin right now.”
- 10 • “It is very distressing having been deceived by a school and accruing a large sum
11 of debt and then when applying for forgiveness having to wait over 4 years to find
12 out a response about my application, and it’s made even worse during a pandemic
13 when there is so much financial insecurity.”
- 14 • “The mental hardship of waiting 4+ years for a decision on a person’s student loan
15 debt (all while interest accrues) is astronomical. It would help a lot to have these
16 loans forgiven since I have a \$75K worthless piece of paper but the hardest thing
17 has to be waiting in limbo while the Dept. of Education sits quiet.”
- 18 • “Feel like I’m in a holding cell; pending for over five years.”
- 19 • “Attending Everest Institute has ruined my life, it left me homeless, taken away a
20 tax refund and during this pandemic I have received no word from the Dept. Of
21 Education. I haven’t heard from them since December 2019 and I have called 3
22 times since with no status of my forgiveness.”
- 23 • “I’m a 70% service disabled veteran and am a certified service disabled veteran
24 owned small business owner. The student loans caused me to be denied a small
25 business loan 3x due to the debt to income ratio the loans have had on my credit
26 score. I can’t receive any COVID 19 funding because my business is a start up and
27 there is no payroll to report on.”

- 1 • “im not even sure anymore. i have not heard anything. that school took advantage
2 of an addict that was just starting back into society and wasnt even sure what i
3 wanted to do in life. They took advantage of my weakness and used it to their
4 advantage.”
- 5 • “Since learning I was a victim of fraud by my former school, The Court Reporting
6 Institute, I have been under a great deal of stress, depression and anxiety. I have
7 been denied opportunities to improve my life and living situations over the course
8 of my life. . . . This has been the most stressful fight of my life. I can’t get loans for
9 a business or to buy a home because of these fraudulent loans. I’m forced to live
10 with family members because I can’t get a place of my own in my name.”
- 11 • “My student loans are a large reason I am on disability at all vs. trying to get another
12 job, the stress and duress of being homeless as a result of the loans have caused me
13 a significant amount of mental health duress, it has placed my life on hold, was a
14 major factor in blowing up my marriage into a divorce.”
- 15 • “i am 60 yrs, a Covid nurse with 80k and someday want retire. My masters
16 education at Kaplan never helped my career. it just placed a bigger financial issue
17 and i dont think i can retire someday.”
- 18 • “I lost my job offer because I couldn’t afford to pay for anything. I’m now living
19 at my parents jobless. I’m very depressed and there is no end in site. I miscarried a
20 child from stress.”
- 21 • “The Sanford Brown Institute scammed me. I am currently having a very difficult
22 time on a new career path, and seeking adequate education in order to provide for
23 my child. This situation has been not only time consuming but emotionally
24 overwhelming. I am currently in Therapy as i have suffered tremendous depression
25 of not being able to find a job in the Medical Billing field as promised by Sanford
26 Brown Institute. No matter how much work and effort I put into achieving that
27 certification, it is still not Acceptable nor Accredited by any potential employer.
28

1 The inconvenience in this whole endeavor remains a hardship currently. I don't feel
2 this is a fair way to treat struggling and striving human beings."

- 3 • "I am a text book example of 'Bait and Switch' loan practices perpetrated by ITT
4 Technical Institute. Instead of taking out a personal lawsuit I followed proper
5 channels. The U.S. Dept. Of Edu. has failed me and failed my family."
- 6 • "I feel like an abused dog that just got kicked again - now through no fault of my
7 own I am at risk of losing my home because I cannot get approved for a 50,000
8 mortgage[,] not trying for a grand manor just a simple home that I can afford."
- 9 • "I have come to the realization that attending National American University ensures
10 that I will live in poverty until the day I die."

11 **SUPPLEMENTAL CLASS ACTION ALLEGATIONS**

12 427. Plaintiffs incorporate Paragraphs 371-376 of their Complaint (ECF No. 1) as if set forth
13 fully herein.

14 428. Named Plaintiffs file this supplemental complaint on behalf of themselves and all other
15 individuals similarly situated.

16 429. All Named Plaintiffs continue to seek to represent the § 706(1) Class as set forth in
17 Paragraph 371 of the Complaint in this action (ECF No. 1).

18 430. Named Plaintiffs Sweet, Deegan, and Jacobson seek to represent a sub-class (the
19 "§ 555(e) Sub-Class") consisting of:

20 All members of the class certified in this case on October 30, 2019 (ECF No. 46) whose
21 borrower defense applications have been denied since the date of class certification.

22 431. The proposed § 555(e) Sub-Class satisfies the requirements of Rule 23(a) of the Federal
23 Rule of Civil Procedure.

- 24 a. The sub-class is so numerous that joinder of all members is impracticable because,
25 as of the date of this Supplemental Complaint, there are at least 74,000 individuals
26 who are members of the proposed class.

1 class as a whole. A court order requiring the Department to provide adequate explanation of the
2 grounds for its denials would resolve each sub-class member's claim.

3 434. A sub-class is also appropriate under Federal Rule of Civil Procedure 23(b)(1) because
4 prosecuting separate actions could create inconsistent or varying adjudications that could establish
5 incompatible standards of conduct for the Department. Similarly, the adjudication of one sub-class
6 member's claims would, as a practical matter, be dispositive of the interests of the other members
7 not party to the adjudication.

8 **SUPPLEMENTAL CAUSES OF ACTION**

9 435. Plaintiffs incorporate Paragraphs 377-389 of their Complaint (ECF No. 1) as if set forth
10 fully herein.

11 **COUNT 2⁹**

12 ***Unlawful Denial Notices – APA § 555(e)***

13 **(§ 555(e) Sub-Class)**

14 436. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

15 437. Defendants have violated the APA, 5 U.S.C. § 555(e), because they have issued Form
16 Denial Notices to members of the proposed sub-class that were not accompanied by a legally
17 adequate "brief statement of the grounds for denial."

18 438. Defendants' actions have harmed and prejudiced Named Plaintiffs and members of the
19 proposed sub-class, including by threatening their health and welfare.

20 439. The Court should declare that Defendants have violated the APA, compel the Department
21 to cease issuing Form Denial Notices, and, for each Class Member who is in fact not eligible for
22 borrower defense to repayment, issue a denial that provides an adequate statement of the grounds
23 for denial.

24
25
26 ⁹ Plaintiffs' original Count 2, ECF No. 1 ¶¶ 390-404, was previously dismissed. *See* Order Granting
27 Partial Motion to Dismiss, ECF No. 41. Plaintiffs have therefore numbered their Counts in this
28 Supplemental Complaint as following the extant Count 1, ECF No. 1 ¶¶ 377-389.

COUNT 3

Arbitrary and Capricious Agency Action – APA § 706(2)

(All Classes and Sub-Classes)

440. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

441. The ‘presumption of denial’ policy adopted by the Department to deny all borrower defense applications that fall outside of certain narrow categories is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

442. Specifically, the Department’s policy is not in accordance with the 1995 Regulations, because the policy requires the denial of applications regardless of whether the borrower’s school engaged in acts or omissions that would give rise to a cause of action against the school under applicable state law.

443. The Department’s policy also is not in accordance with the 2016 Regulations, because the policy requires the denial of applications regardless of whether the borrower’s school made a substantial misrepresentation.

444. The Department has acted in repeated bad faith in developing and implementing the ‘presumption of denial’ policy.

445. Defendants’ actions have harmed and prejudiced Named Plaintiffs and members of the class who have received denials of their borrower defense applications during and since December 2019, including by threatening their health and welfare.

446. Defendants’ actions imminently threaten to harm and prejudice Named Plaintiffs and members of the class who have not yet received decisions on their borrower defense applications, because those Class Members face an imminent likelihood of having their BD applications denied pursuant to an unlawful process.

447. The Court should declare that Defendants have violated the APA and compel the Department to evaluate each Class Member’s individual borrower defense application on its own merits in accordance with applicable law.

COUNT 4

Procedural Due Process – U.S. Const. Amend. 5

(All Classes and Sub-Classes)

448. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set forth herein.

449. Plaintiffs have a property interest in their right to raise a defense to the repayment of their federal student loans.

450. Plaintiffs also have a property interest in uninterrupted loan forbearance — that is, the right to be free of collection while they contest their debt.

451. Plaintiffs also have a property interest in receiving a decision and notification thereof on their borrower defense to repayment applications.

452. The Defendants have deprived Class Members of their constitutionally protected property interests without due process of law by failing to satisfy their obligation to consider the borrower defense applications on the merits.

453. The Defendants have deprived Class Members of their constitutionally protected property interests without due process of law by failing to satisfy their obligation to provide borrowers with a neutral decision-maker on their borrower defense applications.

454. The Defendants have deprived Class Members of their constitutionally protected property interests without due process of law by providing constitutionally inadequate denial notices, *viz.*, Form Denial Notices A-D, which do not inform borrowers of the reasons for the agency’s action.

455. The Defendants have deprived Class Members of their constitutionally protected property interests without due process of law by providing constitutionally inadequate denial notices, *viz.*, Form Denial Notices A-D, which do not inform borrowers about how to challenge the agency decision in federal court.

CONSOLIDATED¹⁰ PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in their favor and grant the following relief:

- A. Declare that the Department’s policy of refusing to grant, on the merits, borrower defense applications submitted by members of the class is unlawful;
- B. Declare that the Department’s policy of refusing to deny, on the merits, borrower defense applications submitted by members of the class is unlawful;
- C. Vacate the Department’s policy of refusing to grant or deny borrower defense applications on their merits;
- D. Declare that named Plaintiffs and members of the class who still have not received any decision on their borrower defense applications are entitled to a decision, on the merits, of their pending claims;
- E. Certify the § 555(e) Sub-class, as defined above in paragraph 430, pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- F. Declare that the Department’s Form Denial Notices are unlawful;
- G. Declare that each and every denial of a borrower defense application for which the borrower received a Form Denial Notice was not a decision on the merits of the borrower’s application;
- H. Declare that the ‘presumption of denial’ policy adopted by the Department to deny all or almost all borrower defense applications that fall outside of certain narrow categories is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- I. Declare that the ‘presumption of denial’ policy deprives class members of their constitutional right to procedural due process;

¹⁰ For the Court’s convenience, Plaintiffs set out here their full Prayer for Relief in this matter, including elements of the Prayer for Relief in the original Complaint that are applicable under this case’s current procedural posture.

- 1 J. Vacate each and every denial of a borrower defense application that the Department has
2 issued since October 30, 2019 (the date of class certification in this matter);
- 3 K. Compel the Department to lawfully adjudicate each and every borrower defense
4 application submitted by a Class Member that was denied on or after October 30, 2019;
- 5 L. Compel the Department to lawfully adjudicate each and every borrower defense
6 application submitted by a Class Member on which a decision has not yet issued;
- 7 M. Enjoin the Department from applying the ‘presumption of denial’ policy and associated
8 procedures to evaluate any borrower defense application, whether previously denied or yet
9 to be decided;
- 10 N. Compel the Department to provide an adequate statement of the grounds for denial for any
11 borrower defense application that receives a denial on the merits;
- 12 O. Order the Department to place or maintain Class Members’ loans in stopped collection
13 status until their borrower defense is granted or denied on the merits;
- 14 P. Retain jurisdiction as appropriate;
- 15 Q. Award reasonable costs and attorneys’ fees as authorized by law; and
- 16 R. Grant such further relief as may be just and proper.

17 Respectfully submitted,

18 /s/ Eileen M. Connor

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

THERESA SWEET, CHENELLE
ARCHIBALD, DANIEL DEEGAN, SAMUEL
HOOD, TRESA APODACA, ALICIA DAVIS,
and JESSICA JACOBSON on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

MIGUEL CARDONA, in his official capacity
as Secretary of the United States Department
of Education,

and

THE UNITED STATES DEPARTMENT OF
EDUCATION,

Defendants.

Case No. 19-cv-03674-WHA

**[PROPOSED] ORDER GRANTING
MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL COMPLAINT**

(Class Action)
(Administrative Procedure Act Case)

After consideration of Plaintiffs' motion for leave to file a supplemental complaint (ECF No. ____), [Defendants' opposition (ECF No. ____)], [and Plaintiffs' reply (ECF No. ____)], it is hereby ORDERED as follows:

Plaintiffs are granted leave to file the Supplemental Complaint under Federal Rule of Civil Procedure 15(d) and the Proposed Supplemental Complaint (ECF No. ____) is deemed filed. [Defendants shall have thirty (30) days from the date of this Order to file their response to the Supplemental Complaint.]

IT IS SO ORDERED.

Dated: _____

Hon. William Alsup
UNITED STATES DISTRICT JUDGE

Supplemental Complaint
Exhibit Index
Deposition Transcripts

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

Supplemental Complaint

Exhibit Index

Interrogatory Responses & Related Documents

Order	Document
1	Supplemental Interrogatory Responses
2	Interrogatory 17-18: How to Review a Borrower Allegation in a One-off or Small Batch Application
3	Interrogatory 17-18: ITT Memo, April 2020
4	Interrogatory 17-18: ITT Program Cost Memo, May 2020
5	Interrogatory 17-18: ITT Educational Services Memo, May 2020
6	Interrogatory 17-18 Evidence Considered Memo

Supplemental Complaint

Exhibit Index

Bates Stamped Documents

Documents appear in this order, with Bates-Numbered Slip-Sheets Between them. The documents are cited **by Bates Number** in the Supplemental Complaint.

Order	Bates Range	Document Title / Identifier
1.	DOE00000196-DOE0000213	Everest/Wyotech Transfer of Credits Memo
2.	DOE00000584-DOE0000603	Borrower Defense to Repayment Claims Evaluation
3.	DOE00002144-DOE00002147	"Manning Memo"
4.	DOE00002342	Submissions by Attorneys General Seeking Relief for Constituents
5.	DOE00002528-DOE00002529	Charlotte School of Law Memo
6.	DOE00002653	School Notice Letters and Other Open Items
7.	DOE00003427-	Next Gen FSA Key Actions
8.	DOE00004316-DOE00004320	Summary of Information Requested by Diane Regarding Loan Discharges Pursuant to 2016 Regulation
9.	DOE00004321-DOE00004322	Borrower Defense – Summary of Notice to Schools Process
10.	DOE00004939-4940	Capella School Notice Letter
11.	DOE00006016-6022	Borrower Defense Unit Claims Review Protocol
12.	DOE00006206-DOE00006508	Training Binder – Borrower Defense To Repayment
13.	DOE00006893-DOE0006895	Bd Work Plan For November 2019

Order	Bates Range	Document Title / Identifier
14.	DOE00006974	FSA FY 2020 A-123A Assessment
15.	DOE00007209-DOE00007214	Detailed Briefing: Borrower Defense and 2016 Rule – Corinthian Colleges and ITT Technical Institute
16.	DOE00007269-DOE00007271	Talking Points – Institutional Accountability Regulations
17.	DOE00007289-DOE00007291	Talking points – Borrower Defense to Repayment
18.	DOE00007866-DOE00007879	CCI guaranteed employment memo
19.	DOE00008693-DOE00008694	Borrower Defense Claim Review Productivity Requirements, Incentives and Support Plan
20.	DOE00008841-DOE00008843	Borrower Defense Quality Control Procedures
21.	DOE00009291	“Approval Rates” Memo
22.	DOE00009378-DOE00009379	DeVry School Notice letter
23.	DOE00009380-DOE00009382	Ashford School Notice Letter
24.	DOE00009383-DOE00009385	Infilaw School Notice Letter
25.	DOE00009386-DOE00009388	University of Phoenix School Notice Letter
26.	DOE00009399-DOE00009412	ITT Guaranteed Employment Memo
27.	DOE00009509-DOE00009518	Borrower Defense Presentation
28.	DOE00009519-DOE00009520	Anthem Education Group Memo
29.	DOE00009550-DOE00009551	CEC Memo With December 2020 Update
30.	DOE00009552-DOE00009553	CEC Memo
31.	DOE00009583	DeVry Memo

Order	Bates Range	Document Title / Identifier
32.	DOE00009585	Keller Memo
33.	DOE00009626-DOE00009630	EDMC Memo
34.	DOE00010045-DOE00010049	Beckfield College Memo
35.	DOE00010089-DOE00010093	Berkeley College Memo
36.	DOE00010201-DOE00010205	Brookline College Memo
37.	DOE00010297-DOE00010298	Business Industrial Resources Memo
38.	DOE00010339-DOE00010340	Career Institute of Health and Technology
39.	DOE00010341-DOE00010345	Career Point College Memo
40.	DOE00010364-DOE00010367	Carrington College Memo
41.	DOE00010368-DOE00010371	Carrington College Memo
42.	DOE00010571-DOE00010572	Concorde Career Institute Memo
43.	DOE00010573-DOE00010575	Concorde Career Institute Memo
44.	DOE00010647-DOE00010649	Davenport Memo
45.	DOE00010738-DOE00010740	Eagle Gate College Memo
46.	DOE00010783-DOE00010791	Empire Beauty School Memo
47.	DOE00010792-DOE00010794	Empire Beauty School Memo
48.	DOE00010795-DOE00010796	Empire Beauty School Memo
49.	DOE00010818-DOE00010825	Everglades University Memo
50.	DOE00010834	Everglades University Memo

Order	Bates Range	Document Title / Identifier
51.	DOE00010870	Florida Career College Memo
52.	DOE00010871-DOE00010874	Florida Career College Memo
53.	DOE00010957	Galiano Career Academy Memo
54.	DOE00010963-DOE00010966	Galiano Career Academy Memo
55.	DOE00011006-DOE00011008	Grantham Memo
56.	DOE00011207-DOE00011209	Institute for Business & Technology Memo
57.	DOE00011254	Iverson Institute Memo
58.	DOE00011259-DOE00011263	Iverson Institute Memo
59.	DOE00011330	Keller Memo
60.	DOE00011331-DOE00011340	Keller Memo
61.	DOE00011396-DOE00011403	Lacy Cosmetology School Memo
62.	DOE00011421	Lawton School Memo
63.	DOE00011426-DOE00011429	Lawton School Memo
64.	DOE00011569-DOE00011570	Masters of Cosmetology Memo
65.	DOE00011572-DOE00011574	Mattia College Memo
66.	DOE00011608-DOE00011609	Meridian University Memo
67.	DOE00011644-DOE00011647	Micropower Career Institute Memo
68.	DOE00011707-DOE00011711	Missouri Technical School Memo
69.	DOE00011746-DOE00011752	Morris Brown College Memo
70.	DOE00011761-DOE00011765	Mountain State Univ. Memo

Order	Bates Range	Document Title / Identifier
71.	DOE00011953-DOE00011956	Ohio Media School Memo
72.	DOE00012087-DOE00012088	Pinnacle Career Institute Memo
73.	DOE00012245-DOE00012248	Remington College Memo
74.	DOE00012388-DOE00012389	San Diego College Memo
75.	DOE00012560-DOE00012561	Southwest Memo
76.	DOE00012629-DOE00012633	Stenotype Institute of Jacksonville Memo
77.	DOE00012658	Strayer Memo
78.	DOE00012664-DOE00012668	Strayer Memo
79.	DOE00012673-DOE000012675	Suburban Technical School Memo
80.	DOE00012822-DOE00012824	Touro College memo
81.	DOE00012862-DOE00012863	Unitech Training Academy Memo
82.	DOE00012873-DOE00012877	Universal Technical Institute Memo
83.	DOE00013647-DOE00013656	Decision Memo: Tiered Relief Methodology
84.	DOE00013704-DOE00013707	Heald UCL Memo
85.	DOE00013708-DOE00013725	Heald Transfer of Credits Memo

Supplemental Complaint

Exhibit Index

“Other” Document Types Cited

Order	Document Name	Link (if applicable)
1	Transcript from October 1, 2020 Hearing in <i>Sweet v. Cardona</i> (related to ECF No. 141, the zoom chat transcript).	n/a
2	Order re: Preliminary Injunction, <i>Calvillo Manriquez v. DeVos</i> , Case No. 3:17-cv-07210 (ND. Cal., May 25, 2018, ECF No. 60).	n/a
3	Premier Education group Litigation: Complaint, <i>United States v. Premier Education Group</i> (2016 WL 2747195)	n/a
4	Premier Education group Litigation: ECF No. 222	n/a
5	Premier Education group Litigation: ECF No. 224	n/a
6	Premier Education group Litigation: ECF No. 229	n/a
7	Premier Education group Litigation: Jeanette DeForge, Agreement with AG Forces Premier Education Group Out of Massachusetts; Salter College, Others, to Forgive \$1.6M in Student Debt	https://www.masslive.com/news/2019/07/attorney-general-agreement-to-shut-down-5-colleges-statewide-cancel-students-debt.html
8	Borrower Defense to Repayment Application – OMB No. 1845-0163	https://studentaid.gov/sites/default/files/BD-General-Application-Form.pdf
9	Borrower Defense to Repayment Application – OMB No. 1845-0146	https://studentaid.gov/sites/default/files/borrower-defense-application.pdf
10	Career Education Corporation, FTC Complaint, Case No. 1.19-cv-05739, N.D. Ill., ECF No. 1.	https://www.ftc.gov/system/files/document/cases/career_education_corporation_complaint_8-27-19.pdf

Order	Document Name	Link (if applicable)
11	Career Education Corporation, FTC Settlement, Case No. 1.19-cv-05739, N.D. Ill., ECF No. 11.	https://www.ftc.gov/system/files/documents/cases/de_11_-_stipulated_order_for_permanent_injunction.pdf
12	Career Education Corporation, Assurance of Voluntary Compliance, Case No. D-1-GN-19-000017	https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/FINAL%20CEC%20AVC%20attached%20to%20Petition%20wCauseNo.pdf
13	Kevin Carey, "Corinthian College Is Closing. Its Students May Be Better Off as a Result"	https://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-students-may-be-better-off-as-a-result.html?_r=0
14	Federal Student Aid, Fiscal Year 2020 Annual Report	https://www2.ed.gov/about/reports/annual/2020report/fsa-report.pdf?source=email
Not Attached. Use Live Link.	Borrower Defense to Repayment Loan Forgiveness Data	https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-data

Supplemental Complaint**Exhibit Index****Docket Entries from *Sweet v. Cardona***

Please note: These documents are not attached, but gathered here in this table for reference because they are cited in the Supplemental Complaint.

Document Title/Identifier	ECF Number
Complaint	1
Defs.' Opp. to Plaintiffs' Motion for Class Cert., ECF No. 38	38
Class Certification Order, ECF No. 46	46
Nevin Dec., ECF No. 56-4	56-4
Defendants' Motion for Summary Judgement, ECF No. 63	63
Brown Dec., ECF No. 71-3.	71-3
Plaintiffs' Motion for Case Management Conf., ECF No. 108	108
Jacobson Aff., ECF No. 108-11	108-11
Connor Dec. in Support of Motion for Case Management Conf., ECF No. 108-2	108-2
Wright Aff., ECF No. 108-3	108-3
Deegan Aff., ECF No. 108-8.	108-8
Defs.' Resp. to Aug.31, 2020 Order, ECF No. 116, with Exhibits A-D attached	116
Sweet Affidavit (Exhibit 3 to Connor Dec., ECF No. 129-1)	129-1
Defs.' Opp. to Mot. to Enforce, ECF No. 140	140
Brown Dec., ECF No. 140-1	140-1
Zoom "chat" transcript, ECF No. 141	141
Defs.' List of Schools, Attachment to Filing in Response to Judge's Inquiry, ECF No. 145-2	145-2
Discovery Order, ECF No. 146	146

Defs.' Response to Order to Show Cause, ECF No. 150	150
Brown Declaration, ECF 150-1	150-1
DePaul Aff., ECF No. 151	151
Lezan Aff., ECF No. 155	155
Norton Aff., ECF No. 159	159

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

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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

Page 2

1
2
3 December 15, 2020
4 10:03 a.m. (EST)
5
6
7
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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Page 4

1 A P P E A R A N C E S C O N T I N U E D
2
3 JOSEPH JARAMILLO, Esquire
4 CLAIRE TORCHIANA, Esquire
5 Housing & Economic Rights Advocates
6 3950 Broadway, Suite 200
7 Oakland, California 94611
8 Telephone: (510) 271-8443
9 Email: jjaramillo@heraca.org
10 Email: ctorchiana@heraca.org
11
12 ON BEHALF OF THE DEFENDANTS:
13 R. CHARLIE MERRITT, Esquire
14 KEVIN P. HANCOCK, Esquire
15 KATHRYN C. DAVIS, Esquire
16 MARCIA BERMAN, Esquire
17 U.S. Department of Justice
18 Civil Division, Federal Programs Branch
19 1100 L Street, Northwest
20 Washington, D.C. 20530
21 Telephone: (202) 307-0342
22 Email: robert.c.merritt@usdoj.gov
23 Email: kathryn.c.davis@usdoj.gov
24 Email: kevin.p.hancock@usdoj.gov
25 Email: marcia.berman@usdoj.gov

Page 3

1 A P P E A R A N C E S
2
3 ON BEHALF OF THE PLAINTIFFS:
4 REBECCA ELLIS, Esquire
5 MARGARET O'GRADY, Esquire
6 EILEEN CONNOR, Esquire
7 TOBY R. MERRILL, Esquire
8 Legal Services Center of
9 Harvard Law School
10 122 Boylston Street
11 Jamaica Plain, Massachusetts 02130
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17
18 - and -
19
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Page 5

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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Page 6

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)

DEPOSITION PAGE:

Exhibit 24 Revised Notice Of Deposition 15
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
With Cover Sheet Titled
Exhibit A

Exhibit 28 November 20, 2020 Deposition 141
Of Diane Auer Jones

Exhibit 29 Borrower Defense Unit Claims 142
Review Protocol PowerPoint
With Cover Sheet Titled
Exhibit 10

Exhibit 30 Affidavit Of Rudolph Howell 227

Page 8

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

Page 7

PREVIOUSLY MARKED EXHIBITS

(Not attached to the transcript)

DEPOSITION PAGE:

Exhibit 3 U.S. Department Of Education 73
Office Of Inspector General
Report

Exhibit 7 May 4, 2017 Email 79

Exhibit 10 May 22, 2019 Hearing 91
Transcript

Exhibit 12 April 21, 2019 PowerPoint 231
Titled Borrower Defense To
Repayment

Exhibit 13 Defendants' Response To 176
August 31, 2020 Order

Exhibit 15 Declaration Of Eileen Connor 190

Exhibit 17 Politico Article Titled DeVos 127
Orders Partial Loan Relief
For Many Duped Student
Borrowers

Exhibit 18 October 27, 2020 Oversight 213
Committee Press Release
Titled New Documents Show
Department Of Education Froze
Tool To Help Defrauded
Student Borrowers

Page 9

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

Page 10

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>

<p style="text-align: right;">Page 30</p> <p>1 later.</p> <p>2 Okay. And is there anyone who reports</p> <p>3 to you? Or who reports to you?</p> <p>4 A So the way my organization is</p> <p>5 organized, I have five deputy chief operating</p> <p>6 officers; all report directly to me. And other</p> <p>7 than that, it would be my administrative office</p> <p>8 that would be in the front office kind of folks,</p> <p>9 but those are the folks that report to me.</p> <p>10 Q Okay. And could you give me the names</p> <p>11 of those five deputy chief officers?</p> <p>12 A Today -- as of today, those names are</p> <p>13 Robin Minor, who is the deputy chief operating</p> <p>14 officer of partner participation and oversight;</p> <p>15 Dave Albers who is a deputy chief operating</p> <p>16 officer for strategic planning; Joe Lindsey, who</p> <p>17 is a principal deputy chief operating officer;</p> <p>18 Chris Greene, who is a deputy chief operating</p> <p>19 officer for student engagement and aid delivery;</p> <p>20 and Colleen McGinnis, who is the deputy chief</p> <p>21 operating officer for internal controls and those</p> <p>22 kinds of issues. And that should make up the five</p> <p>23 unless I dropped off a name.</p> <p>24 Q And are there reports about your</p> <p>25 performance?</p>	<p style="text-align: right;">Page 32</p> <p>1 Office of Federal Student Aid if -- if that's your</p> <p>2 question, and borrower defense has -- has metrics</p> <p>3 inside of Federal Student Aid. We're a</p> <p>4 performance-based organization and by virtue of</p> <p>5 that, we're a metric of which borrower defense is</p> <p>6 one.</p> <p>7 Q Sorry. You're cutting out a little</p> <p>8 bit, but -- but I think I -- I understood that.</p> <p>9 A I'm sorry.</p> <p>10 Q Okay. And have you ever been advised</p> <p>11 to improve your performance as it relates to</p> <p>12 borrower defense?</p> <p>13 MR. HANCOCK: Objection: exceeds the</p> <p>14 scope of the court-ordered discovery.</p> <p>15 MS. TORCHIANA: Okay. I would say it's</p> <p>16 pretty relevant, but we can move on for now.</p> <p>17 BY MS. TORCHIANA:</p> <p>18 Q And do you evaluate anyone?</p> <p>19 A I -- I ultimately evaluate the five</p> <p>20 deputy chief operating officers that report to me</p> <p>21 directly and those inside of my front office.</p> <p>22 Q Okay. And are those formal reviews?</p> <p>23 A Yes. Yes, they have -- they have</p> <p>24 annual -- we are still a government agency, and so</p> <p>25 at the end of a reporting period, at the end of a</p>
<p style="text-align: right;">Page 31</p> <p>1 A Pardon me, ma'am. Could you repeat</p> <p>2 that question, please?</p> <p>3 Q Are there reports about your</p> <p>4 performance?</p> <p>5 A Mine, personally?</p> <p>6 Q Uh-huh. Yes.</p> <p>7 A Yes, I'm accountable for my performance</p> <p>8 and there's an annual report.</p> <p>9 Q Okay. And who prepares those reports?</p> <p>10 A Who prepares them? The -- ultimately</p> <p>11 the secretary of education approves my final</p> <p>12 report. I prepare input for that report if that's</p> <p>13 your question, and I send that input to the deputy</p> <p>14 under secretary.</p> <p>15 Was that your question?</p> <p>16 Q Yes.</p> <p>17 And are there any metrics by which your</p> <p>18 performance is evaluated that you know of?</p> <p>19 MR. HANCOCK: Objection: exceeds the</p> <p>20 scope of the court-ordered discovery.</p> <p>21 BY MS. TORCHIANA:</p> <p>22 Q Well, do you know is anything about</p> <p>23 borrower defense taken into account in your</p> <p>24 performance metrics?</p> <p>25 A We have many performance metrics in the</p>	<p style="text-align: right;">Page 33</p> <p>1 fiscal year, we have an end-of-year evaluation</p> <p>2 done on employees.</p> <p>3 Q Okay. Okay. And if you could turn to</p> <p>4 paragraph 3 of your declaration. You say here</p> <p>5 that you oversee the management of FSA.</p> <p>6 Could you explain in more detail how</p> <p>7 that relates to your work with the borrower</p> <p>8 defense unit or with borrower defense generally?</p> <p>9 A As I stated earlier, I have five deputy</p> <p>10 chief operating officers. One of them that I</p> <p>11 named was Ms. Robin Minor, who is the deputy chief</p> <p>12 operating officer for partner participation and</p> <p>13 oversight. One of Ms. Minor's organizations</p> <p>14 underneath her as partner participation and</p> <p>15 oversight is the borrower defense unit. And, so,</p> <p>16 in this -- in regards to your question, I manage</p> <p>17 the deputies who, in turn, manage subordinate</p> <p>18 units, and one of the subordinate units inside of</p> <p>19 partner participation and oversight is the</p> <p>20 borrower defense unit.</p> <p>21 Q Okay. Okay. And would you say of the</p> <p>22 five deputies that you oversee, is Robin Minor the</p> <p>23 only one who works with the BDU; is that true?</p> <p>24 A I -- I didn't say that, and it would be</p> <p>25 difficult to say that. I -- I wouldn't say that</p>

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

<p style="text-align: right;">Page 46</p> <p>1 A I -- I don't know. As I said earlier,</p> <p>2 I would classify it as confusion because I -- I</p> <p>3 don't know why they -- why they thought that.</p> <p>4 Q Okay. So was the stoppage a concern</p> <p>5 when you joined or, you know, you . . .</p> <p>6 MR. HANCOCK: Objection. Potentially</p> <p>7 calls for deliberative information.</p> <p>8 MS. TORCHIANA: The witness can still</p> <p>9 answer.</p> <p>10 THE WITNESS: I was just trying to make</p> <p>11 sure I understood your question. I didn't know if</p> <p>12 you were through with your question. You said was</p> <p>13 this guidance a concern. For -- for me when I</p> <p>14 started?</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q When you started, was it a concern that</p> <p>17 no decisions had been issued?</p> <p>18 A When I started, the overall backlog in</p> <p>19 production, borrower defense processes and system</p> <p>20 were a concern to me because of -- of -- as I said</p> <p>21 earlier, the sheer volume and the fact that they</p> <p>22 were not moving.</p> <p>23 And, so, not just -- not just the fact</p> <p>24 that the decisions weren't going out, but that the</p> <p>25 methodology and other things needed to be known so</p>	<p style="text-align: right;">Page 48</p> <p>1 borrower defense cases would be -- would be</p> <p>2 managed by. That's when I use the term "fix it."</p> <p>3 To answer your question, that's what I mean,</p> <p>4 getting those -- getting those things in place so</p> <p>5 that this process could start moving.</p> <p>6 Q Okay. And do you know -- we'll discuss</p> <p>7 this more later, but do you know -- had there been</p> <p>8 any staff requests for the BDU before you joined?</p> <p>9 A I -- I actually don't know if there had</p> <p>10 been more staff requests for BDU before I joined</p> <p>11 because I would not have necessarily seen those.</p> <p>12 Q Okay. And how many -- how many staff</p> <p>13 people were working at the BDU when you joined?</p> <p>14 Do you remember?</p> <p>15 A I -- I don't know precisely, but it</p> <p>16 was -- in terms of attorneys, I would say probably</p> <p>17 10 to 12 at the most.</p> <p>18 Q Okay. And how many staff people did</p> <p>19 you estimate were needed to clear the backlog?</p> <p>20 A So estimate being the correct term,</p> <p>21 I -- I did not estimate. I -- I went to the</p> <p>22 borrower defense team and worked with them to see</p> <p>23 what they thought they needed based on the --</p> <p>24 based on the caseload. I can't tell you about</p> <p>25 their internal workings. I don't -- I don't know</p>
<p style="text-align: right;">Page 47</p> <p>1 that we could move on with the cases.</p> <p>2 So I would -- I would say borrower</p> <p>3 defense as a whole was a concern for me when I</p> <p>4 started in March of 2019.</p> <p>5 Q Okay. And did you take any -- what</p> <p>6 steps did you take about the backlog when you</p> <p>7 started?</p> <p>8 A Specifically, and through -- through</p> <p>9 the deliberation with the team, I concluded that</p> <p>10 we needed more people. Specifically, we needed</p> <p>11 more attorneys and we needed more financial</p> <p>12 resources if we were to fix the systems that --</p> <p>13 that manage, collect, case management systems that</p> <p>14 support the team. And, so, as the operating</p> <p>15 officer, I went about focusing on -- on that and</p> <p>16 fixed it in the next several months.</p> <p>17 Q Okay. So when you say "fixed it," what</p> <p>18 do you mean?</p> <p>19 A Hire attorneys, recruit, hire, bring on</p> <p>20 board attorneys so that there would be more hands</p> <p>21 doing the work.</p> <p>22 Q Okay. And do you know --</p> <p>23 A Secure the financial resources --</p> <p>24 secure the financial resources necessary to</p> <p>25 upgrade and fix the systems that those -- that</p>	<p style="text-align: right;">Page 49</p> <p>1 that, but collectively I do know we came out to a</p> <p>2 number of something around 60 -- we needed</p> <p>3 somewhere in that amount of attorneys in order to</p> <p>4 have people to adjudicate what was a growing</p> <p>5 backlog of cases, but I don't know how much -- I</p> <p>6 could not tell you today that that was some</p> <p>7 scientific equation. I can tell you it was the</p> <p>8 internal workers of BD team as you would go to</p> <p>9 your experts and ask about what do we need to --</p> <p>10 to tackle this issue.</p> <p>11 Q Okay. And did you make any requests to</p> <p>12 hire more staff for the BDU?</p> <p>13 A I did.</p> <p>14 Q Okay. And when -- when was the</p> <p>15 first -- or just how many times did you make --</p> <p>16 did you request?</p> <p>17 A I don't know. I don't know how many</p> <p>18 times I -- I made a request. I just know that my</p> <p>19 request was approved. I believe it was approved</p> <p>20 the first time I asked, so I don't know that there</p> <p>21 were more than one -- there was more than one time</p> <p>22 that I had to ask.</p> <p>23 Q And when was the first time you asked?</p> <p>24 A Shortly after taking over, but I -- but</p> <p>25 I can't tell you the exact time, but it was</p>

<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>

December 15, 2020

74 to 77

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

Page 82

1 A I signed off on all of the -- all of
 2 the metrics that go into the strategic plan and
 3 the annual plan, one of which is the metric. And
 4 in signing, I denote my confidence in the process
 5 of the development of those things.

6 Q Okay. So would you ever agree to a
 7 performance metric that wasn't reasonable or that
 8 you think wasn't attainable?

9 A So when I look at a performance metric
 10 in general, I look to see if we provided the
 11 resources necessary to achieve it. And if we
 12 provided the resources necessary to achieve it,
 13 then, you know, I would feel comfortable that it
 14 was reasonable.

15 But you asked me if I would ever sign
 16 off on a performance metric that is not
 17 reasonable; am I -- am I correct?

18 Q Yes.

19 A I would not knowingly do so; however, I
 20 am not beyond flaw and -- and we have a large
 21 organization, and as I've said, they all have
 22 metrics. I have to build and trust the process
 23 that it would not bring me an unachievable metric,
 24 and so -- but it is not without flaw.

25 So there -- there could be one that

Page 83

1 would have to be changed or adjusted if it were
 2 not -- if it were found to be, I think as you
 3 said, unrealistic.

4 Q Okay. And how did you inform yourself
 5 that the BDU -- BDU unit's metrics were achievable
 6 or attainable?

7 MR. HANCOCK: Objection: vague; and
 8 potentially calls for deliberative information.

9 BY MS. TORCHIANA:

10 Q You can still answer.

11 A So we have metrics updates as I was --
 12 as I was saying, and -- and -- and a process by
 13 which they are developed. So the way I inform
 14 myself in general is by listening and having
 15 dialogue and asking questions that I think are
 16 challenging that would make those who develop and
 17 think deeply about them and looking at, you know,
 18 their responses and the history and seeing if
 19 together we can agree that this is something that
 20 can be done. And then ultimately they are
 21 established that way.

22 So I -- I know that's not a one, two,
 23 three answer, but neither is the process. It is a
 24 very deliberative back-and-forth process that
 25 leads to what you are calling the metrics.

Page 84

1 Q Okay. And, so, when BDU came up with
 2 its performance metric, what deliberations did you
 3 have with the BDU? Did you meet with them about
 4 the performance metrics?

5 MR. HANCOCK: Objection: calls for
 6 deliberative privileged information. I instruct
 7 the witness not to answer.

8 BY MS. TORCHIANA:

9 Q Okay. And how -- when you signed off
 10 on the performance metrics, how did you come to
 11 understand that that was an achievable goal? What
 12 told you that?

13 A So what -- so if -- what told me that
 14 the goals were achievable?

15 Q Uh-huh. Yes.

16 A From my level -- and I have to explain
 17 this a little bit, though -- but from my level,
 18 I'm more concerned that the process is in place
 19 for the voices to be heard and the development to
 20 occur. And, so, I am spending my time on the
 21 process; in other words, are they from the ground
 22 up. Do subject matter experts have an opportunity
 23 to say something; are we, you know, not listening
 24 to any voices; or how do they look on a historical
 25 basis.

Page 85

1 Those kinds of questions when you
 2 manage a large organization, you have to become
 3 confident that those will help bring out the best
 4 in those you manage.

5 And, so, the way -- the reason I'm
 6 confident is because I spend an intense amount of
 7 time on the process to make sure the process is in
 8 place to deliver that. I don't -- I'm not a
 9 borrower defense attorney. I don't -- I can't
 10 tell you perhaps the intricacies that you're
 11 looking for in terms of all of those things that
 12 happen inside of the borrower defense unit, but I
 13 can tell you what process I had used.

14 Q And who told you about the processes at
 15 the BDU?

16 A Who told me about how borrower defense
 17 unit processes the work? Is that your question,
 18 ma'am?

19 Q Sure.

20 Well, you said you were listening to --
 21 when you set the performance metrics you were
 22 listening to different voices and it's a
 23 deliberative process.

24 Who were you deliberating with to set
 25 those numbers?

<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>

Page 98

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.

Page 99

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

Page 100

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?

Page 101

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

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

1 Q Yeah, that's fine. Thank you.

2 So FSA resumed issuing decisions. When

3 did FSA cease making decisions on borrower defense

4 applications?

5 MR. HANCOCK: Objection: vague.

6 BY MS. TORCHIANA:

7 Q You can still answer.

8 A So I'm -- I'm trying to understand. Do

9 you mean after this point in time when did we

10 cease?

11 Q So it says FSA resumed, so resumed is

12 starting again. So when did FSA stop issuing

13 decisions?

14 A Oh, I -- I -- okay. Yeah, I

15 understand. I think I understand your -- your

16 question.

17 If you mean prior to this time when

18 were we making decisions and when did we stop, I

19 believe we stopped based on my review of the facts

20 and as I was told -- because during my time coming

21 in in March, I looked into this and it was part of

22 my education on borrower defense, that after the

23 Manriquez case decision, that there were no more

24 decisions being issued out of borrower defense.

25 And, so, I don't know the exact time of

Page 123
Page

1 that, but whatever the timing of that court order

2 was is -- is my understanding of when borrower

3 defense stopped.

4 And, so, that was already in process

5 when I took my position in March of 2019.

6 Q Okay. And, so, did the decision stop

7 on both Corinthian students' applications and

8 non-Corinthian students' applications?

9 A So I'm now talking about my

10 understanding of it. I was not there when the

11 original Manriquez case decision was made, but no

12 decisions were going out to my knowledge in March

13 of 2019.

14 So that would have been, you know,

15 whatever is -- no decisions were going out.

16 Q Okay. When you say FSA resumed issuing

17 decisions, was that decisions on all pending

18 borrower defense applications including both

19 Corinthian and non-Corinthian?

20 A What -- what I mean in that statement

21 is that all decisions, depending on which ones

22 were -- were right for -- for being made, right,

23 those that had been -- cases that had been

24 adjudicated and decisions were ready to go out,

25 and there was a methodology to use in all of those

Page 124
Page

1 schools that you named, if they had cases that

2 were sitting there ready to go out.

3 Q Okay. But the injunction was still in

4 place at that time?

5 A So the cases for which -- the cases for

6 which the injunction did not cover.

7 Q Okay. And when you say resumed, does

8 that include -- we spoke about this a bit before.

9 Let me rephrase.

10 Had both decisions on eligibility as to

11 Step 1 as we talked about it, and relief, Step 2

12 as we talked about it, ceased?

13 MR. HANCOCK: Objection: vague.

14 THE WITNESS: I --

15 BY MS. TORCHIANA:

16 Q You can still answer.

17 A So had -- had decisions -- had

18 decisions for borrower defense cases ceased until

19 the point in this statement when I said resumed?

20 Is that the question? I'm trying to

21 make sure I understand your question.

22 Q Yeah.

23 So when you say -- so we established

24 that decisions had stopped, had ceased, and --

25 before this new methodology came out. And was it

Page 125
Page

1 both decisions as related -- determinations on

2 eligibility, so whether someone was eligible for

3 borrower defense, and also how much relief they

4 were owed?

5 A Right. So, ma'am, again, Step 1

6 involves a case coming in being adjudicated by a

7 borrower defense attorney, and then through that

8 process determining if a claimant is eligible or

9 ineligible for borrower defense, a defense for

10 relief.

11 That first part, that Step 1 part,

12 which I think you are describing in this question,

13 again has never stopped. And, so, it never

14 stopped.

15 And, so, when I said resumed, I'm

16 talking about completing the process through Step

17 2 as I'm defining it, which means the ability to

18 issue a determination to a borrower because now

19 you have a relief methodology.

20 So it goes back to our discussion

21 earlier about Step 1 and Step 2.

22 Q Okay. And do you know -- did you know

23 how many Step 1 decisions were being made during

24 that time from June 2018 to December 2019?

25 A I can't -- I can't recall. You mean,

<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>

Page 134 Page	Page 136 Page
<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>

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

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

<p style="text-align: right;">Page 178 Page</p> <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>	<p style="text-align: right;">Page 180 Page</p> <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>
<p style="text-align: right;">Page 179 Page</p> <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>	<p style="text-align: right;">Page 181 Page</p> <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>

Page 182
Page

1 Q Do you know roughly when it was
2 developed?

3 A I -- I do not. I think it evolved over
4 time in the -- in the BD unit and possibly liaison
5 as circumstances dictated that an additional type
6 of form would be needed.

7 Q Okay. And what circumstances dictated
8 that an additional form would be needed?

9 A I don't know exactly other -- other
10 than these -- these forms are created based on
11 what is seen in the claims that are being
12 adjusted.

13 So if you see a circumstance occur
14 enough and you believe that claimants need to be
15 able to have certain information in order to file
16 a particular claim, you might adjust or make sure
17 you design a form with that in mind.

18 Q Okay. And, again, for this form D, who
19 designed the form?

20 A So, again, I would say -- I don't know
21 exactly who, other than forms are a collaboration
22 between our liaison office and our borrower
23 defense office. That's how forms are drafted and
24 then approved through our policy element at the
25 Department of Education.

Page 183
Page

1 Q Okay. And did you have to approve this
2 form before it started being used?

3 A I don't necessarily approve each form.
4 They go -- they go through the staffing process.
5 The approval of a form is the -- is -- is the
6 policy element of what we do because the forms
7 represent an extension of policy.

8 Q Okay. So would you say the denial
9 forms are -- they're under policy?

10 MR. HANCOCK: Objection: asked and
11 answered.

12 BY MS. TORCHIANA:

13 Q Okay. Are the denial forms part of
14 operations?

15 A So what I -- what I would say is the
16 drafting of policy forms like the ones that we
17 just went through, A through -- through D, begins
18 inside of Federal Student Aid.

19 So it -- it begins as part of
20 operations, but the final form and the decision on
21 what the form -- that the form is appropriate is a
22 policy decision.

23 Q Okay. So if you look at form D, it
24 says, applicable law, and is this somewhere where
25 you would expect the state law standard under

Page 184
Page

1 which an application was decided would be if it
2 was decided under the 1995 regs?

3 A If the appropriate state law?

4 Q Yes.

5 If -- if a borrower's application was
6 decided according to state law, do you think that
7 law would be stated under the applicable law
8 section?

9 A Yeah, that would -- exactly where to
10 put something on the form would not be something
11 I'd be prepared to opine on. Exactly where to put
12 it on the form, I don't know. I would leave it to
13 those in charge with that to -- to tell me --

14 Q Okay.

15 A -- the laws.

16 Q Do you think it would be somewhere on
17 the form?

18 A I don't know. I would -- I would look
19 to my attorneys to tell me if state law needed to
20 be on the form or not. And if -- and if they
21 believe that it would be, it would need to then be
22 put through that staffing process I described
23 earlier to make sure those in charge of the forms
24 and policy elements came to an agreement that, in
25 fact, it should be.

Page 185
Page

1 Q Okay. And if you -- if you go to the
2 next page, the section it says, What if I do not
3 agree with this decision?

4 A Yeah.

5 Q And then it says, number three is,
6 Identify and provide any evidence that
7 demonstrates why ED should approve your borrower
8 defense repayment claim.

9 And, you know, you noted actually
10 earlier in your declaration -- and we can turn
11 back to it if you want to see that, but you say
12 that FSA will consider any evidence under
13 reconsideration which includes both new evidence
14 and evidence already submitted.

15 When was the choice made to consider
16 any evidence as opposed to new evidence?

17 A So I don't -- I don't know the exact
18 point -- point in time when that became a matter
19 of policy and certainly a matter of our forms. I
20 know that it is today, but exactly how -- how long
21 ago that was determined, I -- I don't know.

22 Q Okay. And would you say that was a
23 policy decision?

24 A I'm -- I would -- I would say that
25 those kind of elements on a form, like, time

<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>

Page 194 Page	<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>	Page 196 Page	<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	<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>	Page 197 Page	<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>

Page 198 Page	<p>1 Level of specificity, just that the</p> <p>2 evidence was reviewed and therefore was probably</p> <p>3 on hand somewhere within borrower defense.</p> <p>4 Q Okay. We'll -- we'll move on.</p> <p>5 Could you turn to Exhibit 19 which is</p> <p>6 behind tab 19?</p> <p>7 (Exhibit 19 referred to.)</p> <p>8 THE WITNESS: I have it here.</p> <p>9 BY MS. TORCHIANA:</p> <p>10 Q Okay. And -- and just before we --</p> <p>11 just before we get into that, I wanted to ask a</p> <p>12 follow-up question about something we were talking</p> <p>13 about before.</p> <p>14 Have you seen any documents with</p> <p>15 redactions -- with, you know, redactions of school</p> <p>16 groups that are related to borrower defense?</p> <p>17 A Have I -- have I seen any documents</p> <p>18 that were redacted related --</p> <p>19 Q Not in --</p> <p>20 A -- to borrower defense.</p> <p>21 Q Have you seen any documents where the</p> <p>22 school group -- where any information about a</p> <p>23 school group is redacted?</p> <p>24 MR. HANCOCK: Objection.</p> <p>25 THE WITNESS: I have.</p>	Page 200 Page	<p>1 MR. HANCOCK: I'm sorry. Can I just</p> <p>2 clarify what document we're looking at? Is it the</p> <p>3 Exhibit A in -- in Exhibit 19?</p> <p>4 MS. TORCHIANA: No, it's 19, and it's</p> <p>5 Attachment 1, which is behind Exhibit A. You see</p> <p>6 the stamp is page --</p> <p>7 MR. HANCOCK: 145-2.</p> <p>8 MS. TORCHIANA: Yeah, 145-2, page 1 of</p> <p>9 15.</p> <p>10 MR. HANCOCK: Okay. Thank you.</p> <p>11 THE WITNESS: (Reviews document.)</p> <p>12 This is a -- this is my declaration at</p> <p>13 Attachment 1, attachment -- or Exhibit A.</p> <p>14 BY MS. TORCHIANA:</p> <p>15 Q Okay. And when you turn to</p> <p>16 Attachment 1, have you seen this chart before?</p> <p>17 A I -- I have.</p> <p>18 Q Okay. Do you know who put this chart</p> <p>19 together?</p> <p>20 A I -- I don't know specifically who, but</p> <p>21 I believe it is most likely our borrower defense</p> <p>22 group and the folks that were in that area.</p> <p>23 Q Okay. And who do you think it would</p> <p>24 have been in the borrower defense group?</p> <p>25 A I would never be able -- I don't know,</p>
Page 199 Page	<p>1 MR. HANCOCK: Exceeds the scope of</p> <p>2 court-ordered discovery.</p> <p>3 THE WITNESS: So I have seen documents</p> <p>4 where words are redacted out.</p> <p>5 BY MS. TORCHIANA:</p> <p>6 Q About -- were those words related to</p> <p>7 specific school groups?</p> <p>8 A I don't recall what they were related</p> <p>9 to, but if you're -- the first part of your</p> <p>10 question, have I seen documents in the -- in the</p> <p>11 staffing process and the ruling process where</p> <p>12 there are -- where there are redactions, I have.</p> <p>13 I've seen documents where words were redacted out.</p> <p>14 Q I don't mean redactions in general. I</p> <p>15 meant redactions related to specific school</p> <p>16 groups.</p> <p>17 A That -- that particular -- I -- I just</p> <p>18 don't recall if it was related to school groups or</p> <p>19 not.</p> <p>20 Q If you could take a look at Exhibit 19.</p> <p>21 Do you recognize this document -- actually, if you</p> <p>22 could turn to -- your declaration is in the front,</p> <p>23 but if you could turn to Attachment 1, that would</p> <p>24 be helpful.</p> <p>25 Do you recognize this document?</p>	Page 201 Page	<p>1 ma'am. You mean who within all of the borrower</p> <p>2 defense group that actually did this chart?</p> <p>3 Q Yeah, who -- who do you think --</p> <p>4 A I don't know.</p> <p>5 Q -- compiled it?</p> <p>6 A I don't know.</p> <p>7 Q Okay. If you had questions about this</p> <p>8 chart, about the contents of it, who would you</p> <p>9 ask?</p> <p>10 A So the way we're organized, I would --</p> <p>11 I would go to the deputy chief operating officer</p> <p>12 for partner participation and oversight, and I</p> <p>13 would --</p> <p>14 Q And who is that?</p> <p>15 A That's Ms. Robin Minor.</p> <p>16 Q Okay.</p> <p>17 A And I would ask her my question.</p> <p>18 Q Okay.</p> <p>19 A She might ask who -- whoever is</p> <p>20 required to get the answer and ultimately I would</p> <p>21 get my answer then.</p> <p>22 Q Okay. And have you ever -- have you</p> <p>23 ever asked anybody questions about this chart?</p> <p>24 A I don't require -- I don't remember or</p> <p>25 recall asking questions about this specific</p>

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

<p style="text-align: right;">Page 214 Page</p> <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 style="text-align: right;">Page 216 Page</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>
<p style="text-align: right;">Page 215 Page</p> <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 style="text-align: right;">Page 217 Page</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>

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

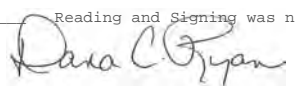
Page 238 Page	<p>1 methodology for non-CCI claims that had started to</p> <p>2 be developed at that time that you know of?</p> <p>3 A Ma'am, could you -- could you repeat</p> <p>4 that question again? I'm sorry.</p> <p>5 Q Yeah.</p> <p>6 So this presentation is from</p> <p>7 August 2019, and it says, 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>

Page 246
Page

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

Page 247
Page

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

Page 248
Page

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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Page 249
Page

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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Page 250
Page

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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		
<hr/> EX 0024 Brown 121520 6:10 15:12,13 EX 0025 Brown 121520 6:12 19:9,10 112:5 136:21,22 EX 0026 Brown 121520 6:13 56:6 EX 0027 Brown 121520 6:16 136:15,17 EX 0028 Brown 121520 6:19 141:9,10 EX 0029 Brown 121520 6:21 56:4 142:4,5 EX 0030 Brown 121520 6:25 227:17,18 <hr/>	145 141:7 145-2 200:7,8 15 190:2,3,4 200:9 209:19,20 15,256 157:19 150,000 64:15 87:9,14 227:2,7 15:03 9:10 15:05 11:25 15:08 12:5 15th 9:10 16 16:8 55:22,23 56:10 128:19 163:7 191:17 16,045 136:25 160,000 64:15 71:15 16:16 57:15 16:30 57:19 17 127:18,19 130:20 165:14 191:3,17 17:43 105:15 18 94:24 129:11 155:18 170:5 191:3, 17 213:8,10 18:18 105:19 19 73:10 191:17 198:5,6,7 199:20 200:3,4 193 75:24 1986 15:24 1995 184:2 1999 211:12 19:05 136:9 19:20 136:13 1:18 105:17 1st 204:7 206:15 <hr/>	2,000-plus 154:22 20- 56:4 200,000 240:6 2000- 242:12 2004 211:12 2012 204:7 206:15 2016 190:13,18 191:3 195:10 235:9,25 236:2,9,16 2017 57:7 73:23 76:9, 17 77:13,14,15 78:11,12 79:18 94:24 95:21 2018 17:2,16,19,22 35:24 37:24 38:15 40:3 41:9 52:13 92:1 102:8,15 125:24 239:5,14,24 241:5,12 242:5 244:11 2019 17:11,15,16 20:19 27:14 35:24 36:11,12 37:12 38:18 40:24 44:13 47:4 50:20 52:3,9 56:25 57:2 75:3 91:3,6,22, 24 93:4 102:13 103:18 112:9 113:19 114:6 123:5,13 125:24 130:9,17 136:24 140:1,5,12, 13,19,24 143:1,7 150:8 151:4 155:6 156:20 157:20 158:12,17 159:1 168:21 170:6 191:4, 6,18 232:25 233:2 237:9,25 238:7,12,23 239:13 241:7,13 242:13,14 243:15 245:15 <hr/>
<hr/> 1 <hr/>	<hr/> 2 <hr/>	2020 9:10 63:22 64:7, 11 65:17,23 71:15 81:23 87:10 88:13 136:16 190:14,18 20:41 189:21 20:55 189:25 20th 77:12,14 21:45 222:6 21:55 222:10 21st 232:25 22 211:12
1 100:24 101:1,15 102:9,16,18,21 103:7,13,19 104:16, 17 124:11 125:5,11, 21,23 126:18,25 147:14 151:8,9,12, 17,18 152:8,18 153:4 154:9 199:23 200:5, 8,13,16 203:6 207:13,15,24 208:4,9 211:12 227:11 234:1, 4,6,8 236:24 242:24 1,000 138:19,25 1,453 127:13 10 48:17 55:20 91:5, 17,18 92:22 93:3 103:4 126:7 154:20, 23 10th 112:9 11 160:3 11:16 57:16 11:30 57:17 11th 136:24 12 48:17 91:5 103:4 126:7 154:20,23,24 231:24,25 12:43 105:9,16 13 176:4,5,6,8 14 161:24 162:9,15	2 20:17 100:24 101:1, 15,16 124:11 125:17, 21 147:15,16 151:18 152:10,12 153:8,9, 14,15 167:16 178:24 203:2,9,22 204:3,12 205:25 206:14 207:14,16 210:7,19 227:12 232:25 234:9 242:23 243:6,8	

December 15, 2020

2

227,000 128:3 129:8	43 135:22	91 63:24 72:2
22:09 231:14	44 194:13,18,23	
22:32 246:3,20	45 25:11 194:17,18	
22nd 93:4	452 144:9	A
23 166:6,7,13	4:47 222:7	a.m. 57:16,17
23:07 231:10	4:55 222:8	ability 98:16 125:17
24 15:3,4,8,12,13	4th 20:19 195:8	236:20 246:10
166:6 169:11 190:6		absolute 163:1
25 19:6,7,9,10 20:10	5	absolutely 173:21
53:11 112:5 136:21,		181:10 208:13,21,22
22	5 112:8 209:18	acceptable 195:16
25s 20:9,13	50 93:10 99:12	account 31:23 160:17
26 56:5,6	501(c) 18:15	195:12 206:3,18
27 136:15,17 142:2	509 75:22	accountability 65:8
27,700 234:11	52 195:19	240:3
270 75:24	53 196:14	accountable 31:7
28 141:9,10 193:22	54 144:9	accounted 117:25
29 55:17,20 56:4	56 190:7	158:5
142:4,5	5:07 231:11	accounts 69:24
2:05 136:10	5:09 231:12	accreditation 204:10
2:20 136:11	5:32 246:23	206:17
3		accreditations 210:12
	6	accuracy 57:7
3 33:4 73:7,8,9	6 121:15 133:11	accurate 56:20 76:8
141:23 190:12 203:4,	142:18,19,24 194:23	220:19 221:5
23 207:10 208:2,13	195:6 228:21	accurately 215:14
209:16 210:9,17	60 49:2	achievable 64:23 83:5
211:2,20 220:13	6th 233:2	84:11,14 87:20
225:3 228:21		achieve 82:11,12
30 194:4 227:17,18		87:17 88:23,24
300-page 66:4	7	acknowledge 9:23 10:1
30th 241:16,17	7 78:14,16,18 136:23	action 9:16 76:4
31 63:20,22 136:16	71-3 19:7 20:11	149:23
31st 77:15	789 137:1,2,6	actions 90:18
32 16:12 141:6		active 16:1
33 227:15		activity 126:1
37 64:2,10	8	acts 163:14
38,700 233:22 234:5	8 138:18 139:10	actual 58:25 64:15
3:41 189:22	149:25	66:5 71:15 196:8
3:55 189:23	88 194:9	add 135:21 196:10
4	8th 190:14,18	additional 43:9
		77:17,21 138:19,25
4 53:11 142:18 190:13	9	149:3 152:4 163:9
209:18,19 225:3	9 156:23	182:5,8 245:12
236:18	90 9:14 63:10 69:20	address 50:13 155:19
40 62:16	194:9	addressed 88:16 191:7
40,000 236:20,25		adjudicate 45:14 49:4
237:3		54:12 89:12 104:2,6
		108:9 127:5 133:6
		148:23 151:23 156:13

December 15, 2020

3

157:8,11 179:12,23 191:9 196:7 204:16 207:4 208:9 242:16	agenda 25:15 59:6 agendas 58:17,19,21, 25 59:2 aggressive 90:3 agree 10:12 11:10,12 82:6 83:19 134:11, 13,18 158:7 185:3 agreement 9:6 10:9,10 184:24 ahead 109:5 aid 17:7,10,18 21:18, 24 22:1,12,16,25 26:1,25 27:1,6,13 30:19 32:1,3 34:9 36:1,5,7,10,19 37:2, 3,11,20 38:7,19 42:22 54:1 61:7,10, 15,22 63:14 67:20,22 68:12 80:25 112:24 116:7,15,16 127:14 131:5 155:16 157:8 159:25 170:19 174:3, 10 183:18 215:23,24 216:8 224:1,10 239:12 air 15:25 16:2,14,15 18:4,5,9 airmen 16:16 Alabama 15:23 Albers 30:15 Alexandria 16:19 algorithms 117:4 allegation 186:4 195:24,25 allegations 204:8 206:16 210:12 allowed 87:18 96:10 132:4 186:1 242:11 allude 171:25 alluding 162:15 163:21 alternative 113:21 ambiguous 97:10 amount 14:10 28:23 49:3 85:6 98:19,22 118:8,19 121:24 139:21 147:2 148:7 235:16 245:9 analysis 165:15 analytics 117:11 119:9,19 120:11,22	announcement 243:15 annual 31:8 32:24 63:22 64:19 82:3 136:16 annually 69:13 answering 197:23 answers 81:17 108:10 112:19 207:2 anticipated 240:5 anticipates 138:20 165:16 anticipation 139:1,10 anxiety 136:1 apolitical 34:10 Apollo 203:17,20 205:20 208:12 appeared 19:3 applicable 76:4 183:24 184:7 204:14 applicant 208:1 applicants 162:18 170:7 209:2 application 54:16,24 121:21 150:22 157:6 162:1 184:1,5 190:12 193:23,24 194:14 204:5,6 206:21 208:3,4 215:5 220:17 235:7 application's 196:16 applications 35:18,20 53:14 64:7 87:9 96:16 122:4 123:7,8, 18 128:4 129:9 156:25 157:3,21 158:11,17,19 164:20 165:21 170:7 207:8 209:3,5 210:8,14 227:4 233:1,23 234:12,20 236:21,25 237:22 239:9 241:25 244:15 applied 96:13 101:13, 17 204:12 applies 164:1 apply 99:8,15 100:12 163:25 203:19 210:20 221:9,13,20 appointed 17:11 appointee 22:24 23:5
--	---	--

December 15, 2020

4

appointees 22:22	assist 71:12	160:9 161:19,22
appointments 34:15	assistance 19:20	162:14 167:11 180:23
approval 76:11,20,21, 22,23 77:8 90:16	assisted 19:24	184:19 191:9,14
107:19 143:8,15	assists 19:25	195:15 196:9 208:8
150:17 155:11 164:6, 9,22 165:4,12 166:11	associate 117:24	239:17
173:12 175:14,23	association 119:8	attribute 34:17 153:2
183:5	assume 23:7 94:21 186:21 202:15	audio 120:14 138:11 153:5
approvals 134:2,10,15	assuming 68:4 155:21 226:15	Auer 23:8 24:10 25:20 26:7 42:2,17 60:12
137:9,18 138:2,5	Atlanta 16:3	92:23 107:22 115:13
165:17 166:1 219:1	attached 15:14 19:11 56:7 136:18 141:11	131:3,19 173:15
234:19	142:6 227:19	175:10 192:7 193:3
approve 54:15 65:5,7	attachment 199:23	209:24 215:5 217:25
81:25 183:1,3 185:7	200:5,13,16 209:17	223:5 225:11
187:6 225:12	attain 87:2	August 232:25 233:2 237:9,25 238:7,12
approved 49:19 81:15	attainable 82:8 83:6	241:6,13,16,17
100:12 137:3 163:11	attaining 87:7	authorities 34:19 55:6
174:16 175:9,21	attempt 212:1 216:5	authority 54:14,23 55:12 224:20,22,24
182:24 209:3 225:20	attempting 217:24 219:5,6	authorize 224:22,24
234:11,19	attended 137:7,11 162:18 179:17	automated 217:15
approves 31:11	181:15,20 191:24	automatic 104:8
approving 134:4	206:13 211:9	automatically 104:7
approximately 17:3	attending 41:15	automation 216:25
65:13 188:5 236:20	attorney 12:13 14:7, 16 19:20,23 54:12,19	autopilot 148:15
April 41:12 67:20	55:13 85:9 100:7	avoid 18:17
150:17 155:11 241:5	101:9,14 125:7	avoided 135:12,14
April/may 114:23	139:13 146:11,12	aware 9:3 35:22 54:17 61:11 73:1 76:25
area 167:19 171:2	152:5,20 160:10	77:3 78:25 103:4
200:22 207:2	161:17 162:13	114:17,20 115:5
areas 16:8,21	179:12,24 180:6,7	145:12 173:4 223:15
arrangement 10:6	204:16 205:16 207:4	
arrival 70:2 90:15	208:24 212:7	B
arrive 155:25	attorneys 9:22 14:2,3 47:11,19,20 48:16	back 12:4 16:17 27:21 55:16 57:18 61:6
arrived 151:6	49:3 55:8 71:7 88:8, 11,17,22 89:1,12,18,	73:5 78:25 80:6,7,9
art- 129:14	23 90:13,16,23 91:12	105:19 106:13 108:18
article 79:2,13	103:5,10 126:6,8	109:22,25 112:3,8
127:21,25 128:7,13, 21 129:15,22	139:19 143:3,9,13,15	118:20 125:20 136:5, 12,20 140:22 142:1
asks 99:7 170:16	144:4,6,13,16 145:8, 18,23 146:14,25	149:18 170:5 174:14
aspects 79:23,24	147:1 148:20,23,24	185:11 189:24 207:3
161:13	150:18 151:16,20,25	219:17,20 220:4,10
assert 176:13 178:20	152:6,12,18 153:1,5, 8,11 154:9,11,15,18,	222:9,14 224:21
assess 80:13,22 81:7 207:18	20,23,24 155:3,7	225:18,21 231:13
assessment 206:24	156:2,7,13 157:14	235:17 236:6 237:8
assign 148:12		243:17
assigned 22:8,25		
assignment 16:6		
assignments 18:6		

<p>back-and-forth 83:24</p> <p>background 15:19 155:17,20</p> <p>backlog 40:10 41:18 42:9,17 43:5 46:18 47:6 48:19 49:5 50:13 146:19</p> <p>backlogs 43:1</p> <p>band 139:14</p> <p>based 34:14 48:23,24 74:15,17 96:7 101:18 122:19 147:2 156:3 179:1 181:12 182:10 211:14</p> <p>basis 27:15 84:25 138:21 205:15</p> <p>batteries 10:25</p> <p>BD 40:2 49:8 64:6 86:5 98:18 103:7,24 106:8,9,14,23 107:2, 3 108:4,7,17,19 109:7,23 132:13 156:2,25 182:4 235:7 237:21</p> <p>BDU 33:23 34:6 48:8, 10,13 49:12 51:17 52:14 67:18 68:8 69:3,16,21,23 70:6 71:2 76:9 77:15,19 78:1 79:24 80:12,18, 23 81:6,8,20 83:5 84:1,3 85:15 86:5,18 87:7,12 88:5,12 89:2,18 90:23 97:17 99:1 105:25 107:8, 23,25 108:24 109:11 132:7 143:1 150:2 154:11,15,18 156:12 163:8 165:15 168:17, 22 217:13 223:6 244:5</p> <p>BDU's 76:21 79:23</p> <p>began 69:20 90:15,18 114:15 130:9,17 133:2 175:2,5 241:21 244:19</p> <p>begin 12:15 77:16 86:4 110:17 114:11 130:5 156:5 159:7 170:18,20 174:22</p> <p>beginning 133:11 139:25 151:3 193:23</p>	<p>begins 183:17,19</p> <p>begun 241:7</p> <p>behalf 9:13,19 160:9</p> <p>belief 45:17 109:12</p> <p>believed 43:8 44:23 45:4,12,17 62:9 92:12 105:25 106:10 108:7,10,14 109:7,17</p> <p>believes 133:23 134:1</p> <p>bell 16:3 130:3</p> <p>BERMAN 20:5,12 222:1, 4</p> <p>binder 63:20</p> <p>bit 32:8 34:9,11 53:15 84:17 99:6 124:8 143:2 170:3 195:20</p> <p>blacked 195:21</p> <p>blanket 179:10</p> <p>board 18:10,13,16,19, 21 47:20 143:11 144:10 155:13</p> <p>boiled 104:7</p> <p>borrower 14:15,16 20:24 21:4,8,20 22:2,4 25:14 28:4,6, 7,10,12,13,21 29:12, 15,18 31:23 32:2,5, 12 33:7,8,15,20 34:4 35:2,17,20 37:23 38:1,9,14,21,23,25 39:7,9,18,21 40:7,9 41:8,16 42:9 43:1,7, 9 44:23 45:4 46:19 47:2 48:1,22 50:2 51:20 52:8,10,25 53:3,6 54:1,3,6,15, 21 55:2,5,7,10,14 56:25 57:5 66:21 67:3,5,16 68:13,20 70:15 71:13,20 76:3, 5 77:17,22 81:11 85:9,12,16 86:1 89:4 92:12 93:19 94:20 96:1,9 97:24 98:3,7, 12 100:18 101:2,11, 19 116:2 121:19,20, 22,25 122:3,22,24 123:2,18 124:18 125:3,7,9,18 126:22, 23,25 127:17 130:1 133:2 135:16,18</p>	<p>136:25 138:3,7,11, 13,16 141:5 144:24 146:7,9,10 147:3,12, 16 150:3 152:14 153:12,13 157:8,11, 13 160:13,22 161:7, 9,20,25 162:17 163:17,24 164:12,15, 16,20 165:6,7 166:9 167:13,14 169:7 170:6,19,24 171:3 174:12 177:11 178:5, 25 179:5,9,24 180:10,20,22 181:15 182:22 185:7 186:2, 22,23 187:6 189:4 191:21 195:12 196:8 197:9,17,22 198:3, 16,20 200:21,24 201:1 202:23 203:21 204:7 205:4,24,25 206:13 207:22 211:9 212:24,25 213:4 215:4 216:2,18 221:9,13,21 223:24 224:8 227:3 232:14, 17,19 233:1 234:17, 20,21,22,23,24 235:7 236:10 239:19 240:7 243:8 244:14</p> <p>borrower's 181:2 184:5</p> <p>borrowers 99:9,15 129:1,9 131:10 133:3 134:3,7,21 137:6,11 169:16,19 176:13 178:3,20 179:17 181:20 210:11 220:17 227:5</p> <p>borrowers' 165:20</p> <p>boss 24:7</p> <p>bottom 72:1 75:23 99:6 127:25 128:10 129:4 142:21 178:24 228:22 236:18</p> <p>bowels 226:23</p> <p>box 15:5</p> <p>bracketed 15:4 19:7 136:16</p> <p>brand 146:11</p> <p>break 13:13,15 57:11 105:5,9 136:5 189:16 221:23</p>
--	---	--

December 15, 2020

6

breakout 137:6
breaks 13:11
briefed 167:24 168:3
briefing 68:14,15
 243:4
bring 47:19 82:23
 85:3 143:11 177:13
 236:6
bringing 156:6 172:8
 245:12
broad 9:14 37:5 62:20
 90:1
broadly 37:16
Brooks 191:24 194:6
 197:5,18
brought 97:21 144:8
 145:22 181:8 191:8
 203:11
Brown 9:9 11:11,14
 12:7,12,17 20:11
 44:1 58:5,14 105:21
 131:4 190:2 214:22
 221:25 222:12 231:16
 246:22
budget 52:1
build 82:22 90:21
 150:14
building 87:23 104:22
 112:18 126:15
buildup 90:15 156:3
built 63:4 154:25
bureaucratic 150:24
business 55:14 90:13
 211:10

C

California 93:20
 94:15 95:9,12
call 24:11 40:10
 43:14,22 60:23 61:2
 97:2 102:20 111:16
 120:12 149:6 152:1
 153:14,15 161:2
 174:8 215:23 241:9
called 37:19 96:2
 147:15 219:24 227:11
calling 50:10 83:25
 87:22 148:9 152:7
 157:16

calls 46:7 51:4 78:3
 83:8 84:5 135:4
 186:6,17 187:12
 196:4 229:4,19
Calvillo 45:21 96:2,3
 97:5,19 105:22 223:7
cancel 229:4
capabilities 165:3
capability 245:12
capacity 133:3 151:18
 154:20 244:22 245:3
capital 17:4 21:13,
 15,16 52:12
care 207:24 215:20,21
 217:1,10,17 218:2,11
 219:10,12
career 16:7 191:25
 209:22 211:11
careers 34:16
case 23:22 25:1 29:21
 45:11 47:13 86:1
 88:4,20 89:14 92:15
 95:8,9,23 96:2,20
 97:3,9,19,20 98:10,
 14 99:8,14 100:8
 106:13 108:8 109:8
 122:23 123:11 125:6
 134:5 147:12 150:5
 156:2 162:9,11 164:1
 190:10 191:20
 204:14,17,25 205:2,
 7,9 207:4 208:14
 212:7 220:20 240:14
caseload 48:24
cases 28:22,23 29:2,
 4,8,11,13,14,17,22
 38:1,25 40:9 45:4
 47:1 48:1 49:5 54:12
 70:15 89:12,15 91:1,
 7 95:12 98:23,25
 99:2 108:9 109:10
 123:23 124:1,5,18
 126:25 127:5,6
 133:2,6 138:3 147:4
 148:24 151:23 152:19
 154:25 155:1 158:1
 162:10 163:19,22,23
 165:9 169:22 179:24
 237:9,12,15 242:16
catch 17:21 213:16
categorically 70:14

categories 62:20
 70:24 76:2,10,20,25
 77:4,7,17,21 165:20
 194:3 203:22 210:7
 229:12
categorize 71:11
categorizing 101:2
category 64:12 90:2
 193:8 206:2
caught 35:14
caused 79:15 243:14
causing 134:20
CCI 179:1,6 237:6,10,
 15
cease 122:3,10
ceased 124:12,18,24
CEC 191:25 192:8
 193:5
center 37:17
centers 149:6
cetera 69:14 194:12
chain 86:17
challenged 93:20
 94:15
challenges 89:11 98:1
challenging 83:16
change 34:14 77:23
changed 22:9,11 25:5
 83:1
characterized 210:19
charge 39:9 184:13,23
chart 55:24 56:15
 57:3,8,24 67:15
 200:16,18 201:2,8,23
 202:10,13,17 203:3
charts 232:11
check 137:21 155:17,
 20 193:1 227:9
Chicago 167:11
chief 17:12,17 18:18,
 24 22:12,13,15 25:2
 27:13 28:14 29:5
 30:5,11,13,15,17,18,
 20 32:20 33:10,11
 36:19 37:1 38:5,17
 53:22 54:2,8 56:16
 59:23 61:15 70:3,17,
 20 73:23 86:2 94:19
 95:3 116:14 146:5,6
 150:9 157:7 201:11
 224:7 239:12

Mark Brown
December 15, 2020

7

choice 185:15	68:9 130:19 153:7	13,21,23 212:12,15, 20
Chris 30:18	176:24 190:16,23	commonly 180:11
chronologically 132:20	191:2 208:1 226:10	communicate 12:18,24 13:2 24:9 60:11,13 192:7
circle 222:14 227:10	clearance 150:20	communicated 43:4,16 110:20 111:1,4,5,24 112:2 115:21
circumstance 182:13	close 71:23 246:17	communicating 134:16
circumstances 163:3,4 179:14 182:5,7	Coast 105:9	companies 204:9 206:17
cite 169:6 209:14	collaboration 164:23 182:21	company 16:3
claim 100:9,14 101:8, 10 151:12 160:4	collaborative 64:21 66:12	compensation 34:22 35:1,16,19
161:3 174:14 176:15	collaboratively 171:12 177:12	compiled 201:5
178:20 179:1,6,13	colleagues 38:4,8	complete 77:15 98:23 100:12 220:17
180:20 181:2,5,11,14	collect 47:13	completed 62:8 101:14 110:16 139:13 163:12 227:12 234:5 236:24 238:16,21 239:1 240:19,21 241:16,18
182:16 185:8 187:7	collected 203:5	completes 165:15
196:1,3,11 203:16	collection 239:25	completing 125:16
204:20,23 206:6	collective 112:20	complex 238:20
211:22 212:5 234:21, 24 235:13 236:2,7,8	collectively 49:1 88:23 115:16 171:7	compliant 153:21
claimant 125:8 179:5	Colleen 26:20,22 30:20 39:8 98:8 171:4 223:21,23	compound 97:11 132:10
claimants 182:14	college 15:21	computation 152:21 153:16
claims 35:2 76:3,10 77:1,4,7,18,21	Colon 167:19	computations 154:1,3 237:2
81:13,14 87:14 93:17	column 203:2,4,6,9, 22,23 204:3,12 205:25 206:14 207:10 208:2,13 210:7,9,17, 19,24 211:2,20 227:10	compute 121:11 243:10
96:19,21 97:2 99:21	columns 212:2	computing 153:18
103:6,7 104:1,6,15, 24 121:20 130:5,18	combination 119:22	concern 46:4,13,16,20 47:3 71:11 87:1,4,6, 8,11,15,22 88:1 134:20 135:2 179:9 244:8
131:7 134:4 135:17, 19 136:25 139:6	comfortable 23:22 25:12 82:13	concerned 28:21,22,24 84:18 134:24 135:2
154:19,22 156:14	comma 128:11	concerns 21:23,25 39:17,19,22 71:3 89:9 244:5
157:9,11 163:11	command 16:14 18:5	conclude 245:24
164:18 182:11 188:22	commander 16:13 18:5	concluded 47:9
196:7,8 197:17	comment 63:8,10 79:7 220:22	concludes 246:2
208:9,11 234:23	commissioned 15:24	conclusions 74:18 75:5
235:22 236:16 237:23	commit 72:25	conditions 137:1
238:1,8 240:1,6	committed 14:5 192:4	
Claire 10:11,17 12:12 20:5 56:8 57:21 105:7	committee 213:9,23 214:3	
clarification 106:4, 22 107:12,24 108:14	common 163:9,13,25 165:15 179:18,21 180:1,11 181:1,16,21 197:20 203:4,18 204:1,13 205:5,12 207:9,11 208:3,17 210:9,19,21 211:1,	
clarify 66:19 95:3 108:13 109:19 133:14 180:16 200:2 211:16		
clarifying 57:21		
clarity 40:12 44:17		
class 97:1,2		
classified 23:1		
classify 46:2 92:10, 21		
clear 22:17 36:6,14 40:10 43:11 48:19		

December 15, 2020

8

conduct 90:8	control 219:23 220:1, 3	98:21 99:8,14 123:1 138:12 230:16,20,23, 25 231:3,5 237:11,17
conference 228:6	controls 25:23 30:21 173:1	court's 76:13 229:12
confidence 82:4	conversation 39:24 73:2 105:12 107:5 146:13 151:24 221:2	court-ordered 31:20 32:14 34:24 35:4 74:21 79:9 121:1 162:21 192:11 199:2 214:16
confident 85:3,6 164:15	conversations 9:5 41:25 52:25 86:4,5, 6,19,21 130:15 159:22	courts 93:21 94:15 95:9,13 96:8,11
confirm 12:23 194:14	convoluted 148:11	cover 124:6 129:4 176:10
confirmed 12:3	COO 20:18 22:22 24:25 28:2,3 36:2,3,6 53:2,7 168:25	covered 96:20 156:16 179:2 203:12,13 235:22
conflict 18:17 19:3 192:22	copies 63:22 78:15 141:7	covers 155:17
confused 134:3	copy 58:7 133:18 213:21,22	Covid-19 60:25
confusion 43:15 44:14 46:2 92:8,9,11,21 105:24 106:5,8,9,17, 20 109:20 134:6,20 135:12,13	Corinthian 123:7,19 137:3,10,12 163:11 164:8 176:13	coworkers 75:19
conjunction 141:21	corner 190:7 209:17	coworkers' 75:9
connected 197:17	Corp 209:22	created 170:21 182:10
consent 10:5	Corporation 18:14 192:1	criteria 55:1 176:15 210:14
considered 80:3 160:17,22 195:13 196:15,23,25 206:5, 21	correct 20:20 34:7 48:20 82:17 131:15 167:4,23 176:21 189:2,4 226:17 244:7	criticals 76:22
considers 160:7	correction 17:14	culminate 63:12
constructed 225:8	correctly 220:17	current 20:18 39:6 57:22 178:19
consult 14:12 209:4	correlate 148:3,4	curriculum 18:8
consultant 16:20,21	counsel 10:5,8 12:10 13:19,21 19:24 20:1 35:7,10 72:21 141:21 142:16 173:12 175:16 193:12 218:25 225:17	customer 167:18 215:20 217:1,10,17 218:2,11 219:10,12 240:5
consultation 142:16	correction 17:14	customers 135:22,23 216:10
consulted 196:19,20	correctly 220:17	cut 138:14
contemplated 54:18	correlate 148:3,4	cutting 32:7
content 240:10	counsel 10:5,8 12:10 13:19,21 19:24 20:1 35:7,10 72:21 141:21 142:16 173:12 175:16 193:12 218:25 225:17	cycle 237:10,15
contents 131:12 201:8	correction 17:14	
context 63:18 179:23 232:12 233:9	correctly 220:17	D
continue 77:20 93:21 99:21,25 101:22 109:10 110:3,9,12,14 133:5 163:24 242:11	correlate 148:3,4	daily 28:5
continued 45:14 242:15,22	counsel 10:5,8 12:10 13:19,21 19:24 20:1 35:7,10 72:21 141:21 142:16 173:12 175:16 193:12 218:25 225:17	damage 179:9
continues 195:4	counselors 194:7,8	Dan 9:12 11:18 231:7 246:7
continuing 102:16 103:13,20 104:5,6 127:5 151:10 154:10 163:8 178:9 242:15	count 149:20,21 161:10,14	Dana 9:19 11:18
contract 149:5 152:25	counted 152:5	data 72:2,6 116:16 117:3,7,10,11,14 119:9,18,19 120:10, 11,22 131:21,24 137:13,16,21,24 138:4 154:5 239:25
contractor 219:9	country 16:9 17:9 148:4	
contractors 148:13 149:5,21	counts 161:14 227:7	
contributed 98:24	couple 12:15 58:14 62:8 80:12 117:21 119:18 143:7 144:10 178:17 222:13 227:13	
	court 9:18,22 10:13, 16,20 11:2,6,8,13,22	

December 15, 2020

9

<p>240:2,10,11 database 244:21 date 18:22 41:4 74:16 111:8 144:7 155:23 157:16 168:21 203:13 233:15 236:10 dated 75:1 dates 204:3 211:5 235:24 236:8 241:21 Dave 30:15 day 103:2 150:25 188:7 202:5 day-to-day 205:15 days 63:11 69:20 220:8,11 deal 145:1 dealing 52:15,21 debt 129:10 December 9:10 103:18 112:9 125:24 130:9, 17 132:12 133:1 136:24 140:1,5,12, 13,19,24 157:20 158:12,17 159:1 170:6 238:23 241:12 243:15 decide 54:15,23,25 59:11 110:8 155:10 decided 110:2,9,11,12 113:12,15,17 134:8 184:1,2,6 239:8 decision 44:6 78:8 108:8 109:8 110:18, 20,23 112:21 113:1,6 117:5 119:9 122:23 123:6,11 143:3,8,12, 14 144:13,15 147:8, 11,17 158:20 159:2, 7,11,13 161:25 183:20,22 185:3,23 190:14 222:15,19 223:6,13,14,19,22 224:5,11,13,15 225:6,10 227:6 236:19 239:14 241:24 decisional 212:6 decisions 37:23 38:15 39:18 40:3 41:8,20 42:2,5,7,15 43:9 44:20,24 45:13,15,22 46:17,24 51:25 52:2 53:14 91:25 102:7,</p>	<p>14,16 106:1,11 107:3,9,19,23 108:1, 6,17,20 111:12 114:13 117:8 121:19 122:2,3,13,18,24 123:12,15,17,21,24 124:10,17,18,24 125:1,23 126:19 128:3 129:8 130:1 132:6,7,9,18 135:11 136:25 138:20 139:1, 7,17 140:3 150:3 153:8 156:3,24 157:3 158:10,17,22 159:1, 7,9,10,24 161:2 167:22 186:1 189:13 195:18 207:5 222:16 223:1,6 224:2,15 227:4 242:7,12 243:6,8,12,14,18 declaration 14:15,17 19:17 20:11 33:4 53:12 55:16 112:4 136:21 139:24 141:17 142:13 160:16,21 168:7 170:4 185:10 199:22 200:12 declarations 14:14 19:19 141:20 declare 10:3 declining 231:17 deep 121:7 deeply 83:17 defense 14:15,16 16:20,22 20:25 21:4, 9,20 22:2,4 25:14 26:23 28:4,6,7,10, 12,13,21 29:12,15,18 31:23 32:2,5,12 33:8,15,20 34:4 35:2,17,20 37:23 38:1,10,14,21,22,23, 25 39:7,9,18,21 40:8,9 41:8,16 42:10 43:1,7,9 44:23 45:4 46:19 47:3 48:1,22 50:2 51:21 52:8,10, 25 53:3,6 54:1,3,6, 15,21 55:2,6,7,10,14 56:25 57:5 66:21 67:3,5,16 68:13,20 70:15 71:13,20 76:3 77:17,22 81:11 85:9,</p>	<p>12,16 86:1 89:4 92:12 94:20 96:1,9 97:24 98:3,7,12 101:2,11 116:2 121:20,22 122:3,22, 24 123:3,18 124:18 125:3,7,9 126:22,23, 25 127:17 133:2 135:17,19 136:25 138:3,7,11,13,16 141:5 144:24 146:7, 9,10 147:3,12 150:3 152:14 157:9,11,13 160:13 161:7,20 162:1,17 163:17,24 164:12,15,16,20 165:6,8 167:13,15 169:8 170:6,19,24 171:4 174:12 177:11 179:1,5,24 180:20,23 182:23 185:8 187:7 189:4 191:21 196:9 197:9,17,22 198:3, 16,20 200:21,24 201:2 202:23 212:24 213:1,5 215:4 216:2, 18 221:10,14,21 223:24 224:8 227:3 232:14,17,19 233:1 234:17,21,22,24 236:11 239:19 240:7 244:14 define 106:17 111:15 153:9 defined 207:23 defining 125:17 definition 100:21 definitive 169:24 defrauded 206:19 delay 191:1 delegated 26:3 55:8 delete 196:10 deliberating 85:24 deliberation 47:9 deliberations 51:23 84:2 226:25 deliberative 43:22 46:7 51:5 64:24 83:8,24 84:6 85:23 135:4 deliver 37:18 85:8</p>
--	---	---

December 15, 2020

10

delivery 30:19 219:4	17,18,20 31:13 32:20	238:2,8,11 239:22
demonstrates 185:7 187:6	33:9,11 86:2 146:6 201:11 224:7	240:4
denial 166:8,18 167:6 168:9 183:8,13 186:4,15 187:8 224:19,23,25 225:2, 13	derived 65:4 66:7	developing 62:3 68:24 77:20 78:1 116:4,10, 22 117:17 118:14 119:14
denials 107:20 134:2, 9,14,16 157:19 158:10	describe 127:12 166:6 208:8 215:14 216:6, 16 217:24 218:15 219:6 234:1,5,8	development 82:5 84:19 113:20 115:12 239:6,18
denied 189:10 209:11	describes 127:25 142:25 166:8	develops 16:15
denote 82:4	describing 125:12 126:24 233:25	device 13:3
department 14:1 16:25 25:24 37:22 38:14 40:4,14 43:12 54:22 72:4 73:24 76:18 78:12 79:19 80:16 92:16 95:20 102:7 106:12,19 110:11 112:9,18 113:7,19 115:15 119:6 128:2 129:7 131:7 133:23 134:1,4,8 135:1,11 143:16,19 144:17,19 153:20 156:24 159:14,23 160:4 165:16 169:12 173:10 177:15 179:18 181:21 182:25 207:17 218:24 222:25 224:16 225:25 235:19	deserves 162:11	devices 13:5
department's 131:5 157:2 159:11 161:24	design 182:17	Devos 9:12 58:17 59:20 128:1,24 129:6,25 224:12 227:22 230:5
depend 149:22	designed 182:19 210:24 215:4	dialogue 39:23 83:15 87:22 164:25 165:10
depending 23:9,12 41:4 100:16 123:21 149:20	desire 42:10	Diane 14:18 23:8 24:10 25:20,22 26:7 42:2,17 60:12 92:23 107:22 115:13 131:3, 19 173:15 175:10,21 192:7 193:3 209:24 215:5 217:25 223:5 225:11
depends 27:16 169:5 179:12,13 181:6 204:24 205:2,6 212:16 232:20	detach 116:17	dictated 182:5,7
deposed 14:23	detail 33:6 97:1	difference 52:17 154:1
deposition 9:9,23,24, 25 12:24 13:23 14:25 15:3,13 19:10 56:6 136:17 141:10 142:5 227:18 246:2,13,15, 22	details 41:21,22 72:24 117:1 138:8 245:5	differs 102:3
deputies 33:17,22	determination 95:5 125:18 153:11,15	difficult 33:25
deputy 16:13 17:1 18:4 30:5,11,13,15,	determinations 55:12 102:9 125:1 152:12 153:23 180:8 212:10, 11 213:4	digital 152:23 215:19,20 217:1,10, 17 218:2,10 219:10, 12
	determine 93:18 94:13 98:19 99:22 100:13 121:24 157:5,10,16 161:18 163:13 204:19 209:10 211:17	digitized 177:25 215:21 216:3
	determined 101:17 112:17 121:20 133:1 157:24 180:2,4 185:21 210:8 234:23	direction 37:9
	determines 101:10 212:22,23	directives 197:4
	determining 96:6 100:8 125:8 153:16 161:3 196:15	directly 30:6 32:21 151:5 224:6
	develop 62:1 83:16 113:13 118:12 119:1, 10,25 120:8 175:7	director 77:19 164:11 223:23
	developed 61:24 76:9 77:7 83:13 107:17,18 110:4,5 112:1 114:4, 21 115:2,6,10 118:5 119:6 158:21 159:12, 15 164:7,22 181:23, 25 182:2 237:23	disagreed 96:8
		disapprovals 137:18 138:2
		disapproved 81:16
		discharge 76:5 77:18, 22 121:22 137:1 162:17

December 15, 2020

11

discovered 163:23	229:24 232:5 233:5	218:19 222:15 223:11
discovery 31:20 32:14 34:24 35:4 60:7 74:21 76:13 79:9 121:1 162:21 192:11 199:2 214:16 226:2 229:11 230:9	documentation 107:6 235:15 236:5	224:14 232:20 239:16
discuss 21:8,14,19 22:3 25:13 38:12,13 40:1,2,3,8,13 41:8, 19 48:6 59:8,10 75:18 115:11,14	documents 14:13 193:3,16 197:25 198:14,17,21 199:3, 10,13 202:2,10,17,21 212:6 244:22	early 106:16 140:21
discussed 38:4 41:16 115:25 121:18 189:1 211:8 232:22	Doe 169:13	earnings 121:4 225:23,25
discussing 21:11 75:20 214:10,13 222:14	DOJ 72:19	ease 215:4
discussion 42:7,8,14 97:22 115:20 125:20 167:2 226:16	doles 131:8	East 105:9
discussions 20:24 39:2 53:6 65:22,24, 25 72:23 114:7,10,13 115:23,24 127:3	dollars 51:25	easy 221:9,13,20
displayed 204:14	door 215:21	ECF 19:7 20:11 56:10 209:18
displeasure 79:1,16, 23 80:3	dormitories 18:7	Economic 12:13
disqualifying 220:18	draft 170:14 171:7,10 172:8,16,20 177:13	ed 18:11,12,13 39:17 40:4,14 41:15 185:7 187:6
distinction 216:23	drafted 170:9,12,22 177:1 182:23	ED's 179:1
distinguished 100:24	drafting 172:12,18 174:2,18 175:5 177:7 183:16	educate 39:25
distortion 120:14 138:11 153:5,6	drafts 170:18,20 175:25	educated 28:24 38:1, 9,22 50:2
distress 134:6,21 135:12,14	drives 52:1	educating 45:3
distributing 147:7 148:21 149:1	Dropbox 57:25	education 16:14,21,25 17:1,12 18:1,2,3,5, 9,15 24:17,18 28:6 31:11 37:22 40:16,23 41:20 73:24 75:12 76:18 78:12 79:19 103:14 106:19 122:22 131:4,6 135:2 144:17,19 173:11 177:16 182:25 191:25 209:22 224:16
dividing 153:4	dropped 30:23	Education-determined 207:18
document 15:15 19:15, 16 45:2 53:19 56:11, 14 63:25 66:4,12 68:2 71:17 72:25 73:14,15,16,18,19 78:21,22 79:5 80:7 93:2 111:8 119:10 128:12 141:7,15,16 142:10,11 151:23 153:19 162:7 166:12 177:19 187:22 193:17 194:1,16,24 195:4 199:21,25 200:2,11 202:1,4 214:7 227:23	due 239:6	educational 18:7 95:24 97:16 108:4 126:21
	duly 12:8	effect 105:23
	Duped 128:25	effective 111:8
	duties 22:8 26:3	effectively 54:11 221:1
	duty 16:1	efficiency 243:2
	dynamic 117:19,20,23 188:6	efficient 131:7
	E	effort 63:4,5 64:22 112:21 117:15 120:16
	earbuds 10:23	electronic 13:4 15:4 19:6 57:25 63:22 133:18 190:3
	earlier 33:9 38:9 40:15,22 46:1,21 61:9 64:18 71:4 90:17 91:5,9,13 95:25 102:2 103:8 109:21 125:21 126:20 130:18 140:6 141:19 142:15 143:11,18 144:23 145:5,11,12 147:14,15 150:6,8 151:11 156:4 158:20, 24 170:4 175:19 181:6 184:23 185:10 189:11 192:20 207:1	element 25:23 40:6 95:4 175:15 177:15 182:24 183:6 238:17
		elements 17:9 67:19, 21 81:19 120:19,20

184:24 185:25 218:22 eligibility 102:9,17 104:16 124:10 125:2 166:15 168:12 176:15 eligible 100:8 101:12,14 125:2,8 134:7,21 157:1 158:22 234:24 eliminated 136:1 Elisabeth 9:12 email 12:25 emails 61:4,6 emerged 28:19 emphasize 50:21 employed 194:10 employee 63:8 employees 33:2 143:20 146:20 147:6 148:19, 25 149:22 155:11 employment 15:20 192:23 en 193:18 enable 156:8 enabled 150:2 end 32:25 34:17 40:20 59:25 147:7,10 148:21 174:22 188:18 194:9 end-of-november 188:16 end-of-year 33:1 ended 115:8 246:22 ending 233:2 engage 216:9 engagement 30:19 215:22 enjoined 95:20 enrolled 179:2,6 204:7 206:15 211:11 enrollment 203:13 ensure 54:2,9 entail 235:11 entails 235:12 enter 9:20 entire 39:21 68:23 73:21,22 74:3 88:4 entirety 98:14 202:3 entitled 128:13,24 enumerate 164:13	equation 49:7 101:18 error 166:21,24 167:3,6,18,22 errors 166:7 essentially 64:19 121:8 174:11 establish 141:4 155:23 established 76:2 83:21 100:15 124:23 140:21 173:20 establishing 77:16 226:14 estimate 48:19,20,21 50:14,16 estimated 131:10 et al 9:12 evaluate 32:18,19 128:14 evaluated 31:18 72:3 evaluation 33:1 161:25 event 227:24 everyone's 245:19 evidence 157:4,6,15, 17,21,23 158:3,11,18 160:5,7,11,18,22 161:4,10 163:9,13, 22,23,25 165:15 179:18,21 180:1,7 181:1,16,21 185:6, 12,13,14,16 186:5,15 187:5,9 195:13,16 196:15,19,21 197:4, 16,20,21 198:2 203:4,7,15,19,23 204:1,13,23 205:5,12 206:5,22,24 207:9,12 208:3,17 210:9,18, 19,21 211:1,13,21,23 212:13,15,20 235:14 evolved 174:23 182:3 exact 14:10 18:22 49:25 50:23,24 70:1 71:18,19 107:14,15 110:2 122:25 130:7,8 143:5 149:2 166:2 177:23,24 178:8 185:17 213:20,22 220:4 236:10 241:20 EXAMINATION 12:10	examples 205:13 exceeded 154:20 exceeding 60:7 74:20 76:12 214:15 exceeds 31:19 32:13 34:23 35:3 79:8 120:25 162:20 192:10 193:6 199:1 226:1 229:10 Excel 240:13 exchanged 193:2 exclusion 203:10 exclusive 203:14 execute 54:6 113:8 219:3 224:11 executed 224:2 executes 26:1 execution 34:18 exhibit 15:2,12,13 19:9,10,12 55:20 56:4,6 57:22 58:13 63:20 73:7,8,9,10 78:14,16,18 91:17,18 92:22 93:3 112:5 127:18,19 130:20 136:15,17,21,22 141:9,10 142:4,5 176:4,5,6,9,10 178:16 179:16 190:3, 4 198:5,7 199:20 200:3,5,13 213:8,10 227:17,18 231:22,23, 24,25 exhibits 176:9 213:25 exist 103:2 129:20 exists 58:2 expect 39:20 55:13 58:24 90:19 183:25 186:5,16 experience 206:4,18 experienced 161:19 expert 54:21 81:12 expertise 52:21 66:25 67:2 195:18 196:12 202:23 experts 49:9 64:22 84:22 90:9 164:24 226:21 explain 33:6 84:16 93:23 98:9,17 99:24 101:3,6 120:23 150:1
--	---	---

203:1 210:6,10,15 212:1 228:11 236:22 explained 37:8 97:4 98:11 126:23 144:24 180:24 explanation 98:25 99:3 explored 39:20 exploring 99:1 exposed 28:17 express 39:16 68:7 230:6 expressed 79:22 87:1 extension 183:7 225:9 extensions 218:22 extent 43:22 extreme 79:1,16	36:1,5,7,10,19 37:1, 3,11,20 38:6,19 42:22 51:24 53:25 61:7,10,14,22 63:14 67:20,21 68:12 80:24 112:24 116:7,15 127:13 131:5,8 155:15 156:9 157:8 159:24 170:18 174:3, 10 183:18 215:23,24 216:8 224:1,9 239:12 feedback 135:24 feel 82:13 feeling 135:6 felt 216:13,14 figure 128:7 file 169:14 182:15 filed 129:9 235:13 236:2 files 15:4 19:6 172:8 fill 150:22 filled 178:4 final 31:11 100:19 173:3,9 183:20 219:1,2 225:6,12 231:22 finalized 234:12 financial 47:11,23,24 131:9 241:21 financially 9:16 find 52:21 62:21 87:19 160:4 167:20 205:16,18 finding 156:25 180:3 findings 179:1 212:19 fine 57:13 73:12 122:1 136:7 189:19 221:24 finish 13:12,14 firsthand 52:7 160:17 195:11 206:3,18 fiscal 33:1 64:7,11 65:17,19,23 71:14 81:23 87:9 88:13 fit 203:22 207:9,10 210:14 fits 205:25 206:1,14 208:2 212:12 five-minute 105:5 fix 47:12,25 48:2	fixed 47:16,17 flaw 82:20,24 flows 86:23 focus 126:5 147:6 focused 18:15 focusing 47:15 FOIA 169:14,25 folder 190:3 folks 30:8,9 119:23 120:12 126:8 127:4, 11,12,14 145:1 148:13 149:19 169:20 170:20 171:1 200:22 226:22 follow 58:14 240:2 follow-up 198:12 footer 75:23 Force 15:25 16:2,16 18:4 Force's 18:9 forever 143:23 forgive 229:4 forgiven 147:18 148:7 forgiveness 131:9 form 24:13,14 25:3 44:10 107:6 111:5 115:22 170:8,9 171:6,10 172:12 177:17,20,22,23 178:14 179:8,16 181:19,22 182:6,8, 17,18,19 183:2,3,5, 20,21,23 184:10,12, 17,20 185:25 216:3 217:13,15,16,21,22 218:1,10,15,17 219:5,16,20,22,23 220:4 224:22,25 225:7,20 formal 32:22 37:10 43:18 format 178:3,7,9 219:2 forms 44:5 177:25 182:10,21,23 183:6, 9,13,16 184:23 185:19 216:25 218:19,21 219:1 225:2,13 formulate 62:25
F		
face 147:22 facilities 18:7 fact 38:13,24 46:21, 23 88:19 106:13 115:2 116:14 184:25 225:9 facts 28:25 122:19 FAFSA 217:20 failed 87:18 fails 195:25 failure 196:1 fair 90:7,8 131:7 fairly 139:16 fairs 89:19 fall 45:18 97:3 190:13,17 191:3 235:25 236:9 242:14 fallen 236:16 falls 203:11 familiar 73:16 78:20, 23 92:23,25 94:18,25 100:25 128:5 129:13, 19 132:23 150:19 205:17 215:7,19 226:24 227:21,24 228:2,16 232:3 federal 17:7,9,18 21:18,24 22:1,12,16, 25 25:25 26:25 27:1, 5,13 32:1,3 34:9		

December 15, 2020

14

formulated 63:17	general 16:13 19:24, 25 44:1 58:5 59:22 60:15 63:18 70:24 73:21 80:6 82:10 83:14 86:22 148:10 152:16 173:11 175:16 178:6,9 179:25 180:7 181:3 191:20 199:14 203:15 214:21 218:25 221:25 225:16,18	graduation 15:21,24 granted 165:21 181:2, 14 187:19,24 188:2 207:20 grants 234:13,14,16 great 11:7 13:10 15:9 20:14 58:7 59:15 Greene 30:18 ground 84:21 156:16 group 53:6 66:5,6 138:5 162:16,17 192:16 198:22,23 200:22,24 201:2 203:17,20 205:20 208:12 209:16 groups 165:25 198:16 199:7,16,18 growing 49:4 103:8 guess 70:8 89:7 90:1 91:24 151:17 guidance 43:8,14,17, 19,20 44:4,8,10,14, 19,24 45:5,7 46:13 92:13,14,18 106:10 108:10,15,25 111:17 129:17 130:5,8,11,16 222:16 guided 55:8 67:22
forward 68:14 75:3,6 96:21 102:14 103:16 110:6 111:16 115:1 116:1 140:19 166:4 191:19 225:19 241:10 Foss 171:3,9 found 37:5 83:2 98:24 170:7 180:3 210:21 211:1,19 four-month 155:24 frame 67:21 92:20 107:1 108:22 114:23, 24 115:20 158:25 188:17 203:12 frames 203:16 frankly 41:24 fraud 209:25 free 229:5 front 15:8 30:8 32:21 55:18 78:23 199:22 215:21 237:10,13,15 frozen 215:5 FSA 20:18 22:10 25:21 26:4,19 33:5 35:23, 25 36:14,22 37:9,15 38:4 61:11 62:25 63:22 67:17 69:17 71:8 72:4 76:2 116:23 117:16 118:4, 12 119:1,8,13 120:8, 19,21 121:18,20,22 122:2,3,11,12 123:16 136:16,24 138:18 147:6 150:2,6 152:1 155:5 160:7,16 162:16 166:17 169:15 171:15 185:12 218:1 FSA's 53:13 full 19:19 74:25 133:3 155:20 167:9 227:10 228:1 full-time 143:21,22 fully 240:23 function 212:24 functional 241:23 functioning 241:9	general's 73:20 generalities 181:4 generally 21:12 25:9, 11 33:8 51:11 58:17 105:8 135:10 180:24 214:9 generate 148:1 generation 37:19 215:24 generic 58:19 196:24 generically 81:11 Georgia 16:4 gift 229:3 give 20:1 30:10 65:1 96:25 110:1 115:6,7 117:1 118:19 119:15 120:18 146:12 167:10 169:23 190:25 191:2 207:2 229:20 giving 180:18 229:3 goal 65:18 84:11 87:18,20 88:24 goals 35:25 36:6,10, 11,15,17,21,25 37:4, 15 61:11,14,21 62:5, 10,12,17 63:7,13 64:21 68:18 84:14 87:7 140:16 good 9:2 11:6 62:6 105:8 142:24 governance 68:12 government 12:2 13:19 32:24 89:21 149:21 150:19 155:13 156:9 229:3 government-issued 11:15 grade 16:12 graduated 15:22 graduates 194:10 graduating 89:23	<hr/> H <hr/> halted 218:18 220:15 Hancock 10:19,22,24 11:4,7,9,18 14:7 20:8 29:23 31:19 32:13 34:23 35:3,8, 11 43:21 44:1 45:23 46:6 51:4,8 56:8,13 57:12,20 58:5,10 60:4,6 67:7 72:22 74:19 76:12 78:3 79:8 80:19 83:7 84:5 92:2 93:24 94:10 97:10 105:7,13 109:1 111:19 113:22 118:15 119:3 120:2,25 122:5 124:13 132:10 133:13,20 135:3 136:6 138:23 144:20 145:9,19 154:12 155:8 156:15 159:4, 16 162:20 168:18
<hr/> G <hr/> gave 68:22 100:20		

Mark Brwn
December 15, 2020

15

183:10 186:6,17 187:12 189:19 192:10 193:6 196:4 197:6 198:24 199:1 200:1, 7,10 208:5 214:14,21 216:19 218:3 219:13 221:11,18,24 222:20 223:8 226:1 229:10, 19 230:8,13 242:2 243:23 245:21 246:4, 7,9 hand 198:3 handle 240:10 hands 47:20 handy 11:17 happen 25:8 85:12 104:11 149:15 177:3 204:4,6 240:17 242:16 happened 132:6,17 150:11 156:19 216:17 222:24 238:23 241:18 happy 73:1 hard 58:6 78:15 141:7 195:20 harm 93:18 94:13 99:23 131:9 head 39:13 118:23 137:5 163:4 169:9 209:8 health 69:1 211:10 hear 10:14,15,16,19 11:2 35:10 75:8 78:7 228:8 heard 40:20 53:2 74:6,7 76:20 78:1 84:19 86:8 100:23 101:1 160:15 214:12 221:7,8 229:3 230:5 hearing 74:12 215:8 held 9:5 helped 19:21 152:7,9 171:9 220:16 helpful 199:24 helping 172:16,20,21 high 243:1 higher 18:1,2,3,11,12 131:3 hire 21:17 22:1 47:19 49:12 50:5,12 52:16, 19 87:16,19 88:17	91:11 143:3,8,13,14 144:13,16 145:8 146:24 147:1 148:23 150:18,24 155:6,11, 24 162:13 hired 17:5 89:19 144:3,6 147:6 148:19 151:16,20,22 hires 128:14 145:18 hiring 21:20 52:1,14 53:9 89:19 90:2,7,8 142:25 150:19 151:9 155:13 historical 84:24 historically 51:19 history 15:20 29:14, 15,18 38:22 83:18 109:15 hit 217:20 hold 17:13 214:4,6 237:22 244:21 holding 243:17 holistic 227:9 horizontally 58:3 hours 14:11 117:22 House 213:23 214:3 Housing 12:13 HR 50:7 human 17:4 21:13,14, 16 52:12 145:1 Hundreds 148:18 <hr/> I <hr/> Ian 171:3,9 icon 217:21 ID 11:16,20 12:3 217:20 identification 15:14 19:11 56:7 136:18 141:11 142:6 227:19 Identify 185:6 187:5 identity 12:3 imagine 60:1 240:9 immediately 29:6 87:14 104:11 132:13 150:13,14 151:2,5,6 156:5 immersed 103:24 immersion 38:11	impact 98:11,15,18 169:7 impactful 169:4,5,6 implement 52:23 implied 216:14 important 95:2 improve 32:11 improvement 52:18 improving 52:24 inaccurate 216:15 include 124:8 149:22 165:4 211:19 included 38:24 39:12 40:9 144:25 161:4 196:25 237:6 includes 54:1 185:13 including 123:18 163:14 income 96:7 incorrect 131:16 incorrectly 169:13 increase 150:1,2,6 153:3 156:12 235:8 245:3,4 increased 150:10 151:9,25 153:5 165:17 244:22 increasing 150:13 151:18 indication 104:23 indicators 62:15,23 individual 20:1 54:15,23 148:2 162:1,2,9 176:20,21, 25 186:10 individual's 19:22 individualized 205:1 individually 212:8 individuals 176:22 industry 16:22 ineligibility 166:14 170:8,10,11 172:12 196:16 ineligible 100:9 125:9 156:25 157:25 158:5,22 160:4 170:7 inform 83:4,13 information 15:19 43:23 46:7 51:5 83:8 84:6 86:23 112:21
---	--	--

135:4 178:4 182:15
 191:3 192:8 198:22
 202:20,22 226:7
 228:19 236:12
initial 44:16 107:4
 108:18,20 109:22,24
initially 43:7 92:20
 107:10
injunctio 45:21 96:3
 97:5,14 105:23
 124:3,6 223:7
innocuous 229:5
inordinate 118:8
input 31:12,13 63:8
 70:18,19 81:4,7
 131:24 236:5
inquiries 240:5
inside 19:25 32:3,21
 33:18 38:6 66:21
 67:15 85:12 112:24
 147:3 170:19 171:15
 173:18 174:3 183:18
 197:21 212:20 224:9
 226:22
insidious 229:2
inspector 73:19,20
install 80:15
installed 80:14
instance 51:2 186:3
 203:12
instances 14:21
Institute 15:23
 191:24 211:11
instruct 84:6 230:9
instructed 77:19 78:1
 129:25
instructing 43:25
 51:6
instruction 97:23
instructions 98:3,4
 132:5,17,22 241:22
instructs 13:21 35:7
 128:2 129:7 193:13
insufficient 186:4,15
 187:9
insulated 138:9
intake 235:7
intend 44:6
intended 39:25 210:20
intense 85:6

intent 211:18
interest 18:17 19:4
 28:5 126:14 192:22
interested 9:17 28:9,
 11,14
interesting 28:8
interests 98:15
intern 16:2
internal 30:21 48:25
 49:8 55:5 71:8 86:6
 152:14 160:12 161:6
 175:20
internally 45:10
interrupt 57:20
intricacies 85:10
introduction 228:12
intuitive 216:10
invest 88:18
investigating 191:10
investment 71:7
involved 17:4 72:24
 110:24 117:13 149:16
 171:19,21 172:11,13,
 18 175:23 215:9
involvement 17:25
 18:2 116:3,5,20
 215:11
involves 125:6 175:14
 225:23
Iraq 16:11
isolated 86:20 167:3
issuance 107:18
issue 38:25 42:11
 44:20,24 45:14,22
 49:10 58:6 106:1
 107:23 108:1 110:13
 111:12 125:18 134:8,
 10 158:10,21 159:9,
 10 203:11 214:10
 215:8 217:2 222:16
 223:6
issued 37:23 38:14
 39:1,17 40:2 41:9
 43:13 46:17 92:1
 102:14 108:15 112:9
 122:24 128:1 132:18
 134:2 136:24 150:4
 156:24 157:20 225:25
issues 27:17 28:6,7,
 10,19 30:22 39:20,22
 40:11 52:8 53:3

91:23 131:4 191:8
 211:1 214:12 243:17
issuing 45:13 96:6
 107:9 121:19 122:2,
 12 123:16 128:3
 129:8 130:1 132:6
 134:2,13 135:11,16,
 18 138:19,20 157:3
 158:16 159:7 235:20
 243:17
item 25:15 217:17
ITT 137:3,10,12
 163:11 164:7 237:6,
 10,16

J

January 76:9 77:12,14
jar 120:15
job 17:2 18:24 36:18
 37:1 39:11 52:18
 113:8 120:15 157:14
 176:13 178:20,21
 191:11
Joe 30:16
joined 17:20,21 37:21
 38:2,13 40:17,24
 42:17 46:5 48:8,10,
 13 90:22 91:12 93:5
 102:6 113:19
Jones 14:18 23:8
 24:10 25:22 26:7
 42:2,17 43:12 60:12
 92:24 93:1,13
 101:21,24 102:1,4
 106:21 107:22 115:13
 131:3,19 134:5,17
 173:15 175:10,21
 192:7 193:4 209:24
 215:6 217:25 220:15
 223:5 225:11
Jones' 25:20 99:10
July 77:15 155:25
 190:14,18 241:6
June 37:24 38:15 40:3
 41:9 92:1 102:8,15
 125:24 241:5
Justice 14:1

K		
	laws 54:6 101:12 184:15	89:7,10,11 93:18 94:13 96:25 99:23 100:13 126:1 137:16, 23 161:4,16 167:1 198:1 207:1 243:2 245:4
	lawsuits 95:14	levels 89:8
keeping 81:10	lawyer 67:1 205:8 208:16,17 235:17	liaison 117:2 119:17 120:12,22 154:4,5 170:24,25 171:2 177:12 182:4,22 226:22
Kevin 11:9 14:7	lawyers 67:1 127:1	liaisons 117:12
key 62:15 116:1	lay 180:18 244:25	license 11:16
killing 221:1	layers 66:6	lieu 10:1
kind 10:20 30:8 58:2 61:20 68:25 116:16 117:4,6,7,20 118:1 119:23 120:15 121:12 129:24 137:16 148:16 160:2,12 171:20 185:25 186:21 195:20 206:24 207:15 209:7 217:2 222:23 225:4 240:21 245:6	layman's 180:19,22	lieutenant 15:25
kinds 18:8 30:22 41:22 62:23 66:2 85:1 98:1 99:2 117:12 145:2 165:10 177:2 202:24 207:6 232:15 243:9 245:2	lead 14:6,15 146:9 167:14	life 155:17
Kingdom 16:9	leader 26:22 39:7,8 98:6 164:15,16 167:15 171:2,3	limitations 243:18,19 244:4
knew 37:25 104:12 115:18,20 130:14 172:14	leadership 72:4	limited 98:15 100:21 116:6,9,13 151:24
knowing 136:3 168:4 174:12 205:20 226:6	leading 17:16	Lindsey 30:16
knowingly 82:19	leads 83:25 131:4	lines 221:17
knowledge 52:7 59:18 79:4 102:18,22 103:2 111:6 123:12 151:14	learn 37:3 78:8 246:14	link 217:22
Knowledgeworks 18:14, 21	learning 95:25 97:25 98:2 127:4	Linkedin 89:22
L	leave 184:12 195:17 196:7 206:23 214:1	list 169:2 196:16 209:25 210:1 212:17
label 229:5	legal 9:14,19 77:16 161:2,13 196:1,3	listed 76:7 179:3,7 210:9
lacked 219:23 220:1	legislated 54:7 69:2	listen 135:23
large 37:18 63:5 82:20 85:2 103:6 149:6,13 168:1 204:9 206:17	legislation 34:19 54:5	listened 228:12
lasts 63:10	legislative 61:25 63:9	listening 83:14 84:23 85:20,22 86:10 228:7
launched 45:11	letter 78:24 100:18 132:23 147:23 148:1 152:20,23 166:8,14 167:6,21 168:6 172:20,22 173:2,18, 22 175:5,21 176:12, 17 177:1,10 178:3,8 186:3,15,22 187:4 225:2	listing 203:4
law 54:5 55:9 76:4 89:22 90:11 174:13 183:24,25 184:3,6,7, 19	letters 147:8 148:22 149:1,10 166:11,18 168:9,12 170:8,10,11 171:10,12 172:12,19 173:2,6,8,9 174:2, 19,21,24 175:7,24 176:1,24 177:7 224:20,23 225:1	lived 16:9,10
	letting 235:12	loaded 147:25
	level 29:8 41:21,24 70:17,18 81:20 84:16,17 86:9 88:17	loading 152:24
		loan 76:5 121:4 128:25 131:8 147:18 148:3,4,5,7 149:22, 24 172:5 240:1
		located 9:14
		locations 120:14
		lodged 167:18
		long 14:8 25:9 29:14 52:19,20 58:20,23 132:8 136:7 147:20 148:11 153:21 175:6 185:20 220:5,8,9,12 245:7

December 15, 2020

18

long- 68:16	makers 112:22 117:5 119:10	matter 9:11 10:4 64:22 66:25 79:2 84:22 164:24 169:25 185:18,19 226:21
longer 240:12	making 66:1 114:14 122:3,18 153:22 172:24 223:15,22	mature 141:1
looked 61:19 70:14 93:6 122:21 197:2	manage 33:16,17 47:13 85:2,4 148:12,16	Mcginis 30:20
losers 153:17	managed 48:2	Mckinsey 128:14
lost 158:14 206:11	management 17:4 33:5 47:13 52:12 68:11 86:16,17 88:20 89:14 180:22 240:14	meaning 17:15 94:25 106:9,11 107:19 176:21 188:22 196:24 203:10
lot 29:4 72:24 118:11 119:1 149:13,14 202:2	manner 10:7 43:14 131:8 178:1	means 34:12,13 53:16, 21 93:23 94:4 125:17 149:11 196:25 203:22 208:14 229:25 230:3 231:18 236:23
lots 44:5 62:14,16, 20,22 223:14	Manning 20:22 21:22 22:15,19,24	meant 29:20 44:4,7 45:21 74:7 142:1,2 199:15 240:15
low 10:25	Manriquez 45:11 92:15 95:22 96:20 97:3,20 98:10 105:22 108:8 109:8 122:23 123:11	measurable 66:1 68:1
lunch 105:8,16,17	March 17:11,16 20:19 27:13 28:1 35:24 36:11,12 37:12 38:18 40:24 41:2,3,12 44:13 47:4 52:3,9 56:25 57:2 59:25 67:20 75:3,13 91:3, 6,22,24 92:20 95:24 97:16 102:13 103:2, 14,15,17,23 113:19 114:17 122:21 123:5, 12 126:21 143:6 150:8 151:3 155:10, 25 156:19 168:21 191:4,5,18 239:13 242:13	measure 80:17 113:5 121:5
<hr/> M <hr/>	March/april 107:1 108:21	measurement 160:10
Macom 9:13	mark 9:9 11:11 12:7, 17 15:11 19:8 20:11 56:3 131:4 136:15 141:8 142:3 227:16 246:22	measurements 68:6,25 102:25 104:23 141:4
macro 81:20 89:7 137:16,23	marked 15:13 19:10 56:6 130:20 136:17 141:10 142:5 176:4 227:18	media 37:25 79:2,13
made 49:18 50:5,7,8,9 51:1,12 62:5 71:21, 24 89:23 91:23 102:8 110:18 113:10 123:11,22 125:23 126:19 139:23 143:4, 8,12,14,18 144:12,15 145:7 147:12 160:1,2 180:8 185:15 212:10 213:4 217:16 222:18 224:5,13,15 234:20 236:9 241:24 244:17	mass 147:24 243:2	meet 14:3,8 21:2,4,6 23:6,8 24:16,18 26:7,11,16 27:7,11 37:7 40:17,24 58:16, 20 59:2,19 84:3 89:2 140:16 176:14
main 113:1,5 190:25	match 210:25 240:1	meeting 26:9 28:1 29:10 41:2 55:1 60:1,3,24 61:1 68:20
major 16:13 62:12,14, 19 240:14 244:4	mathematical 101:18 207:19 237:2	meetings 23:17,19,25 24:4,20,21,23 25:3, 10 41:7,10,12,15 58:18 59:13,17 68:10 69:7,21,22 115:24 230:6
majority 237:9,12,14		member 18:10,14
make 30:22 46:10 49:11,15 50:6 51:25 53:14,20 56:8 68:9 83:16 85:7 95:7 117:8 124:21 133:15 135:25 137:15 149:14,15 152:12 153:8,9,11 155:22 165:23 170:13 173:1 179:10 182:16 184:23 196:11 204:8 206:16 207:5 210:11 216:10, 24 219:14 220:2 223:5 224:3,10 229:4 239:19 241:23		members 26:7,9,13,16 28:4 118:12
maker 113:1,6		membership 18:16
		memberships 18:19
		memo 128:10 129:5 130:7,8,23 131:2,12, 13,19
		memoranda 77:16,20 78:2

nontraditional 89:20, 21
note 57:24 59:15
 136:23 148:6 235:2
noted 66:25 132:22
 136:2 185:9
notes 59:12,16
notice 15:3,10 211:4
notification 115:1
 191:7 236:4
notifications 104:25
 105:1 109:9 110:7,14
 133:6 149:10 178:11,
 13 237:4 243:9
notified 101:19
 147:17 207:22
notify 133:3
noting 58:9
notion 229:3
November 128:1 188:18
 195:8
nuanced 52:16
number 28:22 29:2,8,
 13 39:19 49:2 64:6,
 9,17 65:6,7 71:16,23
 87:17 88:16 90:15
 91:7 98:5 103:6
 117:24 138:25 139:4,
 11 142:21 144:9
 147:4 148:5 149:2
 150:23 153:20 155:1
 156:13 158:7 165:1,
 17 166:2 169:22
 185:5 188:22 195:25
 219:24 220:1,3 226:8
 227:2
numbers 64:20 65:9,
 11,23 66:14,18,20
 67:6 68:8 70:7,9,23
 85:25 103:5 117:6
 126:5,11,13,16 127:7
 130:17 133:4,14
 137:19 138:22 142:20
 147:24 152:5 156:6
 166:25 168:1 188:15
 189:2 237:8 240:1
 243:3 244:22

o

oath 10:2

obfuscate 229:6
object 13:20 43:21
 60:6 214:14,15 230:8
objection 11:24 29:23
 31:19 32:13 34:23
 35:3 45:23 46:6 51:4
 67:7 74:19 76:12
 78:3 79:8 80:19 83:7
 84:5 92:2 93:24
 94:10 97:10 109:1
 111:19 113:22 118:15
 119:3 120:2,25 122:5
 124:13 132:10 135:3
 138:23 144:20 145:9,
 19 154:12 155:8
 156:15 159:4,16
 162:20 168:18 183:10
 186:6,17 187:12
 192:10 193:6 196:4
 197:6 198:24 208:5
 216:19 218:3 219:13
 221:11,18 222:20
 223:8 226:1 229:10
 242:2 243:23
objections 10:6
objective 37:19
objectives 36:7,10,12
 37:4 61:22 62:5,10,
 12,14,20,25 63:7,14
 66:2 71:12
obtain 169:14
obvious 29:16
occasionally 166:22
 240:15
occasions 14:11
occur 84:20 182:13
occurred 145:13
occurs 213:2
October 17:2,15,22
 52:13 204:7 206:15
offer 155:22
offers 89:23
office 19:24,25 30:7,
 8 32:1,21 62:2,6
 73:20 75:19 111:18
 117:2 119:17 131:5
 143:6 173:19,20,23
 175:16,17,22 182:22,
 23 218:24,25 223:2,
 12 224:1,17 225:16,
 17

officer 17:13,17
 18:18,24 22:12,14,16
 25:2 28:14 29:5
 30:14,16,17,19,21
 33:12 36:19 37:1
 38:5,18 42:10 47:15
 53:23 54:2,8 56:17
 59:23 61:16 70:3,21
 86:2 94:19 95:3
 116:14 146:5 150:9
 157:7 201:11 239:13
officer's 70:18
officers 30:6,11
 32:20 33:10 73:23
 224:7
offices 174:6 225:19
official 192:22
 209:9,13
officials 128:2 129:7
 130:1 159:23
OIG 74:6,8,9,13,18
 75:13
ombudsman 135:24
onboarded 37:8
onboarding 37:11,12
one-on-one 23:20
one-person's 100:21
ongoing 163:17
open 15:5 246:13
operating 17:12,17
 18:18,24 22:12,16
 25:2 28:14 29:5
 30:5,13,15,17,18,21
 32:20 33:10,12 36:19
 37:1 38:5,17 42:10
 47:14 53:22 54:2,8
 56:17 59:23 61:15
 70:3,17,21 73:23
 86:2 94:19 95:3
 116:14 146:5 150:9
 157:7 201:11 224:7
 239:12
operation 149:7
 240:13
operations 27:4,6
 28:15 56:21,24 98:16
 183:14,20 216:8
 217:3
opine 161:1 184:11
opinion 75:16 161:11
opinions 75:9

December 15, 2020

21

opportunity 84:22		Participants 9:3
opposed 185:16		participating 9:23
optimistic 240:21		participation 30:14
option 58:2		33:12,14,19 38:20
orchestrate 149:12		40:5,7 66:22,23 86:3
order 49:3 50:12 71:6		127:16 146:6,8
89:4 123:1 134:6		201:12 223:25
174:13 178:25 182:15		particulars 212:14
192:24 219:1 239:19		parties 10:5 110:23
ordered 76:13		174:10
Orders 128:24		partner 30:14 33:12,
organization 14:16		14,19 38:20 40:5,6
18:15 28:16 30:4		66:21,23 86:3 127:16
32:4 34:2,10 38:11		146:6,8 201:12
66:22,23 68:23,24		223:24
69:1,7 81:2,3 82:21		partnerships 204:9
85:2 88:4 116:7,18		206:16
138:10 140:8 155:3		parts 34:2 38:19
169:2,4 171:8,18,21		68:13 74:4 171:8,17,
172:3 226:23		20 191:17
organizational 67:14		party 9:16
120:19,20 171:16		pass 155:16
177:2		passport 11:16
organizationally		past 129:11
117:9		path 111:16
organizations 33:13		payment 178:19
34:3		PDF 133:19
organized 30:5 146:4		peers 38:8
201:10		pen 176:25
orient 58:3		penalty 10:4 161:9
oriented 58:1 81:1		194:15,20,25 195:6,
original 123:11		13 206:4,10,20
outcome 9:17		pending 121:19 123:17
outline 173:10		128:3 129:9 139:7
outlined 54:4		Pentagon 16:19
output 64:19 70:18,19		people 17:5 47:10
80:17,23 81:5,8		48:13,18 49:4 50:12
overbroad 168:18		60:23 86:11 88:6
overnight 90:19		89:19 90:12 97:6
oversee 33:5,22		98:5 100:17 117:3
oversight 18:6 26:4		119:18,19,20 120:10,
30:14 33:13,15,19		11 126:10 127:13
38:20 40:6,7 66:22,		133:4 135:6 148:12,
23 86:3 127:16		24 149:3,8,9,12,14,
146:7,8 152:25		16 152:4 154:6
201:12 213:9,23		171:18,23,24 173:2,6
223:25		175:15 176:22 216:4
owed 125:4		218:16
owns 192:4 216:8		percent 101:17 194:9
		percentage 147:19
		153:12 207:19
	p	
p.m. 105:16,17		
136:10,11 189:22,23		
222:7,8 231:11,12		
246:23		
pace 41:19 42:1,5,7,		
14		
pages 178:17		
pandemic 25:5		
paper 174:16 176:25		
177:20 192:3 205:22		
219:24 220:1		
papers 202:24		
paragraph 20:17 33:4		
53:11 77:11 112:8		
121:15 133:12,21		
136:23 138:18 139:10		
142:18,19,24 147:5		
149:25 156:23 160:3		
161:24 162:9,15		
163:7 165:14 166:6,		
7,13 169:11 170:5		
190:12,13 195:6		
228:25		
paragraphs 194:12		
parameters 115:7		
Pardon 31:1		
part 18:9 28:17 38:10		
40:20 66:3,24 67:24		
68:11 69:8,22 76:17		
78:12,23 79:18,20		
95:23 97:18,23		
100:17 102:12,20		
103:25 104:14 105:2		
116:10 122:21 125:11		
126:24 127:3 140:7		
147:16 152:7,19		
161:17 163:21 164:2,		
19 165:10 169:1		
173:24 183:13,19		
197:1 199:9 207:12,		
19 215:23 217:3,9		
223:24 225:23		
226:12,13,24 234:2		
235:4,17 237:10,12,		
13,15		
partial 117:18 119:2,		
25 120:24 128:25		
225:22		

December 15, 2020

22

percentages 96:7 153:18 166:25	phones 13:6	93:14,16 95:4,7
perfectly 62:18	photo 11:16	106:10 111:12,15
performance 30:25 31:4,7,18,24,25 32:11 34:22 62:15, 21,22,25 67:18 68:5, 10,17 71:2 72:3,10, 20 80:11,14 81:24 82:7,9,16 84:2,4,10 85:21 86:25 104:14 140:3,7 189:1	photo-issued 12:3	112:10,23 113:7,8 114:14 117:2,5,12 119:7,10,17 120:12, 13,22 121:9,12,18,23 131:6,17,25 132:3,12 136:1 153:19 154:4,5 160:16 170:23,25 171:2 173:8,10,18 174:15 175:14 177:11,15 182:24 183:6,7,9,16,22 184:24 185:19,23 186:1 218:22 223:1, 16 224:2,10,16 225:9 226:22 238:17
performance-based 32:4 34:10 81:2 140:8	physically 9:24 90:9 155:12	political 22:22,24 23:5 34:14,17,20
performing 153:25	pick 60:23 150:24	Politico 128:21,24 129:15
performs 154:2	picked 212:4	poll- 173:17
period 27:20 32:25 63:10 150:12 151:2,4 179:3,7 203:18 211:19	picking 153:17	portal 138:1 215:20, 21 216:3
periods 162:19 163:14 186:1 211:7	picture 152:2	portfolio 17:4 21:17 28:13 128:15
perjury 10:5 161:10 194:15,20 195:1,7,13 206:4,10,20	piece 212:15	position 17:13,21 123:5 160:14 193:20
permissible 161:14,15	Pittsburgh 211:11	positions 18:11 106:16
person 10:2 25:4,7 52:19,22,23 60:24 65:1 117:21 144:23 150:24 170:15 172:22 174:13	place 48:4 84:18 85:8 90:18 111:13 124:4 127:3 132:12 134:9 164:17 167:2 173:1 222:17 223:7 235:23	positively 81:15
personal 116:5,19	placement 176:14 178:21	possession 179:19
personally 31:5 116:21 227:1	places 149:14	possibly 41:3 182:4
personnel 22:1 90:21 150:1,11,14 151:25 156:12	plaintiff 190:10	posture 110:3,9,13
persons 117:25	plaintiffs 12:10,14	potentially 46:6 83:8 135:3
perspective 42:12 171:17 177:2 180:19, 22	plan 61:24 62:1,3,18, 22 63:1,4,17 64:19, 20 65:8 66:1 68:2 82:2,3	Powerpoint 232:4 233:10 237:21
pertains 53:22	planned 240:24	practice 180:20
phase 245:10,11	planning 30:16 57:23 65:14	practices 52:1
phases 245:10	plans 37:2 61:20 146:2	precede 51:21 56:16
Philippines 16:7	platform 24:14 88:19 91:16 152:24 217:1, 10,17 218:2,11 219:10,12 228:10 239:6,10,15,18,21 240:4,8,16 241:15 242:8 243:7,12 244:14,18	precise 69:19 70:22
philosophy 67:25	play 99:4	precisely 48:15 114:24
Phoenix 205:21 206:1, 14,19 208:2 209:2,6	point 104:20,21,25 107:13,14,15,16 110:12,15 115:5 122:9 124:19 139:21, 22 141:2 159:18 185:18 188:8 218:17 231:4 233:20 241:2	predates 57:4
phone 25:4 60:23 61:2 117:22	points 88:16	predecessor 20:21,22 60:3
	policies 77:22 225:15	predictable 131:8
	policy 25:23 26:1,5, 23,24,25 27:1 92:13	preliminary 163:12
		premise 131:15 226:15,17

preparation 152:21	proceedings 9:21	production 42:11
prepare 13:22 31:12 58:21 131:19	process 28:11 37:11 39:21 48:5 50:2	46:19 67:2 68:17 72:2,6,23 80:25 81:3
prepared 131:2,14 152:23 176:16 184:11	52:18 53:8,9 55:9 64:24 65:2,10,15	productive 39:23
prepares 31:9,10	66:24 81:17 82:4,22	products 215:22
preparing 77:16 171:5,6 232:15	83:12,23,24 84:18,21 85:7,13,23 93:21	program 39:25 180:2 244:24
presence 178:14	95:4,24 96:1 97:16	programmatic 204:9 206:17 210:12
present 9:24 239:6 241:13 244:11	98:18 99:16,17,19, 22,25 100:22 101:2, 15,22 104:22 108:5	programs 117:14 179:2
presentation 11:20 232:24 233:9,14 237:24 238:6,10	123:4 125:8,16 126:21 129:10 130:17	progress 71:20,21,24
presentations 233:3	138:19 139:12 141:1 143:9 147:7,10	promissory 148:5,6
presented 18:3 36:18, 22,25 61:14,19	148:10,11 149:13,17 150:21 151:12 152:2, 8,10,22 155:21,23,24	protocols 76:21,23,24 164:6,9,22 165:4,12 173:19 175:20
presents 12:2	156:6 162:1,3 163:15,18 164:3	provide 116:16 117:5 119:9 131:22,23 135:23 179:23 185:6 187:5
press 213:9,13 214:25 215:3 216:5,15,22 217:6,8,23 220:14,22	167:16 168:4 172:15, 25 173:25 174:1,11, 17,18 175:2,11,14	provided 82:10,12 92:17 93:1 121:25 169:15,18 204:3 205:3 228:18
Pressley 99:7,14	177:14 183:4 184:22	providing 98:4 112:21 171:13 235:15
pretend 55:4	187:25 188:6 189:12	public 34:16 63:8,10 137:15,24 138:4
pretty 32:16 41:5	197:1 199:11 207:16, 21,25 209:7 215:5	public's 63:15
prevent 134:6	216:6,7 219:7,8	publish 137:25 138:10,13,15
prevented 96:6 97:5	220:9 223:15 225:16	pull 15:6 117:3 119:19 120:10
preventing 13:16	235:4 239:2,19 244:14	pulled 213:25
prevents 93:16	processed 100:10 104:17,24 227:5	pulling 117:14
previous 207:3	233:24 234:3,10 239:9	purely 152:18
previously 109:6 129:7 190:24	processes 46:19 69:25 85:14,17 98:12 156:4 164:12,17 167:2 208:15	purpose 219:9
primarily 88:25	processing 35:2,17,20 52:24 99:21 100:3,11	put 90:1 118:7 149:10 174:6,7,8 176:25 184:10,11,22 187:10 200:18 202:10,17 204:2 220:4 225:3
principal 30:17	130:5 148:21 239:5	puts 170:15
printout 63:20	240:14 241:1,3,12,25 242:1,23 243:2,20 244:10	putting 177:14 241:21
prior 16:1 52:2,9 91:3 122:17 192:23	produce 72:19 137:23 138:1 172:8	
priorities 35:25 36:22,25 37:15 61:11 145:17 146:13,15	produced 158:23,24 176:1 177:23 189:7	<hr/> Q <hr/>
prioritize 157:2	produces 65:11	qualified 76:5 77:18 162:12 244:25
priority 54:18 146:19	product 212:25	qualifies 160:11 206:25
private 230:6		
privileged 43:23 84:6 135:4		
problem 168:2		
procedures 164:12,16 215:15		
proceed 236:20		
proceeding 9:4 102:10		

qualify 77:21 160:11 206:25	react 186:10	189:22,23 222:7,8 231:11,12
quality 70:20 81:5,8	read 14:14,15,17 37:2,25 53:18 59:2 75:7 77:11 79:3,13 93:2,5,12,14 94:3,7 95:17 97:9 99:7,10 121:15 130:25 133:11 142:21 147:21 166:5 194:23 211:21 212:1 213:19,20,21,24 214:8 215:17 227:25 228:17,25 229:21 230:18 246:10	recite 62:19 reclaim 178:22 reclaims 176:14 recognize 19:14,17 141:14 142:9 199:21, 25 213:13 recollection 14:20 111:9 recommendations 164:25 reconciled 148:8 reconsideration 185:13 186:14 187:11,19 188:20 189:10 record 9:3,7,21 10:10 11:20,24 12:1,5,16 57:11,15,19 105:12, 15,19 136:5,9,13 189:21,25 218:7 222:3,6,10 230:12,22 231:8,10,14 246:3,20 recorded 9:4,5,8 records 169:14,16,18 209:9,14 recruit 47:19 52:20 recruited 16:24,25 17:5 recruiting 17:7 90:2 143:10 recruits 16:15 redact 192:8,14 193:16 redacted 193:5,17,19 198:18,23 199:4,13 redaction 192:24 redactions 198:15 199:12,14,15 redactor 193:16 reduced 147:19 148:6 reducing 146:18 reduction 219:24 220:2 reference 240:16 referenced 75:11,13 152:3 168:7 239:24 references 74:6,8,12 referencing 128:16 217:9 243:4
quantify 120:17	reading 87:13 93:8 121:9 133:9 195:2 211:15	
quarterly 69:14	ready 123:24 124:2 139:14 235:3	
question 13:14,15 21:3 27:19 31:2,13, 15 32:2 33:16 35:13 36:20 43:22 46:11,12 48:3 52:17 53:21 56:24 57:1,22 61:13, 17 80:4 85:17 86:23 94:5 95:6 102:12 107:21 113:25 114:1, 3,18,25 122:16 124:20,21 125:12 132:14 140:11,17,23 145:22 146:15 154:14 157:13 159:17 160:1 161:5,22 169:9,20 172:1,2 177:9 178:13 186:20,23 187:16 193:21 197:8,23 198:12 199:10 201:17 202:12,16 205:7 206:12 208:10 209:24 212:22 214:24 216:11 218:14 219:15 225:3, 22 231:6 233:14 234:17 238:4 244:9	reality 218:15 reason 24:3 29:21 62:4 85:5 115:25 186:3 187:8 191:6,12 204:19 215:15 reasonable 82:7,14,17 154:21 reasoning 158:10,16 reasons 61:7 190:25 191:21 196:1 204:1, 20 211:20 recall 21:11 39:4,6, 14,15 41:11,12,21,25 50:24 53:5 59:21 74:11,12 75:20 87:4, 5,6 93:8 107:15 125:25 126:4,7,13 130:7 168:10,14 193:4 199:8,18 201:25 202:7 221:12, 19 241:20 recap 207:15 receive 15:9 130:10 170:8 188:14 232:16, 19 received 108:24 167:20,21 168:8,11 186:2 188:20 190:14 191:6 209:25 210:1 receiving 70:5 71:25 72:5 154:21 191:1 recent 166:20 recess 57:16,17 105:16,17 136:10,11	
questioning 13:13 74:20 214:15		
questions 13:20 53:8 58:15 80:6 83:15 85:1 161:16 171:19 174:25 201:7,23,25 202:5,7 207:6 222:13 245:19		
quick 57:11 155:14		
quicker 21:17		
quotation 134:17		
quote 194:8,9		
quotes 194:6,11		
<hr/> R <hr/>		
raising 207:7		
range 149:18,19		
rate 139:20		
reach 88:13 169:12		
reached 71:16,23		

December 15, 2020

25

<p>referred 73:8 78:16 91:18 119:11 127:19 176:6 190:4 198:7 213:10 231:25 244:16</p> <p>referring 56:10 94:17 116:13 129:16,18,21 133:22 220:24 244:9, 10,13</p> <p>refers 95:8</p> <p>refresh 14:19</p> <p>regard 34:20 228:16</p> <p>regions 17:8</p> <p>regrettably 76:16 95:11</p> <p>regs 184:2</p> <p>regular 24:20 232:16, 23</p> <p>regularly 24:22 40:16,23 58:16 60:3</p> <p>regulations 235:9</p> <p>reissuance 139:25</p> <p>reissuing 158:25</p> <p>relate 112:2 197:4, 15,16 203:8</p> <p>related 9:15 21:16 34:22 35:2,17,19 42:9 52:8 115:1 125:1 163:9 192:8 198:16,18 199:6,8, 15,18 216:18 239:14</p> <p>relates 26:5 32:11 33:7 169:9 192:15 197:5 208:3</p> <p>relating 52:14 204:8 206:16</p> <p>relationship 25:25 26:3 35:21 52:10</p> <p>relationships 242:25</p> <p>relative 18:11 188:22</p> <p>relayed 223:13 224:17</p> <p>relays 159:24</p> <p>release 133:2 213:9, 14 215:1,3 216:5,15, 23 217:6,8,24 220:14,22</p> <p>released 213:23 214:2</p> <p>relevance 229:11</p> <p>relevant 32:16 75:2,5 121:5 157:4,6,21,23 158:11,18 174:9 178:4 193:8,10</p>	<p>204:21 226:7 231:2</p> <p>relief 93:18 94:14 96:7 97:5 98:20,23 99:23 100:9,13 101:17 111:13 112:10,13 113:2,13 114:7,11 115:12 116:4,11 117:18 118:5,12 119:2 120:1,24 121:4,17,24 124:11 125:3,10,19 128:25 129:10 132:25 134:7,10,22 152:21 153:12 207:19 222:17 225:22,25 235:1 236:19 237:1,22,25 238:7,10,14 243:13</p> <p>rely 204:23</p> <p>remainder 140:25</p> <p>remains 39:10</p> <p>remember 18:22 42:3, 6,8,13 43:3,6,11,16 48:14 50:15 51:15 52:24 65:24,25 66:6 70:7,22 72:12,14,15, 16 80:12 89:6 114:5, 6,24 130:12 131:11 188:19,23 201:24 202:4 215:8 220:5,11 221:1 245:9</p> <p>remote 9:8,13,20 246:22</p> <p>remotely 10:1,3</p> <p>remove 192:8,16</p> <p>removed 66:7 193:5 219:11,15</p> <p>reopen 246:15</p> <p>repayment 185:8 187:7</p> <p>repeat 31:1 35:13 67:13 165:23 206:12 238:3 242:17</p> <p>repeatedly 243:16</p> <p>repeating 102:11</p> <p>rephrase 106:3 124:9</p> <p>reply 109:22,24 186:5,9</p> <p>report 22:6,7,14,21 23:4 30:6,9 31:8,12 32:20 34:5 63:22 73:20,22,23 74:3,6, 8,9,10,13,18 75:5,7, 11,14,20 136:16</p>	<p>138:7 157:24,25 158:8</p> <p>reported 69:25 72:3,7 102:24 103:3 104:18 126:11,14 129:6 167:6</p> <p>reporter 9:19,22 10:13,16,20 11:2,6, 8,13,22 69:22 138:12 230:16,20,23,25 231:3,5 237:11,17</p> <p>reporting 9:25 10:7 22:19 32:25 69:4,11, 16</p> <p>reports 30:2,3,24 31:3,9 34:6 138:1, 11,15,16 168:9,12,16</p> <p>represent 176:12 183:7</p> <p>representation 56:20 57:4</p> <p>represented 29:4 62:8 145:17 146:19</p> <p>represents 203:2</p> <p>Republic 16:6</p> <p>request 9:6 49:16,18, 19 50:5,6,10 119:21, 22 143:19 145:7 169:14,25 186:13 187:11 236:14</p> <p>requested 24:5,6,8 169:16,19</p> <p>requests 48:8,10 49:11 51:2,12 52:5 91:11 145:7 187:19 188:19 189:9</p> <p>require 67:19 175:15 201:24 243:13</p> <p>required 53:9 67:21 119:25 120:7 156:4 191:11 192:25 201:20 214:19 236:3 240:12 243:9</p> <p>requirement 61:25 236:3</p> <p>requirements 63:9 121:22 156:8</p> <p>requires 174:13</p> <p>reread 162:4</p> <p>reserve 246:9,13</p> <p>resign 18:20</p>
--	--	--

December 15, 2020

26

resigned 19:4	rhythm 41:5	15,18 203:7 209:16
resigning 18:25 19:3	right-hand 190:7	210:18 211:10 235:8,
resolve 131:7	195:21 228:22	12,13,14,16,20
resource 241:8	rightfully 218:23	236:4,12
resources 47:12,23,24	rights 12:13 178:21	schools 89:22 124:1
51:25 54:9 64:24	ring 130:3	137:7,10,11,18
71:22,25 82:11,12	rise 167:1	163:10 164:7 165:19,
87:12,17 88:5,7,10,	rises 161:4,15 206:25	20,22,24 192:19
12,18,21 89:1 103:10	road 141:3 240:25	210:11 212:3 225:24
104:3 119:24 120:7	Robin 30:13 33:11,22	236:13 237:6
126:15 139:22 145:1	34:5,6 39:10 86:12,	scientific 49:7
165:10 239:18	14,19 201:15 224:4,6	scientists 117:11
respond 51:3 235:17	role 18:1 20:18 25:20	scope 31:20 32:14
responded 106:25	26:19,24 27:2 53:16,	34:24 35:4 60:7
response 51:12 107:4	22 54:2,5,8,13	74:20 76:13 79:9
108:18 145:4 235:8	119:7,8 223:22	121:1 162:21 163:13
responses 83:18	rolling 138:21	192:11 193:7 199:1
235:20 236:14	room 9:24 12:19,21	203:17 204:2 205:5,
responsibilities	13:5,8	12 207:9 210:8
53:13,25 54:4	rough 50:16,22	211:13 212:12
responsibility 28:16	roughly 72:12 128:3	214:14,16 216:19
responsible 65:10	182:1 188:19	218:3 219:13 221:11
responsive 37:17	route 193:18	226:2 229:11 230:8
restarted 135:18	routine 41:2	script 228:18
result 157:1 236:19	routinely 24:11 25:6	Sean 169:12
results 68:1	41:17 59:14 70:25	secretary 14:17 17:1,
resume 128:2 129:8	81:4	12 22:7 23:4,7
132:6,18	rule 235:23,25 236:2,	24:17,18 26:4 31:11,
resumed 121:19 122:2,	9,16	14 40:16,23 41:6,15,
11 123:16 124:7,19	rules 101:12	20,23,24 43:12 50:8,
125:15	ruling 199:11	9 51:3 58:17 59:6,7,
retired 16:12	run 56:21,24 117:4	20 79:22 106:21
retirement 16:17	running 117:14 161:20	108:16 109:22 110:21
review 55:9 72:9	Ryan 9:19	111:3,18 130:15
93:17 122:19 157:14		144:25 145:1 159:24
163:8,12,24 173:6,12		173:13,24 175:18,20,
175:15,16 180:2		23 218:25 221:8
195:4		223:2,13 224:12,18
reviewed 77:23 173:15		225:17 227:22
198:2	S	secretary's 78:25
reviewing 70:5 71:2	Salesforce 244:20	112:23
72:13	sat 14:24 146:14	section 52:22 128:18
reviews 15:15 19:16	scale 168:5	184:8 185:2 194:23
32:22 53:19 56:14	scenario 147:18	195:6
63:25 71:17 73:15,18	scenarios 207:6	sections 117:10
78:22 128:12 141:16	schedule 156:1	secure 47:23,24
142:11 162:7 166:12	scheduled 24:21,22	security 150:20
177:19 187:22 194:1,	school 90:11 138:5	155:16
16,24 200:11 214:7	162:18 165:25 179:17	seek 106:4 107:11,24
227:23 229:24 232:5	180:3,9 181:15,20	108:13
233:5	191:25 192:4,15,16,	seeking 129:9
	25 194:8 197:5	
	198:15,22,23 199:7,	

December 15, 2020

27

sees 173:20	side 13:7 172:6	sort 99:6
send 31:13 61:4 90:12 106:11 108:9 109:9	195:22 223:16 228:23	sorted 188:8
sending 107:2,3 108:17,19 109:16,24 178:10,12	sideways 58:1	sounds 91:22 147:22 175:10 225:24
sends 59:7	sight 13:10	source 96:7 180:6
senior 16:24 17:23 22:18,23 28:18 52:11 53:1 72:4 192:21	sign 81:25 82:15 131:21 158:7 246:10	sourced 129:21
sense 91:11 118:25 153:23 175:25	signature 20:3 78:25 141:22,24 246:21	sources 135:24 202:11
sentence 93:15 94:8 121:16 130:25 231:18 234:9	signed 79:17 82:1 84:9 128:1,11 129:5, 25 130:2 141:17 160:16,20,21 194:15, 19,25 195:12 206:4, 10,20	Southern 16:3
sentiments 230:7	significant 63:4 71:21,24 126:17 169:7 191:10	space 195:18
September 143:1 155:6,13 241:7	significantly 29:17 126:6 156:24	Spain 16:10
series 244:23	signing 82:4	speak 42:1,16 151:4 152:13 160:9 222:23 239:23 241:4
servants 34:16	signs 161:9 195:7	speaking 209:23 243:21 244:3
servicer 148:3	similar 194:3 211:7	specialties 152:9
servicers 149:23	similarly 169:11 224:19	specific 18:13 41:25 44:14 65:1,7,16 72:25 87:4,6 118:19 143:24 145:13 174:21 175:5 187:4 199:7,15 201:25 205:7,8
servicing 172:5	simple 238:19	specifically 26:4 29:1 41:13 42:14,25 47:8,10 52:25 80:7 130:13 132:21 178:5 200:20 212:23 222:23
sessions 23:20	simply 37:12 50:24 75:1 103:8 109:10 150:24 155:14 158:3	specificity 152:15 198:1
set 36:11 62:11 64:9, 17 65:13,16,20 66:14,17,20 67:5 68:8 69:12,13 81:24 85:21,24 86:25 96:19 111:16 138:22 139:1, 3 140:3,11,14 163:2, 4	Sir 215:3	specifics 210:23
sets 203:9	sit 127:2 146:12	speculate 45:8 95:13 118:2 137:15,17 188:12 195:15 205:10
setting 65:22 112:10 164:19 226:7,13	site 137:25 138:1 217:14 218:1	speculation 78:4 186:7,18 187:13 196:5 229:19
settle 63:13	sitting 116:21 124:2	Speculative 93:24 94:10
Seventeen 128:20	situation 24:12 60:25 89:24	speech 227:21,25 228:1,8,12,18
sheer 46:21	situations 210:20	speechwriter 230:1
sheet 174:9	sixth 133:19 237:20	speed 17:6 21:25 52:15 191:22 245:4
sheets 192:3	sizing 155:4	spend 85:6
short 136:4	sky 45:19	spending 84:20
short-term 68:17	slides 233:12,16	spent 16:18 94:23 118:14,22
shortly 18:18 49:24 50:1,18 90:14	slightly 116:8	spoke 42:24,25 106:21 124:8 218:19 225:22
showed 29:13	small 75:23 228:22	spotted 166:10,17
showing 235:14	smart 217:16,21,22 218:1	
shrill 229:4	smartphone 12:25	
shy 190:21	social 24:14	
sic 194:6	software 244:24	
	sole 110:22	
	soliciting 235:20	

December 15, 2020

28

<p>spreadsheet 240:13</p> <p>spring 50:19 114:5 245:14</p> <p>staff 48:8,10,12,18 49:12 50:5 51:17 52:5 58:21 77:19 117:16 118:11,14 119:13 120:9 145:18 174:8 232:10 243:18</p> <p>staffed 29:7 218:24</p> <p>staffing 21:15,24 28:23 53:3 63:9 150:6 172:15,25 173:24 177:14 183:4 184:22 199:11 219:7, 8 244:5</p> <p>Stafford 129:16,20 132:24</p> <p>stage 100:7 139:11 239:1</p> <p>stages 235:6</p> <p>stalled 129:10</p> <p>stamp 56:10 75:24 200:6 209:18</p> <p>stand 188:2</p> <p>standard 183:25</p> <p>standing 23:16,19 24:21,22</p> <p>start 15:18 23:24 48:5 69:3,6,16 72:5, 6 90:4,5 101:16 112:7 114:4 130:1 132:7,9 133:22 139:2 155:12 194:22 235:19,20</p> <p>started 16:7 17:2 18:1 20:19,23 24:4, 25 25:2 27:25 28:20 29:9 35:23 36:1,5, 13,14,18,25 37:6,12 40:2 43:7 44:13,20 46:14,16,18 47:4,7 52:7,13 61:10 65:22 70:4,5 71:1 72:13 77:6 79:22 91:5,22, 24 95:19,24 102:13 103:14,16,17,23 108:21 113:15 114:6 115:3,4,8 135:11 136:15 137:9 150:13 158:25 174:18 181:14 183:2 238:1 239:11</p>	<p>starting 15:21 122:12</p> <p>starts 67:3 77:12 93:13 130:23 194:22 229:1</p> <p>state 12:16 76:4 183:25 184:3,6,19 196:1,3</p> <p>stated 33:9 109:6,21 111:24 142:15 143:18 158:20 175:19 181:6 184:7 207:1 232:20 239:16</p> <p>statement 9:20 74:7 93:23 112:10,22 113:6 119:7 121:13, 18,24 123:20 124:19 130:18 131:15 134:12 135:25 139:9,23 151:24 152:3 157:9 173:8 179:10 229:16, 18</p> <p>statements 174:7</p> <p>States 15:25 16:2,15 18:4</p> <p>stating 10:9</p> <p>status 28:12 38:24 40:8 41:17 97:17 209:14</p> <p>statute 240:7</p> <p>step 100:24 101:1,15, 16 102:9,16,18,21 103:7,13,19 104:16, 17 124:11 125:5,11, 16,21,23 126:18,24 127:2 147:14,15,16 151:8,9,12,17,18 152:8,10,12,18 153:4,8,9,14,15 154:9 167:16 207:13, 14,15,16,24 208:4,9 227:11 234:1,4,6,8,9 236:24 242:23,24 243:6,8</p> <p>steps 47:6 153:4</p> <p>stipulations 203:9</p> <p>stop 78:1 100:17 122:12,18 123:6 164:2,4 217:25 241:25</p> <p>stoppage 46:4</p> <p>stopped 45:12 102:18, 22 122:19 123:3</p>	<p>124:24 125:13,14 136:1 151:13 154:10 218:13 242:21</p> <p>strategic 30:16 37:2 61:20,24 62:1,3,22 63:4,17 64:20 65:14 66:1 82:2</p> <p>strategy 157:2</p> <p>Stratford 132:2</p> <p>Street 9:15</p> <p>student 17:7,10,18 21:18,24 22:1,12,16, 25 26:1,25 27:1,6,13 30:19 32:1,3 34:9 36:1,5,7,10,19 37:2, 3,11,17,20 38:7,19 42:22 54:1 61:7,10, 15,22 63:14 67:20,22 68:12 80:24 112:24 116:7,15,16 127:13 128:25 131:5 155:16 157:8 159:25 170:19 174:3,10 183:18 215:22,23,24 216:8 224:1,10 239:12</p> <p>Student-loan 128:15</p> <p>studentaid.gov 217:18</p> <p>students 18:8 81:18</p> <p>students' 123:7,8</p> <p>subject 34:21 64:22 66:24 67:1 76:10 84:22 164:24 192:6 216:12 224:21 226:21</p> <p>submit 180:10 186:13, 16</p> <p>submitted 24:8 121:21 185:14 190:12 206:3</p> <p>subordinate 33:17,18 127:17</p> <p>subordinates 38:6,16</p> <p>subschoools 192:20</p> <p>subsequently 195:7</p> <p>substantially 150:2</p> <p>successful 71:13 89:5 155:22 178:25 179:6 234:20</p> <p>suffered 131:10</p> <p>sufficient 157:17 160:5,7,17,22 163:12</p> <p>sufficiently 29:6</p>
--	---	--

suggest 221:9	talent 54:10	tempo 23:12
summary 174:9	talents 21:18	temporarily 22:25
summer 239:5 242:13 244:11 245:14	talk 24:13 41:17 58:20 59:4 90:24 91:2,16 105:8 106:20 109:11 132:21 138:2 150:12 151:3 160:25 166:14 170:3 172:5 191:16,18 243:19	ten 17:8 90:20 231:10
supervisors 146:10 167:12,14	talked 34:8 58:15 124:11,12 143:2 172:10 207:21	ten-minute 189:16 221:23
support 9:14,20 47:14 62:16 117:5 120:15 149:6 206:6 243:4	talking 56:22 80:11 88:22 89:6,15 97:22 102:21 103:1 105:22 123:9 125:16 127:15 132:24 147:24 168:23 197:24 198:12 212:17,18 218:20 220:21 233:17 242:23 243:3,20	ten-page 130:23 131:2
supported 76:3 160:5	target 64:6,9,14,17 65:12,16,23 66:18 67:6 68:8 88:13 89:2 226:8	term 42:5,6 48:2,20 88:1 97:18,20 100:3, 16,22 102:1,2,5 113:10 127:12,15 143:3,22,24,25 145:22 165:5,6 180:14 196:21,25 220:25 221:1 240:21
supportive 117:15	targeted 227:3	terminology 100:25
suppose 154:8 216:14	targets 64:21 66:5	terms 45:13 48:16 53:16 85:11 89:20 94:3 97:21 101:5,23 107:22 112:18 116:19 133:4 137:6 175:9 188:22 215:17 216:16 230:2
supposed 109:17 219:19	team 26:8,10,13,16,23 28:4 29:12 40:8 43:7 44:23 47:9,14 48:22 49:8 87:12 96:5,9 97:24 98:3,6 103:24 127:14,17 141:5 146:9 152:15 161:7 171:1,4 174:15 180:23 232:14,17,19 236:11	testified 12:8
surface 211:14,15	teams 24:15 154:5	testimony 10:4 80:20 92:23 93:1,2,6,13 113:23 118:16 119:4 120:3 154:13 155:9 222:21 243:24
Sweet 9:11 190:10	technical 172:6 217:2 219:25 244:23	text 60:21,22 61:2
Sweet's 193:23	technically 244:25	theoretically 210:23
switch 170:2	technician 9:13	Theresa 9:11 190:10
sworn 10:3 12:8	technicians 121:11 153:25 154:4 226:21	thing 90:19 97:23 101:10 117:20 153:10 160:2 186:14 206:2 222:14 244:15
symbols 217:19	techniques 215:15	things 12:15 18:8 27:16 34:1 38:10 46:25 48:4 58:15 61:20 62:23 63:12 66:2 68:25 71:5,8 74:9 82:5 85:11 88:24 89:9 91:8 97:17 98:1 99:3 103:1,9 112:20 116:17 117:4,7,12 127:3 136:2 143:10 145:2,13 148:16 150:23 152:17 160:12 165:1,2,11 171:20 172:17 177:3 180:1 181:7 188:7 197:2 202:25 204:3 208:20
system 17:7 46:19 50:7 88:19,20 148:1 158:5 191:14 239:25 240:2,11,25 241:3,9 242:14 243:20 244:10,20 245:6,13	technology 191:11 240:20	
systemic 166:24 168:2	teleworking 16:3	
systems 47:12,13,25 71:7 89:14 103:11 117:3 152:24 167:20 191:11 239:5 240:20 241:2,12,22 242:1	telling 45:2 115:3 180:21	
<hr/> T <hr/>		
tab 15:3,8 19:6 20:6, 13 53:11 55:17,20 112:5 136:21 141:6 142:2 176:8 190:2 198:6 227:15	tells 165:8	
table 64:2,10		
tables 225:24,25		
tackle 49:10		
tacks 170:2		
tail 147:20		
taker 59:15		
takes 155:15 207:24		
taking 18:23 49:24 50:1 67:25 119:1 219:3		

December 15, 2020

30

210:24,25 211:25	245:10 246:3,20	93:25 94:11 97:12,13
212:7 216:10 225:4	time-consuming 118:4,6	105:20 109:3 111:21
227:14 232:15 233:20	timeline 241:6	114:2 118:17,24
239:16 242:24 243:9,10,11 245:6,8	times 16:8 25:16	119:12 120:6 121:2
thought 36:17 46:3	27:22 41:14 42:23	122:6 124:15 127:22
48:23 61:16 107:25	49:15,18 117:25	132:16 133:17,24
108:24 126:15 213:1	156:16 159:18 233:12	135:9 136:4,14,19
thoughts 45:10	timing 62:6 123:1	138:17,24 141:8,13
thousand 139:17	tired 245:20	142:3,8 145:3,15,25
thousands 138:20	title 228:3	154:16 156:10,21
three- 155:24	today 9:9 13:17,22,25	159:8,19 162:22
tied 121:4	17:13 30:12 49:6	168:24 176:7 183:12
tiered 112:10,12	56:25 74:1,3,4	186:12,25 187:17
113:2,13 114:3,7,11,20 115:12 116:4,10	104:19 117:20 163:18	189:5,8,15 190:1,5
118:5,12 121:17	169:10 178:10 185:20	192:12 193:9,11
222:17	188:3,11 193:1 208:9	196:13 197:11 198:9
tighter 240:3	218:11 219:6 227:11	199:5 200:4,8,14
time 9:10,11,18	240:22	208:25 213:12 214:17
11:24,25 12:5 14:10	today's 246:2	215:2 216:20 218:4,6,8 219:18 221:15,22
18:16 22:10,11 23:1,10,12 25:6 27:20	told 68:19 78:11	222:11 223:4,17
36:7 39:1,6,8,10	84:12,13 85:14,16	226:4 227:16,20
40:11 41:6,11 43:13	86:11 95:17 97:14	229:13,22 230:11,14,19,24 231:2,4,15
44:16,17 49:20,21,23,25 50:24,25 54:10	104:5 106:14,23	232:2 237:19 242:6
56:16 57:5,8,15,19	107:22,23 122:20	244:2 245:17,25
58:23 59:22 61:1	127:4 145:23 146:2	246:6,12,18
66:8 67:21 69:19,20	188:11 194:8	total 136:3,24 233:1 245:1,9
70:1,19,23 71:19	tomorrow 117:21	totally 116:17 132:23
73:25 84:20 85:7	tool 214:13 215:4,12,18 216:1,18 217:9,11 220:15	traditional 170:14
91:2 92:16,19 94:23	top 39:13 56:11 64:3	trained 55:13 161:13,17 208:24
104:9 105:8,15,19	76:1 93:9,12 118:23	training 16:14,21 18:5
106:17,25 107:1	131:3 137:5 142:21,22 163:3 169:8	trains 16:15
108:21 109:18 110:2	195:21 209:8,17	transcript 15:14
114:23,24 115:19	228:3	19:11 56:7 136:18
118:7,8,11,14,19,22	topics 42:23 58:25	141:11 142:6 227:19
119:1 122:9,17,20,25	59:4,8,9 222:13	246:11
124:4 125:24 126:14	Torchiana 10:11,15,18	transformational
134:15 136:9,13	12:11,12 15:11,17	37:18
139:21,22 143:5	19:8,13 20:7,10,14,15 29:24 31:21	true 24:24 27:24 33:23 178:6
150:14 151:2,4	32:15,17 34:25 35:5,15 43:24 44:9 45:24	Trump 128:14
155:18 156:7 157:23	46:8,15 51:6,9,10	trust 82:22
158:25 162:19 163:14	56:3,12,18 57:10	truthful 13:17
165:17 174:21,22	58:4,8,11 60:8	Tuesday 9:9
179:3,7 182:4	63:21,23 67:9 72:18	Turkey 16:10
185:18,25 188:17	73:3,11 74:22 76:14	turn 15:2 19:5 20:16
189:21,25 203:12,15,18 211:18 214:3	78:6,19 79:10 80:21	33:3,17 53:10,11
222:6,10 226:20	83:9 84:8 91:20 92:5	55:15,17,22 63:19,24
231:14 233:13,19		
235:2,16,23 238:2,9		

Mark Brumby
December 15, 2020

31

73:7 75:22 78:14 93:9 112:3 127:18,24 129:3 130:21 133:10 136:20 141:6 142:17 156:22 161:23 176:3, 9 178:16,23,24 179:15 181:18 185:10 190:2,6 193:22 194:4,13 195:19 198:5 199:22,23 200:15 209:16 213:8 220:13 227:15 231:23 232:25 235:5 237:20 turned 13:7 141:25 turning 80:9 Tuskegee 15:22,23 Twenty-five 20:7 type 13:3 67:15 167:21 182:5 types 110:6 152:17 164:17 216:10 218:21 233:20 typing 147:22	214:9,11,24 216:17, 22,24 217:2,6,8 218:13 219:15 229:8, 17 234:17 235:10 238:24 understanding 25:20 26:18 51:16,18 71:5 74:25 91:25 92:9,17 96:3,5 100:1 121:4,8 123:2,10 157:19 167:9 179:25 180:18 186:20 understandings 35:25 understood 32:8 45:21 46:11 61:13,16 105:23 unique 21:18 163:23 unit 21:20 33:8,15,20 34:4 38:21,22 39:9 51:21 52:10 53:4 55:6,7 66:21 67:3,5, 16 68:14 71:13,20 80:18,23 81:6,12,20 85:12,17 86:2,5,6,7, 18 88:5 89:5,18 90:23 92:12 94:21 98:7 105:25 106:8,9, 14,23 107:2,3,8,23, 25 108:4,7,17,19 109:7,12,23 126:22 127:17 132:13 133:2 146:7 161:20 165:6,8 167:13 168:22 170:19 174:12 177:11 182:4 202:24 212:24 213:1, 5 223:24 224:8 unit's 81:8 83:5 United 15:25 16:2,9, 15 18:4 units 33:18 170:24 171:13 University 15:23 205:21 206:1,14,19 208:2 209:2,5 unrealistic 83:3 update 62:2 188:9,13, 14 updated 191:15 242:1 243:7 244:11 updates 68:15 83:11 104:8 232:11,14,15, 17,19 233:21 241:18	upgrade 47:25 89:13 245:8 upgraded 240:9 242:9 243:21 244:20 245:13 upgrades 240:16,18,24 241:8,15 242:15 244:23 245:2 upper 190:7 user-friendly 220:16 UTC 9:10 11:25 12:5 57:15,19 105:15,19 136:9,13 189:21,25 222:6,10 231:10,14 246:3,20 utilize 216:4 utilized 180:12 240:23
<hr/> U <hr/>		<hr/> V <hr/>
U.S. 9:14,19 Uh-huh 23:3 31:6 36:4 53:24 60:14 64:8 84:15 93:11 103:21 126:3 142:23 211:6 238:13 ultimate 173:12 ultimately 31:10 32:19 83:20 149:23 201:20 unable 96:9 98:20 unacceptable 195:16 unachievable 82:23 under- 135:1 145:21 underneath 33:14 understand 26:2 29:11,20 42:21 53:21 63:2 70:8 74:18 84:11 94:5,9 97:8 101:4,7,8 102:8,15 108:3 113:25 114:1 117:6 118:9 120:5,13 122:8,15 124:21 132:11 140:17 145:21 149:4 151:8 165:23 179:20,22 197:8		vague 29:23 45:23 83:7 122:5 124:13 138:23 145:19 197:6 208:5 valid 98:24 validate 226:17 validated 180:4 varies 23:9,11,15,18, 23 25:6,10,12 27:9, 12,14,21 42:21 212:16 variety 161:16 vary 232:20 verbal 44:5,16 107:5 111:7 verbally 50:8,9,11 111:10 version 57:25 177:21 versus 9:12 100:24 video 9:8,13 view 64:23 195:15 Virginia 16:20 virtual 61:1 228:5 virtually 228:9 virtue 25:24 32:4 212:2 visible 188:10 visit 90:11 visited 89:22

Page

1
2
3
4
5
6
7
8
9
10
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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>

January 12, 2021
(DATE)

Mark A. Brown
(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

Page 2

1
2
3 November 20, 2020
4 9:15 a.m. (EST)
5
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7
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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Page 4

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Page 3

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Page 5

1 A P P E A R A N C E S C O N T I N U E D
2
3 Also present:
4 Dan Macom, Video Technician
5 Asher Trangle
6 Matt Pachman
7 Victoria Roytenberg
8 Jed Brinton
9 Andrew Teoh
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Page 6

1	C O N T E N T S	
2	EXAMINATION OF DIANE AUER JONES:	PAGE:
3	By Ms. O'Grady	10
4		
5		
6		
7	E X H I B I T S	
8	(Attached to the Transcript)	
9	JONES DEPOSITION	PAGE:
10	Exhibit 1 Revised Notice Of Deposition	13
11	Exhibit 2 Declaration Of Diane Auer	18
12	Jones	
13	Exhibit 3 U.S. Department Of Education	48
14	Office Of Inspector General	
15	Report	
16	Exhibit 4 January 10, 2017 Email	52
17	Exhibit 5 October 24, 2016 Email	57
18	Exhibit 6 January 9, 2017 Email	60
19	Exhibit 7 James 4, 2017 Email	62
20	Exhibit 8 December 14, 2017 Memorandum	64
21	Exhibit 9 Borrower Defense Unit Claims	66
22	Review Protocol	
23	Exhibit 10 May 22, 2019 Hearing	111
24	Transcript	
25		

Page 8

1	E X H I B I T S C O N T I N U E D	
2	(Attached to the Transcript)	
3	JONES DEPOSITION	PAGE:
4	Exhibit 16 Wall Street Journal Titled	230
5	Trump Administration Hires	
6	McKinsey To Evaluate	
7	Student-Loan Portfolio	
8	Exhibit 17 Politico Article Titled DeVos	233
9	Orders Partial Loan Relief	
10	For Many Duped Student	
11	Borrowers	
12	Exhibit 18 October 27, 2020 Oversight	249
13	Committee Press Release	
14	Titled New Documents Show	
15	Department Of Education Froze	
16	Tool To Help Defrauded	
17	Student Borrowers	
18	Exhibit 19 Defendants' Response Regarding	263
19	The Court's Request At The	
20	October 1, 2020 Class Hearing	
21	Exhibit 20 Order Denying Class	289
22	Settlement, To Resume	
23	Discovery, And To Show Cause	
24		
25		

Page 7

1	E X H I B I T S C O N T I N U E D	
2	(Attached to the Transcript)	
3	JONES DEPOSITION	PAGE:
4	Exhibit 11 Document Titled 84 FR	185
5	49788-01, 2019 WL 4573049	
6	(F.R.) Rules And Regulations	
7	Department Of Education,	
8	34 CFR Parts 668, 682, And	
9	685, RIN 1840-AD26, [Docket	
10	ID ED-2018-OPE-0027] Student	
11	Assistance General	
12	Provisions, Federal Family	
13	Education Loan Program, And	
14	William D. Ford Federal	
15	Direct Loan Program, Monday,	
16	September 23, 2019	
17	Exhibit 12 April 21, 2019 PowerPoint	186
18	Titled Borrower Defense To	
19	Repayment	
20	Exhibit 13 Defendants' Response To	196
21	August 31, 2020 Order	
22	Exhibit 14 Affidavit Of Daniel Deegan	216
23	Exhibit 15 Declaration Of Eileen Connor	217
24		
25		

Page 9

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

Page 10

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>

<p style="text-align: right;">Page 50</p> <p>1 had in common. We also found that FSA maintained</p> <p>2 support for its borrower defense loan discharge</p> <p>3 decisions. FSA's business operations maintained</p> <p>4 borrower claim applications, attestations, and</p> <p>5 other supporting documentation, such as school</p> <p>6 transcripts.</p> <p>7 Q And then the next sentence, also, if</p> <p>8 you wouldn't mind?</p> <p>9 A BDU used this information to make</p> <p>10 borrower defense claim determinations and maintain</p> <p>11 documentation.</p> <p>12 Q Okay. And then if you see up under the</p> <p>13 headline of what we did on this very same page,</p> <p>14 the last sentence of that paragraph says, Our</p> <p>15 review covered FSA's borrower defense loan</p> <p>16 discharge process from the end of June 2016</p> <p>17 through July 31st, 2017.</p> <p>18 A I see that.</p> <p>19 Q So is that time period between</p> <p>20 June 2016 and July 2017 the same time period you</p> <p>21 were just saying there was no methodology?</p> <p>22 A I -- I don't remember -- I don't recall</p> <p>23 exactly when the department started adjudicating</p> <p>24 claims, so I -- I don't know whether June 2016 was</p> <p>25 the beginning date, but it is that general time</p>	<p style="text-align: right;">Page 52</p> <p>1 particular programs.</p> <p>2 Q And what about ITT?</p> <p>3 A I'm not aware of ITT claims having been</p> <p>4 adjudicated other than it is my understanding that</p> <p>5 there were some ITT campuses in California. I</p> <p>6 don't know when the adjudication began of those</p> <p>7 claims, but it is my understanding that there may</p> <p>8 have been -- in -- in the California campuses of</p> <p>9 ITT, there may have been some adjudications. I</p> <p>10 just don't know the time frame of when those took</p> <p>11 place.</p> <p>12 Q Okay. If we could look at the zip file</p> <p>13 within the zip file that's titled -- actually, it</p> <p>14 might not be a file; it might just be a regular</p> <p>15 folder -- ECF 66-2 Declaration and Exhibits.</p> <p>16 A I'm sorry. ECF?</p> <p>17 Q It's a folder, not a file. It's ECF</p> <p>18 66-2 Declaration and Exhibits.</p> <p>19 MR. MERRITT: It appears at the very</p> <p>20 top of the list, Diane.</p> <p>21 THE WITNESS: Okay.</p> <p>22 BY MS. O'GRADY:</p> <p>23 Q Okay. And if you could open the one</p> <p>24 that is Exhibit 6.</p> <p>25 MS. O'GRADY: So we'll mark this as</p>
<p style="text-align: right;">Page 51</p> <p>1 period that I was told that the department's</p> <p>2 limited work was based on a -- a certain number of</p> <p>3 programs at a certain number of campuses during a</p> <p>4 certain period of time.</p> <p>5 Q And in the paragraph -- the sentences</p> <p>6 that I had you read first in that third paragraph</p> <p>7 regarding the seven categories of claims, are you</p> <p>8 familiar with those seven categories of claims?</p> <p>9 MR. MERRITT: Objection to the scope</p> <p>10 and use of the IT report.</p> <p>11 BY MS. O'GRADY:</p> <p>12 Q Ms. Jones, you can answer.</p> <p>13 A I am aware that there were certain</p> <p>14 programs during a certain period of time for which</p> <p>15 the department was informed by the California AG</p> <p>16 that misrepresentations occurred.</p> <p>17 I don't remember the count, but I know,</p> <p>18 for example, that there were job placement rate</p> <p>19 claims at certain programs at certain campuses</p> <p>20 during certain time periods. I don't recall</p> <p>21 exactly which programs and which time period.</p> <p>22 Q And you're aware just of CCI claims</p> <p>23 being adjudicated?</p> <p>24 A During that time frame, yes, I am aware</p> <p>25 only of CCI claims being adjudicated in those</p>	<p style="text-align: right;">Page 53</p> <p>1 Exhibit 4 for this deposition.</p> <p>2 (Jones Deposition Exhibit 4 was marked</p> <p>3 for identification and attached to the</p> <p>4 transcript.)</p> <p>5 BY MS. O'GRADY:</p> <p>6 Q Have you ever seen this memorandum</p> <p>7 before?</p> <p>8 A Yeah. Let me scroll through first.</p> <p>9 (Witness reviews document.)</p> <p>10 I have seen this document.</p> <p>11 Q In what context have you seen this</p> <p>12 document?</p> <p>13 A I first saw this document when I was</p> <p>14 asked to sign -- and I might use the wrong</p> <p>15 terminology here. I'm not an attorney by</p> <p>16 training. I think it was a declaration that I had</p> <p>17 to sign regarding the recusal -- I don't mean</p> <p>18 recusals -- please help me find the right terms,</p> <p>19 but there were documents that our Office of</p> <p>20 General Counsel had to produce, and there's a</p> <p>21 process by which information is redacted -- maybe</p> <p>22 redaction is the right term -- and I was asked to</p> <p>23 review a series of documents to confirm that what</p> <p>24 was being redacted was deliberative information,</p> <p>25 and it was in that context that I first saw this</p>

<p style="text-align: right;">Page 54</p> <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 style="text-align: right;">Page 56</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>
<p style="text-align: right;">Page 55</p> <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 style="text-align: right;">Page 57</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.</p> <p>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>

Page 102 Page	Page 104 Page
<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>

Page 110 Page	Page 112 Page
<p>1 Q And why isn't it the case with step one</p> <p>2 that policy would be set on --</p> <p>3 A Policy was set in establishing the</p> <p>4 definition of misrepresentation.</p> <p>5 Q And that's the extent of your</p> <p>6 involvement with that?</p> <p>7 A That is the extent of my involvement is</p> <p>8 in defining misrepresentation in the 2019 regs.</p> <p>9 Granted, I was not involved in defining</p> <p>10 misrepresentation in the 2016 regs or the 1995</p> <p>11 regs, but I was involved in defining</p> <p>12 misrepresentation for the 2019 regs.</p> <p>13 MS. O'GRADY: Okay. If we can go to</p> <p>14 another exhibit. This will be -- if I could just</p> <p>15 ask the court reporter, Dana, did I actually mark</p> <p>16 Exhibit 10 or did I not? I'm hoping that I did</p> <p>17 not, but just let me know either way.</p> <p>18 THE COURT REPORTER: Can you hear me?</p> <p>19 MS. O'GRADY: Now I can.</p> <p>20 THE COURT REPORTER: Okay. Just give</p> <p>21 me just a second. I separated files, so I've got</p> <p>22 to go into the last file.</p> <p>23 MS. O'GRADY: By my count, I'm now up</p> <p>24 to Exhibit 10 because we didn't actually talk</p> <p>25 about the Nevin declaration. But if I'm wrong</p>	<p>1 Q No problem.</p> <p>2 A Yes, this looks like the transcript of</p> <p>3 my hearing before the House Oversight Committee.</p> <p>4 Q Okay. And who prepared you for this</p> <p>5 testimony?</p> <p>6 MR. MERRITT: Objection to the scope.</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q I believe you can still answer.</p> <p>9 MR. MERRITT: Okay. Go ahead for now.</p> <p>10 THE WITNESS: Largely I prepared myself</p> <p>11 for the hearing, but, you know, there were</p> <p>12 meetings with, you know, attorneys in the Office</p> <p>13 of General Counsel. And -- and certainly people</p> <p>14 on my team, you know, helped me pull documents to</p> <p>15 review.</p> <p>16 BY MS. O'GRADY:</p> <p>17 Q Okay. And what kind of documents did</p> <p>18 you review?</p> <p>19 MR. MERRITT: Objection as to calling</p> <p>20 for privileged information as well.</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q I certainly don't want any privileged</p> <p>23 information, but if there were members of your</p> <p>24 team who were not lawyers that you worked with or</p> <p>25 to the extent you prepared yourself by reviewing</p>
<p>Page 111 Page</p> <p>1 about that and it's Exhibit 11, that's fine. Just</p> <p>2 please let me know so I don't mess up the</p> <p>3 numbering.</p> <p>4 THE COURT REPORTER: I have 9 as the</p> <p>5 last one you marked.</p> <p>6 MS. O'GRADY: I can tell you which</p> <p>7 document we're going to open. It's a PDF in the</p> <p>8 main folder, Hearing Examining For-Profit College</p> <p>9 Oversight.</p> <p>10 THE COURT REPORTER: I'm sorry, Maggie.</p> <p>11 Nine is the last one you marked. Ten is next.</p> <p>12 Could you hear me then?</p> <p>13 MS. O'GRADY: No. If you could just</p> <p>14 tell me if the next exhibit is 10 or 11?</p> <p>15 I see it in the chat. Thank you.</p> <p>16 So this exhibit will be Exhibit 10 for</p> <p>17 this deposition.</p> <p>18 (Jones Deposition Exhibit 10 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 And, Ms. Jones, do you recognize this</p> <p>23 document?</p> <p>24 A Sorry. I had to get my cursor over to</p> <p>25 my microphone.</p>	<p>Page 113 Page</p> <p>1 previous memoranda, I'd like to know what those</p> <p>2 were.</p> <p>3 A Well, this is a totally different</p> <p>4 matter. This has nothing to do with borrower</p> <p>5 defense.</p> <p>6 Q Well, I believe -- I believe some does.</p> <p>7 We can go to that. But did -- I take from your</p> <p>8 answer you mean you did not review any documents</p> <p>9 about borrower defense in preparation for this</p> <p>10 testimony?</p> <p>11 MR. MERRITT: Again, objection. It's</p> <p>12 calling for privileged company.</p> <p>13 MS. O'GRADY: That's fine. I'll move</p> <p>14 on.</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q I want to talk about your exchange with</p> <p>17 Congresswoman Pressley, and this is about borrower</p> <p>18 defense. I think the easiest page numbering is</p> <p>19 from the top of the page, and it's 49.</p> <p>20 A Yes, I remember this part of the</p> <p>21 dialogue well.</p> <p>22 Q So at the bottom, Congresswoman</p> <p>23 Pressley asked, Ms. Jones, at this moment, do you</p> <p>24 know how many claims remain unprocessed?</p> <p>25 And here she is talking about borrower</p>

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>

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

Page 134 Page	Page 136 Page
<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>
Page 135 Page	Page 137 Page
<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>

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

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

Page 174 Page	<p>1 borrowers could be misinformed and believe that we</p> <p>2 would not be approving any claims, and there was a</p> <p>3 concern that that would have a chilling effect on</p> <p>4 borrowers.</p> <p>5 So a decision had been made in -- in --</p> <p>6 that we would not issue denials if we were not</p> <p>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</p> <p>10 that, but I don't -- I can't tell you who actually</p> <p>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</p> <p>14 where the final decision was made. That</p> <p>15 decision -- you know, I -- I think the original</p> <p>16 decision was made before I was in my role. I</p> <p>17 think it was revisited from time to time, but I</p> <p>18 don't believe I was involved in the -- in the</p> <p>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</p> <p>23 that you didn't want to have a chilling effect on</p> <p>24 borrowers. What do you mean by that?</p> <p>25 A I think the concern was that if the</p>	Page 176 Page	<p>1 to decide between no decisions or just denials?</p> <p>2 MR. MERRITT: Objection: calling for</p> <p>3 privileged information about the deliberations</p> <p>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</p> <p>7 answer that.</p> <p>8 Okay. Next bullet point is, No</p> <p>9 processing systems available from summer 2018 to</p> <p>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</p> <p>13 development of a system to replace Excel</p> <p>14 spreadsheets as the BD unit's mechanism for</p> <p>15 managing claims.</p> <p>16 Q So when the processing systems were</p> <p>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</p> <p>21 know.</p> <p>22 Q Okay. Then issuance of decide --</p> <p>23 denial note -- excuse me.</p> <p>24 Issuance of denial decision scheduled</p> <p>25 to resume by mid September. What is that</p>
Page 175 Page	<p>1 only decisions being issued were denials, that</p> <p>2 that could be misrepresented by the media to make</p> <p>3 borrowers believe that we were not going to</p> <p>4 approve valid claims and the chilling effect would</p> <p>5 be that, you know, if somebody has a valid claim,</p> <p>6 they could have been discouraged from filing them.</p> <p>7 We did not want -- I mean, you know, at</p> <p>8 no point in time did anybody want somebody with a</p> <p>9 valid claim to not submit it.</p> <p>10 Q And whether or not a claim is valid is</p> <p>11 a step-one determination after they apply;</p> <p>12 correct?</p> <p>13 A That's correct.</p> <p>14 Q So -- so it was determined as a matter</p> <p>15 of policy that it was better to issue no decisions</p> <p>16 rather than deny -- rather than send out denials</p> <p>17 of any claims?</p> <p>18 A I -- I believe that's the decision that</p> <p>19 was made in spring of 2018.</p> <p>20 Q Was there ever a discussion about</p> <p>21 sending out approvals so that -- I mean, it seems</p> <p>22 to me the choice was to either not issue denials,</p> <p>23 as it says here, until approvals could be issued.</p> <p>24 Was there a discussion about increasing</p> <p>25 the pacing of approvals so that you wouldn't have</p>	Page 177 Page	<p>1 referring to?</p> <p>2 A I didn't write this slide, and so I'm</p> <p>3 not quite sure what -- what this refers to.</p> <p>4 Q So at this point in your role, were you</p> <p>5 not keeping tabs on the pace of decisions being</p> <p>6 made?</p> <p>7 A In -- in the August time frame, we were</p> <p>8 still waiting for the California court to rule on</p> <p>9 the methodology, and so at this point in time, we</p> <p>10 were still hopeful that there would be a</p> <p>11 determination, at least for the Corinthian</p> <p>12 borrowers, about a methodology. So at -- at this</p> <p>13 point in time, we're still waiting for the court.</p> <p>14 Now, by August, we, the working group,</p> <p>15 had come up with some potential methods to use for</p> <p>16 adjudicating future claims, but it had not yet</p> <p>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</p> <p>21 sorry. This is the time period where we had</p> <p>22 developed some options. They weren't yet applied.</p> <p>23 And in the meantime, there was still the hope that</p> <p>24 the California court would rule at least for the</p> <p>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	1 more questions, yeah. 2 MR. MERRITT: Okay. 3 BY MS. O'GRADY: 4 Q So I just -- it sounds to me, and 5 correct me if I'm wrong -- I really want to 6 understand -- that your position, your 7 understanding of the state of things at this point 8 was that the injunction in Calvillo Manriquez 9 prevented FSA from issuing any borrower defense 10 decisions? 11 MR. MERRITT: Objection. It's a 12 mischaracterization of her testimony. 13 BY MS. O'GRADY: 14 Q Okay. Please -- please correct me if I 15 misstated that. 16 A You misstated that. 17 Q Okay. So what was your understanding 18 of how Calvillo Manriquez affected FSA's ability 19 to send out borrower defense decisions? 20 A What I -- what I'm trying to explain to 21 you is that because there was pending litigation, 22 whether a particular decision was related to that 23 litigation or not, because there's pending 24 litigation around borrower defense, I am not a 25 senior enough official to have decision-making	Page 184 Page	1 there's denials ready to go out, why couldn't they 2 have gone out? 3 MR. MERRITT: Objection: asked and 4 answered. 5 MS. O'GRADY: It has indeed been asked. 6 MR. MERRITT: And it's been answered. 7 BY MS. O'GRADY: 8 Q Okay. I'll ask again. So you said you 9 could not have reversed that decision because of 10 the litigation? 11 A That's not exactly what I said. 12 Q Okay. And I -- I apologize. I know 13 this is getting redundant and back and forth and I 14 really just want to make it clear. I don't mean 15 to -- to be -- to be so repetitive. 16 I really do want to understand is there 17 a person or a number of people, and can you 18 identify them, who could have decided to begin 19 issuing those denials rather than deciding not to 20 issue them until approvals could also be issued? 21 A It would be speculative, right. I 22 mean, there are any number of people, but because 23 I don't believe exactly who made each decision, it 24 would be speculative on my part. 25 Q So who made the decision not to issue
Page 183 Page	1 authority. 2 Q What was -- so who would have 3 decision-making authority to -- if not you? 4 A I think that's what I'm trying to tell 5 you is that I -- I -- I -- there's lots of people 6 who could have it. I don't know who made all the 7 decisions, but I do know it wasn't me. 8 Q The policy decision not to issue 9 denials until approvals could also be issued, is 10 it your understanding that began immediately with 11 the Calvillo injunction? 12 A I don't know the precise timing. 13 Q Okay. Because I -- so -- and I really 14 want to get to the bottom of this. I didn't think 15 they were related because I'm reading this bullet 16 point and you explained that it was about not 17 wanting to give borrowers the wrong idea. And 18 then we have the Calvillo Manriquez injunction 19 that prevents the application of a certain partial 20 methodology towards a number of CCI students. 21 So -- so the approvals have been paused 22 because the approvals demand -- you know, the 23 approvals need that step-two determination of the 24 partial relief that's been enjoined, but the 25 denials don't need to involve step two, and if	Page 185 Page	1 denials until approvals could also be issued? 2 A I do not know. 3 Q You were just told of that decision and 4 went along with it. Okay. 5 A I was told that was the decision. 6 MS. O'GRADY: Okay. I think we'll take 7 a break now. Thank you for those extra few 8 minutes. 9 THE WITNESS: Uh-huh. 10 MS. O'GRADY: How long do we want the 11 break to be? Charlie -- 12 THE VIDEOGRAPHER: Hold on one second. 13 The time is 19:24 UTC time. 14 (Recess -- 2:24 p.m.) 15 (After recess -- 2:43 p.m.) 16 THE VIDEOGRAPHER: Okay. We're now 17 back on the record. The time is 19:43 UTC time. 18 MS. O'GRADY: For the record, I'm just 19 going to state the designations on the last two 20 exhibits. So file name ECF NO 56-3, Exhibit 5, 21 2019 regulations which is a long PDF file is 22 Exhibit 11. 23 (Jones Deposition Exhibit 11 was marked 24 for identification and attached to the 25 transcript.)

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>

Page 190 Page	<p>1 a new letter has to be developed.</p> <p>2 So I can't say that this is the full</p> <p>3 and complete final census, but the attempt was to</p> <p>4 develop letters that -- that could be used to</p> <p>5 communicate regardless of the school the borrower</p> <p>6 attended.</p> <p>7 Q Okay. And then the next sentence is,</p> <p>8 This has taken longer than we hoped but the</p> <p>9 notices are finished and we are now working with</p> <p>10 our contracting officials and loan services to</p> <p>11 enter these notices into servicer systems.</p> <p>12 So this has taken longer than we hoped.</p> <p>13 How long did you hope it would take to develop</p> <p>14 these letters?</p> <p>15 A Our -- I can't remember what -- I can't</p> <p>16 remember what I hoped. I -- I just know that, you</p> <p>17 know, it -- it took what felt like a long time.</p> <p>18 Q And what are the factors that made it</p> <p>19 take what felt like a long time?</p> <p>20 A The complexity -- the complexity of the</p> <p>21 situation.</p> <p>22 Q And what do you mean by that?</p> <p>23 A For example, there are some borrowers</p> <p>24 who have loans that will be adjudicated under all</p> <p>25 three regulations. How do you -- you know, we</p>	Page 192 Page	<p>1 The complexity was do we try in one</p> <p>2 letter to explain well, these loans were</p> <p>3 adjudicated under California state law, blah,</p> <p>4 blah, blah, but these loans were adjudicated under</p> <p>5 a federal standard. And the question was is it</p> <p>6 better to try and do that all in one letter?</p> <p>7 Should we send two letters, one for each set of</p> <p>8 adjudications?</p> <p>9 So it becomes complicated in deciding</p> <p>10 what -- what content.</p> <p>11 In addition, because for Corinthian</p> <p>12 borrowers a decision had been made that all of</p> <p>13 those borrowers would get a minimum of 10 percent</p> <p>14 relief if they were part of the class, we had to</p> <p>15 have letters that explained the 10 percent to</p> <p>16 Corinthian borrowers, but that 10 percent had not</p> <p>17 been -- it was not part of a policy for other</p> <p>18 schools. It just hadn't -- hadn't, you know,</p> <p>19 gotten there yet.</p> <p>20 Q So the denial letters that identify or</p> <p>21 that are dealing with loans that you say are under</p> <p>22 different regulations, has that letter been</p> <p>23 developed?</p> <p>24 A I believe that the letter has been</p> <p>25 developed for under the state standard. And let</p>
Page 191 Page	<p>1 were trying to figure out what's the right way to</p> <p>2 manage. Do we send one letter for all three</p> <p>3 adjudications? Do we separate them into three</p> <p>4 separate adjudications?</p> <p>5 So it -- it gets complicated. There's</p> <p>6 a -- you know, when borrowers consolidate loans,</p> <p>7 they don't always understand that they've reset,</p> <p>8 you know, the clock, right. So there are -- is</p> <p>9 it -- the student loan program is a very</p> <p>10 complicated program, and there's just a lot of</p> <p>11 complexity around the potential combinations.</p> <p>12 Q Okay.</p> <p>13 A We have borrowers who, you know, left</p> <p>14 the program and came back or maybe, you know,</p> <p>15 completed one degree and now they're back for a</p> <p>16 second.</p> <p>17 So it's just a complicated --</p> <p>18 Q With respect to the letters that were</p> <p>19 being developed, how do the letters reflect those</p> <p>20 complications?</p> <p>21 A We had to decide, for example, whether</p> <p>22 the letter should have a fill in the blank. So</p> <p>23 let's say a borrower had loans adjudicated under</p> <p>24 the '95 regs and the 2016 regs, meaning under the</p> <p>25 state standard and under the federal standard.</p>	Page 193 Page	<p>1 me think about if it's been developed for</p> <p>2 the regs -- and -- under the federal standard.</p> <p>3 You know, the longer I recall seeing</p> <p>4 was to respond under the state standard, which is</p> <p>5 more complicated than the federal standard, I</p> <p>6 don't recall whether I've seen a federal standard</p> <p>7 letter yet.</p> <p>8 Q Okay. So and when you say a letter</p> <p>9 under the state standard, you're referring to a</p> <p>10 letter under the '95 regulations?</p> <p>11 A Correct.</p> <p>12 Q Okay. And that's -- okay.</p> <p>13 So besides -- and I think my question a</p> <p>14 couple of questions ago was, you know, what are</p> <p>15 some of the factors that made the process of</p> <p>16 developing this letter -- this denial template</p> <p>17 take longer than you had hoped, and you said one</p> <p>18 of them was having to do with a letter under the</p> <p>19 state standard and the federal standard.</p> <p>20 Is that right?</p> <p>21 A More than one. That was one example.</p> <p>22 Q Yeah. So my next question is what are</p> <p>23 some other factors besides that one?</p> <p>24 A Some other factors are -- and this gets</p> <p>25 very weedy, but the name of the school that the</p>

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>

Page 210 Page	<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>	Page 212 Page	<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>
Page 211 Page	<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>	Page 213 Page	<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	Page 224 Page
1 A No other schools had data available	1 that relies on earnings data, and the data tables
2 when we --	2 under which I -- I and the team developed the 2019
3 Q So if there were no other schools of	3 methodology, the data tables had been developed
4 data available, how was that methodology going to	4 only for Corinthian and ITT.
5 be used for schools other than Corinthian and ITT?	5 Q Okay. So if we can go back to your
6 A By methodology, what I mean is the	6 declaration, which is Exhibit 2?
7 methodology requires earnings tables to be	7 A Okay.
8 developed, and at the time that we were developing	8 Q And this is when you say that the
9 the methodologies, the FSA team had earnings	9 department has had to address a number of
10 tables only for Corinthian and ITT.	10 challenges in developing a new methodology
11 Q And why is that?	11 including identification of an accurate, reliable
12 A Because it takes time --	12 and accessible source of earnings data that would
13 MR. MERRITT: Objection to the scope of	13 not raise concerns about privacy.
14 the questioning.	14 A Yes.
15 BY MS. O'GRADY:	15 Q So were you able to identify that
16 Q Well, I -- I am going back a couple of	16 source of earnings data?
17 topics, but I do want to understand that the	17 A Ultimately, yes.
18 partial relief methodology that was -- that was --	18 Q And when did that identification
19 you've testified you were not able to use because	19 process begin?
20 of the Calvillo Manriquez injunction was for all	20 A I can't remember the exact timeline.
21 schools, not just CCI and Corinthian; correct?	21 The college developed the college scorecard, and
22 MR. MERRITT: Objection. It calls for	22 in that process was able to get earnings data from
23 speculation.	23 the IRS. And, so, once that had happened, we
24 Go ahead, Diane.	24 identified that as a potential data source because
25 THE WITNESS: You keep mixing the 2017	25 it was being published in the college scorecard.
Page 223 Page	Page 225 Page
1 and the 2019 methodology. I wasn't involved in	1 Q But you recused yourself from looking
2 the 2017 methodology, so I don't know what they	2 at the data for CEC schools?
3 looked at or -- I wasn't --	3 A There was no data for CEC schools.
4 BY MS. O'GRADY:	4 Q What do you mean there was no data for
5 Q But you were involved in the -- the not	5 CEC schools?
6 being able to apply it because it was enjoined. I	6 A If you're talking about the development
7 mean, that was -- that happened during your	7 of the methodology, there were no data tables on
8 tenure, the --	8 earnings for CEC schools.
9 A But it wasn't my decision.	9 Q Why?
10 Q Right. But you testified that that's	10 A Because they hadn't gotten to it yet.
11 why -- I mean, before Congress and in your	11 Q They just hadn't gotten to it yet?
12 declaration you explained. I'm asking you about	12 A They just hadn't gotten to it.
13 it because you said, you know, we were not going	13 Q Because it was delayed or they just --
14 to apply that methodology because it was enjoined	14 they had a list of schools they just hadn't gotten
15 by the Calvillo Manriquez court?	15 there?
16 A That was the decision that the	16 A I think you don't understand how
17 department had made. Yes, the methodology was	17 complicated it is to make these data tables.
18 enjoined and until the court issued a final	18 Q What was the order of schools to make
19 bulleting, yeah, it was enjoined.	19 the data tables for? Was there a priority of
20 Q Okay. It wasn't because you didn't	20 schools?
21 have data for other schools; it was because it was	21 A Yes, Corinthian and then --
22 enjoined?	22 Q Corinthian and then ITT?
23 A So on the 2017 methodology, yes. You	23 A Yes.
24 were asking me about the 2019 methodology that I	24 Q And then, was the order of schools
25 was developing, and what I'm telling you there is	25 based on how many borrower defense applications

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>

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

Page 258 Page	<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>	Page 260 Page	<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>
Page 259 Page	<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>	Page 261 Page	<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>

<p style="text-align: right;">Page 262 Page</p> <p>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?</p> <p>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.</p> <p>15 Q That's okay. I see where you're going 16 with that, and I think that does clarify something 17 for me.</p> <p>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?</p> <p>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.</p> <p style="text-align: right;">Page 263 Page</p> <p>1 Q Okay. And for -- okay. Is this tool 2 up and running right now to your knowledge?</p> <p>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.</p> <p>12 Q Okay. So --</p> <p>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.</p> <p>19 Q One second. Just bear with me.</p> <p>20 MS. O'GRADY: Okay. The next exhibit, 21 which will be Exhibit 19, is in the folder as ECF 22 number 145.</p> <p>23 (Jones Deposition Exhibit 19 was marked 24 for identification and attached to the 25 transcript.)</p>	<p style="text-align: right;">Page 264 Page</p> <p>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.</p> <p>7 Okay. What exhibit now?</p> <p>8 BY MS. O'GRADY: 9 Q ECF number 145, Defendants fraud list. 10 And that is Exhibit 19 for this deposition.</p> <p>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.</p> <p>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</p> <p style="text-align: right;">Page 265 Page</p> <p>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?</p> <p>10 A I have.</p> <p>11 Q Okay. Let's look at the first one.</p> <p>12 A The Excel spreadsheet -- I'm just 13 looking at a data table.</p> <p>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?</p> <p>17 A Yeah.</p> <p>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.</p> <p>24 I want to ask you -- you can finish 25 reading the column names -- if you're familiar</p>
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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>

Page 278 Page	<p>1 Q Okay. So at some point, you signed off</p> <p>2 on this text or something very similar to it?</p> <p>3 A Yeah. I can't remember if it listed</p> <p>4 those three points, but -- but, yeah, I mean,</p> <p>5 there was instructions for reconsideration.</p> <p>6 Q Okay. And when you were reviewing the</p> <p>7 form denial letters, did you think about or</p> <p>8 consider whether or not they would provide enough</p> <p>9 information for a borrower to seek</p> <p>10 reconsideration?</p> <p>11 MR. MERRITT: Objection: calling for</p> <p>12 privileged information.</p> <p>13 MS. O'GRADY: Do you mean deliberative</p> <p>14 process privilege?</p> <p>15 MR. MERRITT: I mean you're asking her</p> <p>16 what she thought, you know, about the review of</p> <p>17 the letters before they were final.</p> <p>18 BY MS. O'GRADY:</p> <p>19 Q On this final letter, do you believe</p> <p>20 there's enough information for a borrower to</p> <p>21 request reconsideration?</p> <p>22 A I believe that there is -- yeah, I</p> <p>23 believe there is enough information about a</p> <p>24 borrower that they can request and how they would</p> <p>25 go about it, like address it in an email or, you</p>	Page 280 Page	<p>1 Q I'm looking at this particular</p> <p>2 document. So what information in this document</p> <p>3 could a borrower point to to say, Ed, you got it</p> <p>4 wrong, because?</p> <p>5 A I mean, I think they would explain why</p> <p>6 they think we got it wrong.</p> <p>7 Q And what specifically -- how would that</p> <p>8 explanation be different than their initial</p> <p>9 application? You know, what -- what other --</p> <p>10 what -- why do you believe that Ed incorrectly</p> <p>11 decided your borrower defense to repayment</p> <p>12 application?</p> <p>13 A I mean, you know, again, I think a</p> <p>14 borrower would give an explanation, and the -- the</p> <p>15 one that I'm aware of is, you know, borrowers who</p> <p>16 wrote in and said, you know, you assigned relief</p> <p>17 because you said I was in this program but, you</p> <p>18 know, the college called it this other program,</p> <p>19 and -- and -- and that's different on the table.</p> <p>20 Q So the one example you can think of is</p> <p>21 a -- is, again, a problem with the -- again,</p> <p>22 properly identifying what program or what school</p> <p>23 somebody went to.</p> <p>24 If a borrower has included information</p> <p>25 about a number of allegations and then this denial</p>
Page 279 Page	<p>1 know --</p> <p>2 Q Yes. In terms of logistics, the email</p> <p>3 address is there and the fact of the</p> <p>4 reconsideration process has been described?</p> <p>5 A Yes.</p> <p>6 Q In terms of the substance in point two,</p> <p>7 Why you believe that Ed incorrectly decided your</p> <p>8 borrower defense to repayment application, what</p> <p>9 information in this denial letter could a borrower</p> <p>10 use to answer that question?</p> <p>11 A And that's the part of this that I -- I</p> <p>12 don't have the expertise. I -- you know, those</p> <p>13 particular questions were developed by the BD</p> <p>14 unit.</p> <p>15 Q Let me ask it a different way. So if</p> <p>16 you could put yourself in the shoes of the</p> <p>17 borrower because the borrower is -- I can tell you</p> <p>18 this borrower and probably most borrowers are not</p> <p>19 themselves lawyers either. How do they determine</p> <p>20 what information to include to answer the</p> <p>21 question, Why you believe that Ed incorrectly</p> <p>22 decided your borrower defense to repayment</p> <p>23 application?</p> <p>24 MR. MERRITT: Objection: speculative.</p> <p>25 BY MS. O'GRADY:</p>	Page 281 Page	<p>1 letter, for example, if we just scroll up to</p> <p>2 page 10 of the PDF, Allegation one, employment</p> <p>3 prospects: You allege that Keller Graduate School</p> <p>4 of Management engaged in misconduct related to</p> <p>5 employment prospects. This allegation fails for</p> <p>6 the following reasons: Insufficient evidence.</p> <p>7 Your claim for relief on this basis is</p> <p>8 therefore denied.</p> <p>9 What basis -- how would a borrower</p> <p>10 interpret that paragraph? I mean, I think you put</p> <p>11 yourself -- well, that's my question.</p> <p>12 How should a borrower interpret that</p> <p>13 paragraph?</p> <p>14 A Because I don't know what the borrower</p> <p>15 submitted originally, I -- I don't know. I don't</p> <p>16 know what was in the borrower's original</p> <p>17 application.</p> <p>18 Q When you signed off on the initial form</p> <p>19 denial letters, I think at one point you had said</p> <p>20 this is the spot, you know, for the following</p> <p>21 reasons, and that's where you had expected there</p> <p>22 to be information about the state law standard</p> <p>23 applied.</p> <p>24 That's right? You testified about that</p> <p>25 earlier today; correct?</p>

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>

Page 290 Page	<p>1 (Jones Deposition Exhibit 20 was marked</p> <p>2 for identification and attached to the</p> <p>3 transcript.)</p> <p>4 MS. O'GRADY: The file name is ECF</p> <p>5 number 146, Order denying settlement show cause.</p> <p>6 BY MS. O'GRADY:</p> <p>7 Q Do you have that open?</p> <p>8 A I do.</p> <p>9 Q Okay. And do you recognize this</p> <p>10 filing --</p> <p>11 A It doesn't look familiar --</p> <p>12 Q -- or court order?</p> <p>13 A -- to me.</p> <p>14 Q Okay. I'll let you know this is a</p> <p>15 court order in this case that is what ordered the</p> <p>16 discovery. It's the genesis of your being here</p> <p>17 today.</p> <p>18 So on page 16 of this PDF, if you could</p> <p>19 scroll there, I just want to use this to ask you</p> <p>20 some questions about other individuals and their</p> <p>21 roles if you wouldn't mind.</p> <p>22 So are you on page 16?</p> <p>23 A I am.</p> <p>24 Q Okay. So bullet point one here, these</p> <p>25 are the topics of discovery. The development and</p>	Page 292 Page	<p>1 A I -- I -- I have -- I have no idea -- I</p> <p>2 have no idea who else works -- I don't know the</p> <p>3 names of any of Colleen's staff except for one. I</p> <p>4 know one staff person by name. So I think you'd</p> <p>5 have to ask her.</p> <p>6 Q Okay. And that's true for the</p> <p>7 disposition of any request for reconsideration.</p> <p>8 Is there anyone else besides Ms. Nevin that would</p> <p>9 have knowledge of that topic?</p> <p>10 A I don't even know what the disposition</p> <p>11 of any request for reconsideration --</p> <p>12 Q Oh, reconsideration is what we were</p> <p>13 just talking about.</p> <p>14 A Right. But I honestly don't know what</p> <p>15 disposition of any request means.</p> <p>16 Q Okay. Let's look at topic two. The</p> <p>17 extent to which the difficulty of reviewing</p> <p>18 borrower defense applications actually caused or</p> <p>19 justified the Secretary's 18-month delay.</p> <p>20 Who would be the person closest to that</p> <p>21 question?</p> <p>22 MR. MERRITT: I object to this line of</p> <p>23 questioning. I mean, you have other --</p> <p>24 interrogatories and other lines of asking</p> <p>25 questions like this.</p>
Page 291 Page	<p>1 use of the form denial letters including the</p> <p>2 submission, timeline of review, and disposition of</p> <p>3 any request for reconsideration; and the form of</p> <p>4 denial issued before this suit and under the</p> <p>5 previous administration.</p> <p>6 Who is the -- which individuals would</p> <p>7 be the best people for us to ask about those</p> <p>8 issues?</p> <p>9 A Our Office of General Counsel is who</p> <p>10 you should ask. All of those requests are handled</p> <p>11 through our Office of General Counsel.</p> <p>12 Q And when you say "all of those</p> <p>13 requests," what do you mean?</p> <p>14 A I mean, you know, request for</p> <p>15 documents --</p> <p>16 Q No, I -- no, I know that. I just want</p> <p>17 to know the -- the topics. So who is closest to</p> <p>18 the topic of the use and form of the denial</p> <p>19 letters that we talked about? So those denial</p> <p>20 letter forms A through D. You reviewed them and</p> <p>21 signed off on them. Who else is the person</p> <p>22 closest to that issue?</p> <p>23 A I mean, Colleen Nevin is closest to</p> <p>24 that issue.</p> <p>25 Q Anyone else besides Colleen?</p>	Page 293 Page	<p>1 MS. O'GRADY: I want to get a -- I want</p> <p>2 to get a sense of Ms. Jones' understanding of what</p> <p>3 her colleagues work on and do especially since we</p> <p>4 talked a lot today about who has a policy-making</p> <p>5 role and who doesn't.</p> <p>6 MR. MERRITT: We've talked about that</p> <p>7 and, you know, provided a lot of information about</p> <p>8 that. So I think this particular request is</p> <p>9 getting beyond the scope. I mean, her specific</p> <p>10 knowledge of that as opposed to those topics in</p> <p>11 general, like, who else would be involved.</p> <p>12 MS. O'GRADY: I don't understand your</p> <p>13 objection. It's the witness' personal knowledge</p> <p>14 about exactly the scope of the discovery.</p> <p>15 MR. MERRITT: I mean, it's somewhat</p> <p>16 calling for a legal conclusion, I mean, to the</p> <p>17 extent you're saying who has information relevant</p> <p>18 to this.</p> <p>19 I mean, you know, Diane, you've talked</p> <p>20 about these topics. You can answer the question.</p> <p>21 THE WITNESS: I mean, for -- for number</p> <p>22 two, it would be our Office of General Counsel.</p> <p>23 The attorneys that were involved in the Manriquez</p> <p>24 case.</p> <p>25 BY MS. O'GRADY:</p>

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>

Page 298
Page

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

Page 299
Page

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

Page 300
Page

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

Page 301
Page

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

1

Exhibits		
EX 0001 Diane Auer Jones 112020 6:10 13:14, 15	EX 0016 Diane Auer Jones 112020 8:4 230:3,4	12:49 122:20
EX 0002 Diane Auer Jones 112020 6:11 18:5, 12 29:6 36:5,21 40:4 69:20 93:14 186:9 224:6 244:11 285:1,3	EX 0017 Diane Auer Jones 112020 8:8 233:15, 16	13 196:10,11 282:15
EX 0003 Diane Auer Jones 112020 6:13 48:7,8	EX 0018 Diane Auer Jones 112020 8:12 249:15,18	14 216:16 217:8 275:4
EX 0004 Diane Auer Jones 112020 6:16 53:1,2 57:5,6,9	EX 0019 Diane Auer Jones 112020 8:18 263:21,23 264:10	145 263:22 264:9
EX 0005 Diane Auer Jones 112020 6:17 57:10, 11 60:4 142:9,11 185:20	EX 0020 Diane Auer Jones 112020 8:21 73:19 74:15 289:25 290:1	145-2 265:14
EX 0006 Diane Auer Jones 112020 6:18 52:24 60:6,7		146 290:5
EX 0007 Diane Auer Jones 112020 6:19 62:10, 12,13 84:1	\$	14:15 9:12
EX 0008 Diane Auer Jones 112020 6:20 64:22, 24,25 68:24	\$300 149:16	15 40:4 69:21 71:1,4 76:6 77:5 93:18 94:25 95:21,25 217:7,9
EX 0009 Diane Auer Jones 112020 6:21 66:5, 8,9	0	158,000 114:15
EX 0010 Diane Auer Jones 112020 6:23 110:16,24 111:16,18	0 241:20 243:3,9,19 244:5	15:42 69:13
EX 0011 Diane Auer Jones 112020 7:4 111:1 185:22,23	1	15:56 69:17
EX 0012 Diane Auer Jones 112020 7:17 186:3, 4 243:13	1 13:14,15 90:11 91:5 151:6,10 164:25 245:7,9 265:15	16 230:3,4 290:18,22
EX 0013 Diane Auer Jones 112020 7:20 196:10,11 282:14,15	10 37:13 80:3 102:16 103:11 110:16,24 111:14,16,18 186:20 192:13,15,16 209:2 215:19 281:2 285:3	160,000 114:14,16 116:6,7 117:22 158:18,20
EX 0014 Diane Auer Jones 112020 7:22 216:16 217:8	100 26:24 61:11,25 62:3,6	17 93:20 233:15,16
EX 0015 Diane Auer Jones 112020 7:23 217:7, 9	103 153:20,21	17:14 122:17
	108-08 206:21 275:5	17:49 122:22
	10:42 69:14	18 96:3 249:15,17,18
	10:56 69:15	18-month 136:4 231:13 256:16,25 257:1 292:19 294:21
	11 111:1,14 185:22,23 188:7 275:8	18:08 136:11
	11,000 170:16	18:13 136:15
	116 196:2,7 282:16	19 263:21,23 264:10
	11:28 91:21	1994-1995 44:10
	11:30 12:16 91:23	1995 46:25 54:25 92:17 110:10 163:6 261:13
	12 186:3,4 243:13	1998 108:4
	129-1 216:14	1999 262:11
	12:15 122:4,19	19:24 185:13
		19:43 185:17
		1:08 136:12
		1:13 136:13
		1st 151:3 203:10 208:20 209:16 212:4 262:11
		2
		2 18:5,12 19:14 29:6 36:5,21 40:4 69:20 93:14 186:9 197:25 198:25 200:20 204:8 224:6 243:14 244:11 285:1,3

95 86:11 92:9,14,20 93:5,9,12 163:9 191:24 193:10 262:14	added 129:9,10,13 130:5 199:9	16,17,19,21 59:10,13 60:24 61:5,17 93:25 94:10 98:22 133:3 143:11 172:6,14 230:1 271:18,19 272:3,11,22 291:5
98 148:8,9,12	adding 253:12 254:4 255:18	administration's 61:21 271:25
9th 60:15 273:3	addition 160:24 192:11 199:3	administrative 103:17
A	additional 58:25 139:22 188:19 251:14,19 253:4,12 260:22 274:22	adopted 46:7
a.m. 69:14,15	address 209:15 224:9 278:25 279:3 289:16 299:8	Adult 20:13
A09 167:11 243:14	addressed 171:17 240:12	advance 74:22 142:13
A09-borrower 186:2	adequate 41:14,17 71:10	advice 33:24 34:18
ability 11:18 105:3 108:13 172:22 182:18	adjudicate 103:18 145:25 154:6 162:1 195:20 211:20 219:24 244:21 267:1 271:23	advise 271:8
absolutely 34:16 125:8 138:5 262:2	adjudicated 44:18 47:3 48:3 51:23,25 52:4 92:14 93:4 101:10 102:13 129:1 147:4,17 152:10 169:8,11 170:4,17 176:17 190:24 191:23 192:3,4 195:16 204:5 208:3 215:15 242:22 253:21 261:19	advised 42:4 80:24
abundance 267:15	adjudicating 46:5 50:23 71:8 106:24 114:21 139:24 140:4 177:16 245:8 248:1 262:6	advises 80:21 81:3
accepted 58:20,22	adjudication 52:6 62:1 101:16,18,20,23 102:3,7 106:9 129:1 145:9 152:15,20,22 153:2,3,16 162:6 169:14 204:15 211:4 241:24 271:11	advisor 28:4 31:25 32:2,10,23 39:16 40:8 239:12
accepting 59:14	adjudications 48:5 52:9 101:14 132:4 191:3,4 192:8 203:20	advisors 27:11
access 99:5 172:7,13 173:17 259:19 270:18,21,23 271:3	adjustment 194:15	advocacy 154:8
accessible 224:12	administered 10:5	AFF 206:22
accordance 75:23 103:23 104:16 244:18	administration 29:11 41:19,23 42:5,16 43:18 46:5 47:21 56:1,2,4,5 58:14,15,	affairs 33:14,16,19
account 233:10 259:6		affect 218:3,4 219:6, 13 220:23
accountable 108:5		affected 182:18
accreditor 252:11		affects 221:5 231:17 247:4
accurate 54:11,13 198:6 224:11 240:25 250:16		affidavit 207:7 216:24 217:8 275:5
accurately 165:12		affiliated 276:24
acknowledge 9:25 10:4 153:25 154:2		afforded 62:6 146:19 244:25
Act 20:15 94:1,12 117:11 132:25 133:4 137:24 138:25 140:18,24 180:13		AG 47:19,20 51:15
acting 26:21 31:20 32:4,7 65:10		agencies 143:13 149:12
action 9:18 63:9 144:9 203:15 212:6		agency 45:14 234:2 295:22
actions 47:8		agree 136:7 157:25 163:15,16 165:6 210:2 214:7 275:12
actors 148:22 149:15		agreeing 10:16,19
acts 148:23 203:13		agreement 9:6 10:10, 13 172:5,19 213:25
actual 21:25 63:23 134:22		agrees 157:14
Adair 28:7,8		ahead 34:6 46:22 87:1 112:9 133:25 163:24 214:21 217:3 222:24
add 36:10 130:23 221:14 251:15,25 255:17		aid 20:17,19 36:22 37:7 39:20 97:10 105:9 114:21 134:11

November 20, 2020

4

187:9 188:12 239:15 241:14 alerted 92:17 aligns 22:2 allegation 58:22 200:14 201:8 205:1, 8,24 209:3,6 268:4 274:24 281:2,5 287:18,21 allegations 148:24 200:7,10 209:1 250:14,20 275:19 280:25 allege 145:20 209:4 281:3 alleged 163:20 165:16 237:3 alleges 208:14 211:23 alleging 54:18 58:8 60:18 164:18 allowed 143:13 alphabetical 13:9 14:3 74:16 alphabetized 14:20 alternative 96:10,15, 19,24 97:25 98:11,19 172:25 ambiguous 95:13 amount 59:24 61:10 64:18 71:13 72:5,11, 23 76:3,7 77:6 96:10 99:8 131:4 246:22 252:6 analysis 230:10 233:1 analyzes 121:20 and/or 9:7 announced 23:23 announcement 38:6 annual 26:9 answering 166:14 answers 213:2 anticipates 247:25 anybody's 33:25 anymore 172:15 anyone's 27:16 133:14,16,18 135:15 Apollo 265:20 apologies 75:3 239:12 241:4 298:6 apologize 75:6 184:12 217:14	app 259:21 apparently 48:25 54:4 appealed 96:5 Appeals 161:25 appears 52:19 57:18, 20 60:14 144:23 168:9,16 207:11 214:3,4 Appel 97:8,18 238:5 appellate 96:7 applicable 75:24 103:23 104:16 118:15 199:7 203:8,15 208:18,21 212:7,8 213:11 244:18 applicant 141:20 256:1 application 55:24 75:18 77:23 78:2 81:13,15 84:23 91:14,18 92:18 96:2 103:7,9 105:13 106:6 115:18 118:4 125:3 145:5 146:16,23 147:1 149:18 151:17 155:18 183:19 207:20 209:13,18 211:16,22 214:17,19 215:20,23 217:16 233:5 241:19 245:14,22 253:25 262:22 263:14 268:14 274:20 275:22 277:25 279:8,23 280:9,12 281:17 applications 44:2 48:1 50:4 79:17,19 80:23 102:25 103:2 106:25 124:23 136:3 150:2,15 156:20 169:6 170:9,17,22 171:3,13 220:8 225:25 231:12,24 233:7 237:1 246:3 256:15 257:7 259:10 265:21 266:16 268:11,19 271:12 287:14 292:18 294:2, 13,14,17,20,22 295:19 applied 92:25 93:4,11 94:17 95:16 101:3 102:16 107:13 118:9 124:13 139:21 141:14	142:1 177:22 203:19 212:1,11,13 215:2 216:8 262:22 281:23 applies 79:25 109:18, 25 151:4 212:18,19 214:6,10 245:6 253:17 apply 42:11 79:19 120:22 123:5 128:15 133:1 141:22 151:7 156:25 172:22 175:11 208:8 212:9 215:8 223:6,14 263:16,18 applying 95:16 119:4 141:2 180:12 205:4 255:22,23 appoint 162:15 apprenticeship 33:6 approach 96:10,16,19 97:25 98:12 164:15 approval 23:22 65:13, 15 134:5 241:22 243:5,7 244:8 approvals 171:14 173:21,25 174:7 175:21,23,25 178:2, 16 183:9,21,22,23 184:20 185:1 approve 99:4 175:4 approved 96:12 101:3, 8 128:5,13 130:15 170:9,22 171:3 172:23 173:9 177:17 200:3 243:15,16,18, 25 267:6,10 268:1,6 approves 39:13 approving 174:2 approximate 88:14 approximately 16:11 32:14 April 98:4 133:10 area 287:1 areas 19:25 195:13 argue 256:22 argued 139:7 arguments 145:5 arises 189:25 arm's 11:24 arose 276:12 arrival 41:2
---	---	--

November 20, 2020

5

<p> arrows 148:14 art 102:7 article 230:1,8 233:13,20,21 234:13 235:18 236:19 239:10 240:7 241:17 250:25 articles 236:1 assert 148:18 198:2 199:2 asserted 43:19 assess 262:7 assessed 261:1 262:20 assessing 42:9 assessment 153:6 assigned 108:10 280:16 assist 18:21 assistant 20:7 26:21, 22,25 27:1 28:6,8 32:5,7 assistants 27:11 assume 77:2 295:24 assumed 296:1 assuming 14:11 114:15 117:3 attached 13:16 18:13 48:9 53:3 57:12 60:8 62:14 65:1 66:10 111:19 185:24 186:5 196:12 198:1 216:17 217:10 230:5 233:17 249:19 263:24 264:19 290:2 attachment 65:24 130:2 282:18 attachments 196:21 attempt 190:3 attempting 148:22 attend 116:7,21 attended 47:16 71:15 72:12 95:1 139:10 150:15 190:6 194:1 199:22 200:22 218:12 219:22 240:22 267:14 295:20 attestations 50:4 attorney 11:4 53:15 68:13 70:5 77:18 80:14,25 82:8 101:21 105:2,6 108:22 119:21 147:7 180:17 </p>	<p> 204:12,23 205:3 283:5 attorney-client 9:7 attorney-driven 106:9 attorneys 9:24 15:22 56:9,13,17 57:1 67:18 68:17 78:5 80:7,20 81:5 82:14, 15,22 85:15 112:12 129:2 162:5 181:5 216:4 242:6 269:21, 24 270:1 282:2 293:23 audio 121:22 Auer 10:23 13:11 239:11 300:19 August 172:1,16 173:3,4 177:7,14 authority 82:10 84:21 85:6,10,21 86:2 107:22,23 126:19 127:1,5,8,11,13,17, 20 183:1,3 authorize 23:25 authorized 25:12 66:2 167:7 171:7 231:21 232:5 257:3,24 automatically 14:20 avoid 163:21 165:17 awaiting 100:15 101:1 170:13,22 246:17 awarded 141:21 aware 9:3 26:7 51:13, 22,24 52:3 61:12 85:24 86:2 137:19,22 139:6,11 148:21 154:7 159:12 230:10 234:24 280:15 </p> <hr/> <p style="text-align: center;">B</p> <hr/> <p> back 16:20 35:24 36:4 44:25 47:11 59:11 60:2 68:23 69:16,23 73:15,23,25 74:2 75:7 84:1,15 93:9,14 98:4 107:14 114:11 116:12 118:3 122:21 133:11 134:1,3,15 136:14 141:22,23,25 147:24 162:7 163:8 184:13 185:17 186:8 </p>	<p> 191:14,15 194:7 205:14 209:12 214:25 220:11 222:16 224:5 228:22 229:3 233:8 244:10 263:8 274:12 285:1,2 286:11 289:16 297:24 298:7 background 273:14 backlog 134:21 135:1, 4 137:12,15,18,20 138:2,4,6,12,19 158:16,17,20 159:5 bad 148:23 149:14 Baltimore 36:13 219:16 bar 160:18 base 80:2 based 47:19,20 49:25 51:2 54:9 68:17 78:22 80:16 107:15 154:15 156:9,14 159:12 198:10 201:2 208:7 211:1,11,14 214:1 215:22 218:15 221:23 225:25 231:24 237:2 241:24 243:1 253:19,20 270:13 275:9 277:3 282:4 288:25 289:8 bases 65:12 basically 276:16 286:2 basis 56:3 79:11 126:7 150:17,18,21 154:19,24 155:6 157:5 189:15 215:6,7 220:25 269:21 272:25 281:7,9 BD 67:19 68:14,16 80:14 106:5 109:18, 24 151:8 159:11,16 171:12 176:14 216:4 238:19 242:6,11 260:9 268:16 269:21 270:1 271:21,22,25 279:13 294:25 BDU 50:9 bear 263:19 bearing 194:3 began 30:20 31:17 34:15 36:24 37:1 52:6 132:16 183:10 </p>
--	---	--

<p>246:10 257:19 begin 98:1 115:1 184:18 224:19 249:11 beginning 29:7 49:17 50:25 114:7 144:15 160:23 164:6 begins 49:21 148:12 186:21 188:7 209:14 217:4,14 behalf 9:16,21 10:16, 19 18:1 161:1 245:17 belief 154:24 156:15, 16 157:4 244:25 believed 165:2 251:13 284:13 believes 240:17 beneath 27:7 benefiting 149:23 BERMAN 13:21 14:14 181:13,18 Betsy 235:19 bill 147:25 bit 103:14 107:18 114:24 125:18 257:25 biweekly 129:21,22 bizarre 144:21 Black 27:5 28:11 blah 192:3,4 blank 191:22 286:2 blip 286:18 body 108:9 295:22 bonus 108:2 133:14,16 bonuses 107:24 borrower 23:2,5 29:12,20,24 32:1 33:21 34:11 37:3 40:1 41:15 42:6,10 45:13 47:25 50:2,4, 10,15 54:5,17,21 55:11,22,24 56:8,17, 24 58:1 60:16 63:9 65:13 66:16 67:2 71:8,11,14 72:12 75:18,20,21,22 76:1, 3 77:23 78:2,5 80:12 81:16 82:11 84:6,22 91:13 92:18 96:13 100:14,15 102:5,10, 24 103:2,22 104:15 105:11 106:22,25 107:10 109:14,25</p>	<p>113:4,9,17,25 114:22 115:9 117:15 118:15 124:13,14,23 125:3 127:14,19 134:14 135:13 136:2 137:5 138:21 141:16 142:2, 4,18 145:19,25 146:1,6,10,11,15,23, 25 147:10 148:5,19 149:17,18 150:1 151:5,16,24 152:8,9 155:19 156:19 159:23 162:5 163:16 164:17 165:7,10 167:11 169:6,21 170:5 180:4 182:9,19,24 187:7, 12,24 188:10,17 189:12 190:5 191:23 194:1,5,10,12,13 195:4,7,9,14,15,19, 22 198:9 203:11 206:4,5,8,11 207:18, 20 208:9 209:11,15 212:4,12,16 215:21 216:8 217:16 218:8 225:25 226:3 231:6, 12,16,17,24 232:12, 18,21 233:5,6 240:18,20 242:2 243:5,8 244:16 245:7,14,22 246:3,4 250:6 252:19 253:17, 20,24 255:22 256:15 259:10 260:17 261:18 263:16,17 265:1 266:17,19,20,23 267:13,24,25 268:7, 13 271:12 272:24 274:18 275:21,24 277:2 278:9,20,24 279:8,9,17,18,22 280:3,11,14,24 281:9,12,14 285:16, 20 292:18 294:2,12, 14,16,19 299:10,13, 22 borrower's 75:18 79:7 106:6 203:13 209:13 241:18 259:16 267:10,16 268:4,6 281:16 borrowers 40:22,25 41:4,9,25 42:2,10, 17,22 47:16 48:1</p>	<p>54:9,18 58:8 59:5,12 60:18 61:10 62:5 77:7,10,12 80:2,6,17 91:7 94:17,19,21,23 95:2,6 96:12 99:3 103:21 104:15 109:9 116:7 117:22 120:12, 21 125:15,20,22 129:11 139:22,25 141:5 142:2,3 144:16,24 145:3,11 149:13,15,21 150:1 151:15 152:11 161:2, 9 162:5 163:25 164:10 165:1 170:20, 24 173:15 174:1,4,24 175:3 177:12,25 178:20,24 179:18 183:17 186:16,25 189:14 190:23 191:6, 13 192:12,13,16 198:2,15 199:2,21 200:22 201:17 202:20,22 204:5 205:15,23 206:14,15 215:2,6,25 232:20 233:6 234:2 237:2 240:21 251:21 254:25 255:4 259:19 260:6 261:16,22 262:14,25 266:21,24 267:3 279:18 280:15 285:6 287:10 297:10 borrowing 85:22 bottom 49:15 75:9 93:18 113:22 144:8 148:11 160:13,14,22, 23 163:13 168:24 183:14 186:13,20 197:25 198:24 200:20 236:23 265:15 285:3 BP 35:11 bracketed 282:3,7 brackets 283:14 breach 81:21 82:4 107:3 253:9 254:21, 23 break 12:16,17 64:19 69:7 122:5 123:1 126:25 181:11 185:7, 11 228:19 267:12 274:5</p>
--	---	---

November 20, 2020

7

breaking 122:9	117:10 132:24 137:22	295:1,3,5,6,15
breaks 12:15,20	138:8,23 139:2,3	cases 17:19 21:17
Brickman 28:4,14,18 31:9 97:8 238:4	140:1 172:11 173:16	22:9,17,20 24:3
briefed 76:13,17	177:8,24 192:3	134:24
briefly 54:2	204:6,7 239:7 297:10	categories 49:24
brings 122:2	call 15:23 128:10	51:7,8 170:24 265:21
broad 9:17 34:2 56:7 219:2	147:20 199:1 250:17	267:4,5 268:11
broader 19:19 84:19 288:22	276:23 289:15	category 189:25
broadly 118:9	called 20:12 39:23	267:20 268:14
Brogan 32:6,13,15	74:5,6,14 78:18	caused 136:3 138:3
Brooks 217:22 219:4, 22	226:22 250:20 280:18	156:18 231:12 256:15
brought 30:25 31:11 81:24 97:16	calling 65:19 86:22	292:18
Brown 15:9 16:16	112:19 113:12 126:4, 6 138:14 146:22	CCI 47:16 51:22,25
27:13 98:13 104:10	149:15 176:2 229:22	116:11,14,21 117:23
127:24 128:3 129:14, 16 228:15 239:14	278:11 283:19 293:16	123:3,12,14 171:24
264:19 297:5,15	calls 222:22 273:11	172:9 183:20 198:10
298:2	Calvillo 94:4 116:18	222:21
Brown's 27:18 231:22	117:13 118:19 120:3	CEC 33:20 34:10,12, 15,18 35:6,10,13,23
bucketed 143:22	124:1,2,11,24 180:7, 11,21 182:8,18	218:21 219:9,13
budget 21:18 22:10	183:11,18 222:20	220:4,9,15 221:19,22
30:10 39:2,4,5,6,7, 8,9,10,12,13,16	223:15 295:10	225:2,3,5,8 227:9,25
143:8	campus 106:21	265:5
budgets 38:11	campuses 47:23 51:3, 19 52:5,8 61:4 90:8	CEHE 35:18
bulk 114:25	cancellation 231:23	census 190:3
bulky 216:22	capability 272:19	center 18:1 139:20
bullet 144:11,15,23	capacity 272:18	certified 63:4
169:7,11 170:8	Capitol 22:19	cetera 129:3 208:20
171:14,22 173:11	care 259:14,15 260:3, 5,15	212:5
176:8 183:15 290:24	career 20:12 30:6	chain 227:18
bulleting 223:19	33:10 36:19 143:5,22	challenge 194:22
burdensome 161:7,11	218:1 252:4 269:25	challenged 115:10
162:2 163:1	careful 239:4	challenges 49:6
business 50:3 143:11 187:10	carried 298:3	224:10
	carry 233:25 234:19	challenging 59:18,20, 21
	235:20 236:6 297:21	chance 247:16 266:6
	carrying 296:17,19 297:11	change 162:14 188:18
	carve-out 103:11	251:4 258:19
	case 13:8 17:3 20:18	changed 26:13
	24:1,19 79:21 84:23	changing 59:19
	85:19 90:18 110:1	channel 267:1
	125:14 127:24	characteristics 49:25
	139:12,14,20 141:20	characterization
	147:12 150:8 157:8, 10 180:8,18 194:25	84:25
	196:24 207:8 208:14	characterize 68:8
	210:25 245:25 289:3, 7 290:15 293:24	80:4 269:16
		charge 68:18 80:8,9, 14 149:17 157:13,19
		charging 149:21 150:1
C		
cafeteria 159:20		
calculating 71:9		
calendar 91:24		
California 47:19,20		
51:15 52:5,8 67:9		
72:9 90:19,20,24		
96:21 98:16 115:10		

November 20, 2020

8

<p>Charlie 10:15 15:23 46:21 69:1 121:8 185:11</p> <p>Charlie's 34:23</p> <p>chart 243:12,15</p> <p>chat 111:15</p> <p>cheated 234:3</p> <p>check 188:24 203:5 240:23</p> <p>chief 21:2 22:18 26:1 27:13,19 33:19 107:25</p> <p>chilling 174:3,23 175:4</p> <p>choice 175:22</p> <p>chose 271:25</p> <p>CIP 68:5 241:15 276:19,20,22,25</p> <p>Circuit 139:8</p> <p>circulated 137:4</p> <p>circulating 236:12</p> <p>circumstance 85:25 86:1,2 178:14</p> <p>circumstances 11:9 86:4 211:13</p> <p>claim 50:4,10 65:20 75:21 79:7,11 102:12 118:15 138:11 141:16 142:2,4 147:10,17 149:22 151:15 152:10 159:23 162:15 169:18,24 175:5,9,10 189:12 195:16,19,21 198:4 208:3 211:17 216:9 232:25 241:22 242:22,24 243:5,8 248:1 249:2 253:21 261:1 267:2,5,10,17 268:4,6 269:3 274:19,23,25 281:7</p> <p>claimants 71:15 72:12 77:10</p> <p>claiming 69:3,4</p> <p>claims 40:23 41:6,8, 16,21 42:6,8 44:18 46:6 48:3 49:3,24,25 50:24 51:7,8,19,22, 25 52:3,7 56:12 58:9,13 59:3 62:4,5 65:14 66:17 67:2 71:8,11 79:13 80:15 86:14 87:13,16 90:1</p>	<p>92:14 96:13 100:10, 14,15,19,20,25 101:5,9 103:18,25 113:24 114:1,3,22 115:7,14,17 116:5,15 117:15 125:19 128:23,24 129:1,2 132:2,8 134:14,20 137:15,20 138:4,6 140:4 148:19 149:14 150:4 151:4,8,10,19, 20 154:3,6,25 155:15 156:15 157:1,4,15 158:2,16,18,20,24 159:1,3,12,13,16,18, 21,25 160:1,4 161:1 162:2,12 169:17 171:15,24 172:9 173:12,18 174:2 175:4,17 176:15,17 177:16 186:16 187:1 198:3,9,16 199:3 201:17 211:20 215:22 231:7,8,16,17 232:21 239:3 244:21 245:1, 8,13 246:6 252:20 254:9,13,15,16,19 260:9 261:25 262:6 265:1,2 271:23 285:6 287:12</p> <p>clarification 70:1 130:23</p> <p>clarify 74:12 83:6 99:7 107:17 119:10 167:4 213:5 262:16</p> <p>clarifying 73:21 92:22 119:13</p> <p>clarity 46:16 98:15</p> <p>class 94:17,18 192:14</p> <p>classes 161:1 252:7</p> <p>classification 76:5 241:14 276:18</p> <p>clear 31:23 36:16 70:5,9 86:7 105:10 119:15 125:10,17 138:2,4,6,19 171:4 184:14 197:18 199:5 235:15 248:18 262:3 263:13 266:20</p> <p>clearance 30:12 143:12 271:2</p> <p>cleared 91:25</p>	<p>clearing 137:12,14,18</p> <p>climbing 49:1</p> <p>clock 191:8</p> <p>close 258:1 300:3,8</p> <p>closed 42:2,4 159:20 169:8 245:15</p> <p>closest 291:17,22,23 292:20 295:6</p> <p>closure 114:23</p> <p>code 241:15 276:19, 20,25</p> <p>codes 68:5 276:22</p> <p>colleagues 293:3</p> <p>collected 43:15 45:13</p> <p>collection 29:13</p> <p>collectively 143:15</p> <p>Colleen 15:10 16:17 56:24 78:6 80:13,19, 21 82:13 83:10 84:21 85:9,20 86:17 87:11 89:2 99:14,24 104:12 115:16 119:1,8 128:1 145:15 171:4,6 176:19 188:24 202:25 203:2 205:19 206:18 238:18 244:22 291:23,25 294:19 295:24 296:2</p> <p>Colleen's 85:20 119:18 121:25 206:6 292:3</p> <p>college 36:12 111:8 164:9,14,22,24 219:16 224:21,25 280:18</p> <p>college's 240:19</p> <p>colleges 27:6 28:12 40:25 43:15 71:16 118:6 219:19 234:4</p> <p>colleges' 237:3</p> <p>column 265:7,19,21, 23,25 266:1 268:10, 13,19</p> <p>combinations 191:11</p> <p>comment 24:22 143:13 155:6 264:4,6</p> <p>commenters 148:17 149:10</p> <p>commenters' 148:20</p> <p>comments 30:4,8 78:22 143:21 144:1 149:9</p>
---	---	---

Deane Jones
November 20, 2020

9

155:5,10	concerns 94:11 126:1 132:25 148:20 224:13	constitutes 109:22
commit 164:11	concluded 71:9	construct 165:12
committed 76:14	concludes 300:12	constructed 163:17 165:8,20,23,25 166:8,16,17,23
committee 112:3 249:10,12 250:4	conclusion 41:14 230:25 272:15,18 293:16	constructing 165:14
common 50:1 199:23 200:23 202:21,22,24 205:15,17,21 206:16 216:1 265:22 268:12, 20	conducted 40:14,17 47:20 71:6 95:22	consumer 90:1 164:8
communicate 11:19 190:5 194:11,13	conducts 119:19	contained 167:21
communicated 42:21 43:3 95:4 121:1,14 132:9 260:7	confidence 189:16	content 15:19 35:8 84:11 192:10 237:17
communication 12:13 47:18	confidential 27:11 28:6,8	context 53:11,25 63:12 64:3,8 128:17 149:4 160:3 161:17 168:17,21 242:15,17
communications 28:25 41:25	confirm 11:17 53:23	continue 90:24 92:3 115:11 297:13
Community 36:12 219:16	confirmed 27:1 32:8, 13,16	continued 44:11 103:18 116:24 117:3
company 33:12 106:20 113:12	confusing 173:3	continuing 98:22 99:12 115:16,23 116:3 125:9 188:6 239:3
comparator 241:10,11	confusingly 206:21	contract 81:22 82:5 107:3 187:10 188:11 251:1,4,5 253:9 254:21,23 258:18
complaints 159:22	Congress 108:3,8,9 124:11 223:11	contracting 107:23 190:10
complete 120:3,4 163:19 165:15 189:20 190:3 199:18 226:18	Congressional 158:18 160:7	contractor 187:17,22
completed 62:5 86:25 101:13 140:4 191:15 252:6	Congresswoman 113:17, 22	contractors 188:15
completing 37:3,7 38:23	connected 47:2	control 108:7
complexity 190:20 191:11 192:1 195:3, 13	connection 67:25 150:3,7,10 151:14 260:15	controls 121:21
complicated 38:3,4 44:8 135:8 172:4,18 191:5,10,17 192:9 193:5 225:17	Connor 216:15	convened 98:2
complications 191:20	consent 10:9	conversation 77:17, 20,22 78:16 79:15,23 81:12 83:8,14,17 87:21,23 88:8,12 97:17 100:1,3,7
comports 198:10,20	considerable 37:21	conversations 9:5,7 15:11,12,14,16,19 16:7 23:11 24:4 39:11 78:14 81:18, 21,23 82:3 83:8 97:14 99:23 132:20 229:14,19 284:13
computer 12:9 257:15, 19	consideration 75:17 233:9	converse 268:5
conceivable 166:16	considerations 155:10 295:16	convo 122:14
concern 98:17 125:22 138:12 174:3,25 231:7	considered 55:23,25 93:12 107:4 134:10 153:1 166:23 205:16 232:17 246:24 284:11	COO 107:25
concerned 98:14 126:14 164:18	consistent 103:20 165:3 259:2	coordinated 154:9
	consistently 70:12 79:9	copy 54:11,13
	consolidate 191:6	
	consolidated 44:14 151:6	
	consolidation 151:9	
	constitute 47:8 251:23 252:23,25 255:1	

<p>Corinthian 40:24,25 41:4,9 42:10 43:15 45:2 60:18 65:14 71:16 72:13,14 77:7, 12 79:21 90:18,19 95:2,5,24 96:11 102:16 103:11 118:6 139:9,10,15,19,25 140:4 141:3 173:15, 18 177:11,25 192:11, 16 198:2 199:2 204:4 221:24 222:5,10,21 224:4 225:21,22 226:3,25 245:13,15 246:1</p> <p>Corporation 33:10 36:19 218:1</p> <p>correct 32:20 36:2,3 40:3 61:19 81:10 85:2 91:19 99:9,10, 20 103:10 104:19 114:1 117:21 124:15 128:13 129:7 137:6,7 142:6,16 170:14 171:20 175:12,13 178:22 182:5,14 193:11 209:9 215:16 218:9 220:10 222:21 238:24 239:16 244:20 245:23,24 248:8 253:16 261:15 281:25 283:6 296:1 297:20 298:4,5</p> <p>correctly 167:5 230:16 239:13</p> <p>cost 161:16 230:19, 20,22 231:8</p> <p>Council 143:9</p> <p>counsel 10:9 11:1 14:11 18:25 21:15 22:9 31:9,13 41:12 53:20 65:10,11 86:18 97:13 112:13 143:7 146:3 237:12 238:10 240:9 249:14 271:5 291:9,11 293:22</p> <p>count 51:17 91:21 110:23 114:14</p> <p>country 90:9 240:22</p> <p>County 36:13 219:16</p> <p>couple 13:10 17:12 127:7 171:23 181:25 193:14 222:16 263:10</p>	<p>court 9:20,24 10:20 25:11 37:13 44:12 93:21 94:3,6,11 96:7,21 99:2 110:15, 18,20 111:4,10 136:16,18,22 141:7, 12 158:10 167:7 172:11 173:16 177:8, 13,24 180:19 197:23 198:25 216:24 221:2 223:15,18 231:21 239:7 257:3,23 290:12,15 294:7 297:10 300:4</p> <p>court's 96:6 121:5 156:6,9 247:8 294:10</p> <p>courts 115:11</p> <p>cover 189:23</p> <p>covered 50:15 165:1 253:5 255:2</p> <p>Covid 88:11,17 200:2</p> <p>COVID-19 199:6</p> <p>crafted 246:22</p> <p>create 38:10 163:18 188:17</p> <p>created 55:2 108:3 165:19</p> <p>creates 121:19 187:14</p> <p>creating 107:6 166:23</p> <p>credentials 252:14</p> <p>credit 58:9 65:16</p> <p>criteria 198:4</p> <p>cross 300:3,9</p> <p>crossing 105:20</p> <p>cumbersome 26:16</p> <p>current 25:19 38:15 56:5 99:3 124:5 151:4 260:12</p> <p>cursor 63:19 111:24</p> <p>cus- 251:11</p> <p>custom 251:7</p> <p>customer 251:7,8 259:14,15 260:3,4,15</p> <p>cut-off 253:25 254:2</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>damages 147:19</p> <p>damaging 154:5 158:4</p> <p>Dan 9:15</p>	<p>Dana 9:21 110:15</p> <p>Daniel 206:22 207:18 217:7 275:5</p> <p>darker 264:12</p> <p>data 94:9,12 98:24 99:2,6 121:19,20,22, 24 122:2 130:4,6,7 133:4 164:9,25 165:3 172:7,14 173:18 215:23,24 221:21,23 222:1,4 223:21 224:1,3,12,16,22,24 225:2,3,4,7,17,19 226:11,17,19 227:3, 13,19,24 228:5,11 239:3 258:24,25 265:13,14 270:18,19, 21 271:3</p> <p>date 16:21 35:22 50:25 57:23,25 87:17 130:10 253:25 254:2 255:6,9 262:8 284:11</p> <p>dated 207:19</p> <p>dates 43:24 262:13 273:2</p> <p>David 15:25</p> <p>day 140:3 218:21</p> <p>day-to-day 28:18 30:1 108:20</p> <p>days 263:10</p> <p>de 201:4</p> <p>deal 33:21,22</p> <p>dealing 79:17 192:21</p> <p>debt 231:23 237:2</p> <p>deceased 97:9</p> <p>December 23:24 24:10 120:9 130:11 131:23 134:4 137:6 138:11, 20 221:19 233:20 234:8,17,20 236:11, 14</p> <p>decide 77:22 170:1 176:1,22 191:21 269:21</p> <p>decided 43:3 58:15 90:18 123:4 184:18 195:8 275:20,21 279:7,22 280:11</p> <p>decides 172:12</p> <p>deciding 55:24 81:12, 14 184:19 192:9</p>
--	---	---

November 20, 2020

11

<p>decision 22:16,21 23:20,21 24:4,5,8,24 25:1 43:16 55:18,21 56:3 59:17 61:15,16, 21 63:24 64:1,2,4,9, 14 68:21 85:9,12,14 89:2 96:6,7 101:19 102:7,16 105:13 107:11 121:16 123:17,19,21,23 124:5,7 125:8 126:10 131:1 132:23 134:9 139:4,5 140:8 147:18 150:3 151:24 153:15 155:7 173:16,20,23 174:5,8,11,14,15,16, 19 175:18 176:4,24 178:1,4,15,19,25 179:1,17 181:2 182:22 183:8 184:9, 23,25 185:3,5 187:7 189:11,15 192:12 195:10,11,17 211:11, 14 215:7,10 219:8 221:5,6,8 223:9,16 226:2 231:17 239:6 248:2,21 269:6,7,8, 10,17,23 270:3 272:7,9,10 275:13 277:24 284:23 294:24 295:2,13,16,17 296:15,17,20,21,24 297:1,3,7,8,11 299:15</p> <p>decision-making 25:2 80:15 182:25 183:3</p> <p>decision/reason 204:13</p> <p>decisions 23:12,13 37:14 50:3 56:18,21 86:9,11 105:12 106:5 107:5 108:20 124:14, 18,22 125:1,5,7,9, 11,14,16,21,23 126:14,19,20,24 127:3,9,14,15,19 131:9 132:9,21 135:13 137:5 138:11 150:18,21,24 175:1, 15 176:1 177:5 180:22,25 182:10,19 183:7 219:24,25 221:7 231:9 236:25 237:5,18 238:15,23</p>	<p>246:18 268:16 270:14 272:24 297:10,12,14 299:9,13,17,23</p> <p>declaration 15:2,4,8 16:8,15,16 17:1 18:5,8,10,11 19:10 29:6 36:6,21 40:13 52:15,18 53:16 69:20 70:22 73:16,18 74:11,22 75:7 93:15 110:25 123:11 124:10 142:12 186:9 198:14 199:17 201:15 215:4 216:15 223:12 224:6 242:23 244:11 264:19 266:6 284:25 285:1,2</p> <p>declarations 16:25 103:16</p> <p>declare 10:7</p> <p>Deegan 206:22 207:18 214:1 217:7 275:5,8</p> <p>Deegan's 215:18 217:14</p> <p>deemed 80:7 133:2</p> <p>deep 35:2</p> <p>default 232:17,22,24 233:1,7</p> <p>defendants 10:16 196:3,23 264:9,25 282:16</p> <p>defense 16:22 23:2,6 29:20,25 32:1 33:21 34:11 37:4 40:1 41:16 42:6 48:1 50:2,10,15 54:5,17, 21 55:11,24 56:8,17, 25 58:1 60:16 63:9 65:13 66:16 67:2 71:8,11,14 72:12 75:18,21 77:23 78:2, 5 80:12 82:11 84:6 90:1 92:18 96:13 100:14,15 102:24 103:2,22 104:15 105:11 106:25 113:5, 9,18 114:1,22 117:15 118:15 124:14,23 125:3 127:14,19 134:14 135:13 136:2 137:5 138:22 141:16 142:2,4,18 145:5 146:15,23,25 148:19 149:17 150:1 151:16,</p>	<p>25 155:19 156:19 159:23 160:25 162:5 163:16 164:17 165:7, 10 167:11 169:6,21 180:4 182:9,19,24 186:2 198:9 207:20 209:15 215:22 217:16 218:8 225:25 226:4 231:7,12,16,17,24 232:13,18,21 233:5,7 242:2 243:5 245:8, 14,22 246:3,5 250:6 252:20 256:15 259:10 260:18 265:2 271:12 272:24 275:21 279:8, 22 280:11 292:18 294:2,13,14,16,19 299:10,13,22</p> <p>defenses 29:13</p> <p>defensible 237:23</p> <p>defer 284:20</p> <p>define 33:22 109:17, 24</p> <p>defined 47:6,7 109:16 242:3</p> <p>defines 109:4,7</p> <p>defining 107:5 110:8, 9,11 209:19</p> <p>definition 107:7,12 109:19,22 110:4 205:25 213:12 252:23 253:1 254:20,22 269:3</p> <p>definitions 206:7</p> <p>defrauded 240:18</p> <p>degree 191:15</p> <p>delay 121:7 132:16,18 135:24 136:4 156:9, 18 157:8,12 231:13 247:6 256:10,16,25 257:1,4,13 292:19 294:21 295:3,11 296:11</p> <p>delayed 225:13</p> <p>delaying 231:9</p> <p>delays 161:9</p> <p>delegate 85:13</p> <p>delegated 19:23 85:16 171:5</p> <p>delegates 82:14 85:10</p> <p>deliberation 284:16</p>
--	--	---

November 20, 2020

12

<p>deliberations 176:3</p> <p>deliberative 53:24 63:5 126:13 138:14 153:10 278:13 283:20 284:3</p> <p>delineate 220:4</p> <p>demand 183:22 248:3, 23</p> <p>denial 82:11 99:12 176:23,24 180:22 188:3,20 189:19,22 192:20 193:16 196:25 197:15,25 198:5,7 199:1,13 201:14 207:10,23 209:19,25 210:2,14,19,25 211:1 212:16 213:25 214:9 215:18 216:10 217:2 218:8 219:4 241:22 244:8 256:21 257:5 275:8 277:13,15 278:7 279:9 280:25 281:19 283:1 285:15 291:1,4,18,19 298:8, 9</p> <p>denials 42:14,20 150:13 170:19 173:19,21,24 174:6 175:1,16,22 176:1,4 178:2,16 179:7,13 180:3,14 183:9,25 184:1,19 185:1 221:9 239:7 295:23</p> <p>denied 80:10 84:22 102:13 103:8 150:15 170:17 179:14,16,19 186:17 187:1 189:13 195:19 198:16 201:18 233:8 243:20 244:2 249:3 257:7 265:2 281:8 285:7 295:19</p> <p>deny 175:16</p> <p>denying 290:5 299:22</p> <p>department 15:24 16:22 19:1,13,24 20:20 29:10,21,23 32:14,24 34:13 37:4, 17,21 38:14,17,18 39:16 40:14,19,20,21 41:19 43:13 44:9,17 45:1,6,18 47:18 49:1,4 50:23 51:15 58:14 59:7 64:7</p>	<p>65:20 66:1,21 71:6, 12,23 72:4 75:23 80:22 93:22 94:4,7, 22 95:22 96:5,8 103:18 108:2,10 117:4 126:10 139:7 140:19 143:10 145:8, 24 147:13,16,18,23 148:16 149:11 154:6 156:3,17 157:3 161:8,22 162:1 173:24 178:23 186:14,24 188:8 189:21,22 199:22 200:23 203:4 205:22 206:3,13,16 218:14, 22 223:17 224:9 229:6 232:11 233:25 234:19 236:6,24 237:5 238:15 239:6 240:17 244:17 247:5 248:1,5,21,22,23 255:3 265:3 266:18, 22,25 267:16,24 268:21 269:13,14,25 270:4,8 276:21 285:4,13 288:9 299:11</p> <p>department's 29:12 36:22 51:1 75:17 239:14</p> <p>departmental 202:7</p> <p>departments 189:18</p> <p>depend 23:4</p> <p>dependent 204:20</p> <p>depending 22:16 195:8 268:3</p> <p>depends 22:24 44:22 45:25 93:1 106:1,2 147:3</p> <p>deposed 17:15,21,23</p> <p>deposition 9:11,25 10:1,2 11:21 12:8 13:7,12,15 14:9,10, 23,25 15:1,17,21 16:7 18:7,12 35:17, 21 48:8 53:1,2 57:10,11 60:5,7 62:12,13 64:23,25 66:8,9 74:6,23 84:1 111:17,18 142:13 185:23 186:4 196:11 216:16 217:9 230:4</p>	<p>233:15,16 243:14 249:18 263:23 264:10 275:4 282:15 288:22 289:10,25 290:1 298:23 299:4 300:19</p> <p>deputy 19:23 22:19 26:20,22 27:3</p> <p>derivative 201:4</p> <p>describe 94:25 163:3 201:15</p> <p>describes 165:5</p> <p>description 266:5</p> <p>deserves 152:9</p> <p>designations 185:19</p> <p>designee 171:6</p> <p>desk 11:20</p> <p>detailed 93:7</p> <p>details 179:23</p> <p>determination 45:7 47:22 59:2,14,19,22, 23 61:1,13 75:20 76:2 77:9 78:7 79:3, 7 80:18 81:2 82:16, 18,22,25 84:8 91:13 92:15 99:9 100:16,25 101:1,11 102:4,21 103:4,6 109:2,13 129:3 133:15 141:15 142:5 152:15 169:23 170:13,23 175:11 177:11 183:23 206:18 213:20 215:12,13 230:15 241:18 242:24 243:18 269:1,2 270:16 271:22 272:20 273:18</p> <p>determinations 42:15 50:10 57:2 61:7 73:1 78:10 79:2 83:19 85:7 95:17 99:12,17, 25 103:21 104:1,14, 18 106:8 108:14 116:20 117:15,19,25 118:17,21,24 120:23 124:1,25 129:5 208:6 213:18 218:6 226:10, 25</p> <p>determine 43:12 45:19 56:14 78:1 79:10 80:17 91:4,6 96:22 99:3 101:21 105:23 115:8 133:13,18</p>
---	--	---

140:23 226:4 230:22 240:17 241:24 242:9 248:5 279:19 determined 24:16 44:12 56:2 59:8 60:25 61:5 72:11 87:25 88:18 89:12 117:10 138:23 141:5 170:11 175:14 215:20 254:19 262:19 265:21 268:11 270:7,9 271:11 determines 108:13 234:3 determining 41:22 59:21 67:6 70:7 71:13 72:5 76:7 81:25 86:19 96:10 107:9 109:8 121:2 137:23 151:14 232:12 develop 33:25 37:17 39:10 79:8 86:18,21 89:19 90:14 96:9,15 97:25 98:11 120:20 131:17 186:15,24 189:11,18 190:4,13 194:23 257:14 285:5, 9 developed 41:2 42:7,8 43:10,25 67:10,12,19 71:12 72:4 95:5,6,23 118:9 121:13 123:3, 11 133:6 139:18 141:1 171:15 173:1, 12 177:22 188:8 189:22 190:1 191:19 192:23,25 193:1 198:12 222:8 224:2, 3,21 256:4 259:9 260:17 279:13 developing 37:24 38:22 77:14 82:1 97:2 119:11 123:7 133:7 143:19 146:21 154:20 173:8,10 193:16 198:14 199:18 201:16 215:5 221:16, 17 222:8 223:25 224:10 285:13 development 21:9,10, 12,16 23:22 29:23 31:14 38:5 39:1,3 67:5 76:12 78:11	96:2 97:3 99:22 100:5 104:2 118:13 119:12 121:24 150:11,13 153:10 176:10,13 194:18 225:6 250:19,20 251:12 257:4,18,23 259:12,14,25 285:11 290:25 298:7,12 299:19 developments 256:24 develops 39:6 device 11:24 12:7 Devos 9:14 233:13,24 234:18 235:3,13,19 236:5 dialogue 113:21 Diane 9:11 10:23 13:11 14:3 46:22 52:20 74:12 87:1 156:22 222:24 239:11 240:6 243:22 262:9 293:19 300:13,19 died 238:5,7 difference 108:23,25 169:14 247:13 258:12 266:1 differentiation 206:2 differently 240:11 difficult 294:15 difficulty 136:2 156:19 231:11 256:14 292:17 294:1,12 digital 259:14,15 260:2,4,15 direct 20:6 26:23 27:9,25 28:1,23 31:19 115:24 116:4, 25 125:13 144:10 188:13 203:9,12 208:19 212:3 213:13 directed 42:5 233:25 234:19 236:5 direction 78:6 297:22,25 298:1,3 directive 146:4,6 297:13 directly 24:20 25:23, 25 41:24 56:20,23 99:14 166:22 director 28:10	directors 28:24 disagree 25:13 135:18 257:22 277:22,24 disagreement 247:10 disallow 150:4 disbursed 203:10 208:19 212:3 disbursement 255:6 discharge 42:2,4 49:25 50:2,16 55:1 65:13 75:19 161:3,7, 10,12,19 162:25 163:7 203:11 212:5 disclosure 66:3 discouraged 175:6 discovery 25:12 121:5 150:7,10 167:8 231:21 247:8 257:3, 24 258:3 290:16,25 293:14 discretion 269:9 discuss 34:11 37:13 95:21 127:22 128:2 256:19 284:6,7 discussed 48:23,25 72:25 122:25 127:24, 25 128:19 234:17 244:24 245:19 257:6 261:8 283:9 discusses 19:15 40:6 discussing 22:17 71:5 73:3 76:6 201:24 234:8 235:19 236:13 244:24 250:11 298:10 discussion 98:3 135:19 148:12,16 149:9 175:20,24 230:13 265:5 discussions 97:11 98:8 118:11 229:7,12 231:4 disposition 291:2 292:7,10,15 disseminated 89:16 distinguish 203:3 distortion 121:22 district 67:9 72:9 96:5,21 98:16 117:9 132:24 138:8,23 139:2,3,25 141:7
---	--	---

divide 121:22	Domestic 143:9	EDGAR 39:23,24
divided 20:25	draft 187:13	editing 202:15,16
divides 121:25	drafted 168:14	editorial 201:21
division 20:5 102:12 105:10	drafting 202:14 246:24	EDMC 226:22 227:1,12, 19
divisions 20:22	drafts 168:15 284:16	education 15:24 18:2 19:13 20:3,13 21:13 25:20 30:2 31:4,7 33:10 36:17,19 41:20 45:6,18 59:7 80:22 94:5,7 139:7 163:20, 21 165:16,18 218:1 233:25 234:19 236:6 239:12 265:3
divorce 17:24	drink 12:18	effect 55:3 58:12 67:3 93:11 117:23 131:24 132:15 138:10,20 174:3,23 175:4 221:18 234:7, 16 236:14 269:16,18 296:21
document 13:20 14:6 17:9 18:19 30:9 53:9,10,12,13 54:1, 3,4,12,14,15 55:5 57:16,17,19,21 58:4 60:12,14 62:18,21 63:11 65:5,7,8,20,23 66:7,13,14,15,20 67:20 69:2,3,5,24 70:17 74:7,21,24 75:4 76:23,24 77:1 84:17 111:7,23 114:6 120:5 142:23 143:4, 23 144:4 149:7 160:20 163:4 168:1, 16 169:2 187:4 188:2 196:17,19,23 197:21 198:17 199:5,11 200:4 201:1,11,24 202:8,12,17 204:3 206:25 208:1,4,5 216:23 217:4,18 229:23,25 230:1 233:13 239:22,24 243:23 249:9,23 250:8 266:5,9 273:6 275:16 280:2 282:22 288:23 298:25	due 146:5,8,9,19,22 176:10 244:25 299:2	effective 37:15
documentation 50:5,11 218:23	duly 10:24	efficiency 153:1
documents 15:7 16:18 17:3 43:14 45:2,10, 11,12,13,16,18 53:19,23 57:20 62:25 63:4 64:17 82:24 87:19 88:5 112:14,17 113:8 145:22 168:15 186:15,24 187:2 188:8 189:19 201:16 207:3 215:5 248:4 285:5,9,13 289:3,6, 9,11,16 291:15 298:24 299:3	duped 151:16 234:3	efficient 197:22
DOJ 15:22 16:1	duties 19:23	effort 24:10,23 29:20 37:22 97:3,24 123:24 195:17 260:5 285:9
domain 21:1,3 88:25	<hr/> E <hr/>	efforts 96:9,15 98:11 154:9 201:15
	earlier 15:5 77:1 86:4 91:6 106:15 115:19 130:13 158:19 168:6 169:13 238:3 239:25 242:15 258:10 266:16 276:17 281:25 298:13	eighth 18:9
	early 26:19 32:16 64:7 100:17,22	elected 272:3
	earnings 94:9 98:24 222:7,9 224:1,12,16, 22 225:8 226:11,17, 19 240:20 241:8	electronic 38:6
	easier 49:14 229:24	element 48:24 76:12 164:3 259:7 264:2,4
	easiest 113:18 144:5	elements 258:24,25
	easily 259:23	eligibility 198:3
	easy 91:5	eligible 80:7,17,18 81:16 203:11 212:5 243:7
	ECC 218:12	eliminate 135:4
	ECF 18:8 52:15,16,17 57:6 73:16,24 74:8, 14 142:8 185:20 196:2,5,7 206:20,21 216:14 263:21 264:9 275:4,5 282:15 290:4	eliminating 134:20
	ed 19:1,24 20:6,9 21:4 30:7 31:10,13 32:3 37:5 38:25 121:15 123:13 143:6 156:4 215:21 216:2 218:15 229:6 232:11 275:19,20 277:25 279:7,21 280:3,10 299:11	Elizabeth 9:14
	Ed's 39:2 117:13 139:14	else's 202:17
		email 87:22,24 130:1, 3 168:19 207:18 209:14 220:11 278:25 279:2 288:14,18
		emailed 168:20 287:19
		eminent 88:25
		employ 79:9

employed 35:23 94:22	establishes 105:8	224:20 252:10
employee 33:9 108:1	establishing 110:3	EXAMINATION 11:1
employees 35:13 270:19	estimate 38:9	Examining 111:8
employer 259:24	ethics 218:25 219:1	examples 23:16 159:11 211:19,21 251:14,19, 22,24 252:17,18 254:4,5,25 255:4,18, 21 260:23
employment 36:17 54:9,19 60:19 61:6 209:3,5 281:2,5	evaluate 78:6 86:14 89:5 105:4 115:17 131:5 213:24 230:2	Excel 49:4,7 176:13 265:9,12
enabled 160:25	evaluated 91:9 152:8 232:22	Excellence 18:2
end 50:16 140:3 186:20 228:8	evaluating 57:1 71:24 87:15 232:11 282:4	exception 79:20 151:5
ended 171:21 256:16 300:19	evaluation 109:1 271:16 272:1 273:8	exchange 113:16
enforce 158:9 216:15	events 13:3	excuse 36:7 59:22 128:25 169:10 176:23 254:1
enforced 171:19	eventually 19:12 46:8 98:21	executed 297:2,3,6
engage 118:8 248:24 269:24 270:2 271:25	Everett/wyotech 58:8	exhaustive 23:17,18
engaged 29:19 34:13 37:2 203:13 209:5 281:4 284:12	everyone's 11:9	exhibit 13:7,14,15,22 18:5,12 29:6 36:5,21 40:4 48:7,8 52:24 53:1,2 57:5,9,10,11 60:4,6,7 62:10,12,13 64:22,24,25 66:5,8,9 68:24 69:20,25 73:15,19 74:15 84:1 93:14 110:14,16,24 111:1,14,16,18 123:1 142:7,9,11,14 167:10 181:21 185:20,22,23 186:3,4,9 196:2,9, 10,11 197:11,12,17 198:1,5,25 199:20 200:20,24 203:8 206:19 207:9 209:13 216:14,16 217:7,8,9 224:6 230:3,4 233:15,16 243:13 244:11 249:15,18 263:20,21,23 264:7, 10 265:8 275:3 282:14 285:1,3 289:24,25 290:1
engaging 31:12 154:8 162:11 272:4	evidence 43:19 45:6 55:12,14,18,23 56:6, 10,15 57:1 70:7 75:22 77:19 78:7,17, 23 81:1,4,7,19 82:4, 5 83:12,15,22 87:12 88:2 90:7 101:21 105:4 106:10 109:1 115:17 116:3 145:4, 11,24 148:21,25 169:22 170:1 199:23 200:23 202:21,23,24 203:3,4 205:15,17, 19,21 206:3,5,9,12, 13,15,16 209:7 211:17 213:19,23 215:17,22,25 216:2, 5,9 241:25 242:7 244:16,19 245:4,12 247:17,20,23 248:23 249:3 265:4,22 266:17,20,21,22 267:1,8,9,13,15,24 268:7,12,20,22,25 269:5,22 271:16 272:1,20 273:8 274:22 276:2,4 281:6 282:4,9 286:25	exhibits 16:24 17:1, 4,6 52:15,18 74:6 83:4 185:20 197:4,8
enjoined 67:9 72:8 93:21 94:8,14,15 117:24 140:1,5 141:12 171:25 172:11 183:24 223:6,14,18, 19,22	evidentiary 78:15	exist 86:1 263:17
enrolled 277:4	evolution 26:17 256:20,21	existed 93:23 227:7,9
enrollment 213:14	exact 16:10 35:22 62:8 64:15 87:17 130:10 179:5 206:14	existing 71:7 95:23
ensure 11:12 12:12		expanded 131:11 164:8,21 254:7
ensuring 22:5 68:19		
entailed 29:16		
enter 9:22 190:11 283:8		
entered 44:17		
entire 23:1 69:3,5 143:15 161:1		
entities 187:11		
entitled 152:12		
entity 45:14,15 162:1		
environment 259:15,16 260:16		
essentially 140:7 147:25 149:21 277:7		
EST 300:20		
establish 127:11 209:24		
established 49:23 86:13 103:22 104:15 126:11 271:18,19		

expanding 164:14		figuring 11:10
expect 209:18 283:13		file 13:11,22,25
expectation 211:8,25		14:21 18:9 42:6
212:11,18 227:23		48:11 52:12,13,14,17
228:1 283:10,22		57:9 110:22 142:8
284:22		149:21,22 150:1
expected 208:25		185:20,21 186:1
281:21 287:2,3		187:17 206:13 216:14
expects 212:23		232:24 233:6 243:14
experience 55:23		282:15 290:4
105:3,19 217:21		filed 145:6 154:3,25
expert 17:20,22,25		155:15 156:15 157:5
35:17		196:23 207:7 226:1
expertise 86:15 87:7		232:20 233:5 237:1
105:3 269:22 279:12		245:22 246:3
284:20		files 13:9 110:21
explain 107:18 147:5		167:12 214:16 249:11
161:10 163:24 171:22		filing 175:6 196:3,16
182:20 192:2 219:10		197:23 198:25
251:17 280:5 282:2		264:17,25 282:16
explained 72:16,19		290:10
103:16 106:14 152:6		fill 187:15 191:22
183:16 192:15 220:25		286:2 287:24,25
223:12 248:16 266:15		filled 158:2
explaining 195:14		final 30:14,18 35:11
explanation 72:21		37:3,8,9 38:19
186:16,25 189:12		82:10,16 123:21
194:20,24 195:18		125:1,5,7,14,16,21,
201:17 251:13 258:8		23 126:11 142:18
262:13 280:8,14		143:16,20,25 144:10
285:6,10		160:24 163:14 174:14
explanations 253:12		190:3 201:21 202:1,8
explore 96:9,15 97:25		223:18 278:17,19
98:11		297:9
expound 19:19		finalize 137:16
express 141:1		finalized 16:23
extension 252:8		170:10 284:7,12
extensively 29:10		299:14
extent 89:14 93:23		finalizing 81:17
110:5,7 112:25		finally 27:1
134:25 136:1 148:19		financial 37:18 42:9
150:14 231:11 238:14		43:9,11,12 71:24
240:10 256:11,14		72:1 109:18,22,24
257:3,6 264:23 287:5		152:12,18 164:3
289:10 292:17 293:17		241:9 242:5,9,13
295:18		248:6,8,25
external 33:18,19		financially 9:19
extra 13:10 185:7		149:23 240:18
extremely 161:7,11		find 14:13 53:18
		70:16 75:2 133:2
		152:3 241:2 288:11,
		14
	F	
	facile 70:17	
	fact 41:23 132:20	
	151:15 220:1 251:2	
	279:3	
	factored 246:18	
	factors 190:18	
	193:15,23,24	
	faculty 252:13	
	fails 209:6 281:5	
	failure 135:4	
	fair 142:22 272:15	
	faith 258:5	
	fall 23:6	
	falls 40:1 257:21	
	267:20 268:13	
	false 250:21	
	familiar 14:5 51:8	
	64:1 201:12 250:10	
	265:25 266:4 277:22	
	290:11	
	familiarize 207:21	
	250:2	
	fast 160:18	
	fatigue 12:19	
	feature 130:5 144:20	
	February 32:15,19,21	
	33:2	
	federal 20:17,18	
	29:13 30:11 35:24	
	36:22 37:6 39:20	
	44:21 47:6 92:12	
	97:10 105:8 114:21	
	134:11 187:9 188:12	
	191:25 192:5 193:2,	
	5,6,19 210:22 211:15	
	213:9,12,13 239:15	
	241:13 261:7,12	
	262:20 295:22	
	fee 36:2 149:21	
	188:19	
	feel 264:12	
	fellow 33:6	
	felt 108:4 190:17,19	
	fewer 131:7 254:4,14	
	figure 40:21 43:10	
	69:23 87:14 90:10,11	
	91:3 106:17 191:1	
	194:7	

<p>findings 49:12,17 65:16 150:16 257:8 295:20</p> <p>fine 11:6 92:1 111:1 113:13 149:6 250:7 267:22</p> <p>finish 181:12,20 265:24</p> <p>finished 139:24 190:9</p> <p>firms 154:7</p> <p>first-line 28:14</p> <p>five-minute 69:7 228:18</p> <p>flexibility 11:10</p> <p>flip 250:7</p> <p>floor 22:19</p> <p>focus 37:7 40:24 41:3 71:25</p> <p>focused 78:14 118:5</p> <p>folder 13:8 18:7,9 52:15,17 57:5,8 60:3 62:10 64:23 66:6 73:15 74:2 111:8 142:7 167:10,12 196:2 206:20 233:13 249:10 263:21</p> <p>folders 13:10 14:1</p> <p>folks 15:11</p> <p>follow-up 122:25 123:2</p> <p>footer 55:5 144:4 148:9 153:20 168:24 171:10</p> <p>footers 144:5</p> <p>For-profit 111:8</p> <p>forbearance 232:25 233:2,4</p> <p>forced 252:8</p> <p>foregone 272:14,18</p> <p>forgiven 248:22</p> <p>forgiveness 148:1 203:12 234:2 235:21 236:7 259:22</p> <p>form 84:15 197:14 198:5,6 199:1,12 200:1 210:14 211:1 214:2 215:1 216:10 251:6,10,12 252:21 253:23 255:20 257:5 259:4 260:13 261:16 275:9 277:13 278:7</p>	<p>281:18 282:18,23 283:1,25 285:15 291:1,3,18 298:8,9</p> <p>formal 22:21 98:3</p> <p>format 129:25 142:17, 21 167:22 168:7 201:21</p> <p>formats 167:24</p> <p>forms 291:20</p> <p>formula 243:2</p> <p>formulate 159:2</p> <p>forward 14:19 30:9 99:5 141:25 165:4</p> <p>forwarded 286:15</p> <p>Foss 97:9 228:16 238:4</p> <p>found 43:19 49:21,23 50:1 70:22 186:11 237:22</p> <p>four-digit 68:4</p> <p>fourth 14:15 63:14,15</p> <p>frame 51:24 52:10 133:10 156:2 172:17 177:7 199:14</p> <p>Frank 32:6,13,15</p> <p>frankly 138:25 271:17</p> <p>fraud 264:9</p> <p>Friday 9:11</p> <p>friend 195:11</p> <p>frivolous 151:15</p> <p>front 12:10 57:20 240:24</p> <p>FSA 20:21,23,25 21:1, 7,23 27:17,21 39:6 49:23 50:1 68:22 79:9 97:8 102:9 105:12 107:20,24 108:4,19 119:22 120:15 121:15,19,21 126:19 130:5 160:9 168:16 181:6 182:9 186:2 187:13,14,25 222:9 228:12 238:13, 17,18 243:25 244:2 255:10 258:13,16 261:19 270:20,22</p> <p>FSA's 50:3,15 105:13 182:18 258:11 259:14 270:18,21</p> <p>full 54:11,13 145:8 152:2 190:2 221:9</p>	<p>241:5</p> <p>fundamentally 24:18</p> <p>future 77:10 98:23 118:16 164:23 165:1 177:16</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gain 148:22</p> <p>gains 230:21</p> <p>games 166:19</p> <p>gathered 226:12</p> <p>gave 35:17 72:20 87:6 91:10 252:17 297:25 298:1</p> <p>GEAR 39:21</p> <p>general 12:24 18:25 21:15 22:9 25:18 31:9,13 41:12 50:25 53:20 65:10 86:18 97:12 106:1,16 112:13 130:25 131:16 143:7 146:2 156:13 169:20 200:17,18 201:8 238:10 246:19 266:2 271:5 291:9,11 293:11,22</p> <p>generality 156:11 247:8</p> <p>generally 128:22 130:1,3 218:4 240:25 257:12</p> <p>generic 218:10</p> <p>genesis 290:16</p> <p>germane 156:18,22</p> <p>give 16:10 19:19 23:16,18 26:16 29:16 33:24 35:21 73:23 75:1 83:3 87:9 105:25 110:20 128:23 178:20,23 183:17 196:4 202:1 203:14 245:21 280:14 298:20 300:5</p> <p>giving 68:16 90:13 146:22 163:19 210:18 254:25</p> <p>goal 96:18,20 134:18, 23 253:11</p> <p>good 11:3 122:9 258:5</p>
---	--	--

Deane Jones
November 20, 2020

18

govern 54:20 106:8	178:15 194:17 206:2	hear 108:12 110:18
governing 44:7 104:17	207:2 209:17 251:8	111:12 136:18,19
government 165:3	257:2	heard 48:19 139:1
governs 78:3 268:24	guidance 58:25 67:12,	hearing 17:24 111:8
grab 83:3	24 68:17 82:24	112:3,11 158:19
Graduate 209:4 281:3	120:14,15 244:5	161:25
graduates 117:23	guide 86:8,10	hearings 160:8
grant 20:8,9,14	guys 136:18,19	heavily 84:4
39:22,25 82:11		held 9:5,8 108:5
241:19		206:16
granted 79:17,19	<hr/> H <hr/>	helped 18:24 112:14
80:11 84:22 103:8	half 181:19	helpful 144:19 169:3
110:9 141:16 147:1	halted 138:7	200:18 255:15 258:6
233:4 267:17	Hancock 16:1	helpfully 168:23
granting 84:6 85:21	hand 10:21	high 82:1 83:20
103:1 231:8 299:21	handle 37:23 41:15	100:12 109:23
grants 43:2 47:15	71:10	high-level 107:4
99:13 102:24 120:24	handled 291:10	266:10,13
171:2 179:8 180:23	handling 231:6	higher 18:2 36:17
great 57:4 149:14	hands 180:25 181:1	78:18,19,21
300:14	269:20	highest 108:1
green 243:16,19	happen 17:5 205:12	highlighted 283:4,5,
grounds 65:15	255:25 286:16	10 286:4,25 287:9,18
group 22:15 23:1	happened 40:17 118:25	288:3
31:3,4 41:6,7 55:1	154:16,17 179:3	highlights 286:20
56:25 59:1 80:1	223:7 224:23 251:6	hire 81:5
82:15 85:9,11 94:18	286:16	hires 230:2
97:4,5,6,7,17 98:2	happening 12:13	hiring 107:22 131:4
102:19 143:15 150:4	164:1,16 270:5,10	Historically 27:5
151:9,14 152:20,21	happy 12:20 257:20	28:11
153:1,16 161:3,7,10,	hard 62:23 105:25	history 17:13 19:12
19 162:12,14,25	173:10 299:15	Hokanson 28:5
163:7 169:19 177:14	harm 42:9 43:9,11,12	hold 171:13 185:12
181:2 205:23 206:6	71:24 72:1 109:18,	Holifield 28:10
226:22 237:22,25	22,24 115:8 152:12,	hone 244:15 262:1,3
238:2 265:19,20	18 241:9 242:5,9,13	honestly 92:19 93:6
272:24	harmed 240:18	292:14
grouped 243:25 244:1	hazard 163:18 165:14	honor 58:16
groups 58:13 149:13,	166:24	honored 61:1,7
25 154:8 226:9	he'll 220:14	honoring 61:14
growing 41:15 71:10	head 21:21 48:22	hope 11:11 177:23
guarantee 79:22 80:3	197:16 199:19 216:12	190:13
149:16	221:15 252:16,18	hoped 190:8,12,16
guaranteed 54:18	261:9 286:7	193:17
60:19 61:6 65:16	heading 36:6,8,21	hopeful 177:10
guarantees 54:9	144:7 169:5 171:12	hoping 19:18 110:16
guess 26:2 33:15 35:1	173:19	hospital 238:8
59:11 68:13 79:12	headline 50:13	hour 181:19
81:6 82:10 84:19	headquartered 90:20,	hours 16:11,13 38:1,
90:1 104:6 116:17	22	2,9 299:5
118:23 120:18 128:10		

House 28:11,22 112:3 250:4	implicit 213:21 238:22	Indiana 90:22,23
hundreds 155:3,7	implied 86:17	indicator 241:9
I	importance 137:11,14, 17	indirectly 25:23,25
Ian 97:9,18 228:16 238:4	important 36:11 89:20,22 92:15 137:9 138:2,4,6 189:14	indiscernible 105:19 270:25 289:2
ID 255:10	imposed 147:9 158:9	individual 27:5 41:11 56:12 106:6,9 107:10 152:9 153:2 161:9,12 162:4 205:17
idea 98:10 147:21 178:21,24 183:17 210:5 230:18 251:3 258:21 260:13 292:1, 2	imposition 55:1	individually 267:14
identification 13:16 18:13 48:9 53:3 57:12 60:8 62:14 65:1 66:10 111:19 185:24 186:5 196:12 216:17 217:10 224:11,18 230:5 233:17 249:19 263:24 290:2	impossible 209:20	individuals 22:13 27:10 77:3 120:22 121:15 143:5 148:18 262:5 271:5 290:20 291:6
identified 49:6 58:17 149:11 200:21 224:24 241:12 263:11 276:18	impressions 138:14 153:9 284:2	inefficiency 161:8
identifies 198:25 253:18	improper 273:10	ineligible 80:18,19 81:16 102:20 159:12 215:20 243:8
identify 68:5 71:24 77:5 88:19 89:3 152:5 184:18 192:20 224:15 230:16 259:23	imputed 240:20	inform 92:7
identifying 37:22 89:13 197:24 260:25 280:22	inadequate 49:7	information 50:9 53:21,24 55:17 64:10 65:19 86:23 91:18 93:24 100:24 104:7, 11 112:20,23 125:4 126:5,7 128:21 130:20,25 138:15 164:8 166:3 167:20, 21 168:2,7,18 176:3 187:15,24 198:15 203:18 207:6 217:17, 20,21 229:22 242:5 244:19 246:8,23 251:2 253:14 254:12, 15,17 259:20 260:7, 17,25 261:18,23 271:1 275:24 278:9, 12,20,23 279:9,20 280:2,24 281:22 283:14,16,20 284:3, 23 293:7,17
IG 48:12 49:6	inappropriate 272:6 273:21	informed 51:15 154:16 160:3
imagine 102:20,21 211:20	inclined 232:3	initial 174:19 280:8 281:18
immediately 183:10	include 23:3,7 39:19 125:2 128:21 162:25 195:20 209:25 210:3, 6 211:1,9 212:19 213:8 214:5,10 216:1 254:21,23 279:20 283:11	initially 38:8 178:4, 22 256:5
impact 219:18	included 17:2 23:10 36:18 37:20 62:25 71:21 79:22 81:22 97:7 128:22 129:6 132:3,5,8 143:4,24 156:24 205:25 237:21 240:1 253:10 277:18 280:24 283:17,23 286:20 287:19	initiate 160:25
implement 38:7 44:12 80:22 252:21	includes 20:4,8 75:19 134:18 142:3 188:20 216:24 220:2 231:15 244:19 287:11	Initiating 161:6
implementation 21:8, 19,24,25 22:2,6 29:11 38:11 67:23 130:12	including 103:20 145:23 224:11 291:1	initiative 27:6 28:11
implemented 20:24 44:20 130:16 131:21 164:21	incoming 287:14	initiatives 28:22
implementing 37:18 121:16 131:18	incomplete 125:3 211:16	
	incorrectly 275:19,20 279:7,21 280:10 296:1	
	increased 127:4	
	increasing 175:24	
	index 197:24	

injunction 103:19,20 116:18 117:12,20 118:19 124:2,11,24 140:6,12 171:19 180:21 182:8 183:11, 18 222:20	interesting 46:4 54:23	involving 161:24
input 181:4,5	interface 9:9 260:5	IRS 224:23
insert 204:17,23 205:10 283:6 286:4,6	internal 143:24 234:4	issuance 176:22,24
instances 23:14,16	interpret 281:10,12 294:7,9	issue 22:24 23:4 30:22 38:4 92:13 98:16 135:8 153:14 157:10 173:20 174:6 175:15,22 178:2,16 179:15 183:8 184:20, 25 219:7 239:7 247:5,7 248:3 263:5 291:22,24 297:9
instilling 189:16	interpretations 271:9	issued 17:10 37:14 61:24 62:3 103:19 106:18 125:8 139:5 173:21,24 175:1,23 178:3,17 180:22 183:9 184:20 185:1 188:23 223:18 239:1 245:9 262:10 291:4
Institute 33:5 219:22	interrogatories 292:24	issues 23:6 29:10 33:6 239:12 248:21 289:9 291:8
institution 47:1 118:16 145:23 218:16 219:8 220:1 245:17 248:4,20 276:19	interruption 114:25	issuing 173:25 174:7 182:9 184:19 236:25 237:5,18 238:15,23 297:12,14
institutions 36:18 38:7 116:16 148:23 154:4,9 158:3 218:21 246:6 276:23	intertwined 231:19	items 63:9
instruct 158:8	interviews 47:19,21	ITT 41:25 42:3 47:16 52:2,3,5,9 54:8,18 55:8 83:12 87:13 88:2 90:7,21 221:24 222:5,10 224:4 225:22 226:3,25 245:15,25
instructed 274:24	invent 102:1	IV 39:19 40:2
instructing 87:22 121:8 237:4,18 238:16	investment 189:13	Ivy 219:19
instruction 87:6,9 90:14 91:11 238:22	invoke 153:16	
Instructional 241:15 276:18	involve 22:18,25 78:9 103:8 108:13 126:24 141:6 180:3 183:25 210:20,21 289:11	<hr/> J <hr/>
instructions 37:24 138:21 277:18,20 278:5	involved 21:24 22:16 23:15 25:1 26:5 29:1 30:11,17 38:19,22 39:2,7,11 54:25 56:11,18,20 67:5,7 70:6 76:11 77:8,14 78:8 79:1,24 81:14, 18,20,23 82:2,20 83:7 96:14 97:2,5, 13,19 98:7 103:1 105:15 107:6 108:18, 20 109:17 110:9,11 116:23 117:11 118:5, 6,11,13 121:23 131:8 133:15 143:7,16 174:18 178:11,12 179:12 180:2,18,25 181:4,5 223:1,5 229:7,11,14 238:6 270:1 271:1 273:7 276:1,9 277:12,14 293:11,23 294:25 295:2,5,9,12,14 296:14,15,23 298:11	James 63:7 65:9 77:2 84:4
instructs 236:24 238:14	involvement 25:9 30:3 31:17 77:4,11 95:11 96:1 102:24 104:21, 25 110:6,7 118:10 202:13 258:15 271:13 272:14 273:20 277:5	January 60:15 228:6 273:3
insufficient 209:7 281:6 282:8 286:25	involves 21:13,14,16 76:16 77:1 88:21 161:20	Jed 15:24
intended 118:12 139:8,15		Jeff 97:8,18 238:5
intent 95:7 117:16 118:14 215:3 234:12		Jesse 28:5
intention 117:13 215:1		Jim 31:20 297:4,14
interact 259:17		job 17:13 19:12,15,20 32:22 34:1 51:18 65:15 81:8 133:18,19 135:15 198:2,10
interactions 9:8		
interacts 261:16		
interagency 143:12 144:2		
interest 131:19 146:15,18 164:5		
interested 9:19 17:8		

199:3 219:6		209:1,8,19,22 212:7, 9,10,12,17,19 213:8 214:6,10 215:2,7,9, 11 216:7 256:1 261:11,14 262:21 281:22 283:12,23
jobs 65:16		laws 88:23 89:25 90:3,5
John 28:6		lawsuits 81:24
Johnathan 28:10,15,16		lawyer 81:7 180:5 272:17 273:17,19
joined 29:21 32:14 33:12 37:4 44:9 64:7		lawyers 112:24 279:19 284:21,22 295:4,9,14
jones 9:11 10:21,23 11:3 13:11,15,19 14:22 18:8,11,12,18 25:17 29:15 32:9 35:16 39:14 48:8 51:12 53:2 57:11,15 60:7,11 62:13 64:25 65:4 66:9 74:6,20 91:22 111:18,22 113:23 114:19 122:24 126:18 133:23 137:3 138:18 143:18 185:23 186:4 196:11,15 216:16 217:9 229:5 230:4 232:10 233:16 235:9 236:19 237:16 239:11 240:15 249:18,22 262:9 263:23 274:15 289:12,22 290:1 298:16 299:7 300:13, 19	K	lay 240:1
Jones' 293:2	Katherine 15:23	layout 265:16
judge 137:22 138:7 140:5,17,22 172:18 196:24 269:22	keeping 16:9 177:5 298:22	lead 97:2 295:14
judge's 196:24 265:1	Keller 209:4 281:3	leaders 35:13 107:24
judgments 81:25	Kevin 16:3,4	leadership 129:18
July 50:17,20 90:11 91:5 151:3,6,10 164:25 203:10 208:20 212:4 245:7,9 262:10,11	kind 11:24 12:6 55:23 82:3 112:17 128:20 144:21 159:22 197:23 198:20 201:23 210:15 216:22 219:12 277:8	leading 176:4
jump 74:2	kinds 47:7 56:20 189:24 251:22 253:5 255:1 270:20	leads 56:25 239:14
jumping 19:11	knew 99:5	League 219:19
June 50:16,20,24 98:4 133:10	knowingly 140:20	learn 214:14
Justice 143:10	knowledge 42:7 43:13 59:18 115:24 116:4, 25 125:13 130:6 163:6 226:16 246:4 249:5 259:13 263:2 292:9 293:10,13 294:23 295:11,15 296:5,7,12 299:24	learned 251:1,3
justification 287:23		leave 69:25 239:24
justified 136:3 157:9 231:13 256:16 292:19	L	left 42:3 168:24 191:13 274:6
Justin 65:11 77:2	labeled 206:20	legal 9:16,21 65:12 109:1 169:21,25 269:1,2,6,7,17,21 270:3,14 271:8,12,15 272:20 276:3,12 284:21 293:16
	labor 32:24 105:21	legislation 105:8
	lack 104:21 117:6,7 131:25 272:14 289:8 299:9	legitimate 149:13
	laid 200:13 239:21	Lending 11:5
	language 75:15 277:21,24	letter 160:7 187:6, 12,13 188:18,21 190:1 191:2,22 192:2,6,22,24 193:7, 8,10,16,18 194:4,6, 7,23 198:9,14,20 199:2 200:1,21 204:6 207:10,23 208:17 212:2,18 214:1 216:10 217:2 219:4 278:19 279:9 281:1 285:22,23,24,25 286:1,3,19 291:20
	large 38:21 131:11 154:4 155:1,15,20, 22,24 156:16 157:5 158:2 162:2	letters 188:23 189:11,19,23 190:4, 14 191:18,19 192:7,
	Largely 112:10	
	larger 94:23	
	launched 38:20 259:18 263:3,8	
	law 47:2 90:1,12,19, 23,24 91:4 92:7 100:2,4 140:20 147:9 192:3 203:8,16,19,24 204:6,17,21 205:3,10 208:3,7,8,18,21	

15,20 194:18 195:18 198:12,24 199:18 201:14 203:20 205:11 214:9 257:5 277:13, 16,19 278:7,17 281:19 282:18 291:1, 19 298:8,9 level 43:10 82:1 83:20 100:12 109:14, 23 115:8,23 131:16 145:21 156:10 230:16 247:8 liaison 28:18 lied 252:11 lieu 10:4 light 207:24 256:25 258:14 264:12 likelihood 232:16,21 233:7 limitation 158:9 limitations 147:9,12 limited 43:16,17 51:2 77:12 80:6 270:19 limits 148:4,5 lines 292:24 linked 251:7,10 258:19 260:13 list 23:17,19 41:15 43:23 52:20 71:11 74:13 116:15 220:7, 12,17,19,20 225:14 253:6 254:7,8 255:21 258:24,25 259:7 264:3,4,9,18,20 listed 59:6 194:9 200:7 209:2,8 255:21 265:23 268:12 276:22 278:3 listing 195:14 litigate 154:13 litigation 178:10,12, 17 179:11,13 180:2, 3,4,6,10,24 182:21, 23,24 184:10 295:10 loan 20:14 42:2,4 47:3 49:24 50:2,15 144:10 147:4,25 148:1 188:10,12 189:2,4,5,8 190:10 191:9 208:9 210:12, 13,16,18,23 211:24 213:13 215:14,23,24	229:7,13 230:19,20, 23 231:5,15 233:14 234:1 235:21 236:7 248:22 253:18 255:6, 13 259:22 262:8 loans 22:21 29:14 44:13 90:10 91:5,6 93:4,12 151:3,6,9,11 188:13 190:24 191:6, 23 192:2,4,21 203:10,13 208:19 212:3 231:24 245:6,9 259:17,20 262:9 located 9:17 106:20, 21,22 log 16:9 logistics 279:2 long 12:21 32:10,25 35:2 85:19 103:14 152:5 155:4,7 185:10,21 190:13,17, 19 218:17 long-term 95:7 longer 24:23 29:1 35:23 172:5 189:11 190:8,12 193:3,17 238:6 looked 16:20,21 68:1 83:2 134:16 136:25 152:25 170:1 207:12 217:1,8,15 218:8 221:22 223:3 240:16 263:7 277:13 282:10 285:19 286:24 287:15 losses 248:6,8,25 lot 38:8 104:20 126:24 181:22 191:10 221:8 293:4,7 299:9 lots 155:4,8,10 183:5 235:25 loud 49:18 75:12,16 96:4 114:9 115:4 154:1 loved 139:5 Lucas 28:6,7,8 lunch 122:5,11,19,20 lunchtime 91:25	made 23:21 42:15,21 43:16 45:1 47:15,22 54:25 59:17 61:9,16 64:14 68:22 80:19 85:9 95:22 99:17 104:2 118:19,24 123:18,19,23 124:7, 25 125:7,11 129:5 131:1 132:23 135:13 141:16 142:5 145:25 147:10,18 151:3 156:14 169:22 173:24 174:5,8,11,14,16 175:19 177:6 178:19 183:6 184:23,25 190:18 192:12 193:15 211:18 223:17 226:25 239:6 250:14 251:4 268:16 270:15 271:21 294:24,25 296:20 297:1,9,11 299:13 Maggie 11:5 111:10 181:10 mailed 124:14 125:15 main 19:25 73:15 97:17 111:8 maintain 50:10 maintained 50:1,3 maintains 65:20 66:1 major 144:8 majority 62:7 make 36:16 45:7 50:9 55:18,21 70:1,5,9,12 78:7 79:6 81:1 82:22,24 83:9 86:6 91:7 92:22 98:10 105:14 109:1 126:19, 20 127:9,13 131:18 143:13 152:15 173:16 175:2 178:4 184:14 198:22 199:5 206:18 207:16 209:19 210:1 213:20 218:6 219:7 225:17,18 226:2 232:7 259:1,20 264:1 267:21 269:9,23 272:7,9,20 273:18 284:23 289:20 298:21 maker 24:4,5,8 139:4 makes 82:21 105:9 295:13 making 22:1 24:18,24
	M	
Macom 9:15		

29:24 30:5,13,18,23 31:5,12,15 34:13,14, 19 35:7,14 37:3,9 38:21 47:2 57:2 60:17 103:20 106:5 109:13 118:20 126:8 131:20 134:9 151:24 174:19 194:21 205:24 248:2 262:11 288:18 295:2 296:16 manage 49:5 191:2 260:9,19 management 21:18 22:10 29:2 30:10 35:6 39:9,12 143:8 209:4 251:8 260:18, 19 281:4 managing 108:19 176:15 230:19 mandatory 247:15,18, 19 manner 10:11 272:5 Manning 31:20 63:7 65:9 77:2 84:4 297:4,15 Manriquez 64:9 94:4, 18 96:6 103:19 116:19 117:13 124:11,24 180:8,9, 11,21 182:8,18 183:18 222:20 223:15 293:23 295:1,3,5,10, 15 Marcy 14:12 15:23 Margaret 10:18 11:3 mark 13:14 15:9 16:16 18:5 27:13,18 52:25 57:10 62:11 64:23 66:8 98:13 104:10 110:15 127:24 129:14,16 220:2,6 228:15 230:3 233:15 238:19 239:14,20 240:4 264:19 285:22 289:23 297:5,15 298:2 Mark's 134:2,3,17 marked 13:15 18:12 48:7,8 53:2 57:11 60:6,7 62:13 64:25 66:9 111:5,11,18 185:23 186:3,4	196:10,11 216:16 217:9 230:4 233:16 249:18 263:23 275:4 290:1 Maryland 36:14 mask 220:3,6 master 161:21,25 162:3,11,16 271:20 match 169:2 194:22 matched 68:19 matches 208:23 material 153:11 matter 9:13 10:7 91:2 113:4 116:19 146:20 172:18 175:14 217:24,25 219:8,18 228:2 235:14 244:23 245:3 266:2 270:13 271:13,15 matters 89:25 218:15, 20 Mckinsey 230:2 Mckinsey's 230:10 meaning 41:6 101:17 126:21 129:2 187:8 191:24 205:20 213:12 232:19 246:11 270:3 273:5 means 79:16 101:18,20 145:12 154:19 169:20 170:4,12,15 171:23, 24 173:14 203:1,2 219:11 268:19 269:19,20 284:17 292:15 294:9 297:8, 12 meant 107:18 140:10 180:21 202:24 249:8 284:8,13 meantime 96:8 177:23 mechanism 176:14 media 20:8 175:2 median 240:21 meet 11:8 148:5 159:23 198:3 210:22 211:15 213:9,11 meeting 24:2,12,13 25:2,3,7 97:22 104:12 168:18,21 174:13 215:14 meetings 25:2 28:16	31:12 38:4 97:13,20, 23 112:12 132:19 174:9 meets 56:14 57:2 269:3,4 members 27:9 29:17 31:7,8 112:23 memo 58:2 60:16 63:7, 15 65:9,18 84:12 87:22 137:4 234:4 235:2,16,17,19,23 236:5,8,12,24 237:4, 6,9,12,17 238:14 239:11,16,18,19,21 240:1,10,16,24 273:3 memoranda 58:4 68:24 113:1 168:5 memorandum 53:6 84:9 89:9,11 98:23 235:5, 10 memorializes 89:9 memory 13:3 200:7 201:22 memos 83:2 129:23 133:11 236:17 273:2 Menashi 65:10 68:25 77:1 mental 138:14 153:9 mention 214:5 mentioned 35:17 40:2 276:17 298:13,22 merge 147:22 187:17, 22,23 188:15 merit 59:2 80:16 101:11,22 102:3 115:18 129:3 169:24 241:24 242:25 merits 77:23 80:23 81:25 99:13 126:20 132:9 242:22 247:2 269:23 Merritt 10:15,16 25:4,10 34:2,6,21,25 46:14,22 51:9 52:19 65:17,25 69:4,10 73:10,17 74:1,4,12 84:24 86:22 87:1 95:12 112:6,9,19 113:11 116:8 119:6 120:16 121:3,10,17 124:20 126:4,9,16 133:20,25 135:16,21,
---	--	---

<p>25 136:9 138:13 142:24 143:1 144:18 150:6,20,25 153:8 154:12 156:5,10,21 157:7,16 158:5,8 159:8 166:2,10 167:2,6 176:2 181:10,22 182:2,11 184:3,6 212:14,20 213:1,4 214:11,15,21 220:24 221:11 222:13,22 228:20 229:21 231:1,10,20 232:3 234:9,11,21 235:11 237:14 240:6, 13 243:22 247:1,7 249:14 256:6,13 257:2,22 258:7 266:3 273:11,22,25 276:7 278:11,15 279:24 283:19 284:1,9 287:4 288:17,21 289:13,18 292:22 293:6,15 294:4,6 297:16 298:21 300:9</p> <p>mess 111:2 met 30:18 method 133:6 172:10 230:22 methodologies 222:9 methodology 23:23,25 24:14 25:1,8 41:1, 21,22 42:7,9,12 43:6,9,11,25 44:6,16 47:12,13 50:21 64:12 67:6,8,9,25 68:2,3, 18,20 70:3,4,8,10, 13,14 71:13 72:5,6, 8,10,22 73:5,8 76:7, 10,12,13,16 77:5,9, 11,13,15 78:1,3 79:9,18,21 80:5 93:22 94:8,14,21,24 95:5,10,17,19,20,24 96:1,22,24 98:19 99:1,4,7,18,22 100:5 101:2,7,12 103:4,6 104:3 109:21 115:9 117:6,8,10,14,17,23 118:4,7,8,9,11,14 119:3,12,14 120:1,2, 6,7,12,20,23 121:14 123:3,7,8,13,25</p>	<p>124:12 128:5,9,11, 12,15 130:12,15 131:24 133:1,9 134:5 135:12 137:23 138:10,19,24 139:8, 15,18,21 140:1,5,15, 25 141:10,13,17,19, 22 142:1 171:15,18, 24 172:9,12,22,25 173:8,10,12 177:9,12 180:13,16 183:20 221:18,22 222:4,6,7, 18 223:1,2,14,17,23, 24 224:3,10 225:7 234:7,16,25 237:20, 24 241:20 242:8 299:18,19,20</p> <p>methods 70:6 71:7,24 95:23 177:15 metric 134:13 metrics 130:17,19 133:13,17 137:4,9 168:6 Michael 28:4,13,18 31:9 97:7,18 235:25 237:7 238:3 239:22 microphone 111:25 mid 176:25 mid-november 235:3, 13,20 middle 37:16 69:21 93:19,20 186:13 200:14 203:9 233:23 275:11 migration 176:10 million 83:13,14 millions 88:4 mind 39:14 40:9,11 50:8 71:3 75:12,15 98:25 114:10 125:18 136:17 166:13 172:17 181:10 206:2 287:6 290:21 mine 74:6 153:18 minimum 79:22 192:13 Minor 97:19 238:12 minute 149:5 250:1,7 minutes 57:7 185:8 mischaracterization 182:12 297:17,20 mischaracterized 85:3</p>	<p>mischaracterizing 162:17 misconduct 150:16 209:5 237:3 240:19 257:8 281:4 295:21 misinformed 174:1 misreported 175:2 misrepresentation 43:20 45:8,20 47:9, 22 56:3 58:19,23 59:9,13,15,17,23 60:25 61:2,6,8,15 107:5,8,10,13 109:2, 4,7,16 110:4,8,10,12 145:20 152:16,17 164:1,6,11,16,19 165:2 211:18,23 242:4,12 251:15,23 252:23 253:1,5 254:20,22 255:2 260:23 269:4 misrepresentations 51:16 163:20 165:17 251:19 misrepresented 252:13 missing 210:1 misstate 157:24 misstated 182:15,16 mistaken 286:20 287:17 Mitchell 54:6 58:3 60:17 mitigate 166:1 mixing 222:25 mobile 259:21 moment 83:3 113:23 236:21 275:14 282:12 298:20 money 141:23 147:2,19 monitor 12:10 month 88:10 134:7 months 32:12,18 135:11 moral 163:18 165:14 166:23 morning 11:3 Motion 216:15 mouth 106:12 137:11 move 12:1,2,11 25:15 93:19 113:13 137:1 176:6 212:25 226:5</p>
--	---	---

November 20, 2020

25

274:3,15 moved 28:25 32:4 226:6 moving 30:9 99:4 128:7 131:2,14 141:25 MPRM 31:5,14 multiple 45:17 90:9 200:9	Ninth 139:7 nods 21:21 48:22 197:16 199:19 261:9 286:7 non-cci 117:5 123:25 124:2 171:15,18 172:12 173:12 non-corinthian 199:21 200:21 202:20,21 nonattorney 56:11 Nonetheless 65:25 noon 12:17 91:23 normal 118:22 Northern 67:8 72:9 96:21 98:15 117:9 132:24 138:8,23 139:2,3,25 note 19:7 40:11 176:23 noted 55:10 240:13 notes 199:7 notice 13:7,12 14:9 29:23 30:5,12 37:8 188:3 198:5,7 210:15,25 212:17 245:21,25 246:1 247:14 285:15 noticed 247:16,18 notices 190:9,11 196:25 197:25 239:1 256:22 notification 93:3 102:8,10 125:19 129:12 188:10 notifications 42:16 101:17 notified 87:11 102:5 125:21,23 145:21 170:5 243:9 249:2,3 notify 38:6 188:17 195:22 248:1,19 notifying 101:19 246:5,17 notion 81:7 November 9:12 33:2 103:25 104:1 209:16 236:5 263:3,9 299:1 novo 201:5 NSLDS 255:13 number 13:25 18:8 20:13 36:18 42:14,20	43:1,16 49:15 51:2,3 55:7 57:6 63:3 73:16,25 74:8 75:19 76:2 100:12,23 101:9 114:3,7,12 129:8,11 132:2 142:8 156:23 158:21 169:2,3 183:20 184:17,22 196:2,5,7 206:20,21 216:14 224:9 254:18 255:10,11 260:25 263:22 264:9 265:15 275:4,5 280:25 282:15,16 289:25 290:5 293:21 numbering 111:3 113:18 numbers 42:25 62:8 100:10,13 130:14 132:3 154:4 155:1, 16,20,22,25 156:16 157:5 158:3 168:12, 13 220:21
<hr/> N <hr/>		<hr/> O <hr/>
named 74:5 207:8 216:25 names 14:21 90:3 194:22 220:3,7,12, 14,18,19 265:25 292:3 narrative 217:21 narrow 46:15 232:1 narrower 253:7 National 215:24 navigate 144:6 necessarily 241:17 necessitates 45:9 needed 79:3 87:6,10 106:16 251:20 negative 135:5 negatively 135:14 negotiated 24:17 29:21 30:23 34:12,14 35:5 38:20 188:19 negotiating 29:19 negotiator 24:21 neighborhood 32:12 98:3 114:13 116:6 Nevin 15:10 16:17 56:24 73:16,18 74:11,21 80:13,19,21 82:13 84:21 85:9 99:11 104:12 110:25 119:1 127:2,23 145:15 171:4,6 176:19 188:24 202:25 203:2 238:18 291:23 292:8 294:19 295:24, 25 296:2 Nevin's 78:6 86:8 115:16 nice 11:8	O'GRADY 10:18 11:2,4 13:13,18,24 14:8,12, 17,18 18:4,11,15 25:5,13,16 34:4,9,22 35:15 46:15,17 47:10 48:6,11,14 51:11 52:22,25 53:5 57:14 60:5,10 62:11,17 65:3,22 66:4,7,12 69:1,6,11,18 73:12, 13,20 74:10,19 85:1 86:24 87:3 91:21 92:2,4 95:14 110:13, 19,23 111:6,13,21 112:7,16,21 113:13, 15 116:10 119:7 120:17 121:6,12 122:4,8,15,23 124:21 126:6,12,17 133:22 134:8 135:18,23 136:5,16,20,23 137:2 138:16,17 142:25 143:2,17 145:1 150:9,23 151:12 153:12 154:14,23 156:8,12 157:2,11,22 158:11,14 160:2	

166:6,12,18 167:3,9, 13 176:5 181:12,16, 20,24 182:3,13 184:5,7 185:6,10,18 186:1,7 196:1,6,9,14 212:15,21 213:3,6 214:12,18,24 216:21 217:6,12 221:3,13 222:15 223:4 228:18, 21 229:4,23 230:7 231:4,14,22 232:7,9 233:12,19 234:10,14 235:1,6,8,12 237:11, 15 240:9,14 244:3 247:3,10,12 249:9, 16,21 256:9,18 257:11 258:4,9 263:20 264:8,14 266:12 273:15,23 274:3,14 276:8 278:13,18 279:25 283:21 284:5,14 287:7 288:20 289:5, 15,21,23 290:4,6 293:1,12,25 294:5,8, 11 297:18,19 299:6, 25 oath 10:5 Obama 60:24 object 65:17 121:3 156:5 158:6 256:6 292:22 objection 25:4 34:2, 21,24 46:14 51:9 84:24 86:22 95:12 112:6,19 113:11 116:8 119:6 120:16 124:20 126:4,8 133:20 135:16 138:13 142:24 150:6 153:8 154:12 159:8 166:2, 10 167:2,6 176:2 182:11 184:3 212:14, 20 214:11 220:24 222:13,22 229:21 231:1 234:9 235:6 247:1 273:11,22 276:7 278:11 279:24 283:19 287:4 293:13 294:4 297:16 objections 10:10 obligation 91:22 299:3	obtained 234:4 occupation 68:5 occur 126:2 242:4 occurred 47:23 51:16 107:11 109:3 124:3 164:19 256:24 occurring 101:14 OCTAE 20:12,21 October 57:25 250:5 offer 252:7 office 18:25 20:3,5, 8,11,12 21:3,5,13, 14,15,18,24 22:8,9, 10,11 27:11 28:5,6, 9,19,25 30:2,7,10 31:3,7,8,10,12,13 32:3 37:5 38:24 39:2,3,5,8,9,12 41:12 53:19 86:18 88:12 97:12 112:12 114:20 143:5,6,7,8 146:2 161:25 181:6 238:4,10 239:14 271:4 291:9,11 293:22 officer 21:2 27:14,20 33:19 107:25 219:1 251:4 offices 21:17 30:11 37:22 97:15 official 114:14 182:25 251:1 officially 194:2 officials 190:10 236:24 237:5,18 238:15,16,18 oldest 41:7 omissions 47:8 203:14 one's 74:4 one-off 286:18 ongoing 138:12 238:24 256:11 online 259:21 OPE 20:21 open 13:8,24 18:16 48:6,15 52:23 57:5 74:18 111:7 167:14, 16 171:21 207:15 216:20 264:15 289:10,14 290:7 298:23	operate 39:25 operated 71:15 72:13 95:1 218:1 219:9 operating 21:2 27:13, 19 67:16,17 68:7,8 107:25 122:2 138:22 operation 108:20 145:17 operational 105:12 108:6,17 187:10 258:20 263:9 operationally 131:21 219:11 operations 20:25 21:1 50:3 67:20 68:21 105:10 107:16 270:13 opinion 45:21 158:21, 23,25 159:2,4 276:5, 7 opinions 126:9 opportunities 145:4 opportunity 45:23 145:6,22 163:19 165:15 245:4,12 247:22 266:19 opposed 73:19 129:5 161:11 293:10 option 162:14 237:22 245:20 274:22 options 177:22 237:20 239:21 240:1 order 13:9 14:3 80:10 121:5 156:7,9 188:18 225:18,24 247:9 258:3,19 290:5,12,15 ordered 221:2 290:15 orders 233:14 organization 20:19 105:9 107:21 organizations 149:20 original 172:10 174:15 199:11 277:19 281:16 originally 123:11 281:15 297:4 other's 145:7 outcome 9:19 146:15 outcomes 220:5 outlines 120:6 outstanding 134:13, 20,24 151:4
--	---	---

November 20, 2020

27

overbroad 46:14 116:9
oversaw 38:25
overseeing 20:2 39:3
oversees 21:6,22
oversight 20:24 21:3,
 4 27:4 30:3,17 37:6
 111:9 112:3 157:19
 249:10,12 250:4
owe 141:23
owned 217:25 219:9
ownership 265:19

P

p.m. 122:19,20
 136:12,13 185:14,15
 228:25 229:1 274:9,
 10 300:20
pace 127:3,11,18,21,
 22,25 128:2 134:9
 177:5
pacings 134:22 175:25
package 38:21
packet 62:25 63:3,6
pages 37:11 83:13,15
 148:15 155:4,7
 168:1,12 207:22
paid 36:1 108:1
papers 283:8
paragraph 19:14 29:5,
 7 36:5,8 37:13,15,16
 40:4,6 41:13 49:18,
 20 50:14 51:5,6
 69:21 71:1,4,17
 75:8,11,16 76:6,9
 77:5 93:18,20,21
 94:25 95:21,25 96:3
 103:12,13 148:11
 153:24 160:23 163:14
 186:10,14,21 188:6
 189:17 194:19 200:2
 201:16 203:7 235:2
 236:23 239:10 240:15
 241:5 244:12,13
 281:10,13 285:4
paragraphs 163:24
 198:13
paraphrasing 252:9
pardon 207:17
parents' 17:23

parse 81:6
part 17:23 24:1 29:7,
 9 67:7 68:14 71:20
 72:2 73:8 76:17
 91:10 96:25 97:5
 103:17 104:13 108:13
 113:20 115:3 121:4
 123:7 131:5,9 135:1,
 2,4 145:9 163:9
 184:24 192:14,17
 197:4 199:5 200:5
 203:12 215:7 235:18
 242:1,7 250:25
 256:22 257:11
 259:11,13 260:4
 279:11
part-one 101:6
partial 104:2 117:14
 120:1 123:2 124:12
 128:12 131:24 135:12
 179:14 180:12,16
 183:19,24 221:17
 222:18 233:14 234:1,
 6,15 235:21 236:7,13
 241:19 243:2 244:5
Participants 9:3
participating 9:25
parties 10:9,12
 252:12
parts 37:23 152:4,7
party 9:18
passed 98:18
past 36:17 57:21
 135:10 155:25 156:2
 246:11,14 255:4
 257:14,18
patently 250:21
path 138:7
paused 183:21
pay 107:24 147:2
paying 151:16 163:21
 165:17
payment 259:21
PBO 108:3,4
PDF 36:20 37:12 40:5
 48:11 49:14 55:4
 63:17,18 69:22 111:7
 144:19 168:23 169:3
 171:10 185:21 197:1,
 10,23 207:14,16,17
 208:17 209:2,14
 215:19 217:3,13

236:18 239:9 241:4
 243:14 265:7 275:7
 281:2 283:1 285:3
 290:18
PDFS 13:25 14:2,19
penalty 10:8 19:8
pencils 140:7,9,13
pending 12:22 65:13
 100:11,14,20 104:2
 116:5 117:14 128:22
 136:17 151:8,19,20
 157:1 172:9 182:21,
 23 220:8 237:1
 243:16 246:6 261:25
 268:20
people 22:15 31:1
 40:21 76:22 97:16
 112:13 131:2,7,10,14
 143:3,4 155:21,23
 159:24 183:5 184:17,
 22 255:7,16 270:22,
 24 271:4 291:7
 298:14
percent 61:11,25
 62:3,6 79:22 80:3
 102:16 103:11
 192:13,15,16 241:20
 243:3,9,19 244:5
percentage 61:17,22
 100:21 103:7 109:9
 116:13 159:5 160:1
perform 26:2
performance 26:6,10,
 24 27:12,14,17,19,24
 28:15,24 29:2 107:15
 108:5 133:18,19
 134:2,3,4,6,10
 135:3,5,7,15
performance-based
 20:19 105:9 107:21
performing 22:4
performs 26:2
period 24:22 26:19
 28:21 32:17 43:17
 48:2 50:19,20 51:1,
 4,14,21 100:3 124:18
 131:12 172:4 177:21
 259:17 263:5 267:15
periodic 168:9
periods 47:24 51:20
 58:18,24

<p>perjury 10:8 19:8</p> <p>Perkins 20:14,15</p> <p>permanent 32:8</p> <p>permissible 152:21</p> <p>person 10:5 11:15 22:22 31:2 56:19,25 85:20 155:20 184:17 202:1,4 211:23 260:24 269:20 291:21 292:4,20</p> <p>person-by-person 152:14</p> <p>personal 11:25 207:5, 20 217:16 293:13</p> <p>personally 23:15 25:9 56:13 85:12 108:21 148:22</p> <p>personnel 131:8</p> <p>pertaining 217:25 257:7</p> <p>phase 260:1</p> <p>phases 260:2</p> <p>Phoenix 265:20</p> <p>phone 11:25 15:11</p> <p>phrase 90:2 137:13 294:3</p> <p>phrases 287:11</p> <p>physically 10:1</p> <p>pick 276:20</p> <p>picture 239:24 298:14</p> <p>pie 243:12,15,20</p> <p>pies 243:19</p> <p>pin 181:24</p> <p>place 30:24 35:7 40:19 41:21 44:10 45:8 49:2 52:11 58:19,23 59:13,15,17 60:25 66:20 76:18 78:1 88:12 93:2 96:22 100:2 106:3 115:15 135:12 144:17 164:2 186:18 203:23 204:22 218:18 241:2 265:18 282:3,7</p> <p>placeholder 200:11,15 201:8</p> <p>placement 51:18 65:15 198:2,10 199:3 252:4</p> <p>plaintiffs 10:19 11:1 207:8 216:25 298:25</p>	<p>Plaintiffs' 216:15</p> <p>plan 134:12,15,18,24 135:2</p> <p>plate 27:2</p> <p>platform 176:10</p> <p>play 166:19</p> <p>point 19:11,20 21:25 35:16,19 42:20 44:14,15 54:11 60:2 61:20 64:6 66:22 70:1 83:10 87:13 89:10 99:18 116:14 117:8,12 118:16 122:9 123:4,13 128:25 129:9,10 132:14 135:20 144:11,15 150:14 160:9 169:7,11 170:9 171:14,22 173:11 175:8 176:8 177:4,9, 13 180:9 182:7 183:16 199:12 221:1, 23 226:6,23 229:24 245:11 257:25 264:2 272:10 273:9 275:17, 18 278:1 279:6 280:3 281:19 288:22 290:24 295:18 298:22 299:8</p> <p>pointing 156:13</p> <p>points 278:4</p> <p>policies 22:6 23:3 33:25 39:17 86:8,10 219:13 231:19 270:17</p> <p>policy 20:4,24,25 21:2,6,9,11,12,16, 19,23,25 22:2,16 27:10 28:4 31:4,25 32:2,9,10,23 39:16 40:7 67:20,23 68:6 76:22,24 79:1,15 80:8,9,22 81:8,9,11, 12 86:12,18,21,25 87:20 88:18 90:15 91:3 95:16 103:3 105:10,14,16,23 106:1,4,8,13,16,19, 24 107:5,11 108:9 109:3,6,8,16,17,21, 23 110:2,3 114:20 115:1,6,13,15 117:2 120:6 121:13 126:10, 11,23 131:1,17,20 143:9 145:14,18,19,</p>	<p>20 146:4,20,21 150:23 151:2,3,25 153:10 154:16 157:3, 6,13,19 173:20 175:15 178:1 179:17 183:8 192:17 231:6, 22 232:11,12,18 234:1,18,25 235:20 236:6,11,14 241:1 244:23 245:3 246:19 247:4 259:6 266:2 268:24 269:5,8,20 270:15 271:6 276:5, 10,12,13,16 277:5,8 299:9,12,15,17,20,23</p> <p>policy-making 157:20 219:12 271:7 293:4 296:7,9,12</p> <p>POLITICO 234:5,13 236:2 241:7</p> <p>pool 94:23</p> <p>poorly 163:17 165:8, 20,22 166:7,16,23</p> <p>population 232:20 233:6</p> <p>portfolio 39:17 229:8,13,16,17 230:2,17,23 231:5, 15,18 232:14</p> <p>portion 161:15 205:9</p> <p>position 28:2 33:1 36:24 37:1 58:16 85:20 137:19,21 138:1 139:14 161:22 178:23 182:6 232:22</p> <p>positive 135:3</p> <p>possession 199:23 200:24 203:5 205:23 265:3 266:25 268:22 289:17</p> <p>post-18-month 257:4</p> <p>Post-cmc 196:3 282:16</p> <p>posted 130:6</p> <p>postsecondary 20:3,5, 9 21:4,13 30:2,7 31:3,7,10,13 32:3 37:5 38:25 39:2 143:6</p> <p>potential 94:11 108:1 151:9 161:15 164:10 165:21,22 177:15 191:11 224:24 251:14</p>
---	--	--

November 20, 2020

29

298:23	presume 260:19	229:22 278:12 283:20
potentially 117:11	pretext 135:24	problem 14:17 112:1
137:24 138:24 140:17	pretty 63:22 70:19	126:3 194:16 263:10
151:5 201:7 204:20	prevent 115:16 164:1,	280:21
227:11 229:22 238:12	15	procedure 67:16,18
power 80:15	prevented 94:4,7	68:9 122:2
Powerpoint 167:18,20,	116:19 117:24 124:12	procedures 68:7
21 168:3,4 171:9	182:9	proceeding 9:4
172:1 186:2 243:12	preventing 12:25 13:2	proceedings 9:23
Powerpoints 129:24	117:4 118:20 164:6	process 21:17 24:19,
168:2,13	prevents 115:2,6,13	21,23 26:9 29:22
practice 140:19	183:19	30:12 34:15,17,19
219:25	previous 16:8 25:9	35:5 37:23,25 41:15,
practices 46:8	61:16,21 90:13 113:1	17 49:5 50:16 53:21
Pratt 289:2	165:8 166:22 217:1,7	55:1 71:10 78:9
pre-2016 262:25	272:22 291:5	81:17 82:19,20 83:11
preamble 152:3,7	previously 45:1 47:12	100:21 109:16,17
precise 183:12	49:11 164:19 235:4	115:11 122:3 126:13
precisely 198:19	primarily 238:3	127:18 131:2,14
200:13	264:18	143:12,24 145:9,10,
Predatory 11:5	primary 195:1,2	14 146:5,8,9,20,22
predecessor 31:16,18,	Princeton 36:15	147:16,22 149:23
19 32:4,5 272:23	219:15	152:20,22 153:2,3,16
predecessors 31:25	principal 19:22 26:20	157:20 161:3,7,11,
predecisional 287:6	27:3	12,20 162:8,11
predict 141:6	prior 15:15 26:15	163:2,7 169:17 173:8
premise 58:22	41:2,23 42:15 46:5	188:9,11 189:16,20
preparation 14:23	47:21 55:25 56:1,4	193:15 199:6,17
113:9	58:16,17 61:4 84:25	202:7 218:13,14
prepare 14:24 15:20	85:3 88:17 90:11	224:19,22 241:23
17:7 18:6	93:6,9 118:10 131:22	242:11 244:25 247:25
prepared 112:4,10,25	138:19 140:11 142:14	248:17 258:16 260:24
160:12 239:11,20	152:19 154:17 203:10	272:25 274:17 275:2
240:4	208:20 212:4 213:1	276:6 278:14 279:4
preparing 15:17 16:6	271:17,18,24	processed 169:8,12
preponderance 56:14	priorities 36:23,25	170:4,18
57:3 78:16,20,23	151:23 247:4	processes 37:18 121:4
81:19 269:4	priority 37:2 225:19	processing 83:21
presence 9:8	privacy 94:1,12	101:17,25 102:6,9
present 10:1 176:10	117:11 132:25 133:4	114:22 125:12 129:8
245:4,12	137:24 138:25	134:19 169:14 176:9,
presented 124:24	140:18,24 180:13	16 294:22
168:7	224:13	produce 53:20 299:3
preserved 118:21	Private 9:7	produced 237:13
president 33:13,14,	privately 11:19	240:12 288:19 289:7,
16,18	privilege 65:21 66:1	11
president's 39:10,13	69:4 126:13 278:14	product 67:11
press 249:10,13	privileged 15:18	professional 105:3
250:3,11,13	65:19 69:3 86:23	program 20:14 39:19
Pressley 113:17,23	112:20,22 113:12	144:10 191:9,10,14
	126:5,7 138:15	230:20 241:15 252:6
	153:10 166:3 176:3	257:15 276:19,21,23

277:3,4,6 280:17,18, 22	255:3 284:24 285:15 293:7	23 121:11,12 124:6 130:22 136:17 137:25 139:1,20,22,24 140:21 151:1 153:13 154:21 155:13 157:12,17,25 159:9 160:7,9 181:14 192:5 193:13,22 196:25 205:15 216:6 221:12 234:22 236:3 241:16 245:10 262:2,4 269:17 270:11 275:12 276:3,12,13,15,16 277:1,9 279:10,21 281:11 282:12 283:13 287:15 292:21 293:20 296:10
programs 20:9,10,14, 15 39:20,21,22,25 40:2 43:17,20,22,24 44:1,3 47:24 48:2 51:3,14,19,21 52:1 58:18,23 59:6,8,12 60:24 61:4 62:5 165:4 240:22 241:10, 11 276:17,22	providing 145:11 164:9 194:19 246:8	questioning 35:2 65:18 156:6 222:14 231:3 232:6 257:9 258:2 274:2 292:23
progress 35:13 131:25 133:12	provisions 144:9 160:24	questions 17:13 34:1 42:18 44:25 56:16 68:3,6 69:2 105:16 106:4 107:2 122:25 123:2 127:12 133:21 181:23 182:1 193:14 207:24 231:25 253:19 257:18 261:3 265:1 275:25 279:13 290:20 292:25
project 11:4 230:19	public 24:22 78:22 130:5,6 143:21 155:4 164:25 259:21 264:4, 5	quick 64:19 298:22
projects 38:11	publication 30:13	quicker 153:4,6,7
promoted 33:15,17	publicly 65:23 264:4	quickly 258:5
prompted 98:20	published 30:19 35:11 120:13 166:5 224:25	quo 296:24
promptly 139:5	publishes 134:11	quotation 240:24
promulgated 156:23	publishing 38:19 165:3	quotations 55:8,14
prong 21:20	pull 84:15 112:14	quote 195:18 199:21 200:21 215:5 236:24 240:19
pronounce 239:13	pulled 84:18 133:8	quotes 251:1
properly 165:12,13 280:22	purely 271:12	
proposal 78:21	purpose 94:13 130:22, 24 141:2 154:5 158:3 229:20	<hr/> Q <hr/>
proposed 29:24 30:5, 12 31:14 35:8 37:8 78:20	purposes 25:14	
prospective 164:20	put 22:5 38:8 66:20 72:23 76:18 78:21 106:11 137:10 161:17 164:24 168:1 181:1 188:9 254:3 255:5,9, 10 261:23 279:16 281:10	<hr/> R <hr/>
prospectively 261:24	puts 187:23 260:24 261:18	raise 10:21 163:20 165:16 224:13
prospects 209:3,6 281:3,5		raised 98:16
protection 90:1		range 88:14
protocol 66:17,18 67:4 68:19 108:18 270:25		rankings 252:12
protocols 67:2 70:6 270:21		rare 151:5
provide 34:18 40:22 61:25 98:23 144:24 145:4,6 186:15,25 189:11 195:17,18 201:16 206:5 234:1 235:21 236:7 244:4 247:23 248:4 251:24 252:3 253:13 275:24 278:8 285:5,9	question 12:21 27:24 34:8 35:1 39:15 40:10 55:21 56:7 60:11 64:11 76:5 79:13 83:7 84:20 85:24 88:3 90:9,21 93:1 95:3 97:1 102:17 103:5 105:14, 23 106:14,24 118:2,	rate 51:18 65:15 198:3 199:3
provided 35:6 45:7 67:24 93:24 104:7 120:21 159:11 187:25 203:3 215:17,25 243:17 244:1 249:4		

<p>rating 133:18</p> <p>rationale 295:22</p> <p>reach 11:24 12:12</p> <p>reached 125:4 230:25</p> <p>read 14:20 29:7 48:19,21 49:9,11,18 51:6 71:4 96:4 103:13 114:4,9 115:3 144:14 148:13 149:3 152:2,4 153:25 163:14,23 164:4,7,12 210:11 240:7 249:24 250:9 275:15</p> <p>reading 54:14 75:12, 16 136:17 166:21 167:4 183:15 265:25</p> <p>ready 18:16 87:12,18 90:7 179:16 184:1</p> <p>realize 251:12 258:18</p> <p>reason 91:10 104:24 105:7 117:7 135:24 156:9 157:3,8 195:1, 2 204:19,20,25 205:9 207:9 256:25 273:22 282:8 283:11,15 284:8,19 287:1,10 295:11</p> <p>reasoning 146:21 151:21</p> <p>reasons 91:12 92:6 105:1,5 121:7 156:24 162:24 163:1,2,3 166:20 207:20 209:7 213:7 231:6,9 256:10,12,24 257:13, 21 281:6,21</p> <p>recall 14:5 17:5 43:1 50:22 51:20 61:20 63:1,2 64:5,12 66:19,23,25 72:18 77:16,19,21 94:19 97:21 102:15 123:20, 21,22 125:6,9 127:25 130:11 132:2 142:12 160:6,11 168:4 174:21 193:3,6 196:18 200:25 201:2 207:1 236:4 237:4,19 282:17 285:25</p> <p>receive 20:11 26:8 76:3 100:24 210:14, 16 220:7 288:5</p>	<p>received 47:18 129:12 169:6 207:23 209:25 214:1 243:9 275:9</p> <p>receives 91:13 212:16</p> <p>receiving 42:1 91:17 101:13 285:20</p> <p>recent 233:24 273:3,6</p> <p>recently 17:9 134:16 227:22 246:10,11,12 251:3 260:14</p> <p>recess 69:14,15 122:19,20 136:12,13 185:14,15 228:25 229:1 274:9,10</p> <p>reclaiming 248:25</p> <p>recognize 48:17,18 57:15 66:13,15 111:22 167:17,19 249:22 264:17 290:9</p> <p>recollection 16:18 63:13 77:24 249:8</p> <p>recommendation 54:8, 17,21,24 58:2 60:21, 22 61:9 84:3 204:19, 25 205:9 237:22 282:7 283:11,15 284:8,18 287:1,10</p> <p>recommendations 58:7, 11 60:17 240:2</p> <p>reconciliation 277:7</p> <p>reconsider 277:25</p> <p>reconsideration 274:16,17,19 276:6, 10,13 277:6,15 278:5,10,21 279:4 291:3 292:7,11,12</p> <p>record 9:3,6,23 10:14 12:19 19:8 38:1 49:3 54:3 57:22 60:13 62:19 65:22 69:13,17 71:4 75:12 96:4 103:14,17 114:5,19 115:4 122:14,17,22 136:5,8,11,15 144:14 145:8 146:1 148:13 154:1 158:13 160:7 163:15 185:17,18 212:24 217:6 228:24 229:3 249:14 274:4, 8,12 289:2 298:17,24 300:3,8,11</p>	<p>recorded 9:4,5,10</p> <p>records 194:2,9 276:21</p> <p>recover 147:19 248:6</p> <p>recovery 248:8</p> <p>recusal 53:17 218:13, 14,17,24 219:17 220:23,25 221:5 265:6</p> <p>recusals 53:18 219:14</p> <p>recused 217:23,24 218:2,19 225:1</p> <p>recusing 219:3</p> <p>redact 220:14</p> <p>redacted 53:21,24 62:23 63:5 84:4,10 207:2,19 217:17</p> <p>redaction 53:22 63:1, 12</p> <p>redactions 207:5</p> <p>reduces 164:10</p> <p>redundancy 298:6</p> <p>redundant 184:13</p> <p>refer 11:6 28:7 76:8 94:17 109:21 163:22 197:14</p> <p>referenced 24:12,13</p> <p>referring 71:18 149:2,10,24 154:10, 11 161:18 162:24 164:5 165:8 168:11 173:22 176:11,12 177:1 187:3,5 188:3, 14 189:5 193:9 230:12 234:6 237:7 238:1 239:23 285:12 287:5</p> <p>refers 95:25 161:15, 20 162:8,23 166:7 171:18 177:3 250:13</p> <p>reflect 135:14 191:19</p> <p>Reform 250:4</p> <p>refresh 16:18,23</p> <p>reg 35:11 38:7 78:25 81:22 82:2 93:6,10, 13 148:6 152:2,7,13, 22 155:3 161:15,16, 19,23 162:10 163:6,9 164:7 165:1 242:2,3, 11 247:25 249:6,7 253:5,10 254:21</p>
---	---	---

November 20, 2020

32

255:3 259:2,6,7	regulatory 20:4,5 33:14,16 38:21 107:2,12 108:9 144:9 155:7	relying 159:16,24
regard 20:23 23:2,22 24:14 37:6 46:18 79:8 106:24 241:16 254:24	reimbursed 147:14	remain 113:24
register 276:20	reiterate 155:3	remaining 226:5,7
regs 44:13,16,19 81:18 86:11,12 93:5 110:8,10,11,12 156:14 191:24 193:2 247:24 248:10	relate 150:23 261:4	remember 13:19 31:2 32:13 33:13 35:10, 12,22 39:23 50:22 51:17 64:14 72:20 78:17 83:8 84:13 87:17,23 88:16 113:20 129:9,13,20, 21 130:10 132:4,6,7, 12,13 160:12 174:12 190:15,16 197:4,6 201:5,7 210:17 224:20 227:14,17 237:17 238:8 242:18 246:12 277:17,23 278:3 282:2 287:20, 22 288:7,8,9
regular 28:16 52:14 91:25 97:20 128:6, 16,18,20 130:14	related 9:18 25:14 39:22 77:6 94:20 178:17 182:22 183:15 209:5 218:21 281:4	remote 9:9,10,15,22 11:9,16 300:18
regularly 97:22 129:17,19 137:5	relates 151:2	remotely 10:3,6
regulation 16:22 30:14,19 32:2 37:10 39:18 43:8 44:20 45:22,25 46:10,25 47:5 78:12 92:20,24 93:2 105:13 107:7 142:18 143:16 147:4, 15,21 150:22 151:18, 22 152:1,4,19 154:13 156:23,25 157:6,9 163:17 164:20 165:7, 11,12,14,20,23 166:4,8,9,15,17,21, 22,25 245:6 247:2,4 252:22,24 253:2,15, 20 254:6,8,10,11 299:14	relating 29:11	remove 162:14
regulations 22:3,7 24:7 29:12,25 37:14, 20 38:12,23 39:19, 22,23,24 44:7,10 45:4 46:3,7,9,12,13 54:20,22,25 55:2,11 92:9,12,14,17 93:8 103:3 106:4 109:4,7 119:2,11 132:15 142:9 143:11 144:10 148:3,18 150:19 151:7 154:15,20 156:14 160:24 162:25 164:17 165:9,25 185:21 190:25 192:22 193:10 244:24 245:20 246:21,25 247:14,15, 21 248:13 249:1 254:1,3 255:8,17,19 261:7	relationship 20:20	repayment 145:5 161:1 163:17 165:7 167:11 186:2 209:15 233:8 275:21 279:8,22 280:11
	relative 153:1	repeat 298:18
	release 249:11,13 250:3,11,13	repetitive 184:15
	relevance 231:2 274:1	rephrase 136:21 138:16
	relevant 89:25 256:8, 9,18 257:10 293:17	replace 120:3 176:13
	reliable 224:11	replaced 47:5
	reliance 242:4,13	report 20:16,22 25:17,20,22 26:3 48:12,18,19,20,21, 23,24,25 49:9 51:10 82:15 128:25
	relied 46:25 94:8 152:16	reported 28:22 168:6 235:4
	relief 23:23 24:14,25 25:8,10 40:22 41:22 42:1 59:24 61:10,17, 22,24,25 62:3,7 70:4,10,14 71:9,13 72:5,11,23 73:5,8 76:3,7 77:6,9,13 79:8,10,18,22 80:7, 12 96:11 99:9 102:4 103:4,6,7 104:3 109:9,14 115:8 117:14 120:2 123:3 124:12 128:12 131:24 135:12 137:23 149:17 152:12 155:19 159:14 170:10 171:14 173:11 179:14 180:12,16 183:24 188:10 192:14 221:18 222:18 233:14 234:7,16 236:14 237:2 241:20,21 243:2,3,10,16,17,25 244:5 248:3 277:3 280:16 281:7	reporter 9:21,24 10:20 110:15,18,20 111:4,10 136:16,18, 22 300:5
	relies 93:24 224:1	reporting 10:2,11 25:19 37:20
	rely 99:1	reports 20:7,18 27:25 28:1 100:9,13,18,24 101:8,13 129:11
		represent 196:22 264:24

November 20, 2020

33

representatives 97:12 238:10	restroom 12:18	146:2,7 169:22 173:9
reputations 154:5 158:4	result 71:11 165:13 201:14 244:5 285:8	198:21 200:3 201:1, 3,25 205:11 215:21 256:20,21 261:5
request 9:6 39:10,13 274:21 278:21,24 288:18 291:3,14 292:7,11,15 293:8	resulted 38:5	272:23 274:19 283:17 291:20 298:10
requests 288:23 289:19 291:10,13 298:25	resume 176:25 236:25 237:5,18 238:15,23	reviewer 27:8 143:21
require 148:18	retained 35:21 36:1	reviewing 16:8 42:8 43:25 44:1 56:12 63:12 66:19,23 67:1 70:7 81:7 83:11,22 87:12 88:2 101:21,23 102:3 112:25 136:2 142:12 156:19 201:7 218:7 219:3 231:11 256:14 259:7 268:23 277:12,14 278:6 283:5 292:17 294:2, 12
required 38:4 251:14, 15 258:20	retroactively 92:25	reviews 26:6,10,24 27:13,24 53:9 57:17 62:21 65:7 66:14 82:17 84:17 114:6 149:7 187:4 196:17 197:21 198:17 200:4 201:11 204:3 206:25 208:1 217:18 243:23 250:8 259:5 266:9 275:16 282:22 294:19 296:3
requirement 107:12 249:6,7	return 69:19	revised 13:11
requirements 37:19,21 93:3,11 215:15	returned 218:22	revisited 174:17
requires 92:20 188:11 222:7	returning 70:21	revolve 134:24
reset 191:7	revenue 230:23	Riemer 65:11 77:2
residing 105:11	reverse 178:25	rights 146:5,8,9
resolve 137:15	reversed 178:7 184:9	rigorous 237:23
resolving 134:13,25	review 15:6 16:17 26:4 27:15,17,19 28:15,24 29:2 39:7 40:15,17 41:21 44:6 45:6,10,19 47:12,14 50:15 53:23 55:11 58:5 66:17 67:2,6 68:17 71:7,12,18,20, 21,22,25 72:3 80:16 81:1,4 83:13,15 86:15 87:8,19 88:5 95:23 101:5,6 112:15,18 113:8 115:7,17,23 121:24 125:19 133:19 134:2, 3,4,6,10,17 135:3,5, 7,15 142:14 143:24, 25 144:2 145:8 146:24 149:5 158:24 159:1,15,25 163:8 197:5 199:6,10 202:9,11 204:19,24 205:19 210:8 215:10 218:5 219:12,24 239:3 241:25 242:6 259:1,3 268:20,24 271:23 274:21 276:2, 4,12 278:16 283:11, 15 284:7,18 285:14 287:1,9 289:1 291:2 294:15,16	rise 203:14
resources 71:23	reversed 178:7 184:9	risk 154:2,25 155:14, 17 156:15 157:4,14 158:1 165:19,21,22, 24 230:16 232:24
respect 191:18 264:25	review 15:6 16:17 26:4 27:15,17,19 28:15,24 29:2 39:7 40:15,17 41:21 44:6 45:6,10,19 47:12,14 50:15 53:23 55:11 58:5 66:17 67:2,6 68:17 71:7,12,18,20, 21,22,25 72:3 80:16 81:1,4 83:13,15 86:15 87:8,19 88:5 95:23 101:5,6 112:15,18 113:8 115:7,17,23 121:24 125:19 133:19 134:2, 3,4,6,10,17 135:3,5, 7,15 142:14 143:24, 25 144:2 145:8 146:24 149:5 158:24 159:1,15,25 163:8 197:5 199:6,10 202:9,11 204:19,24 205:19 210:8 215:10 218:5 219:12,24 239:3 241:25 242:6 259:1,3 268:20,24 271:23 274:21 276:2, 4,12 278:16 283:11, 15 284:7,18 285:14 287:1,9 289:1 291:2 294:15,16	road 150:12
respects 109:11	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	Robin 97:19 238:12
respond 45:23 143:14 145:7,22 146:11 193:4 245:16	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	robust 186:16,25 194:20,23 201:17 285:6,10
responded 30:8	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	role 22:1,5 25:19 26:13 27:3 30:20 31:17,24 32:4,7,8 33:4 34:10 37:6 38:10,13,15 39:16 67:22,23 77:21 79:8,
response 24:22 30:5 145:23 149:9 155:5 196:24 202:17 246:17 264:25 286:17	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	
responses 30:16 143:23 144:1 299:1	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	
responsibilities 19:13,16,21 29:8,9 157:24	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	
responsibility 26:23 27:2 37:19 157:20	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	
responsible 20:1,2 26:11,12 27:14,16,18 28:17	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	
rest 149:3	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	
restarted 137:6 138:11	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	
restate 34:7	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	
restricts 114:20	reviewed 14:25 15:4,8 30:7,9 41:7 43:14 45:2 55:19 57:21 60:15 63:1,11 66:17 67:3,17 74:22,25 129:2 130:20 143:25	

November 20, 2020

34

14 95:9,15 98:14	school 42:2,4 45:10,	203:22 217:3 275:7
102:23 103:2 104:24	22 50:5 81:24 91:16,	281:1 290:19
108:10 109:10 124:5,	17 92:8,17 93:3	scrolled 198:8 265:8
8 126:18,23 127:2	114:23 145:11,20,21	scrolling 144:20
132:22 140:11	146:9,10,11,22	199:24
143:18,20 174:16	147:2,14,20,24	scrolls 160:20
177:4 202:16 218:4,7	164:10 190:5 193:25	search 288:15
219:12 220:23	194:2,6,8,9,21	seat 181:7
232:11,18 233:10	202:22 203:13,15	secondary 26:23 27:8
244:4 246:19 258:11,	206:11,14 208:21	secretary 19:23,24
12,22 293:5 296:7,9,	209:4 212:6 217:25	20:7 21:5,14 22:8,
12	220:18,19 226:1,22	12,19,20,22 23:3,7,
roles 33:11,20 40:8	227:9,17 228:5	9,24 24:8,19,24
271:6,8 290:21	245:25 246:1,17,24	25:7,20 26:21,22,25
roll-up 220:21	248:6,25 249:4 257:8	27:1 32:5,7,23 54:6
room 10:1 31:2	265:19 267:14 268:8	58:2 60:17 63:8 84:5
rotated 265:9,16	280:22 281:3	93:23 98:7 128:5
roughly 236:25	school's 146:14,18	129:15 130:21 133:12
rounds 264:3,5	247:22	150:14 160:25 168:6
rule 24:18 29:24	schools 45:12 71:15	181:6 186:3 202:9,11
30:5,12,23 31:5,11,	72:13 91:8 95:1	234:18 236:4 239:21
15 34:12,14,19 35:7,	116:7,21 139:10	257:6 269:13 272:1,5
9,14 37:3,8,9 38:21	141:2 144:15,24	273:7 294:22 295:19,
78:20 106:1 143:20,	145:3 150:16 170:25	21
25 162:7 177:8,24	172:13 192:18 199:22	secretary's 22:18
254:23	200:22 202:20 216:2	26:1 39:4 136:4
rule-making 24:10,21	218:12 220:4,9,12,15	160:8 231:13 292:19
29:20,22 34:15,16,19	221:20,22,25 222:1,	section 161:16 164:4,
35:5 78:8	3,5,21 223:21 225:2,	12 282:1
ruled 140:17	3,5,8,14,18,20,24	sections 248:11
rules 38:20	226:5,7,10,14,24	277:15
ruling 94:16,20 239:7	227:1,2,4,10,24	security 93:25 94:9,
run 63:21	244:20,25 245:3,11,	12 98:22 99:2,6
running 263:2	21 246:2,7 247:15,	133:3 172:6,7,14,20
runs 11:11 27:5	16,19 252:3,5,11,13	173:17 255:10 260:25
Ryan 9:21	295:20	270:20
	scientifically 237:23	seek 278:9
	scientist 70:2	seeking 237:2
	scope 25:4 34:3,21	selectivity 252:13
	51:9 112:6 120:16	semesters 252:8
	121:4 133:20 135:17,	semi-autonomous
	19 142:24 150:7,10	105:17 108:6
	154:12,22 166:2	send 127:14 175:16
	167:7 221:1,10	179:7,17,23 182:19
	222:13 229:21 231:1	187:6,12 191:2 192:7
	232:4 247:1 256:6	194:7 220:12 221:9
	258:2 265:22 268:12	227:18 285:17 288:23
	274:1 293:9,14	sending 175:21 179:8
	scorecard 164:9,14,	188:20 220:17 228:11
	22,24 224:21,25	senior 32:23 33:13,
	screens 63:20	16,17 107:24 182:25
	scroll 53:8 75:25	
	114:11 160:18 199:4	
S		
sadly 97:9		
sake 12:20		
sale 229:7,15		
Salesforce 251:8,11		
258:19 260:7,8,11,		
13,14,18		
sample 198:1 287:17		
satisfied 76:1		
scale 107:24		
schedule 109:8		
scheduled 12:17 97:22		
176:24		

sense 19:11,20 25:6, 18 26:3 29:16 42:24 273:16 293:2 295:13	sheet 67:12	slightly 20:21
sentence 50:7,14 103:13 104:14 149:2 156:13 161:6 162:23 163:14,22 165:6 166:7 167:5 187:2 189:10 190:7	shifted 44:20	slow 160:18
sentences 49:19 51:5	shoes 279:16	small 39:5 143:10 151:8,9
sep- 102:22	shoot 73:24	smart 253:16,23 255:5,20 256:2 259:4
separate 12:10 27:23 61:16 102:22 119:11 125:18 129:7 180:14 191:3,4 271:20	short 64:17 122:11 181:11 197:24 232:6, 8 274:5	smartphone 11:23
separated 110:21 248:7	show 214:16 255:21 258:5 286:11,14 290:5	smartphones 11:19
separating 59:22	showed 76:25	smoothly 11:11 63:22
separation 105:20	showing 14:2	social 93:24 94:9,12 98:21 99:2,5 133:3 172:6,7,14,19 173:17 255:10 260:24
September 176:25	side 145:7	sole 77:4 84:21
series 53:23	sign 22:23 23:24 24:1,20 53:14,17 82:10 84:21 85:7,14, 21 171:2,7 221:5,6	solely 71:25 72:14 76:8 103:6 157:21
serve 19:22 27:8 163:25	sign-off 202:2	solicit 246:23
served 17:20,25 261:3 272:11	signature 19:5	somebody's 135:7
serves 253:19 255:14	signed 19:8 25:8 84:13 235:3,13,19 272:23 278:1 281:18 283:24 291:21	someone's 272:9
service 35:25 188:13 259:21	signer 26:23 202:8	sort 89:8 161:21
servicer 187:6,8,15, 16,21 188:16 189:1, 2,3,4 190:11	significant 96:9 98:10 131:4	sound 64:20 127:7
servicers 187:10,11 188:9,12,23 189:5,9 285:17	significantly 131:12 240:20	sounded 127:10
services 39:8 190:10 252:4,5	signing 283:25	sounds 127:6 182:4
serving 32:6	signs 84:6 85:12 202:6	source 206:4 215:11 224:12,16,24 230:23 268:7
set 43:21 81:9,11 109:23 110:2,3 192:7 226:18 262:12	similar 57:18 201:24 240:22 278:2	sources 45:16,17 215:13
sets 107:7 109:8 120:6	simplify 155:13	speak 67:5 71:19 141:4 169:18
setting 81:8 95:16 276:9	simply 100:18 189:8 286:24	speaks 151:23
settlement 290:5	single 25:7 141:14,18 155:6 296:3	special 161:21,24 162:3,11,16 271:20
shakes 221:15	site 41:24 59:7 120:11,13,21 253:13 259:19	specific 18:6 30:16 56:19 132:12 168:4 203:6 211:9 293:9
share 83:9 266:13	situation 11:16 172:3,10 190:21	specifically 63:2 158:16 228:14 231:25 275:17 280:7
shared 98:17 227:4	situations 189:24 195:4,6 208:8,12	specifics 214:23
she'd 90:16	six-digit 68:5	speculate 99:15 118:12 135:7 140:2 178:13 210:7,9
shed 256:25 258:14	sixth 144:18	speculating 68:12 104:6
	size 131:6	speculation 68:14 222:23 273:12
	slice 243:20	speculative 159:8 184:21,24 212:14,20 214:11,13 234:9 235:7 279:24 294:4
	slide 177:2	

<p>speed 30:21 31:1,11</p> <p>spellings 300:6</p> <p>spending 64:17</p> <p>spent 16:6,8 36:11,14 37:21 38:1</p> <p>spoke 15:20</p> <p>spook 179:18</p> <p>spot 281:20</p> <p>spotlight 264:13</p> <p>spreadsheet 259:11,12 265:9,12</p> <p>spreadsheets 49:4,7 176:14</p> <p>spring 98:5 118:7 173:20 175:19 178:1</p> <p>squarely 257:21</p> <p>staff 22:18 26:2 27:7,9 30:6 31:3,4 143:5,6,7,8,9,10,22 238:13 252:5 292:3,4</p> <p>standard 44:19,21 46:19 47:1,4,6,7 56:15 57:3 67:16,17 68:7,8 75:24 78:15, 18,19,21,24 81:20 86:13,19 87:15,20 88:19 89:3,9,13,20 90:15,16,19,23,24 91:4,7,8,14 92:7,8, 12,15 100:2,4 103:23 104:16,17,21 106:15, 17 107:1 122:1 159:23 191:25 192:5, 25 193:2,4,5,6,9,19 195:8,10,12,15,20,23 203:24 204:15 209:22 210:20,22 211:2,9, 12,14,16,22 212:1 213:9 244:18 256:1 261:2,4,7,11,12,14 262:4,7,20,21 269:5 281:22 282:5 283:12, 23</p> <p>standards 86:15 89:23</p> <p>stands 39:24</p> <p>start 29:18 37:15 38:16 87:12 90:7 98:2,18 101:4,8 130:9 131:13 207:14 274:24</p> <p>started 25:15 31:24 32:1 33:7 46:5 50:23</p>	<p>127:7 133:7,8 134:17 227:18 245:8 246:5</p> <p>starting 163:15 229:24 245:6 246:9</p> <p>starts 153:24 197:11</p> <p>state 10:13 41:13 44:19 45:14 46:18 47:1,2,5 60:13 62:19 65:4,22 85:4 86:13, 15,19 87:15,20 88:19 89:3,9,13,20,23 90:12,15,16,19,23,24 91:4,6,8,14 92:7,13, 15 100:2,4 106:15, 17,19,21,22,25 147:9,12 182:7 185:19 191:25 192:3, 25 193:4,9,19 195:8, 10,12,15,20,23 203:15,19,24 204:6, 14,17,21 205:3,10 208:3,7,8,21 209:1, 8,19,21 210:20 211:1,9,11,14,25 212:7,9,10,12 213:8 214:6,10 215:2,7,9, 11 216:7 234:12 250:2 256:1 261:11, 14 262:21 281:22 282:5 283:12,23 287:6 295:21 298:24</p> <p>stated 116:6 189:8 214:15 241:6,7</p> <p>statement 9:22 45:1 47:11 84:25 85:3 92:23 107:14 157:14 158:1 162:18 195:2,3 212:8 213:8 240:25</p> <p>statements 49:12 150:21 250:16</p> <p>states 86:16 88:22 89:24 90:5,9 186:14</p> <p>statistical 97:15</p> <p>statistics 220:4</p> <p>status 296:24</p> <p>statute 21:1 147:8,11 163:18</p> <p>stay 236:20 300:5</p> <p>stem 114:23</p> <p>step 73:6,7 75:19 76:2,8,14,16,19,21 77:15,17,20 78:4</p>	<p>79:4,14,16 80:9,11 81:13,15 82:11 96:25 99:18,22 100:7 101:24 102:3,4,12, 13,21 104:25 106:14 108:24,25 109:11,12 110:1 116:23,24 117:2,3,4,6 118:3 119:4,8,9,19 129:5 141:17 170:13 183:25 242:12,13,14,15 243:1 248:7,22 299:23</p> <p>step-one 72:25 75:13 76:4 78:9 83:18 84:8 85:7 99:17,24 100:16,25 102:11 103:21 104:1,17 106:8 108:14 116:19 118:17,24 120:23 126:20,24 127:3 129:4 141:14,15 142:5 170:13,19 175:11 241:18 242:24 243:17</p> <p>step-two 72:25 75:13 76:4 79:2,3,11 84:8 95:17 99:9 100:5 101:1 102:12 116:20 117:15,19,24 118:20 120:19,22 121:4,13, 14 124:1,25 170:23 183:23 226:10,24</p> <p>stepped 28:14</p> <p>steps 75:19 76:16 138:18</p> <p>Steve 65:9 77:1</p> <p>Steven 68:24</p> <p>stipulation 10:13</p> <p>stop 116:23 117:2 149:1</p> <p>stopped 220:17 250:18,19,21 272:25</p> <p>stopping 165:2</p> <p>story 236:2 256:23</p> <p>strange 11:8</p> <p>strategic 134:12,15, 18,24 135:2</p> <p>Stratford 235:25 237:7 239:23</p> <p>Street 9:17</p>
---	--	---

strictly 270:3	substance 279:6	
structure 25:19 108:2,12	substantial 37:20	T
student 11:5 20:17,18 29:13 36:22 37:6 39:20 56:6 97:10 101:19 105:8 114:21 134:11 141:18 187:9 188:12 191:9 203:4 210:11 215:24 219:4, 21 231:23 239:15 241:13 249:3	substantiated 170:2	table 130:2 181:7 226:17,19 227:19 243:21 265:13,14 280:19 298:15
student's 249:2	successful 71:14 72:12 78:3 103:22 104:15	tables 121:20,22,25 122:2 222:7,10 224:1,3 225:7,17,19 227:3 228:5
student-loan 230:2	successfully 275:25	tabs 177:5
students 42:3,5 44:2 55:8 59:1 65:14 95:24 117:5 123:4, 12,14,15,25 124:2, 14,19,23 132:10 139:9,16,19 150:15 163:19 164:18 165:15 183:20 218:11 249:2 257:7 295:19 297:12, 14	suffered 152:12,17	tailored 11:16
subcategories 206:7	sufficient 267:9	takes 189:10 222:12 246:18
subfolders 14:1	suggest 122:11 255:18 288:25	taking 30:24 42:19 100:2 102:18
subject 44:15 63:8 66:2 150:16 215:10 235:14 257:8 295:20	suggested 116:22	talk 14:22 49:10 60:1 110:24 113:16 136:6 196:20 197:7 198:14
submission 291:2	suggestions 260:22	talked 73:7 104:20 126:22,24 132:16,17 158:17 221:8 258:10 291:19 293:4,6,19 299:8
submissions 145:7	suit 291:4	talking 13:4 24:9,11 38:13 44:5 46:1 49:20 70:4,10 93:17 99:8 113:25 128:8,9 161:4 164:13,23 165:11 168:5 169:13 180:6 189:8 197:6 198:13 208:2 211:7 225:6 239:17 254:24 287:5 292:13
submit 44:2 142:2 149:13,18 155:18 175:9 206:9 216:9 247:17,19 248:21 266:17,19,21 274:19, 21,22	Summary 144:8	talks 43:8 161:23 168:10
submits 146:12	summer 32:16 176:9	tally 168:11
submitted 15:5,9,10 40:23 45:12 75:21,22 103:17 125:2 142:4 194:5 206:12 209:11 211:17 215:22 216:24 244:16 266:23,24 267:13,25 281:15 298:25	superseded 58:12 60:21	target 154:4 158:3
subscription 142:20	supervise 56:23 99:14 115:25	tasked 22:14 95:15 121:15
subsequent 40:8 100:4 259:5	supervision 28:23 104:5	taxpayer 230:21,24
subsequently 35:8	supervisor 20:6 28:13	teacher 159:14,18,19
subset 23:1 253:7	supplies 267:8	team 29:17 31:1 67:7 80:20 82:21 83:11 85:15 89:17 97:8 112:14,24 115:16,20 119:8,25 121:19,21, 25 129:18 131:6,11 133:7,8 143:3,4 169:21 171:5 206:18 222:9 224:2 237:21
	support 9:16,22 50:2 148:17 215:23 274:23	
	supported 75:21	
	supporting 50:5	
	suppose 25:24,25 44:2 55:21 109:6 233:3	
	supposed 45:19 195:25	
	surprise 214:8,20	
	surprised 139:13,17 214:14 287:9	
	suspect 228:4,9,10,22	
	Sweet 9:13	
	Sweet's 217:15	
	sworn 10:6,24	
	system 176:13 194:14 215:24 251:8 253:18 255:13 257:19 260:18,20 261:19,21 262:19 271:3	
	systems 49:2 176:9,16 187:19 190:11 257:12,14,16,23 260:8 270:18,19,22	

238:19,21 261:19 268:16 296:2,3,4 team's 260:18 teams 121:23 239:20 240:5 Tech 83:12 90:7 technical 20:12 263:4 technically 28:12 46:6 54:24 technician 9:16 technology 25:11 70:17 Ted 54:6 58:2 60:17 teenager 17:23 telling 159:24 223:25 295:12 tells 159:17 temp- 212:2 template 187:14,25 188:3 193:16 200:9 201:2 204:7,8,16,18 205:1,7,8 207:25 208:19,23 210:14,17 211:8 212:2,22,23 214:2,25 218:10 275:9 282:11,12,13 283:2,17,25 284:17 285:8,18 templates 202:2 207:11 218:8 285:11 temporary 263:5 ten 36:11 111:11 ten-page 239:11 tenure 26:19 40:7,12 44:11 156:3 223:8 228:8 296:21,22 term 53:22 70:8,11,12 101:10 102:6,9 230:18 terminology 53:15 102:1,2 169:23,25 203:6 239:5 terms 24:25 53:18 73:11 206:8 247:5 279:2,6 299:21 test 242:2,8,19 testified 10:24 117:18 124:10 137:3, 8 222:19 223:10 281:24 283:22	testify 137:11 298:16 testimony 10:7 55:22 56:6 112:5 113:10 139:11 158:19 182:12 297:17 300:12 text 208:18 278:2 283:5,10 284:21 287:3,9,18 288:3 theoretical 267:19 thereof 131:25 299:10 Theresa 9:13 thing 46:4 98:20 131:17 201:23 205:16 206:14 things 11:14 127:7 128:7 171:23 182:7 248:10 251:22 255:1 264:22 thinking 98:19 181:14 thinks 294:9 thought 126:1 153:5 180:20 251:25 278:16 thoughts 126:9 153:9 284:2 thousands 214:9 287:10 three-page 14:6 threshold 213:16,17 215:15 tied 295:3 time 9:12,13,20 12:21 16:5,8,9,10,21 26:13,19 28:21 31:10 32:17 33:15 36:13 37:22,25 38:8 40:23 43:17 44:5,7,9 46:10 47:24 48:2 50:19,20, 25 51:4,14,20,21,24 52:10 58:18,24 61:10 64:6,18 65:12 66:22 69:13,17 89:21 94:3, 8 98:17,18 100:3 114:8,12,13 116:14 117:17 118:1,5,7,16 122:17,22 124:7,9 126:10 129:10 130:13,14 131:12,22 132:1,5 133:10 136:11,15 138:9 141:25 148:4,5 152:5 156:2 160:9 164:3 172:4,16,24 173:3,25	174:17 175:8 177:7, 9,13,21 178:5 185:13,17 186:9 188:16 189:13 190:17,19 199:14,15 221:24 222:8,12 228:24 229:3,6 238:5 240:7 243:22 246:16, 23 252:7 263:6 267:15 274:5,8,12,13 284:2 289:20 299:11 300:11 timeline 16:23 30:18 35:12 38:22 44:5 64:15 88:16 224:20 238:8 291:2 timelines 38:10,19 times 17:17 43:21 44:1,3 65:24 130:2 273:17 timing 183:12 228:2 tiny 39:5 title 19:15 33:19 39:18 40:2 48:18 66:16 230:1 titled 52:13 today 9:11 11:6,21 12:7,16,25 14:10,24 15:11,13,14,15,23 17:6 26:14 70:19 73:1,11 115:19 142:15 158:19 207:9 234:8,17 236:13 244:15 258:10 263:7 271:14 273:17 281:25 285:14,19 286:20 290:17 293:4 299:5,9 today's 15:20 16:6 74:23 142:13 300:12 told 40:20,24 41:1, 10,24 51:1 59:12 64:2,3,13 71:20 83:12,14 90:6 98:21 104:4 115:23 116:24 120:12 125:12,15 128:14 137:22 159:17,21 185:3,5 212:12 238:2 259:4 285:23 tool 250:5,10,15,18, 19,21 253:13,16 254:25 255:5 256:2, 4,8 258:15,23 259:9,
--	---	--

11,22,25 260:16 261:25 262:5,24 263:1,3 264:2,3 top 36:9,20 52:20 74:14 113:19 114:18 188:7 216:12 239:10, 12 252:16,18 topic 22:25 25:11 158:15 231:20 244:14 256:7,13,17 274:16 291:18 292:9,16 296:8,13 topics 135:21 136:1 222:17 257:10 290:25 291:17 293:10,20 total 76:11 101:9 130:14 132:2 totally 63:21 113:3 180:14 touched 244:14 track 49:2 trained 56:13 272:17 training 53:16 70:2 272:19 transcript 13:17 18:14 48:10 53:4 57:13 60:9 62:15 65:2 66:11 111:20 112:2 185:25 186:6 196:13 216:18 217:11 230:6 233:18 249:20 263:25 290:3 transcripts 50:6 transfer 58:8 65:16 triggered 98:25 TRIO 39:20 trouble 73:22 true 92:9 205:6 226:15 233:3 241:8 271:24 292:6 Trump 41:18 43:18 230:1 trust 80:25 truthful 12:25 turn 63:14 69:20 264:11 Twenty-six 186:11 two-part 241:23 242:2,8,19 two-step 147:16 242:10 247:25 248:17	twofold 108:16 130:25 type 136:22 205:8 287:18 typed 136:23,25 typical 58:4 285:24 286:9 <hr/> U <hr/> U.S. 9:16,21 32:24 Uh-huh 29:4 58:10 63:10 93:16 144:13 161:5 169:4 174:20 185:9 203:17 236:22 245:2 275:10 ultimately 20:7 28:17 33:17 38:5 39:8,12 44:11 72:8 77:8 78:23 82:15 130:4 141:5 224:17 297:4 umbrella 23:5 unavailable 176:17 unclear 171:7 under- 76:18 underlying 295:23 undersecretary 26:20 27:4,12 understand 36:11 40:12 41:18,20 44:4 49:3 63:21 66:25 70:13 71:22 72:7 86:16 91:11 102:2 104:23 105:22 106:12 115:12 116:18 120:18 138:1,3 147:6,8 148:20 150:2,11,17 151:13 157:2 158:23 159:1 166:20 169:9 178:3 181:9 182:6 184:16 189:14 191:7 206:1 208:12 215:6 220:13 221:4,9 222:17 225:16 240:23 242:20 251:21 256:23 260:14 271:10 293:12 296:20 understanding 36:25 40:16 42:11,13,23 45:3,5,22 46:11 47:15,17,25 48:4,5 49:5,8,11 52:4,7 55:15 56:24 58:15	59:10 60:23 61:3,11 62:2,4 77:25 81:8 84:20 85:8,18 88:18, 21 89:24 90:4,8,15, 17 92:10,16 94:2,6, 10,13 98:23 106:7,23 108:11 116:2 123:10 130:21 140:10,12,14, 16 146:13,14 150:13 162:13 174:22 182:7, 17 183:10 187:16,18, 21 188:22 201:13 205:2,5,12,20 239:2 241:21 248:12,14,15, 19 257:15 259:8 260:6,12 261:17 263:4 264:21 266:11, 14 268:18,21 273:20 274:17,20 275:1,23 284:17 293:2 295:6,8 understands 81:1 understood 47:14 70:15 138:5 154:17 undertaken 96:8 underway 29:22 unfounded 148:23 unit 54:5,17 55:11 56:25 58:1 60:16 66:16 67:2,19,24 68:14,16 78:6 80:14 104:5 105:11,17 106:5 109:18,24 119:18,21 125:4 138:22 159:11,16 162:5 169:21 226:4 239:2 245:8 246:5 260:9 271:20,21,22, 25 279:14 unit's 176:14 Universities 28:12 university 27:6 36:14,15 265:20 unnecessary 209:20 unprocessed 113:24 unredacted 84:15 unsubstantiated 154:3,7,25 155:15 156:15 157:4,15 158:2,15,22 159:6 unusual 210:25 up-to-date 134:19
--	--	---

Y

year 26:14 88:10
173:5 199:15 246:12,
14 259:18
years 17:21 26:15
36:12,14
York 9:17,18 65:24

Z

zip 13:22,25 52:12,13

November 20, 2020

1 I have read the foregoing transcript of
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3 it is true, correct and complete, to the best
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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


Page: 16

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Page: 20

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Page: 22

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Page: 24

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Page: 25

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Page: 26

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Page: 30



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Page: 31

 Number: 1 NPRM	Author: Diane.Jones	Subject: Sticky Note	Date: 12/23/2020 8:01:59 AM -05'00'
 Number: 2 led	Author: Diane.Jones	Subject: Sticky Note	Date: 12/23/2020 8:02:29 AM -05'00'
 Number: 3 NPRM	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:19:51 AM -05'00'
 Number: 4 NPRM	Author: Diane.Jones	Subject: Sticky Note	Date: 12/23/2020 8:02:53 AM -05'00'
 Number: 5 NPRM	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:20:03 AM -05'00'

Page: 33


 Number: 1 that was	Author: Diane.Jones	Subject: Sticky Note	Date: 12/23/2020 8:20:34 AM -05'00'
 Number: 2 that was	Author: Diane.Jones	Subject: Highlight	Date: 12/23/2020 8:21:00 AM -05'00'

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

Page: 43

 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


Page: 49

 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 1:29:35 PM -05'00'
finding


 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:23:08 AM -05'00'
finding

Page: 76


 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 1:44:00 PM -05'00'
2017

 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:23:23 AM -05'00'
2017

 Number: 3 Author: Diane.Jones Subject: Sticky Note Date: 12/21/2020 1:44:15 PM -05'00'
limited


 Number: 4 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:23:58 AM -05'00'
limited

Page: 89

 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'


Page: 116

 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

Page: 128

 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

Page: 146

 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
statutes of

Author: Diane.Jones

Subject: Sticky Note

Date: 12/23/2020 8:12:03 AM -05'00'


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'
know

 Number: 2 Author: Diane.Jones Subject: Highlight Date: 12/23/2020 8:13:34 AM -05'00'
know

 Number: 1 Author: Diane.Jones Subject: Sticky Note Date: 12/23/2020 8:30:37 AM -05'00'

it for


Page: 190

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

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

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

Page: 199



 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'

Page: 223


 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'


Page: 224

 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'

Page: 239

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

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


Page: 255

 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'

Page: 267

 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

Deposition Transcripts

Cited in Supplemental Complaint, March 19, 2021

Transcript 3 – James Manning

Page 2

1 - JAMES MANNING -

2 A P P E A R A N C E S

3

4 LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL

5 Attorneys for the Plaintiffs

6 122 Boylston Street

7 Jamaica Plain, Massachusetts 02130

8 BY: TOBY R. MERRILL, ESQ. (Via Zoom)

9 EILEEN CONNOR, ESQ. (Via Zoom)

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13 econnor@law.harvard.edu

14 mogrady@law.harvard.edu

15

16 - and -

17

18 HOUSING & ECONOMIC RIGHTS ADVOCATES

19 3950 Broadway, Suite 200

20 Oakland, California 94611

21 BY: JOSEPH JARAMILLO, ESQ. (Via Zoom)

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Page 3

1 - JAMES MANNING -

2 A P P E A R A N C E S

3

4 U.S. DEPARTMENT OF JUSTICE

5 Attorneys for Defendants

6 Civil Division, Federal Programs Branch

7 1100 L Street, Northeast

8 Washington, D.C. 20530

9 BY: R. CHARLIE MERRITT, ESQ. (Via Zoom)

10 KEVIN P. HANCOCK, ESQ. (Via Zoom)

11 (202) 307-0342

12 robert.c.merritt@usdoj.gov

13 kevin.p.hancock@usdoj.gov

14

15

16 ALSO PRESENT: (Via Zoom)

17

18 JOSEPH RAGUSO - Videographer

19

20

21

22

23

24

25

Page 4

1 - JAMES MANNING -

2 IT IS HEREBY STIPULATED AND AGREED BY

3 and among the attorneys for the respective parties

4 hereto, that the sealing and filing of the within

5 deposition be waived.

6

7 IT IS FURTHER STIPULATED AND AGREED

8 that all objections, except as to the form, are

9 reserved to the time of trial.

10

11 IT IS FURTHER STIPULATED AND AGREED

12 that the within examination and any corrections

13 thereto may be signed before any Notary Public

14 with the same force and effect as if signed and

15 sworn to before this Court.

16

17

18

19

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22

23

24 -o0o-

25

Page 5

1 - JAMES MANNING -

2 THE VIDEOGRAPHER: We are now on the

3 record. Participants should be aware that

4 this proceeding is being recorded and that as

5 such, all conversations held will be recorded

6 unless there is a request and agreement to go

7 off the record. Private conversations and/or

8 attorney-client interactions should be held

9 outside the presence of the remote interface.

10 This is Media Unit 1 of the

11 video-recorded deposition of James Manning

12 being taken by counsel.

13 Today is Thursday, December 17, 2020.

14 The time now is 14:36 in the UTC time code.

15 We're here in the matter of Theresa Sweet

16 versus Elisabeth DeVos.

17 My name is Joe Raguso, remote video

18 technician on behalf of U.S. Legal Support

19 located at 90 Broad Street, New York, New

20 York and I'm not related to any party in this

21 action nor am I financially interested in the

22 outcome.

23 At this time will the reporter, Hope

24 Menaker, on behalf of U.S. Legal Support

25 please enter the statement for remote

Page 6

1 - JAMES MANNING -

2 proceedings into the record.

3 THE REPORTER: The attorneys

4 participating in this deposition acknowledge

5 that I am not physically present in the

6 deposition room and that I will be reporting

7 this deposition remotely. They further

8 acknowledge that in lieu of an oath

9 administered in person, the witness will

10 verbally declare his testimony in this matter

11 is under penalty of perjury. The parties and

12 their counsel consent to this arrangement and

13 waive any objections to this manner of

14 reporting. Please indicate your agreement by

15 stating your name and your agreement on the

16 record.

17 MR. JARAMILLO: This is Joseph

18 Jaramillo for plaintiffs and I agree.

19 MR. MERRITT: This is Charlie

20 Merritt, the defense agrees.

21 THE VIDEOGRAPHER: We're now off the

22 record. The time is 14:38 UTC.

23 (Whereupon a brief recess was taken

24 at this time.)

25 THE REPORTER: Will the witness

Page 7

1 - JAMES MANNING -

2 kindly present his government-issued

3 identification by holding it up to the camera

4 for verification.

5 (Verified.)

6 THE VIDEOGRAPHER: We are now on the

7 record, the time is 14:38 UTC.

8 JAMES MANNING, called as a witness,

9 having been duly sworn on December 17, 2020,

10 by a Notary Public, was examined and

11 testified as follows:

12 2001 Pennsylvania Avenue NW

13 Washington D.C. 20006

14 (Business)

15

16 EXAMINATION BY MR. JARAMILLO:

17 Q. Good morning, Mr. Manning. My name

18 is Joseph Jaramillo and I'm one of the attorneys

19 for the plaintiffs in this case.

20 Can you please state your name for

21 the record?

22 A. James Manning.

23 Q. Mr. Manning, thank you for making

24 yourself available today and we appreciate you

25 voluntarily appearing to serve as a witness in

Page 8

1 - JAMES MANNING -

2 this case.

3 I wanted to go over a few of the

4 ground rules for the deposition, particularly

5 since we're doing this over Zoom. So, first of

6 all, I wanted to confirm there's no one else in

7 the room with you at this point.

8 A. There's no one else in the room with

9 me.

10 Q. And can I have your agreement not to

11 communicate with anyone else while we're on the

12 record in the deposition through electronic device

13 or otherwise?

14 A. Yes. I'm assuming that means if I

15 need to go off to ask counsel a question, that's

16 permissible; isn't it?

17 Q. Yes. Off -- off the record

18 when -- when we're not doing questions and

19 answers, you can speak with your counsel.

20 A. Okay.

21 Q. And can you identify any electronic

22 communication devices in the room such as

23 telephones or things of that nature, iPads?

24 A. Yes. I have -- well, I'm working

25 from a small laptop and I have two telephones,

Page 9

1 - JAMES MANNING -

2 electronic telephones in the room.

3 Q. Can you -- can I have your agreement

4 to put those out of reach so that you're not using

5 those during the deposition while we're on the

6 record?

7 A. Sure. Let me put them out of reach.

8 They're well out of reach.

9 Q. Thank you, Mr. Manning.

10 A. Sure.

11 Q. Even though we're sitting here in our

12 respective homes or offices, I want to emphasize

13 that the -- the oath that you've taken carries

14 the same weight as if given in a court of law. Do

15 you understand that?

16 A. I do.

17 Q. And the court reporter, Ms. Menaker,

18 is taking down everything we say and it will be

19 produced in a transcript form later and serve as

20 evidence in this the case. For that reason, it's

21 important to give audible answers such as yes or

22 no, rather than nods of the head or uh-huh or

23 uh-uh. Do you understand that?

24 A. Yes.

25 Q. And it's also important that we don't

Page 10

1 - JAMES MANNING -

2 talk over each other so that Ms. Menaker can get a

3 clear record of the questions and answers. I will

4 do my best not to talk over you and I would ask

5 that you could do your best not to talk over me.

6 Is that acceptable?

7 A. Yes.

8 Q. Are you represented by legal counsel

9 today in this deposition?

10 A. Charlie Merritt, the Department of

11 Justice attorneys that are handling this.

12 Q. And they represent you in this

13 deposition, correct?

14 A. My understanding.

15 Q. Okay. Now, from time to time Mr.

16 Merritt may object to my questions during the

17 deposition. I just want to explain that unless he

18 instructs you not to answer the question, even

19 though he has objected you are still under an

20 obligation to answer my question. Do you

21 understand that?

22 A. Can you repeat that again so it's

23 clear.

24 MR. JARAMILLO: Ms. Menaker, can you

25 read back my statement.

Page 11

1 - JAMES MANNING -

2 (The question requested was read back

3 by the reporter.)

4 A. Yes.

5 Q. In -- in other words, it may seem

6 awkward because I'm going to ask you a question

7 and Mr. Merritt may object, but the next step

8 would be for you to still answer the question

9 unless he instructs you not to answer. Do you

10 understand that?

11 A. Yes.

12 Q. Now, this is not an endurance

13 contest. We can take breaks whenever we want.

14 You can take a break whenever you want. My only

15 request is that if I have a question pending, that

16 you answer that question before we take the break.

17 Do you understand that?

18 A. Yes.

19 Q. Is there any reason why you can't

20 give truthful testimony today?

21 A. No.

22 Q. Now, did you receive a package with

23 the -- the documents that we may look at today?

24 A. I have a package. I haven't opened

25 it so I assume it's the documents, but I don't

Page 12

1 - JAMES MANNING -

2 know.

3 Q. Okay. Can you open that package,

4 please?

5 A. Here it is. Here are the documents.

6 Q. Great. Thank you, Mr. Manning.

7 Now, there should be a set of tabbed

8 documents that are tabbed with Numbers 1 through

9 22. Is that what you see before you?

10 A. I see Tabs 1 through 22.

11 Q. So during the course of the

12 deposition, I'm going to ask you to look at some

13 of these documents and I will refer to them by tab

14 numbers. Do you understand that?

15 A. Yes, and -- yes.

16 Q. I'm going to have you look at the

17 document that is marked as Tab 1 and in the

18 electronic files there should simply appear the

19 Number 1 on the PDF file and it would say "Revised

20 Notice of Deposition of James Manning." Do you

21 see that document?

22 A. I do.

23 Q. And have you seen this document

24 before?

25 A. I don't recall seeing the revised

Page 13

1 - JAMES MANNING -

2 notice.

3 MS. BERMAN: Sorry. Joseph, is there

4 a password for the electronic documents?

5 MR. JARAMILLO: Marcia, I'm sorry,

6 there is. I just forwarded it to you.

7 MS. BERMAN: Okay. Okay, great.

8 Thanks.

9 Q. So do you recall seeing a Notice of

10 Deposition of James Manning at some point?

11 A. Well, no, I guess I don't recall.

12 Q. Did you ever receive a -- I'm sorry,

13 did I cut you off?

14 A. This is just a declaration I made

15 previously.

16 Q. Okay. So you do not recall seeing a

17 notice of your deposition that's dated the -- the

18 time -- or the time and the date of the

19 deposition?

20 A. I don't recall that.

21 Q. And you are voluntarily appearing

22 here today for this deposition, correct?

23 A. Yes.

24 Q. Have you ever had your deposition

25 taken before?

Page 14

1 - JAMES MANNING -

2 A. No.

3 Q. Have you ever given testimony in

4 court before?

5 A. Yes.

6 Q. How many times?

7 A. Multiple times years ago.

8 Q. When was the last time that you

9 recall?

10 A. About 1983.

11 Q. Do you recall what court the trial

12 took place in?

13 A. No.

14 Q. Do you recall the state in which the

15 trial took place?

16 A. District of Columbia.

17 Q. What was your role in that case, if

18 any?

19 A. I'm trying to -- I'm trying to recall

20 the, the -- the particulars. I can't recall if it

21 was a trial or not. I, at the time, was serving

22 as special agent at the security service at the

23 State Department. There was an incident at the

24 State Department that went to court and I went to

25 testify on it; and I don't remember beyond that

Page 15

1 - JAMES MANNING -

2 because it was a one-time thing.

3 Q. And you were -- so you were a witness

4 in that case and you gave testimony?

5 A. Yes.

6 Q. Do you recall give -- I'm sorry, go

7 ahead.

8 A. It wasn't '83. It was -- it was

9 probably -- '81, '82 probably.

10 Q. Do you recall giving testimony in any

11 other court cases before that?

12 A. Yes. I testified regularly in

13 (unintelligible) District Court in Boston,

14 Massachusetts between 1975 and 1978 when I was a

15 university police officer at Northeastern

16 University.

17 Q. And before those cases do you recall

18 giving testimony in any court cases, any other

19 court cases?

20 A. The only other court case that I

21 would have testified in was a civil action where I

22 had a two-family house in Boston and a tenant that

23 didn't want to leave or wasn't paying rent to me.

24 I wanted to remove him from the space.

25 Q. When was that case, approximately?

Page 16

1 - JAMES MANNING -

2 A. 1977, 1978.

3 Q. And -- and you were a witness in this

4 case?

5 A. I was the complainant and I

6 testified.

7 Q. Okay, and what court was that in?

8 A. West Roxbury District Court, Boston,

9 Massachusetts.

10 Q. Any other cases that you can recall

11 giving testimony in?

12 A. No.

13 Q. What did you do to prepare for

14 today's deposition?

15 A. I -- I talked to counsel and I

16 revisited my declaration and declarations made by

17 Colleen Nevin and Diane Jones.

18 Q. How many times did you meet with

19 counsel?

20 A. A few, like three. I'm -- I'm not

21 sure how many.

22 Q. And what are the dates or approximate

23 dates that you met with them?

24 A. Over the last few days.

25 Q. About how many hours did you spend

Page 17

1 - JAMES MANNING -

2 meeting with them?

3 A. Oh, I don't recall specifically, but

4 maybe about four.

5 Q. Four hours total or four hours in

6 each meeting?

7 A. Total. Maybe a little more than four

8 total. No four-hour meeting.

9 Q. And how did you meet with them; was

10 this in person or via Zoom or by telephone?

11 I'm sorry, can you repeat your

12 answer.

13 A. I was, you know, just using this same

14 type of system, the Zoom system.

15 Q. And who were the counsel that you met

16 with over Zoom?

17 A. Charlie Merritt, Marcia -- I forget

18 Marcia's last name. Marcia. I -- I don't recall

19 Marcia's last name. Call into Charlie. And Kevin

20 -- and I don't recall his last name either. He

21 was on the call with Charlie.

22 Q. Anybody else?

23 A. Not that I recall, but --

24 Q. And you said you reviewed your

25 declaration?

Page 18

1 - JAMES MANNING -

2 A. Yes.

3 Q. When -- when did you give -- when did

4 you -- did you sign that declaration?

5 A. Yes.

6 Q. When did you sign it?

7 A. I don't recall. I have it here, if

8 you'd like me to pull it out and look at it.

9 Q. Sure.

10 A. I signed it on April 12, 2018.

11 Q. And on the front page of that -- can

12 you just hold up the front page of the declaration

13 to your camera.

14 A. Of course. Can you see it?

15 Q. Yeah. If you could move it

16 back -- actually, just hold it right there. Thank

17 you and can you move it back a bit.

18 And how many pages -- you can remove

19 it from the camera now. How many pages is that

20 declaration?

21 A. Seven. There's an exhibit attached

22 to it beyond that. I said in addition to the

23 declaration, there is an exhibit attached to it.

24 Q. And what is that exhibit?

25 A. It looks like it's a -- a

Page 19

1 - JAMES MANNING -

2 press -- press release looks like entitled

3 "Improved Borrower Defense Discharge Process Will

4 Aid Defrauded Borrowers, Protect Taxpayers." So

5 and this press release was December 20, 2017.

6 Q. Did you have any involvement in the

7 creation of that press release?

8 A. No. It's from the Press Office of

9 the Department of Education.

10 Q. And what' the title of the press

11 release?

12 A. "Improved Borrower Defense Discharge

13 Process Will Aid Defrauded Borrowers, Protect

14 Taxpayers."

15 Q. Did you -- did you, yourself, write

16 the declaration or did someone draft it for you?

17 A. It was drafted for me.

18 Q. And who drafted it?

19 A. I don't know. Someone in the General

20 Counsel's Office, I believe.

21 Q. And you reviewed it and signed it

22 attesting to its accuracy?

23 A. Yes.

24 Q. And this was in the Calvillo

25 Manriquez versus Secretary DeVos' case?

Page 20

1 - JAMES MANNING -

2 A. Yes.

3 Q. Were you involved in discussions with

4 counsel about that case during your tenure at the

5 Department of Education?

6 A. I expect that I had communications

7 with counsel about the issue. I don't recall any

8 of them specifically.

9 Q. Were you involved, in any way, with

10 the preparation or production of monthly reports

11 or any periodic reports associated with that case?

12 A. I don't recall what the reports

13 associated with the case.

14 Q. Did you follow any of the legal

15 developments in that case such as Court Orders?

16 A. Not specifically.

17 Q. We may have further discussions. In

18 fact, we will have further discussions about that

19 case later on as it impacts this case, but let's

20 move on to discuss about any other documents -- if

21 you could let me know about any other documents

22 that you've reviewed in preparation for today's

23 deposition.

24 A. As I said, Diane Jones' declaration I

25 reviewed and Colleen Nevin's declaration I

Page 21

1 - JAMES MANNING -

2 reviewed and the attachments on mine. I don't

3 recall if there were attachments on the other

4 documents, but whatever was attached to it I

5 looked at.

6 Q. Any other documents besides those

7 you've listed?

8 A. Well, I'm just looking at -- there

9 was an Exhibit 2 on my declaration which I also

10 reviewed and it's remarks that I made prior to one

11 of the negotiated rulemaking sessions.

12 Q. And what was the date of that

13 rulemaking session?

14 A. Well, looking at the remarks and -- I

15 don't see the date on it, but it was shortly after

16 the 1st of the year.

17 Q. The 1st of the year 2018?

18 A. Yes.

19 Q. And is this a transcript of your

20 remarks?

21 A. Yes.

22 Q. And is -- why don't I just -- well,

23 let's do this. How many pages is that transcript?

24 A. Six.

25 Q. And is that transcript an accurate

Page 22	Page 24
<p>1 - JAMES MANNING -</p> <p>2 reflection of the remarks you made in January,</p> <p>3 2018 of the negotiated rulemaking -- negotiate --</p> <p>4 wait, Negotiated Rulemaking Committee?</p> <p>5 A. Yes.</p> <p>6 Q. Do any of these documents refresh</p> <p>7 your recollection of the facts?</p> <p>8 A. I'm -- I'm sure they did, but I</p> <p>9 couldn't say specifically what at this moment.</p> <p>10 Q. Other than meetings with your counsel</p> <p>11 over Zoom-type platform, did you speak with</p> <p>12 anybody else about your deposition?</p> <p>13 A. No.</p> <p>14 Q. You didn't speak with anybody</p> <p>15 currently at the Department of Education other</p> <p>16 than counsel, legal counsel, about your</p> <p>17 deposition?</p> <p>18 A. I didn't speak to anybody about the</p> <p>19 deposition. I had somebody approach me at a</p> <p>20 reception who said they heard I was going to be</p> <p>21 doing a deposition.</p> <p>22 Q. And who was that?</p> <p>23 A. Someone who knew me, but I -- I</p> <p>24 didn't know, a young woman. I think she was in</p> <p>25 the General Counsel's Office, actually. I don't</p>	<p>1 - JAMES MANNING -</p> <p>2 A. No.</p> <p>3 Q. Did you speak with her about this</p> <p>4 case?</p> <p>5 A. No.</p> <p>6 Q. Did you speak with her about the</p> <p>7 Calvillo Manriquez case?</p> <p>8 A. No.</p> <p>9 Q. Did you speak with her about borrower</p> <p>10 defense?</p> <p>11 A. No.</p> <p>12 Q. And you didn't speak with anybody</p> <p>13 else about this case that was at that reception?</p> <p>14 A. Nobody else.</p> <p>15 Q. Besides the -- the unidentified woman</p> <p>16 that you mentioned?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Did you review any of the</p> <p>19 deposition transcripts in this case?</p> <p>20 A. No.</p> <p>21 Q. Okay.</p> <p>22 A. I mean, people that have since</p> <p>23 been -- been deposed previously up to now, is that</p> <p>24 what you're saying?</p> <p>25 Q. Yes. There are -- as you may be</p>
Page 23	Page 25
<p>1 - JAMES MANNING -</p> <p>2 know her name.</p> <p>3 Q. Okay.</p> <p>4 A. There was no conversation beyond</p> <p>5 that.</p> <p>6 Q. I'm sorry?</p> <p>7 A. I said there was no conversation</p> <p>8 beyond that.</p> <p>9 Q. When was this reception?</p> <p>10 A. The day before yesterday.</p> <p>11 Q. Where did it take place?</p> <p>12 A. In the Barnard Auditorium at the U.S.</p> <p>13 Department of Education.</p> <p>14 Q. How many people were there?</p> <p>15 A. Approximately 50.</p> <p>16 Q. And what was the occasion for the</p> <p>17 reception?</p> <p>18 A. A holiday reception at the end of</p> <p>19 an administration.</p> <p>20 Q. Was Secretary DeVos there?</p> <p>21 A. She stopped by, yes.</p> <p>22 Q. Did you speak with her?</p> <p>23 A. I did.</p> <p>24 Q. Did you speak with her about your</p> <p>25 deposition?</p>	<p>1 - JAMES MANNING -</p> <p>2 aware, there are people who have been deposed</p> <p>3 previously in this case.</p> <p>4 A. No, I have not read any of those</p> <p>5 depositions.</p> <p>6 Q. And you -- you did not talk to</p> <p>7 Colleen Nevin about your deposition today?</p> <p>8 A. No, I did not.</p> <p>9 Q. You didn't talk to Diane Auer Jones?</p> <p>10 A. I did not.</p> <p>11 Q. You did not talk to Mark Brown about</p> <p>12 it?</p> <p>13 A. No, I did not.</p> <p>14 Q. Mr. Manning, we're going to be</p> <p>15 discussing a lot, as -- as you may imagine, the</p> <p>16 borrower defense to Repayment Discharges of</p> <p>17 federal student loans today.</p> <p>18 A. Yes.</p> <p>19 Q. I will refer to those in the</p> <p>20 shorthand as just borrower defense or sometimes</p> <p>21 even BD. Will that make sense to you?</p> <p>22 A. Yeah, BDTR would make sense to me to.</p> <p>23 Q. BDTR meaning Borrower Defense to</p> <p>24 Repayment?</p> <p>25 A. Yes.</p>

Page 26

1 - JAMES MANNING -

2 Q. Mr. Manning, do you have a LinkedIn

3 profile?

4 A. I do.

5 Q. And did you create that profile?

6 A. Yes.

7 Q. Did you, yourself, enter the

8 information in that profile?

9 A. Nobody else that I'm aware of put

10 anything on my profile.

11 Q. Okay. I'll just represent to you

12 that I -- I went on LinkedIn and I looked at your

13 profile and there's a feature on LinkedIn to

14 generate the profile in a resume-type format and I

15 did that so that we could go over your career

16 background and experience at the Department of

17 Education today as sort of a guidepost; and so I

18 would like to have you turn to Tab 2 in your stack

19 of documents.

20 A. Are we done with Tab 1?

21 Q. Yes, we're done with Tab 1.

22 A. Okay.

23 MS. BERMAN: Joseph, I just want

24 to -- excuse me, I just want to note for the

25 record that I'm not able to open the Dropbox

Page 27

1 - JAMES MANNING -

2 attachments. I seem to be the only person on

3 our team having trouble with it, but it's

4 not -- it's opening for me. It's asking me

5 to do all sorts of things like create an

6 account; and I tried to do that, but that

7 didn't even work.

8 MR. JARAMILLO: Mr. Merritt, can we

9 go off the record for this?

10 MR. MERRITT: Yes.

11 THE VIDEOGRAPHER: Going off the

12 record, the time is 15:08 UTC.

13 (Whereupon, a brief discussion was

14 held off record.)

15 THE VIDEOGRAPHER: We're now on the

16 record, time is 15:11 UTC.

17 Q. Okay, Mr. Manning, so I'm having you

18 look at Tab 2.

19 MR. JARAMILLO: And, Ms. Menaker, I

20 would like to have you mark this as --

21 actually, Ms. Menaker, we did not mark the

22 first tab, did we?

23 THE REPORTER: We did not.

24 MR. JARAMILLO: Okay. Can we mark

25 the first tab as Exhibit 31, that would be

Page 28

1 - JAMES MANNING -

2 the Revised Notice of Deposition of James

3 Manning, and I would like to now mark the

4 second tab in the PDF files for Mr. Manning

5 as Exhibit 32.

6 (Whereupon, Exhibit 31 was marked at

7 this time.)

8 (Whereupon, Exhibit 32 was marked for

9 identification.)

10 Q. Mr. Manning, have you had a chance to

11 look at the document that is Tab 2 in your

12 package?

13 A. Well, I -- I started to, but I went

14 back because I had seen the Notice, this -- I was

15 just looking for the first time at the actual

16 Notice of Deposition.

17 Q. Okay. So, just for clarity, you were

18 looking at a document outside of the packet that

19 you received?

20 A. No. I'm looking at the document that

21 was behind Tab 1.

22 Q. Okay, and that document is called

23 "Revised Notice of Deposition of James Manning"?

24 A. Yes, and it's just about, you know,

25 today's date basically. I think that's being the

Page 29

1 - JAMES MANNING -

2 deposition there, right.

3 Q. Did -- had you received that document

4 before you got it in the package today?

5 A. No.

6 Q. Okay. Well, let's move on to Tab 2.

7 A. Okay.

8 Q. And please take a moment to look at

9 that and let me know if that accurately reflects

10 the information from your LinkedIn profile?

11 Mr. Manning, I'm sorry to interrupt

12 your review, I know you're looking carefully --

13 A. I'm -- I'm on the last page. It's

14 a -- this is --

15 Q. I'll let you finish up and then we

16 can talk about it.

17 A. Okay.

18 Q. Is this an accurate -- was this

19 information on -- on this document as to Exhibit

20 32 reflect your -- the information that you put on

21 your LinkedIn profile?

22 A. It seems to be from another document

23 rather than what I put in my LinkedIn profile.

24 This looks like a -- a resume that I've used a

25 number of times. I didn't -- I don't -- I have to

<p style="text-align: right;">Page 30</p> <p>1 - JAMES MANNING -</p> <p>2 go back and look -- to look and see this. See</p> <p>3 this, I don't know how it was attached in all this</p> <p>4 detail and things, this type -- I'm not saying</p> <p>5 it's not there. I just don't recall posting this</p> <p>6 there.</p> <p>7 Q. Sure, and I'll represent to you that</p> <p>8 there's a function on LinkedIn that generates this</p> <p>9 type of resume document from the profile.</p> <p>10 A. Oh, I didn't -- if that's generated</p> <p>11 by LinkedIn, then that's -- that's understandable</p> <p>12 then, but I did not put this on my LinkedIn.</p> <p>13 I did not put this -- I did not put</p> <p>14 this document on LinkedIn. This is a</p> <p>15 representation of resume that I have used</p> <p>16 previously, yes.</p> <p>17 Q. But the information contained in this</p> <p>18 document was information that you input into</p> <p>19 LinkedIn on your profile?</p> <p>20 A. I -- I didn't put all this detail in</p> <p>21 myself. You -- you had suggested that there's a</p> <p>22 -- a way that LinkedIn finds outside documents and</p> <p>23 attaches them; so I asked you what happened with</p> <p>24 this. I did not post all of this on this page.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 32</p> <p>1 - JAMES MANNING -</p> <p>2 said 2017 to 2017, you know. I made, you know,</p> <p>3 notations January '17 to April '17, you know.</p> <p>4 Q. Okay. So would that be on Page 3 of</p> <p>5 the document?</p> <p>6 A. That is Page 3, yeah.</p> <p>7 Q. And would that be for the entry for</p> <p>8 Office of the Secretary of Education, Senior</p> <p>9 Advisor to the Secretary of Higher Education where</p> <p>10 it says "2017 to 2017"?</p> <p>11 A. Yes.</p> <p>12 Q. And you noted the months for that?</p> <p>13 A. January to April, yes.</p> <p>14 Q. So you were senior advisor to the</p> <p>15 Secretary of Higher Education from January to</p> <p>16 April, 2017?</p> <p>17 A. Yes. January 20 -- well, she didn't</p> <p>18 come onboard until the first week of February. My</p> <p>19 appointment was senior advisor to the Secretary</p> <p>20 and I had January 7th -- 20th 1970 -- 2017.</p> <p>21 Okay, yes. This is my title from</p> <p>22 January of '17 through April, into April of '17,</p> <p>23 following which I became, you know, the acting</p> <p>24 under the Secretary which appears earlier on this</p> <p>25 list.</p>
<p style="text-align: right;">Page 31</p> <p>1 - JAMES MANNING -</p> <p>2 A. But it's a fair representation</p> <p>3 of -- of my career. It's a -- in normally the way</p> <p>4 I do things, this is not the same structure, so it</p> <p>5 gives years of service. I would have put months.</p> <p>6 I would have typed particular months in. There --</p> <p>7 it's -- it's a close approximation to a resume</p> <p>8 that I've used.</p> <p>9 It's not what I attached to LinkedIn.</p> <p>10 If it's on LinkedIn, I'm going on what you</p> <p>11 suggested that there's a way that LinkedIn, I</p> <p>12 guess, captures related information and attaches</p> <p>13 it somehow. I'll have to go back and look, but</p> <p>14 the question -- but that is what's happened.</p> <p>15 I don't need all of this information</p> <p>16 on this page, but this is -- this is my</p> <p>17 experience, yes.</p> <p>18 Q. I understand, Mr. Manning. So this</p> <p>19 generally reflects your work experience?</p> <p>20 A. Yes.</p> <p>21 Q. And I noticed when you were reviewing</p> <p>22 the -- the document, you had a pen in your hand.</p> <p>23 Did you make any notations on the document?</p> <p>24 A. Yes, I -- a few places I noticed</p> <p>25 where there was no month mentioned, where it just</p>	<p style="text-align: right;">Page 33</p> <p>1 - JAMES MANNING -</p> <p>2 Q. And that entry appears on Page 2 of 5</p> <p>3 of the document?</p> <p>4 A. Yes.</p> <p>5 Q. And did you fill in the months for</p> <p>6 the -- for that entry for the acting</p> <p>7 Undersecretary of Education?</p> <p>8 A. I did it was from April, 2017 to May</p> <p>9 of 2018.</p> <p>10 Q. And then above that on Page 2 is an</p> <p>11 entry for Federal Student Aid and Office of the</p> <p>12 U.S. Department of Education acting chief</p> <p>13 operating officer. Are those dates correct;</p> <p>14 January, 2018 through March, 2019?</p> <p>15 A. No, I don't think that's correct. I</p> <p>16 don't.</p> <p>17 Q. What would you do to correct those</p> <p>18 dates?</p> <p>19 A. I can start by saying I can go back</p> <p>20 over in my mind, but the timeline on this is not</p> <p>21 exactly correct.</p> <p>22 Q. Okay, and as you sit here today what</p> <p>23 is your best recollection of your time in the</p> <p>24 acting chief operating officer position with FSA?</p> <p>25 A. Well, I -- I had several different</p>

12/17/2020

34 to 37

<p style="text-align: right;">Page 34</p> <p>1 - JAMES MANNING -</p> <p>2 periods when I was acting chief operating officer.</p> <p>3 Q. During the Trump Administration.</p> <p>4 A. During the Trump Administration, so I</p> <p>5 became acting chief. I was -- I was the Secretary</p> <p>6 from April -- this is -- this is incorrect. I was</p> <p>7 not nor have I ever claimed to be acting chief</p> <p>8 operating officer from January -- what a second.</p> <p>9 I'm -- I'm mistaken.</p> <p>10 It's out of order. My resume would</p> <p>11 have reflected this in chronological order.</p> <p>12 Q. Just, Mr. Manning, what's your best</p> <p>13 recollection of when you served as -- as acting</p> <p>14 chief operating officer for FSA?</p> <p>15 A. During the Trump Administration?</p> <p>16 Q. Yes.</p> <p>17 A. Okay. I started January, 2017 senior</p> <p>18 advisor, became Undersecretary in April, served to</p> <p>19 the following May.</p> <p>20 There -- there was a -- a career</p> <p>21 staff person as the chief operating officer in</p> <p>22 January of 2017, James Franzi, who was retained.</p> <p>23 He stayed with the Department until May of 2017.</p> <p>24 That he -- he might have left the first few days</p> <p>25 of June, in that area, and we began a search</p>	<p style="text-align: right;">Page 36</p> <p>1 - JAMES MANNING -</p> <p>2 through your career history. Let's put it to the</p> <p>3 side and draw from your memory, which might be</p> <p>4 more efficient.</p> <p>5 The question being: Do you know when</p> <p>6 you stopped serving as the acting COO of FSA</p> <p>7 during the Trump Administration?</p> <p>8 A. I'm going to miss a block, I'm sorry.</p> <p>9 I have all this written down somewhere else.</p> <p>10 Q. That's okay. This is not -- this is</p> <p>11 not, you know, a -- you know, a -- there's no</p> <p>12 right or wrong answer. I just want to know your</p> <p>13 best recollection. It's whatever you can come up</p> <p>14 with as you sit here today in recollection of when</p> <p>15 you stopped working as acting COO for FSA in the</p> <p>16 Trump Administration.</p> <p>17 MR. MERRITT: And, Joe, I'll let him</p> <p>18 answer this question, I just want to -- we</p> <p>19 have been going for about an hour. I was</p> <p>20 wondering whether we might have a short break</p> <p>21 after he answers this question or -- or</p> <p>22 sometime soon.</p> <p>23 MR. JARAMILLO: Yeah. Let me -- I</p> <p>24 would like to ask him just a couple of more</p> <p>25 questions related to this, but if -- if you</p>
<p style="text-align: right;">Page 35</p> <p>1 - JAMES MANNING -</p> <p>2 immediately for a new chief operating officer and</p> <p>3 Wayne Johnson became the chief operating officer,</p> <p>4 the permanent chief operating officer, in July</p> <p>5 2017.</p> <p>6 He served in that capacity until late</p> <p>7 January, 2018 when a major initiative at the</p> <p>8 Department was going on with Federal Student Aid.</p> <p>9 Next Gen, Next Generation FSA was</p> <p>10 started under Dr. Johnson's leadership. That was</p> <p>11 an important enough issue that in late January of</p> <p>12 '18, he was moved from the COO position and</p> <p>13 focused hundred percent of his time on the Next</p> <p>14 Generation FSA initiative, and at that time I</p> <p>15 became acting COO.</p> <p>16 Q. That would have been January, 2018?</p> <p>17 A. Yes. The end of January, you know,</p> <p>18 first part of February.</p> <p>19 Q. And how long did you serve in that</p> <p>20 position?</p> <p>21 A. I'm -- that's not entirely correct</p> <p>22 here.</p> <p>23 Q. Why -- why don't we do this, Mr.</p> <p>24 Manning: I'm -- I'm finding that this -- this</p> <p>25 LinkedIn document may not me the best way to go</p>	<p style="text-align: right;">Page 37</p> <p>1 - JAMES MANNING -</p> <p>2 don't mind it might just take a minute or</p> <p>3 two.</p> <p>4 THE WITNESS: Well, at the rate I'm</p> <p>5 answering this it might take longer than</p> <p>6 that, I'm sorry to say.</p> <p>7 MR. JARAMILLO: Okay. Well, let's</p> <p>8 see how it goes, but I would like to if you</p> <p>9 don't mind, Mr. Merritt, to just take a</p> <p>10 couple more questions just to nail down one</p> <p>11 of the dates here.</p> <p>12 MR. MERRITT: Yeah, that's okay with</p> <p>13 me. I just wanted to put it on the radar.</p> <p>14 A. Let me take a couple of minutes here</p> <p>15 and see I can reconstitute what I knew yesterday.</p> <p>16 .I've been thrown off by the way this was</p> <p>17 presented here today.</p> <p>18 MR. JARAMILLO: Okay, Mr. Manning,</p> <p>19 why don't we do this; I'm not sure that that</p> <p>20 Tab 2 document is -- is the best way to do</p> <p>21 it.</p> <p>22 If you want to take a break and try</p> <p>23 to refresh your recollection as well, we can</p> <p>24 -- we can do that.</p> <p>25 THE WITNESS: Yes.</p>

12/17/2020

38 to 41

<p style="text-align: right;">Page 38</p> <p>1 - JAMES MANNING -</p> <p>2 MR. JARAMILLO: So, you know, just to</p> <p>3 be clear; I'm just trying to get your best</p> <p>4 recollection of the time periods in which you</p> <p>5 served in, in -- in roles at the Department</p> <p>6 of Education during the Trump Administration</p> <p>7 at this point.</p> <p>8 And we can discuss that when we come</p> <p>9 back on the record, so we can go ahead and</p> <p>10 take -- how long would you like, Mr. Merritt,</p> <p>11 for the break and, Mr. Manning, five or ten</p> <p>12 minutes?</p> <p>13 MR. MERRITT: I will defer to Mr.</p> <p>14 Manning. I was thinking it could be five</p> <p>15 minutes, but what do you think, Jim?</p> <p>16 THE WITNESS: I would say give me ten</p> <p>17 minutes and I'll have this lined up.</p> <p>18 MR. MERRITT: All right. Let's take</p> <p>19 ten minutes, if that's okay with you.</p> <p>20 MR. JARAMILLO: Okay.</p> <p>21 THE VIDEOGRAPHER: We are now off the</p> <p>22 record. The time is 15:35 UTC.</p> <p>23 (Whereupon, a brief discussion was</p> <p>24 held off record.)</p> <p>25 THE VIDEOGRAPHER: We are now on the</p>	<p style="text-align: right;">Page 40</p> <p>1 - JAMES MANNING -</p> <p>2 2018, were you wearing two hats; one as the acting</p> <p>3 COO of FSA and the other as the acting</p> <p>4 Undersecretary of the Department of Education?</p> <p>5 A. Yes, I wore two hats when those</p> <p>6 positions -- in the timeline there.</p> <p>7 Q. And prior to becoming the acting</p> <p>8 Undersecretary of Education in April, 2017 you</p> <p>9 served as a senior advisor to the Secretary of</p> <p>10 Education?</p> <p>11 A. Yes, on higher education issues.</p> <p>12 Yes.</p> <p>13 Q. And the dates of -- of that in that</p> <p>14 role that you -- of senior advisor were January</p> <p>15 20th, 2017 until April, 2017?</p> <p>16 A. Yes.</p> <p>17 Q. And prior to serving as senior</p> <p>18 advisor, did you hold a role on the Trump</p> <p>19 transition -- I mean, I'm sorry, I didn't want to</p> <p>20 -- on the Trump transition team?</p> <p>21 A. Yes.</p> <p>22 Q. When did you start in that position?</p> <p>23 A. September of 2016.</p> <p>24 Q. And when did you stop work in that</p> <p>25 role?</p>
<p style="text-align: right;">Page 39</p> <p>1 - JAMES MANNING -</p> <p>2 record, the time is 15:52 UTC.</p> <p>3 Q. Mr. Manning, we were talking about</p> <p>4 your work history during the Trump Administration</p> <p>5 in the Department of Education.</p> <p>6 A. Right.</p> <p>7 Q. And I wanted to see if you have any</p> <p>8 clarity about your time in the role of -- of</p> <p>9 acting COO of FSA.</p> <p>10 A. Yes. Yes, working backwards I left</p> <p>11 the Department March 4th, 2019. I had been the</p> <p>12 COO until then and I have become the COO after</p> <p>13 Wayne Johnson in 2018 took over the Next Gen</p> <p>14 portfolio. I became the acting COO in February,</p> <p>15 2018 and served through the beginning of March,</p> <p>16 2019.</p> <p>17 Q. And just to clarify, when were you in</p> <p>18 the role as acting Undersecretary of Education</p> <p>19 during the Trump Administration?</p> <p>20 A. I think it began in April of 2017 and</p> <p>21 I've served through May of 2018. Diane Jones</p> <p>22 succeeded me. Diane I think came in in June, but</p> <p>23 I -- I had left that office near the end of May.</p> <p>24 '18.</p> <p>25 Q. So between February, 2018 and May,</p>	<p style="text-align: right;">Page 41</p> <p>1 - JAMES MANNING -</p> <p>2 A. January 19th, 2017. I was a</p> <p>3 volunteer.</p> <p>4 Q. How -- how did you get into that</p> <p>5 position as a volunteer for the Trump transition</p> <p>6 team? Were you recruited or did you just -- did</p> <p>7 you call somebody and say, I want to do this?</p> <p>8 A. No, I was recruited. I'm trying to</p> <p>9 remember who contacted me. Someone that had been</p> <p>10 working with Governor Christie who led the</p> <p>11 transition team. I was just retired at the time</p> <p>12 working for myself, but I agreed to do that as a</p> <p>13 volunteer.</p> <p>14 Q. What was your role in that -- in that</p> <p>15 position?</p> <p>16 A. Well, initially to think about</p> <p>17 preparation for the new administration taking</p> <p>18 responsibility for the Department of Education and</p> <p>19 then after Trump was elected, began a few weeks</p> <p>20 later going in and meeting with the staff around</p> <p>21 the Department to get a sense on where they were</p> <p>22 and what their activities were and what their</p> <p>23 projects were. Obviously no role to in --</p> <p>24 influence activities; just to learn about what was</p> <p>25 the status of the Department.</p>

<p style="text-align: right;">Page 42</p> <p>1 - JAMES MANNING -</p> <p>2 Q. And did you also work on the Trump --</p> <p>3 what was called the -- the transition landing</p> <p>4 team?</p> <p>5 A. Yes.</p> <p>6 Q. And what was that different from the</p> <p>7 transition team?</p> <p>8 A. Well, there's fewer people. It was a</p> <p>9 -- it was effectively part of the transition team,</p> <p>10 but it was the folks that actually went -- went</p> <p>11 into the Department and met with folks in the</p> <p>12 Department.</p> <p>13 Q. And what was your role on the landing</p> <p>14 team; did you have a leadership role or did you</p> <p>15 have a title?</p> <p>16 A. I didn't have a title, effectively,</p> <p>17 as of the transition-- I led the landing team.</p> <p>18 Q. And who was on the landing team?</p> <p>19 A. Myself, Kent Talbert and Bill, Bill</p> <p>20 -- Bill Evers.</p> <p>21 Q. Just the three of you?</p> <p>22 A. Yes.</p> <p>23 Q. Did you examine or educate yourself</p> <p>24 on the Trump -- I mean, I'm sorry, the transition</p> <p>25 landing team about borrower defense?</p>	<p style="text-align: right;">Page 44</p> <p>1 - JAMES MANNING -</p> <p>2 believe he was at the Department at that time. He</p> <p>3 -- he came onboard in the new administration.</p> <p>4 Q. Did you meet with Colleen Nevin?</p> <p>5 A. I don't recall if I met with Colleen</p> <p>6 Nevin during the -- the landing team period. That</p> <p>7 would have been, you know, after -- it was</p> <p>8 actually probably just before Thanksgiving</p> <p>9 through, you know, January 19th, but I don't know</p> <p>10 -- I don't believe I met Colleen until after I got</p> <p>11 onboard at the Department.</p> <p>12 Q. Prior -- prior to your work on this</p> <p>13 transition and landing team, had you done any work</p> <p>14 or related to borrower defense in your --</p> <p>15 MR. MERRITT: Objection.</p> <p>16 Q. -- related to this position?</p> <p>17 MR. MERRITT: It's a scope objection.</p> <p>18 What's the relevance to the topics identified</p> <p>19 by the court in authorizing discovery?</p> <p>20 Q. You can answer the question.</p> <p>21 A. Could you repeat the question?</p> <p>22 MR. JARAMILLO: Can you read back the</p> <p>23 question, Madam Court Reporter, please.</p> <p>24 (The question requested was read back</p> <p>25 by the reporter.)</p>
<p style="text-align: right;">Page 43</p> <p>1 - JAMES MANNING -</p> <p>2 A. Somewhat, yes.</p> <p>3 Q. And what did you do in order to</p> <p>4 educate yourself on that topic?</p> <p>5 A. We -- we met once or twice with folks</p> <p>6 from the Enforcement group.</p> <p>7 Q. Do you recall who you met with from</p> <p>8 the Enforcement group?</p> <p>9 A. I -- I know at least one of the</p> <p>10 meetings was the director and, you know, I don't</p> <p>11 remember his name -- Robert -- whoever was the</p> <p>12 director of the Enforcement group was and several</p> <p>13 of his staffers. I don't recall any of their</p> <p>14 names.</p> <p>15 Q. Did you meet with Robert Eitel?</p> <p>16 A. Eitel.</p> <p>17 Q. Yes.</p> <p>18 A. How do you spell Eitel?</p> <p>19 Q. I think it's E-I-T -- E-I-T-E-L.</p> <p>20 A. Bob Eitel.</p> <p>21 Q. Eitel. I'm sorry.</p> <p>22 A. Okay. I know -- I know Bob is in --</p> <p>23 I know him well, worked with him. I don't</p> <p>24 recall -- he didn't have any role on the</p> <p>25 transition and he had not -- he was -- I don't</p>	<p style="text-align: right;">Page 45</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Mr. Manning, prior to working in the</p> <p>3 Trump Administration or on the transition team,</p> <p>4 had any of your prior work involved borrower</p> <p>5 defense?</p> <p>6 A. Prior to working on the landing team?</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. What was your understanding of</p> <p>10 borrower defense at -- at the time you were on the</p> <p>11 landing team?</p> <p>12 A. I, I -- I don't recall what it was.</p> <p>13 I'm -- I'm sure that I was learning about it. You</p> <p>14 know, part of the, you know, responsibilities of</p> <p>15 the landing team was to understand what programs</p> <p>16 were going on.</p> <p>17 Q. What did you learn about borrower</p> <p>18 defense on the landing team?</p> <p>19 A. I can't recall specifically, you</p> <p>20 know, anything in particular that I learned during</p> <p>21 that period. Subsequently I, you know, learned</p> <p>22 more. I learned more when I came onboard as an</p> <p>23 employee.</p> <p>24 Q. And this would have been in January</p> <p>25 20, 2017 when you came onboard as an employee?</p>

12/17/2020

46 to 49

<p style="text-align: right;">Page 46</p> <p>1 - JAMES MANNING -</p> <p>2 A. Correct.</p> <p>3 Q. And at that time, did you understand</p> <p>4 that borrower defense entailed the discharge of</p> <p>5 federal loans available when a borrower can assert</p> <p>6 a defense to repayment?</p> <p>7 A. Yes.</p> <p>8 Q. And did you understand that the</p> <p>9 Department of Education's duty to resolve borrower</p> <p>10 defense applications was mandatory?</p> <p>11 MR. MERRITT: Objection, beyond the</p> <p>12 scope.</p> <p>13 Q. You can answer the question.</p> <p>14 MR. MERRITT: I'm going to instruct</p> <p>15 you not to answer that question beyond the</p> <p>16 scope of the discovery the court ordered.</p> <p>17 Q. When you came on the -- in the</p> <p>18 administration in January, 2017 were you aware of</p> <p>19 the significant increase in the number of borrower</p> <p>20 defense applications?</p> <p>21 A. The day I came on, I -- I don't</p> <p>22 believe I knew that the day I came on.</p> <p>23 Q. When did you -- when did you find</p> <p>24 that out?</p> <p>25 A. Shortly thereafter.</p>	<p style="text-align: right;">Page 48</p> <p>1 - JAMES MANNING -</p> <p>2 know, we had any number of discussions where they</p> <p>3 would bring me up to speed on issues.</p> <p>4 Q. Anyone else that you recall, as you</p> <p>5 came into your new position in January of 2017</p> <p>6 with the administration, who gave you information</p> <p>7 about the borrower defense?</p> <p>8 A. Well, those would have been the first</p> <p>9 couple of folks as I had known them for the -- the</p> <p>10 better part of two decades, but that, that -- that</p> <p>11 group I'm sure got bigger over time and we had a</p> <p>12 working group that brought in more people. We</p> <p>13 had -- there were other attorneys at OGC.</p> <p>14 Q. Was this working group specific to</p> <p>15 borrower defense?</p> <p>16 A. Yes. Yes, and then -- and then</p> <p>17 ultimately Joe Connolly, the acting deputy</p> <p>18 Secretary, established a formal working group of</p> <p>19 borrower defense. That would have been, you know,</p> <p>20 after a month or so.</p> <p>21 Q. Did the working group have a name?</p> <p>22 A. I'm sure it did. I -- I don't recall</p> <p>23 offhand what the -- the name was, it was.</p> <p>24 Q. Was this the borrower defense Review</p> <p>25 Panel?</p>
<p style="text-align: right;">Page 47</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Okay. How did you find it out?</p> <p>3 A. I don't recall specifically. I, I --</p> <p>4 I just -- I'm sorry. I'm trying to remember when</p> <p>5 I actually can authoritatively answer the</p> <p>6 question. Ask the question one more time, please.</p> <p>7 Q.</p> <p>8 MR. JARAMILLO: Ms. Menaker, can you</p> <p>9 repeat the question for me.</p> <p>10 (The question requested was read back</p> <p>11 by the reporter.)</p> <p>12 A. I think certainly every day that I</p> <p>13 was on as a -- an employee, I was working to</p> <p>14 expand my knowledge on operations at the</p> <p>15 Department; and it was very early on, I'm sure,</p> <p>16 that I started getting information about this --</p> <p>17 the status and standing of the student borrower</p> <p>18 defense issue.</p> <p>19 Q. And who gave you that information?</p> <p>20 A. I -- any -- any number of people.</p> <p>21 You know, I met with -- I think before the</p> <p>22 Secretary got there, Phil Rosenfelt was the acting</p> <p>23 Secretary. I met with Phil a number of times</p> <p>24 during that period; and the acting deputy</p> <p>25 Secretary, Joe Connolly was there. We -- you</p>	<p style="text-align: right;">Page 49</p> <p>1 - JAMES MANNING -</p> <p>2 A. Effectively, yes.</p> <p>3 Q. Were you on that panel?</p> <p>4 A. I was one of the members, yes.</p> <p>5 Q. And you met regularly with people on</p> <p>6 that panel?</p> <p>7 A. Well, we met several times. I can't</p> <p>8 recall how regularly it was.</p> <p>9 Q. Okay.</p> <p>10 A. Ultimately Colleen Nevin became part</p> <p>11 of that. I think that -- well, actually the --</p> <p>12 yeah, there were a couple of attorneys that --</p> <p>13 Justin Riemer was -- was one that came on and</p> <p>14 spent a significant amount of time working with</p> <p>15 that group.</p> <p>16 Q. What was the purpose of that group?</p> <p>17 A. To understand where we were and to</p> <p>18 think about next steps.</p> <p>19 Q. Were any decisions made by that group</p> <p>20 about borrower defense?</p> <p>21 A. I don't know if there was a specific</p> <p>22 action memo, so to speak, hat -- that resulted in</p> <p>23 that, but part of the discussion of that group was</p> <p>24 around the approach to discharge and looking at an</p> <p>25 approach that would be fundamentally fair to every</p>

12/17/2020

50 to 53

<p style="text-align: right;">Page 50</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 borrower and also fair to the taxpayer.</p> <p>2 Q. Do you have an understanding of why</p> <p>3 that needed to be looked at?</p> <p>4 A. I think the feeling was that it</p> <p>5 needed to be looked at because there -- there were</p> <p>6 some that thought that borrowers making a claim,</p> <p>7 that was accepted to get a hundred percent relief;</p> <p>8 and the question was raised in that group whether</p> <p>9 or not that should always be a case or if there</p> <p>10 was an approach that could look at it through a</p> <p>11 different lens.</p> <p>12 Q. And who suggested that in the group?</p> <p>13 A. Who specifically suggested that?</p> <p>14 Q. Yes.</p> <p>15 A. I, I -- I don't recall who was the</p> <p>16 first person to -- to say that. I think that --</p> <p>17 that when it came up, that there was, you know,</p> <p>18 further discussion on that; and that ult --</p> <p>19 ultimately the -- the group decided/recommended an</p> <p>20 approach to looking at developing methodology that</p> <p>21 could look at claims and make judgments on whether</p> <p>22 someone should get a hundred percent or some</p> <p>23 lesser percentage. There -- there was a range</p> <p>24 that went down to ten percent, as I recall.</p> <p>25</p>	<p style="text-align: right;">Page 52</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 Q. And what specifically did he</p> <p>2 recommend with respect to the -- with the relief</p> <p>3 methodology?</p> <p>4 MR. MERRITT: Objection to the extent</p> <p>5 it calls for deliberative privileged</p> <p>6 information.</p> <p>7 MR. JARAMILLO: Are you instructing</p> <p>8 the witness not to answer?</p> <p>9 MR. MERRITT: Yes. Just your</p> <p>10 question asked for a recommendation, correct?</p> <p>11 MR. JARAMILLO: I'll -- I'll</p> <p>12 rephrase.</p> <p>13 Q. Was anything that Phil Jeunst</p> <p>14 suggested put into writing?</p> <p>15 A. Oh, yes, absolutely. It was put into</p> <p>16 effect.</p> <p>17 Q. How was it put into writing?</p> <p>18 A. I -- I don't recall, but it was</p> <p>19 actually -- it was ultimately put aside by the</p> <p>20 court.</p> <p>21 Q. A partial relief meth -- methodology</p> <p>22 that resulted from the Borrower Review Defense</p> <p>23 Panel was -- was put -- set aside by the court in</p> <p>24 the Calvillo Manriquez case?</p> <p>25</p>
<p style="text-align: right;">Page 51</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 And most of the folks at the table</p> <p>2 were not expert enough to -- to develop that, but</p> <p>3 there was an individual that was part of the group</p> <p>4 who was a career member of the Department from the</p> <p>5 finance office, Phillip Jeunst, who was -- was</p> <p>6 qualified and charged to look at the issue and</p> <p>7 come back with a proposal and a methodology that</p> <p>8 could be used to make determinations that would</p> <p>9 allow for forgiveness from ten percent to a</p> <p>10 hundred percent.</p> <p>11 Q. And you said that person's name was</p> <p>12 Phillip Jeunst?</p> <p>13 A. Yeah, I think it was like</p> <p>14 J-E-U-N-S-T. I might have spelled that</p> <p>15 indirectly. J-U-E-N-S-T I think. There might</p> <p>16 have been a G in there, too. I -- I can't</p> <p>17 remember how he spelled his name.</p> <p>18 Q. And what was his position?</p> <p>19 A. He was from the finance office.</p> <p>20 Q. Do you know if he's still with the</p> <p>21 Department of Education?</p> <p>22 A. I believe he is, yes.</p> <p>23 Q. Do you know his current position?</p> <p>24 A. I do not.</p> <p>25</p>	<p style="text-align: right;">Page 53</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 MR. JARAMILLO: Can we go off the</p> <p>2 record.</p> <p>3 (Whereupon, a brief discussion was</p> <p>4 held off record.)</p> <p>5 Q. Mr. Manning, you froze there on the</p> <p>6 video screen for a second, so I'm not sure -- I</p> <p>7 didn't hear an answer. I'm just -- I'm just going</p> <p>8 to repeat my question.</p> <p>9 A. Go ahead.</p> <p>10 Q. When you say that the -- what Mr.</p> <p>11 Phillip Jeunst suggested was -- was put aside by</p> <p>12 the court, are you referring to the court's order</p> <p>13 enjoining the use of the average earnings rule in</p> <p>14 the Calvillo Manriquez case?</p> <p>15 A. Yes, that's correct.</p> <p>16 Q. Did anything about the borrower</p> <p>17 defense Panel review cause a delay in the</p> <p>18 Department's issuance of borrower defense</p> <p>19 decisions?</p> <p>20 MR. MERRITT: Objection, vague.</p> <p>21 Q. You can answer the question.</p> <p>22 A. I'm sorry, can you repeat it, please.</p> <p>23 Did anything?</p> <p>24 Q. I'll rephrase it. Let's back up a</p> <p>25</p>

12/17/2020

54 to 57

<p style="text-align: right;">Page 54</p> <p>1 - JAMES MANNING -</p> <p>2 little bit.</p> <p>3 When you came on to the</p> <p>4 administration, what was your understanding of</p> <p>5 what the -- how the prior administration had</p> <p>6 approached borrower defense claims?</p> <p>7 A. Well, when I came on at that point I</p> <p>8 don't know that I had a position. I -- I came to</p> <p>9 find out that over the course of the last several</p> <p>10 weeks at the end of the previous administration</p> <p>11 that a number of actions had been taken and</p> <p>12 decisions made and adjudication being taken on a</p> <p>13 number of claims prepared and authorized by the --</p> <p>14 the Secretary, previous Secretary for discharge.</p> <p>15 And, as I recall, there were</p> <p>16 approximately 16,000 claims that were signed off</p> <p>17 on that came to my attention early on when I was</p> <p>18 officially onboard; and we, we -- we looked at</p> <p>19 those and talked to general counsel and, you know,</p> <p>20 wanted to come to understand if these had been</p> <p>21 resolved to the point where the incoming Secretary</p> <p>22 would need to authorize their approval.</p> <p>23 There was a -- much discussion about</p> <p>24 that and ultimately recognition that the previous</p> <p>25 administration action had been the final action,</p>	<p style="text-align: right;">Page 56</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Did you have any understanding about</p> <p>3 why she wasn't happy about it?</p> <p>4 MR. MERRITT: Objection, calls for</p> <p>5 speculation.</p> <p>6 Q. You can answer the question. I just</p> <p>7 want to know if you had any understanding of why</p> <p>8 she was unhappy about this decision.</p> <p>9 A. Well, I think in principle there were</p> <p>10 a -- a number of folks that were not happy about</p> <p>11 the situation. I don't know if there were any</p> <p>12 things to say anyone was happy about the</p> <p>13 situation, but it was a decision that required</p> <p>14 action.</p> <p>15 I think that, you know, any</p> <p>16 conversation beyond that, that -- well, I don't</p> <p>17 know how to say this. I think that the -- the</p> <p>18 idea that every individual that made a claim that</p> <p>19 was to be discharged will a receive a hundred</p> <p>20 percent of, you know, discharge did strike any</p> <p>21 number of us as not necessarily the right way to</p> <p>22 go, but yet still recognized that the Department</p> <p>23 had taken the action, the previous Secretary</p> <p>24 approved it, and we, you know, effectively was</p> <p>25 obligated to move it forward.</p>
<p style="text-align: right;">Page 55</p> <p>1 - JAMES MANNING -</p> <p>2 final Department action that -- that was arrived</p> <p>3 at with the proper authority. While it hadn't</p> <p>4 been discharged, they were necessarily needed to</p> <p>5 be discharged by the incoming Secretary.</p> <p>6 Q. And were you involved in any action</p> <p>7 to effectuate these discharges by getting the</p> <p>8 Secretary's approval?</p> <p>9 A. I -- I did brief the Secretary on the</p> <p>10 status and, you know, informed her that we had</p> <p>11 done necessary due diligence and come to</p> <p>12 understand and appreciate that this action was a</p> <p>13 -- a lawful action of the previous administration</p> <p>14 and that the changes needed to happen and, thus,</p> <p>15 became her responsibility to sign that</p> <p>16 authorization.</p> <p>17 Q. How did she react to this?</p> <p>18 MR. MERRITT: Objection, beyond the</p> <p>19 scope of discovery the court authorized.</p> <p>20 Q. You can answer the question.</p> <p>21 A. Well, she -- she wasn't particularly</p> <p>22 happy about it.</p> <p>23 Q. Did she tell you why she wasn't happy</p> <p>24 about it?</p> <p>25 A. Not specifically, no.</p>	<p style="text-align: right;">Page 57</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Why didn't you think it was the right</p> <p>3 way to go?</p> <p>4 MR. MERRITT: Objection to the extent</p> <p>5 that calls for deliberative privileged</p> <p>6 information.</p> <p>7 Q. You can answer the question.</p> <p>8 A. Well, the answer to the -- the</p> <p>9 specific question is I don't know.</p> <p>10 Q. If you know, why did others think it</p> <p>11 was not the right way to go?</p> <p>12 MR. MERRITT: Objection, calling</p> <p>13 for -- to the extent that question calls for</p> <p>14 deliberative privileged information.</p> <p>15 Q. You can answer the question.</p> <p>16 A. Well --</p> <p>17 MR. MERRITT: I mean, if you're</p> <p>18 gonna -- if the question is phrased as what</p> <p>19 do others think about why the discharge</p> <p>20 shouldn't happen leading up to that decision,</p> <p>21 then I'll instruct not to answer. Is that</p> <p>22 the question?</p> <p>23 MR. JARAMILLO: That wasn't the</p> <p>24 question.</p> <p>25 MR. MERRITT: Can you rephrase the</p>

12/17/2020

58 to 61

<p style="text-align: right;">Page 58</p> <p>1 - JAMES MANNING -</p> <p>2 question or restate the question?</p> <p>3 Q. Why did others think that this was</p> <p>4 not necessarily the right way to go, your words?</p> <p>5 Why was this decision not necessarily the right</p> <p>6 way to go?</p> <p>7 A. Well -- well, obviously, I can't</p> <p>8 speak to what people are thinking, but I can say</p> <p>9 during conversations amongst the working group</p> <p>10 that there was discussion about alternatives to a</p> <p>11 hundred percent relief.</p> <p>12 The -- the Secretary had the</p> <p>13 authority to provide relief in part or in whole</p> <p>14 and we looked at that carefully and had many</p> <p>15 discussions about that, and I don't recall anyone</p> <p>16 ultimately suggesting that, oh, we really ought to</p> <p>17 just say a hundred percent of the claim is made,</p> <p>18 which led to further discussion that established</p> <p>19 the pre -- that worked on the entity of -- of</p> <p>20 methodology that would be fair to borrowers and</p> <p>21 taxpayers, that would look at, you know, the</p> <p>22 situation and the -- and look at records that</p> <p>23 ultimately the court stopped us from using; but</p> <p>24 there were records that the -- the Department had</p> <p>25 in hand, because they were the same records that</p>	<p style="text-align: right;">Page 60</p> <p>1 - JAMES MANNING -</p> <p>2 A. It's a question around balancing it</p> <p>3 between the bor -- the borrower and -- and the</p> <p>4 taxpayer. That was -- balance -- thinking of it</p> <p>5 in terms of -- I don't recall mentioning it quite</p> <p>6 like that.</p> <p>7 Q. Was it -- was it the drive to try to</p> <p>8 protect interest of taxpayers that resulted in</p> <p>9 trying to find ways to limit the relief of -- of</p> <p>10 applicants for borrower defense?</p> <p>11 MR. MERRITT: Objection to the extent</p> <p>12 it calls for deliberative privileged</p> <p>13 information.</p> <p>14 Q. I'm just asking, in general, at the</p> <p>15 Department when you were there, was that the --</p> <p>16 was that the approach?</p> <p>17 A. Was what the approach? Say that</p> <p>18 again.</p> <p>19 Q. To balance the interest of taxpayers</p> <p>20 by finding ways to limit relief awarded to</p> <p>21 applicants for borrower defense.</p> <p>22 A. I, I -- I don't think that's -- the</p> <p>23 way you just put it is a fair representation of</p> <p>24 how the conversation was, but the ideal behind</p> <p>25 everything that we did from the beginning was to</p>
<p style="text-align: right;">Page 59</p> <p>1 - JAMES MANNING -</p> <p>2 were used earlier in the previous administration</p> <p>3 to address the gainful employment issue.</p> <p>4 And so members of the group picked up</p> <p>5 from there and looked at the potentiality of using</p> <p>6 that information that would be had, that had been</p> <p>7 provided by the Social Security Administration for</p> <p>8 useful gainful employment, to look at that as part</p> <p>9 of the methodology that was put forward in</p> <p>10 performance and effectuated, until the court ruled</p> <p>11 that the use of the information was potentially a</p> <p>12 violation of a privacy act.</p> <p>13 Q. And -- and this approach that</p> <p>14 resulted from the borrower defense Group Review</p> <p>15 Panel, was this -- in terms of not awarding a</p> <p>16 hundred percent relief, that was a change in</p> <p>17 position from how the prior administration</p> <p>18 approached this issue, correct?</p> <p>19 A. That is correct.</p> <p>20 Q. And did -- was it your understanding</p> <p>21 that the prior adminis -- oh, strike that.</p> <p>22 Did the Department feel a need to</p> <p>23 balance the interests of student bor -- borrowers</p> <p>24 who were victims of misconduct by their schools</p> <p>25 with the interest of taxpayers?</p>	<p style="text-align: right;">Page 61</p> <p>1 - JAMES MANNING -</p> <p>2 be fair to student borrowers that had been harmed</p> <p>3 and to give full consideration to how much harm</p> <p>4 was done and if it was worthy of a hundred percent</p> <p>5 forgiveness, then that's what should be provided.</p> <p>6 If it was something where the</p> <p>7 individual had moved forward and been successful</p> <p>8 and should have had some relief, at some level,</p> <p>9 that should be considered too; and that -- and</p> <p>10 looking at things through that lens ultimately was</p> <p>11 fair for the borrower and fair for the taxpayer in</p> <p>12 respect that it was going to cost something, but</p> <p>13 out of hand we shouldn't start with respect to</p> <p>14 that -- that everybody that was harmed was harmed</p> <p>15 a hundred percent.</p> <p>16 Q. So in order to protect the taxpayer,</p> <p>17 the new administration took an approach that would</p> <p>18 find ways to -- to measure harm and such that a</p> <p>19 hundred percent relief was not granted; is that</p> <p>20 true?</p> <p>21 MR. MERRITT: Objection,</p> <p>22 mischaracterization of prior testimony.</p> <p>23 Q. You can answer the question.</p> <p>24 A. Can you repeat the question, please.</p> <p>25 Q. In order to protect the taxpayer, the</p>

Page 62

1 - JAMES MANNING -

2 new administration's approach was to find ways to

3 limit relief commensurate with what the Department

4 viewed as the harm to the borrower; is that true?

5 A. No, I don't think that is phrased

6 correctly.

7 I don't think we were thinking of the

8 taxpayer, you know, first and then looking to --

9 to have a balance. I think we were looking to try

10 to make it fair across the board.

11 Q. So what were you doing to protect the

12 taxpayer?

13 MR. MERRITT: Objection, overbroad.

14 Q. You can answer.

15 A. I -- I think, though, protecting the

16 taxpayer was -- I don't know what happened when we

17 were deciding correctly for borrowers.

18 Q. Was the interest of schools also a

19 consideration in revising the -- the relief

20 awarded to borrowers?

21 A. I, I -- I never heard that was raised

22 as a consideration.

23 Q. So, in your view, the considerations

24 were the taxpayer and the borrower?

25 A. Yes.

Page 63

1 - JAMES MANNING -

2 Q. Any other considerations?

3 A. I'm sure there were other

4 considerations discussed at the table. I don't

5 recall what they were.

6 Q. In your view, the prior

7 administration did not sufficiently take into

8 account the interest of the taxpayer?

9 MR. MERRITT: Objection. We're

10 getting beyond the scope of the discovery the

11 court authorized.

12 Q. You can answer unless your counsel

13 instructs you not to.

14 MR. MERRITT: Well, which topic is

15 this relevant to?

16 MR. JARAMILLO: Well, this is

17 background leading towards the eventual delay

18 in the processing of applications and it has

19 to do with the view of the new administration

20 toward Borrowers Defense claims and what

21 would be used to evaluate them.

22 MR. MERRITT: I don't think that's a

23 topic. I mean, if the court's -- as relevant

24 to this witness, the only topic the court

25 authorized discovery into is the extent to

Page 64

1 - JAMES MANNING -

2 which the difficulty of reviewing borrower

3 defense applications -- sorry about that.

4 So as relevant to this witness, the

5 only topic that the court authorized

6 discovery into is the extent to which the

7 difficulty of reviewing borrower defense

8 applications actually caused or justified the

9 Secretary's 18-month delay and I don't think

10 that question relates to that topic.

11 MR. JARAMILLO: Well, the court did

12 say that there was a strong showing of agency

13 pretext, the class had been prejudiced by

14 delay, and the court said we need to know

15 what's really going on and that led him to

16 compel discovery on the topic you listed, but

17 other topics as well that Mr. Manning might

18 have knowledge of including the denial issue

19 before this suit and under the previous

20 administration and the extent to which the

21 Secretary denied applications of students who

22 attended the school subject to findings of

23 misconduct. This all gets to pretext and

24 potential causes of the delay.

25 Are you going to instruct him not to

Page 65

1 - JAMES MANNING -

2 answer that question?

3 MR. MERRITT: You're correct that

4 some of the topics could be relevant to Mr.

5 Manning.

6 I will state that the court's general

7 statement that the pretext do not set the

8 parameters for a technical discovery, the

9 actual topics that you listed do.

10 At this point we are very, very far

11 before the 18-month delay the court

12 referenced, which as you now began in 2018.

13 So I guess, at this point, I'll -- I'll ask

14 you to restate the question.

15 MR. JARAMILLO: We can move on.

16 Q. Mr. -- Mr. Manning, you testified

17 earlier that it was determined that the Secretary

18 needed to approve the applications of

19 approximately 16,000 borrowers of -- that were

20 prelim -- that were approved by the prior

21 administration, but not actually discharged; is

22 that correct?

23 A. Correct.

24 Q. And were you involved in the

25 Secretary's approval of those applications?

12/17/2020

66 to 69

<p style="text-align: right;">Page 66</p> <p>1 - JAMES MANNING -</p> <p>2 A. I -- I briefed her that that was the</p> <p>3 determination after review by the Office of</p> <p>4 General Counsel. There was no option and I -- I</p> <p>5 recommended she sign.</p> <p>6 Q. That she sign what?</p> <p>7 A. The discharge of those 16,000 loans</p> <p>8 -- \$200 billion worth of loans.</p> <p>9 Q. And was that an actual document</p> <p>10 discharging the loans?</p> <p>11 A. She signed recognizing that, that her</p> <p>12 -- her action authorized the process to go</p> <p>13 forward.</p> <p>14 Q. And were you involved in drafting the</p> <p>15 written document for that action?</p> <p>16 A. I was not.</p> <p>17 Q. Did you give her, the Secretary, any</p> <p>18 written communication about the action?</p> <p>19 A. I believe I may have. I expect I</p> <p>20 did, yes.</p> <p>21 Q. Why don't we look at Tab 11 in your</p> <p>22 documents and this was previously submitted as</p> <p>23 Exhibit 7 in the Jones deposition.</p> <p>24 (Whereupon, Exhibit 7, having been</p> <p>25 previously marked, was tendered to the</p>	<p style="text-align: right;">Page 68</p> <p>1 - JAMES MANNING -</p> <p>2 A. I have no recollection of who gave me</p> <p>3 the draft.</p> <p>4 Q. Do you know if this resulted from the</p> <p>5 borrower defense Review Panel?</p> <p>6 A. I do not. I think that I would say</p> <p>7 that -- so the paragraph that reads, "We</p> <p>8 established a review panel consisting of Joe</p> <p>9 Connolly, Lynn Mahaffy -- we established a review</p> <p>10 panel consisting of Joe Connolly, Lynn Mahaffy,</p> <p>11 Phil Rosenfelt, Justin Riemer and myself who</p> <p>12 examined the claims and background explanation and</p> <p>13 made recommendations on how to resolve the pending</p> <p>14 claims and proceed in the future."</p> <p>15 So this memo preparation was made in</p> <p>16 and amongst the group of people represented here.</p> <p>17 Q. And was this the action you referred</p> <p>18 to previously of the -- of Secretary DeVos</p> <p>19 authorizing the discharge of approximately 16,000</p> <p>20 borrower defense claims?</p> <p>21 A. Yes. It was --</p> <p>22 Q. I'm sorry, go ahead.</p> <p>23 A. The answer to what you said so far is</p> <p>24 yes. It was a recommendation to the Secretary</p> <p>25 signed by me to "proceed with discharge for direct</p>
<p style="text-align: right;">Page 67</p> <p>1 - JAMES MANNING -</p> <p>2 witness for identification.)</p> <p>3 Q. And I'll ask you to just skip past</p> <p>4 the first page that says "Exhibit 7" because that</p> <p>5 was just used to get it into the court file; and</p> <p>6 if you turn to the second actual page of the</p> <p>7 document, do you recognize this document?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And can you tell me what it is?</p> <p>10 A. This is a memo from me to the</p> <p>11 Secretary.</p> <p>12 MR. JARAMILLO: And I'm not sure that</p> <p>13 I did this, but we should mark this -- I'm</p> <p>14 sorry, we don't have to mark this. Strike</p> <p>15 that.</p> <p>16 Q. Did you write this memo, Mr. Manning?</p> <p>17 A. I signed it. I don't believe that I</p> <p>18 was the author.</p> <p>19 Q. Do you know who authored it?</p> <p>20 A. Probably a committee.</p> <p>21 Q. And what committee would that be?</p> <p>22 A. Oh, I, I -- I don't know. I would</p> <p>23 say that I, you know, ultimately read it and sent</p> <p>24 it forward.</p> <p>25 Q. Who gave you the draft of it?</p>	<p style="text-align: right;">Page 69</p> <p>1 - JAMES MANNING -</p> <p>2 and non-direct loans for all impacted borrowers</p> <p>3 direct for U.S. or in the CFO's Internal Control</p> <p>4 Unit to set up interim procedures to process</p> <p>5 claims until new borrower defense regulations are</p> <p>6 operable and take effect. Proceeding with</p> <p>7 requesting OIG launch a review of the borrower</p> <p>8 defense program."</p> <p>9 Q. And you're reading from Page 4 of</p> <p>10 this exhibit?</p> <p>11 A. Correct.</p> <p>12 Q. And you see that Secretary DeVos</p> <p>13 signed it and checked the -- the line that says</p> <p>14 "Approved"?</p> <p>15 A. I do.</p> <p>16 Q. And this is a document that shows</p> <p>17 that she approved the action listed in the</p> <p>18 recommendation?</p> <p>19 A. It is.</p> <p>20 Q. And you see your comment at the</p> <p>21 bottom that says "With extreme displeasure"?</p> <p>22 A. I do.</p> <p>23 Q. After, did you -- do you recall</p> <p>24 seeing that after she signed this document?</p> <p>25 A. Well, I -- I don't recall that,</p>

12/17/2020

70 to 73

<p style="text-align: right;">Page 70</p> <p>1 - JAMES MANNING -</p> <p>2 but --</p> <p>3 Q. After she signed this document, did</p> <p>4 you talk to her about her extreme displeasure?</p> <p>5 MR. MERRITT: Objection, asked and</p> <p>6 answered.</p> <p>7 Q. You can answer.</p> <p>8 A. Well, I know she was not happy about</p> <p>9 it and I know that she would have preferred that</p> <p>10 the action was taken on fully under Trump's</p> <p>11 administration, but she -- she knew she had an</p> <p>12 obligation and she signed it and was not happy</p> <p>13 about it, the way it had been handled up to then.</p> <p>14 Q. And after she signed the document, do</p> <p>15 you know if the 16,000 applications were actually</p> <p>16 discharged?</p> <p>17 A. Yes, they were.</p> <p>18 Q. Do you know when they were</p> <p>19 discharged?</p> <p>20 A. I do not.</p> <p>21 Q. Do you have an estimate as to when</p> <p>22 they were discharged?</p> <p>23 A. Not long after she signed this.</p> <p>24 Q. And were they all discharged with a</p> <p>25 hundred percent relief?</p>	<p style="text-align: right;">Page 72</p> <p>1 - JAMES MANNING -</p> <p>2 discussion about moving forward with the</p> <p>3 methodology and getting to a point where we would</p> <p>4 be able to move forward, as I said before, fairly</p> <p>5 for the borrower and the taxpayer by considering</p> <p>6 the harm that was done to student borrowers and</p> <p>7 providing relief at an appropriate level that</p> <p>8 ultimately was between a hundred percent and ten</p> <p>9 percent.</p> <p>10 Q. To your recollection, when was that</p> <p>11 new methodology put into effect?</p> <p>12 A. Oh, I'm -- I'm trying to recall. I</p> <p>13 can't remember specifically when it was put into</p> <p>14 effect, you know, obviously it would take</p> <p>15 some -- some time to stand up. It was in</p> <p>16 effect -- started being worked on through '17.</p> <p>17 You know, it was in effect for a</p> <p>18 certain period of time before it was put aside by</p> <p>19 the court in 2018. I, I -- I can't remember the</p> <p>20 specific start date in terms of when it was up for</p> <p>21 operation.</p> <p>22 Q. Until it was up in operation, is it</p> <p>23 true that the Department did not issue any other</p> <p>24 final borrower defense decisions except for the</p> <p>25 approximately 16,000 that were approved by the</p>
<p style="text-align: right;">Page 71</p> <p>1 - JAMES MANNING -</p> <p>2 A. That's my understanding.</p> <p>3 Q. During the time period in which the</p> <p>4 borrower defense Review Panel was -- was meeting</p> <p>5 to evaluate the borrower defense program, did FSA</p> <p>6 issue any decisions on borrower defense</p> <p>7 applications?</p> <p>8 A. I don't recall if they issued any or</p> <p>9 not. They certainly were receiving applications</p> <p>10 and were making judgments whether they were</p> <p>11 acceptable for consideration or not, but I don't</p> <p>12 recall that. I --</p> <p>13 Q. Do you recall there being -- sorry,</p> <p>14 go ahead. I talked over you.</p> <p>15 A. That's okay. Sorry. I don't recall</p> <p>16 that there were any that were finally fully</p> <p>17 settled beyond these.</p> <p>18 Q. Was there a decision to put a pause</p> <p>19 on issuing final decisions during the time period</p> <p>20 of the borrower defense Review Panel?</p> <p>21 A. During a period that involved the</p> <p>22 panel? I -- I don't recall a -- a formal</p> <p>23 decision, but -- I don't -- I don't recall a</p> <p>24 decision that ordered that.</p> <p>25 I think there was certainly</p>	<p style="text-align: right;">Page 73</p> <p>1 - JAMES MANNING -</p> <p>2 Secretary in the memo we just looked at?</p> <p>3 A. I don't specifically recall, but I</p> <p>4 expect that it's true though.</p> <p>5 Q. And this memo, as you read, did</p> <p>6 authorize the CFO's Internal Control Unit to set</p> <p>7 up interim procedures to process claims, right?</p> <p>8 MR. MERRITT: Objection, ambiguous.</p> <p>9 What -- what document?</p> <p>10 MR. JARAMILLO: The document we</p> <p>11 looked at which was the May 4th, 2017 memo</p> <p>12 that's Exhibit 7 in this case.</p> <p>13 Q. Tab 11 for you, Mr. Manning.</p> <p>14 A. Yes. That's Page 4 of Exhibit 7; is</p> <p>15 that right.</p> <p>16 Q. Yes, the authorization of the setting</p> <p>17 up of interim procedures.</p> <p>18 A. Yes, I see what you're saying there.</p> <p>19 "Direct OUS and the CFO's Internal Control Unit"</p> <p>20 -- sorry, I'll read the whole thing so you have</p> <p>21 it.</p> <p>22 "Proceed with discharge for direct</p> <p>23 and non-direct loans for all impacted borrowers.</p> <p>24 Direct OUS and the CFO's Internal Control Unit to</p> <p>25 set up interim procedures to process claims until</p>

12/17/2020

74 to 77

<p style="text-align: right;">Page 74</p> <p>1 - JAMES MANNING -</p> <p>2 new borrower defense regulations are adopted and</p> <p>3 take effect. Proceed with requesting OIG launch a</p> <p>4 review of the borrower defense program."</p> <p>5 And my reading of the second sentence</p> <p>6 "direct all OUS and CFOs' Internal Control Unit to</p> <p>7 set up interim procedures to process claims until</p> <p>8 new borrower defense regulations are adopted" to</p> <p>9 me refers to the establishment of the methodology.</p> <p>10 New borrower defense regulations, actions on that</p> <p>11 didn't start until the end of 2017.</p> <p>12 Q. Right, and -- and this says that the</p> <p>13 OUS and the CFO's Internal Control Unit was</p> <p>14 directed to set up interim procedures to process</p> <p>15 claims un -- until then; is that right?</p> <p>16 A. Yes, and I'm saying that the,</p> <p>17 the -- what was set up in the interim processes</p> <p>18 was to effectuate the methodology and apply that.</p> <p>19 Q. And were the interim procedures set</p> <p>20 forth in any document, any document that you're</p> <p>21 aware of?</p> <p>22 A. Not that I recall.</p> <p>23 MR. MERRITT: Joe, would it be okay</p> <p>24 if we took a short break sometime soon for</p> <p>25 five minutes.</p>	<p style="text-align: right;">Page 76</p> <p>1 - JAMES MANNING -</p> <p>2 that position I reported to the Secretary.</p> <p>3 Q. How often did you meet with the</p> <p>4 Secretary in that role?</p> <p>5 A. Well, I -- I met with her -- I'm not</p> <p>6 sure if I met with her in that role specifically</p> <p>7 or I had started a meeting with her as a senior</p> <p>8 advisor and I -- I guess I wasn't officially --</p> <p>9 but I met with her every few weeks in a group with</p> <p>10 other -- with other senior advisors. I would have</p> <p>11 had some individual -- not individual -- some</p> <p>12 smaller group meetings from time to time.</p> <p>13 Q. With the Secretary?</p> <p>14 A. With the Secretary, yeah.</p> <p>15 Q. And did you discuss borrower defense</p> <p>16 issues during any of those meetings?</p> <p>17 A. During any of them?</p> <p>18 Q. Yes.</p> <p>19 A. Certainly.</p> <p>20 Q. And who else was present when you</p> <p>21 discussed borrower defense issues?</p> <p>22 A. I can't be clear in terms of, you</p> <p>23 know, who was there when we were discussing</p> <p>24 borrower defense issues, but generally the folks</p> <p>25 that would meet with the Secretary and I would</p>
<p style="text-align: right;">Page 75</p> <p>1 - JAMES MANNING -</p> <p>2 MR. JARAMILLO: Yes, let's go ahead</p> <p>3 and take a break now for five minutes.</p> <p>4 MR. MERRITT: Thank you.</p> <p>5 THE VIDEOGRAPHER: We are now off the</p> <p>6 record, the time is 16:53 UTC.</p> <p>7 (Whereupon, there was a brief recess</p> <p>8 in the proceedings.)</p> <p>9 THE VIDEOGRAPHER: Please standby,</p> <p>10 everyone. We're now on the record, the time</p> <p>11 is 17:07 UTC.</p> <p>12 Q. Mr. Manning, we're just back from</p> <p>13 break and I wanted to ask you if to -- I don't</p> <p>14 want to know what you talked about. I want to</p> <p>15 just ask you if you spoke with anybody during the</p> <p>16 break.</p> <p>17 A. Briefly with the attorneys.</p> <p>18 Q. Do you have anything to clarify from</p> <p>19 your prior testimony?</p> <p>20 A. No.</p> <p>21 Q. Do you recall any direction -- let's</p> <p>22 back up a little bit.</p> <p>23 As acting Undersecretary of Higher</p> <p>24 Education, who did you report to?</p> <p>25 A. In essence I reported to the -- in</p>	<p style="text-align: right;">Page 77</p> <p>1 - JAMES MANNING -</p> <p>2 include Bob Eitel, Secretary chief of staff</p> <p>3 depending on who that was at the time. She had</p> <p>4 two different chiefs of staff.</p> <p>5 When Diane Jones came onboard, she</p> <p>6 was part of that group. Liz Hill, who was her</p> <p>7 communications person and press spokesman.</p> <p>8 Ultimately when Deputy Secretary came</p> <p>9 on, General Zeiz, Deputy Secretary of Education</p> <p>10 was in some of those meetings. The Deputy</p> <p>11 Secretary of Education, Zeiz is his last name,</p> <p>12 Z-E-I-Z, former General.</p> <p>13 When Wayne Johnson ultimately came</p> <p>14 onboard, he would be part of those meetings as</p> <p>15 well, initially as COO and then continuing to --</p> <p>16 as the director of Next Gen, as I said,</p> <p>17 initiative.</p> <p>18 Q. Other than the May 4th, 2017 memo</p> <p>19 that was from you to Secretary DeVos, did you have</p> <p>20 any other written communications with Secretary</p> <p>21 DeVos about borrower defense issues?</p> <p>22 A. Separately, not -- not that I recall.</p> <p>23 Q. No e-mail?</p> <p>24 A. Quite frankly I can't be sure, but</p> <p>25 e-mails except but for the fact I don't recall</p>

12/17/2020

78 to 81

<p style="text-align: right;">Page 78</p> <p>1 - JAMES MANNING -</p> <p>2 sending e-mails to the Secretary.</p> <p>3 Q. And no text messages?</p> <p>4 A. No, none.</p> <p>5 Q. And underneath you as under acting</p> <p>6 Secretary, was FSA, correct?</p> <p>7 A. Yes, in -- in principal the</p> <p>8 Undersecretary had oversight of the Higher</p> <p>9 Education programs, so FSA is part of Education</p> <p>10 and Career Adult Education.</p> <p>11 Q. Who from FSA reported directly to</p> <p>12 you?</p> <p>13 A. Oh, a whole cadre of folks at</p> <p>14 different times. I mean, there was a group of</p> <p>15 senior leaders of or ten or so that met regularly</p> <p>16 with me.</p> <p>17 Q. Did any of them meet regularly with</p> <p>18 you about borrower defense?</p> <p>19 A. The issue of borrower defense may</p> <p>20 have come up from time to time in general</p> <p>21 meetings, but...</p> <p>22 Q. Who at FSA was responsible for</p> <p>23 overseeing the implementation of borrower defense</p> <p>24 during your tenure at the Department?</p> <p>25 A. The director of the Enforcement group</p>	<p style="text-align: right;">Page 80</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Yes.</p> <p>3 A. Not at FSA.</p> <p>4 Q. Okay. Anywhere else?</p> <p>5 A. Quite frankly, I don't know -- not</p> <p>6 that I know of.</p> <p>7 Q. Okay. So these people, when they</p> <p>8 were in that role, reported directly to you?</p> <p>9 A. I -- actually Jillian Schmoke when he</p> <p>10 came onboard, he came onboard and we had a</p> <p>11 full-time COO that was Wayne Johnson, and he</p> <p>12 reported to Wayne while Wayne was COO through</p> <p>13 July, '17 through January, '18. That --</p> <p>14 Q. And Jillian -- go ahead. I'm sorry.</p> <p>15 A. Yeah, that was the reporting</p> <p>16 relationship.</p> <p>17 Q. So from Julian Schmoke up to Wayne</p> <p>18 Johnson and then up to you?</p> <p>19 A. Yes.</p> <p>20 Q. Did Colleen Nevin ever directly</p> <p>21 report to you?</p> <p>22 A. On paper I'm sure she did. Let's</p> <p>23 see. It would have after the senior leaders had</p> <p>24 left -- I'm sorry, I don't know the gentleman's</p> <p>25 name -- and then Laura Kim. At -- at that point,</p>
<p style="text-align: right;">Page 79</p> <p>1 - JAMES MANNING -</p> <p>2 officially had that responsibility.</p> <p>3 Q. And who was that during your tenure?</p> <p>4 And if it was multiple people just tell me who</p> <p>5 recall, please.</p> <p>6 A. Oh, it was multiple people and it</p> <p>7 was -- I just forgot the name. I just saw his</p> <p>8 name on a e-mail not too long ago. Robert -- I</p> <p>9 don't remember his last name. He left actually</p> <p>10 earlier; he left in February and then Laura Kim</p> <p>11 and then shortly after that she left and Colleen</p> <p>12 Nevin effectively was the senior person there.</p> <p>13 And I would seek Colleen from time to</p> <p>14 time until -- until Jillian Schmoke became the</p> <p>15 director of the borrower -- of the, you know,</p> <p>16 Enforcement Unit in the summer of '17. So '17</p> <p>17 probably August.</p> <p>18 Q. And, Mr. Manning, you've named people</p> <p>19 that were, as you described it, in the role of</p> <p>20 director of Enforcement within FSA, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Between you and that role of director</p> <p>23 of Enforcement, was there anybody else in the</p> <p>24 chain of reporting?</p> <p>25 A. Between me and director?</p>	<p style="text-align: right;">Page 81</p> <p>1 - JAMES MANNING -</p> <p>2 Colleen reported directly to me.</p> <p>3 Q. It -- go ahead. I'm sorry.</p> <p>4 A. It -- it would have been -- you know,</p> <p>5 if it wasn't March, '17 it could have been shortly</p> <p>6 after that, early '17.</p> <p>7 Q. And, Mr. -- Mr. Manning, please don't</p> <p>8 take offense at my question, but I want to do a</p> <p>9 quick check-in to see if there's any reason that</p> <p>10 you're having trouble recalling any facts today</p> <p>11 and you don't have to tell me the reason at this</p> <p>12 point, but I want to know if you are having</p> <p>13 trouble.</p> <p>14 A. Oh, well, I'm only reporting on what</p> <p>15 I -- well, I'm trying to remember things that I</p> <p>16 think I -- I should remember, but that are not</p> <p>17 coming right to mind.</p> <p>18 Q. Okay.</p> <p>19 A. I have been away from that for a</p> <p>20 while. I've been doing other work and I really</p> <p>21 haven't been following any issues in and around,</p> <p>22 you know, the Department or borrower defense or I</p> <p>23 didn't focus on those things.</p> <p>24 Q. I -- I understand, Mr. Manning, but I</p> <p>25 just want to make sure that there's nothing that</p>

Page 82

1 - JAMES MANNING -
 2 might be impeding your recollection today. For
 3 example -- and you don't have to tell me if you
 4 don't want to, but sometimes medications may have
 5 an impact on recollections.
 6 I just wanted to make sure there's
 7 nothing that you're aware of that could be
 8 impacting your recollection today; and, again, I
 9 apologize if this is sensitive for you, I know --
 10 I know it -- it would be for -- for most people,
 11 but are you aware of anything that might be
 12 impacting your recollection, other than the
 13 passage of time between your time at the
 14 Department and now?
 15 A. No. Passage of time.
 16 Q. Okay. You're not aware of anything
 17 else?
 18 A. I'm not aware -- not aware of
 19 anything else.
 20 Q. Okay, I know it's kind of awkward,
 21 but I just kind of had to ask just because, you
 22 know -- I know you're doing your best and you're
 23 taking time to think and jog your memory and I
 24 just wanted to make sure nothing was --
 25 A. Just the fact that I'm 67 and not 57

Page 83

1 - JAMES MANNING -
 2 anymore.
 3 Q. I understand. I find myself going
 4 through some slowdowns as well.
 5 So did you communicate directly with
 6 Colleen -- strike that.
 7 Did you have any written
 8 communications with Colleen Nevin about borrower
 9 defense?
 10 A. Not that I recall.
 11 Q. No e-mails between you and her about
 12 borrower defense?
 13 A. I'm not saying no e-mails, but I
 14 don't recall.
 15 Q. Okay. What involvement did you have,
 16 if any, in overseeing the borrower defense program
 17 as acting Undersecretary?
 18 A. As acting Undersecretary? Re --
 19 repeat the question.
 20 Q. Did you have a role in overseeing the
 21 borrower defense program when you were acting
 22 Undersecretary in the Trump Administration?
 23 A. Well, in -- in principle the
 24 Undersecretary oversees FSA. During those periods
 25 when there was someone else as COO, I would not

Page 84

1 - JAMES MANNING -
 2 take an active role; and when I dealt directly
 3 with Colleen who was to get updated on activities,
 4 but I had full faith and confidence in her and
 5 allowed her to do her job.
 6 Q. So effectively during that time
 7 period, was Colleen Nevin in charge of borrower
 8 defense for the Department of Education?
 9 MR. MERRITT: Objection,
 10 mischaracterization of prior testimony.
 11 Q. You can answer the question.
 12 A. So repeat it again. Was Colleen
 13 what?
 14 Q. Was she effectively the person in
 15 charge of -- of the borrower defense program at
 16 the Department when she reported directly to you
 17 and you had full faith and -- and confidence in
 18 her?
 19 A. Well, she was -- she was in charge of
 20 the Borrower Defense Unit. She wasn't -- your --
 21 your statement was too broad in terms of, you
 22 know, for the whole Department. There was
 23 oversight, but she ran the borrower defense Unit
 24 and...
 25 Q. And who gave that oversight to her?

Page 85

1 - JAMES MANNING -
 2 A. Well, the -- the leaders in the
 3 Enforcement Unit initially, which would have led
 4 to Julian Schmoke spending more of that time.
 5 Q. And what was your understanding of
 6 the role of the Borrower Defense Unit?
 7 A. They received an adjudicated
 8 applications for borrower defense relief.
 9 Q. So that was one step in the process
 10 of borrower defense's claim review and processing
 11 during your time at the Department?
 12 A. Yes.
 13 Q. Well, let's go through the whole
 14 process step by step. When -- when claims came
 15 into the Department, who was in charge of that
 16 intake?
 17 A. Claims for borrower defense came into
 18 the Department?
 19 Q. Yes.
 20 A. My understanding is they went
 21 directly to the Borrower Defense Unit.
 22 Q. And what did the Borrower Defense
 23 Unit do with them?
 24 A. They reviewed them, made decisions on
 25 whether or not they were sufficient to be given

<p style="text-align: right;">Page 86</p> <p>1 - JAMES MANNING -</p> <p>2 further consideration for relief or they made</p> <p>3 decisions that they were insufficient to be</p> <p>4 considered.</p> <p>5 Q. If they determined that they were</p> <p>6 sufficient to be given further consideration for</p> <p>7 relief, what happened to the claim at that point?</p> <p>8 A. I don't recall.</p> <p>9 Q. Are you aware of anybody else that</p> <p>10 would look at it, besides the Borrower Defense</p> <p>11 Unit?</p> <p>12 A. I expect that the director of the</p> <p>13 Enforcement group might look at it, but I</p> <p>14 expect -- well, I think that -- no. I expected</p> <p>15 the -- the defense -- the director of -- I'm</p> <p>16 sorry -- the Enforcement group.</p> <p>17 Q. And what would director of the</p> <p>18 Enforcement group do at that point?</p> <p>19 A. Just have an understanding of where</p> <p>20 the applications were.</p> <p>21 Q. Okay. So if someone applied and the</p> <p>22 Borrower Defense Unit determined that their -- it</p> <p>23 warrants, the application warrants further</p> <p>24 consideration for relief, who gives that further</p> <p>25 consideration for relief or who during your tenure</p>	<p style="text-align: right;">Page 88</p> <p>1 - JAMES MANNING -</p> <p>2 borrower defense applications or denying --</p> <p>3 approving or denying them?</p> <p>4 A. Initially? I -- I didn't see the</p> <p>5 borrower defense claims as they were coming in.</p> <p>6 The -- the reviews took place in the Borrower</p> <p>7 Defense Unit and I got a report in terms of the</p> <p>8 numbers that were coming in. I wasn't engaged in</p> <p>9 the decisions.</p> <p>10 Q. Okay. You said that was initially,</p> <p>11 did that change at any point in time during your</p> <p>12 tenure at the Department in the Trump</p> <p>13 Administration?</p> <p>14 A. Not that I know. I, I-- I said I</p> <p>15 can't recall what the additional steps were once</p> <p>16 the methodology obviously -- I mean, not</p> <p>17 obviously, but I expect that would have impact the</p> <p>18 whole process; but I don't recall.</p> <p>19 Q. Did you ever receive a package of</p> <p>20 borrower defense applications with the cover memo</p> <p>21 to approve or deny?</p> <p>22 A. Borrower defense applications to</p> <p>23 approve or deny?</p> <p>24 Q. Yes.</p> <p>25 A. No, I do not recall. I don't</p>
<p style="text-align: right;">Page 87</p> <p>1 - JAMES MANNING -</p> <p>2 at the admin -- at the Department?</p> <p>3 A. Well, initially it was within the</p> <p>4 Borrower Defense Unit. Ultimately when there was</p> <p>5 a methodology, I don't recall how the review</p> <p>6 process went once the methodology was established.</p> <p>7 Q. Once the methodology was established,</p> <p>8 was there someone in charge of making a relief</p> <p>9 determination?</p> <p>10 A. I don't recall.</p> <p>11 Q. Was BDU involved in making -- was the</p> <p>12 Borrower Defense Unit involved in making a relief</p> <p>13 determination?</p> <p>14 A. Well, I would say that their work was</p> <p>15 the first step in the process. I -- I don't</p> <p>16 recall beyond their adjudication what the</p> <p>17 additional steps were beyond that.</p> <p>18 Q. Have you heard of their work</p> <p>19 adjudicating claims being referred to as Step 1?</p> <p>20 A. I actually don't remember hearing it</p> <p>21 that way, but --</p> <p>22 Q. Do you recall hearing of a -- of the</p> <p>23 relief determination being referred to as Step 2?</p> <p>24 A. I don't recall hearing that.</p> <p>25 Q. Were you ever involved in approving</p>	<p style="text-align: right;">Page 89</p> <p>1 - JAMES MANNING -</p> <p>2 remember ever receiving a package like that. I</p> <p>3 don't remember. I don't recall.</p> <p>4 Q. Did you have approve any borrower</p> <p>5 defense applications yourself?</p> <p>6 A. Individually?</p> <p>7 Q. Yes.</p> <p>8 A. Not -- not that I recall.</p> <p>9 Q. How about as a group?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Did you ever deny borrower defense</p> <p>12 applications individually?</p> <p>13 A. Individually? No.</p> <p>14 Q. How about as a group?</p> <p>15 A. If something came to me, I -- I don't</p> <p>16 recall.</p> <p>17 Q. You don't recall ever being directly</p> <p>18 involved in issuing borrower defense decisions to</p> <p>19 individual borrowers or individual borrowers in a</p> <p>20 group?</p> <p>21 A. Not to individual borrowers, but</p> <p>22 individual borrowers in -- in a group says</p> <p>23 something different to me. If there's a document</p> <p>24 that, you know, asks for a -- approval on a group,</p> <p>25 something like that, it's possible. Do I recall</p>

12/17/2020

90 to 93

<p style="text-align: right;">Page 90</p> <p>1 - JAMES MANNING -</p> <p>2 it, no.</p> <p>3 Q. And why do you say it's possible?</p> <p>4 A. Well, because -- I would say it's</p> <p>5 possible because I had -- I certainly received</p> <p>6 packages for consideration on any number of things</p> <p>7 for signature to signoff and I do not recall any</p> <p>8 involving borrower defense. That -- that was not</p> <p>9 the way information flowed on that, to my</p> <p>10 recollection.</p> <p>11 Q. Do you know if the Office of the</p> <p>12 Secretary was ever involved in approving borrower</p> <p>13 defense applications, putting aside the -- the May</p> <p>14 4th, 2017 decision to approve those approximately</p> <p>15 16,000?</p> <p>16 A. Do I know whether the Office was</p> <p>17 involved? That -- that would be highly unusual,</p> <p>18 but I don't know.</p> <p>19 Q. Beyond the Borrower Defense Unit in</p> <p>20 Enforcement in FSA, do you have any recollection</p> <p>21 of any other Department or any other unit being</p> <p>22 involved in making or issuing borrower defense</p> <p>23 decisions?</p> <p>24 A. Issuing or making borrower defense</p> <p>25 decisions outside of En -- Enforcement Unit and</p>	<p style="text-align: right;">Page 92</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't recall.</p> <p>3 Q. Were you involved in the development</p> <p>4 of any policies that affected the borrower defense</p> <p>5 Unit's work?</p> <p>6 A. Any policies that affected the</p> <p>7 borrowers? I -- I don't recall the process that</p> <p>8 was followed when the methodology was in place and</p> <p>9 I -- I'm not sure if the borrower defense -- what,</p> <p>10 if any, role they had in the final resolution of</p> <p>11 those applications when the methodology was being</p> <p>12 applied.</p> <p>13 Q. How about any other policy decisions</p> <p>14 that you were involved in that might have affected</p> <p>15 the Borrower Defense Unit; are you aware of any</p> <p>16 others?</p> <p>17 MR. MERRITT: Objection.</p> <p>18 A. I don't.</p> <p>19 MR. MERRITT: Strike that.</p> <p>20 Q. And, Mr. Manning, you mentioned that</p> <p>21 you -- you're not sure whether BDU, Borrower</p> <p>22 Defense Unit, was involved with methodology, but</p> <p>23 other than that was there any policies that you're</p> <p>24 aware of that -- that you had a role in -- in</p> <p>25 making that affected the Borrower Defense Unit?</p>
<p style="text-align: right;">Page 91</p> <p>1 - JAMES MANNING -</p> <p>2 Borrower Defense Unit?</p> <p>3 Q. Yes, that's the question.</p> <p>4 A. No, I don't.</p> <p>5 Q. Do you know if, if -- if a decision</p> <p>6 was issued to approve or deny, do you know who</p> <p>7 would draft the notice of decision?</p> <p>8 MR. MERRITT: Objection, calls for</p> <p>9 speculation.</p> <p>10 Q. You can answer.</p> <p>11 A. I don't know.</p> <p>12 Q. If a borrower application was</p> <p>13 approved and they were granted full relief, do you</p> <p>14 know who would be involved in discharging the</p> <p>15 application -- I mean discharging the loan? I'm</p> <p>16 sorry.</p> <p>17 A. Well, when you say in "full relief,"</p> <p>18 you mean a hundred percent?</p> <p>19 Q. Well, let's, let's back -- let's</p> <p>20 strike that question.</p> <p>21 If a decision was made to grant</p> <p>22 relief on a borrower defense application, who at</p> <p>23 the Department would be involved in effectuating</p> <p>24 that discharge or that -- yeah, or grant --</p> <p>25 effectuating the relief?</p>	<p style="text-align: right;">Page 93</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't recall.</p> <p>3 Q. Now, the Office of the Undersecretary</p> <p>4 was involved in making policy for the Department,</p> <p>5 correct?</p> <p>6 A. From time to time.</p> <p>7 Q. And if you, if you -- if the Office</p> <p>8 of the Undersecretary made a policy, did it need</p> <p>9 or did you need the Secretary's approval for any</p> <p>10 of policies decisions?</p> <p>11 A. I don't recall the process.</p> <p>12 Q. Was it the Secretary's authority to</p> <p>13 make certain policies delegated to the Office of</p> <p>14 the Undersecretary?</p> <p>15 A. That's a good question. I don't</p> <p>16 recall.</p> <p>17 Q. If -- if the Office of the</p> <p>18 Undersecretary made policy decisions, how would</p> <p>19 that be reflected?</p> <p>20 A. There was correspondence process that</p> <p>21 directed it through the executive Secretary, but I</p> <p>22 don't recall what it was.</p> <p>23 Q. Would a written document be generated</p> <p>24 for a policy made by the Office of the</p> <p>25 Undersecretary?</p>

12/17/2020

94 to 97

<p style="text-align: right;">Page 94</p> <p>1 - JAMES MANNING -</p> <p>2 A. I expect so, but I don't recall in</p> <p>3 particular.</p> <p>4 Q. Do you recall ever signing off on a</p> <p>5 policy that was made by the Office of the</p> <p>6 Undersecretary?</p> <p>7 A. I signed off on many letters. I -- I</p> <p>8 can't recall if or what -- there were any that</p> <p>9 were specifically policy directives.</p> <p>10 Q. Did FSA have authority to make policy</p> <p>11 or were they just implementing Department policy?</p> <p>12 A. They did not make policy FSA. FSA</p> <p>13 was an operation, not a policymaking group. It</p> <p>14 was an Office of Policy Liaison, a small team of</p> <p>15 people at FSA that worked closely with the Office</p> <p>16 of Postsecondary Education to understand, to be</p> <p>17 fully appreciative of what the pol -- what the</p> <p>18 current policies were and to be part of the</p> <p>19 conversation and ultimately policies were going to</p> <p>20 change that had impact I would say, they played a</p> <p>21 role in explaining to the policy arm of the Office</p> <p>22 of Secretary of Education how that might impact</p> <p>23 one way or the other operations of FSA, but FSA</p> <p>24 was not a policymaking organization.</p> <p>25 They had a liaison and policy was</p>	<p style="text-align: right;">Page 96</p> <p>1 - JAMES MANNING -</p> <p>2 MR. MERRITT: Objection, speculative</p> <p>3 and overbroad.</p> <p>4 Q. Are you aware of any problems in</p> <p>5 communication of policy from the Office of the</p> <p>6 Undersecretary to the Borrower Defense Unit?</p> <p>7 MR. MERRITT: Objection, overbroad.</p> <p>8 Q. You can answer the question.</p> <p>9 A. I'm not, I'm not -- I'm not aware of</p> <p>10 any.</p> <p>11 Q. You're not aware of any</p> <p>12 misunderstandings that the Borrower Defense Unit</p> <p>13 had about policy?</p> <p>14 A. I don't remember issues along those</p> <p>15 lines.</p> <p>16 Q. Okay. Did you ever give instructions</p> <p>17 to the Borrower Defense Unit to stop issuing</p> <p>18 decisions on borrower defense claims?</p> <p>19 A. Do I have a memory of that, no. I</p> <p>20 don't remember.</p> <p>21 Q. Aren't you aware that the Borrower</p> <p>22 Defense Unit at some point in time during your</p> <p>23 tenure had an understanding that they were to stop</p> <p>24 issuing decisions on borrower defense claims?</p> <p>25 MR. MERRITT: Objection, vague and</p>
<p style="text-align: right;">Page 95</p> <p>1 - JAMES MANNING -</p> <p>2 driven from -- Postsecondary Education policies</p> <p>3 was driven from the Department of Education.</p> <p>4 Policy was driven from the Office of</p> <p>5 Postsecondary Education and FSA would receive, you</p> <p>6 know, that policy and implement it, but we were</p> <p>7 not a policymaking organization. We were an</p> <p>8 operation.</p> <p>9 Q. If policy was made by the Secretary</p> <p>10 or other Department leadership, that would need to</p> <p>11 be communicated to -- strike that.</p> <p>12 If policy -- if the policy affecting</p> <p>13 borrower defense was made by leadership at the</p> <p>14 Department, that would need to be communicated to</p> <p>15 the Borrower Defense Unit, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And, in fact, was it the Office of</p> <p>18 Undersecretary responsible for communicating</p> <p>19 policy instructions to the Borrower Defense Unit?</p> <p>20 A. That would have been one of the</p> <p>21 responsibilities, I'm sure.</p> <p>22 Q. Would you agree that it's important</p> <p>23 to have clear communication of policy from the</p> <p>24 Office of the Undersecretary to the Borrower</p> <p>25 Defense Unit about borrower defense policies?</p>	<p style="text-align: right;">Page 97</p> <p>1 - JAMES MANNING -</p> <p>2 ambiguous.</p> <p>3 Q. You can answer the question.</p> <p>4 A. Can you repeat the question, please.</p> <p>5 Q. Are you aware that during your</p> <p>6 tenure, the Borrower Defense Unit had an</p> <p>7 understanding that they were to stop issuing</p> <p>8 decisions on borrower defense claims?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you recall if the Borrower Defense</p> <p>11 Unit ever stopped issuing decisions on borrower</p> <p>12 defense claims?</p> <p>13 MR. MERRITT: Objection, ambiguous as</p> <p>14 to timing.</p> <p>15 Q. At any time during your tenure, are</p> <p>16 you aware if the Borrower Defense Unit stopped</p> <p>17 issuing decisions on borrower defense claims?</p> <p>18 A. I don't recall.</p> <p>19 Q. At any time during your tenure, are</p> <p>20 you aware that FSA stopped issuing decisions on</p> <p>21 borrower defense claims?</p> <p>22 A. That FSA stop issuing?</p> <p>23 Q. Yes.</p> <p>24 A. I -- I don't recall.</p> <p>25 Q. At any time during your tenure at the</p>

12/17/2020

98 to 101

<p style="text-align: right;">Page 98</p> <p>1 - JAMES MANNING -</p> <p>2 Department, are you aware if the Department of</p> <p>3 Education stopped issuing borrower defense claims?</p> <p>4 MR. MERRITT: Objection, asked and</p> <p>5 answered.</p> <p>6 MR. JARAMILLO: It's not asked and</p> <p>7 answered. I'm asking about the full</p> <p>8 Department.</p> <p>9 A. Okay, well, repeat the question then.</p> <p>10 Q. Are you aware at any time during your</p> <p>11 tenure at the Department of Education in the Trump</p> <p>12 Administration if the Department of Education</p> <p>13 stopped issuing decisions on borrower defense</p> <p>14 claims?</p> <p>15 A. I, I -- I don't recall specifically</p> <p>16 that it was stopped -- issued. I expect --</p> <p>17 Q. Go ahead. I'm sorry.</p> <p>18 A. I'm trying to recall the facts and I</p> <p>19 can't. It's not coming to me. If there's</p> <p>20 something that could refresh my memory, it would</p> <p>21 help that. I -- I don't recall.</p> <p>22 Q. Between July, 2018 and the time you</p> <p>23 left the Department of Education in March, 2019</p> <p>24 are you aware of any borrower defense decisions</p> <p>25 being noticed to borrowers?</p>	<p style="text-align: right;">Page 100</p> <p>1 - JAMES MANNING -</p> <p>2 defense applications?</p> <p>3 A. Between the summer of '18 and when I</p> <p>4 left in '19, I -- I don't recall.</p> <p>5 Q. Now, Mr. Manning, are you aware of</p> <p>6 what this case is about, Sweet versus DeVos?</p> <p>7 A. Not specifically.</p> <p>8 Q. Are -- are you aware of the</p> <p>9 allegations that the Department -- in this case</p> <p>10 plaintiffs allege that the Department unreasonably</p> <p>11 delayed in issuing borrower defense applications?</p> <p>12 A. I, I -- I've heard that previously at</p> <p>13 one point.</p> <p>14 Q. Are you aware of any delay in issuing</p> <p>15 borrower defense applications between July, 2018</p> <p>16 and March, 2019?</p> <p>17 A. Am I aware, no. I don't recall.</p> <p>18 Q. Are you aware of any delay in issuing</p> <p>19 borrower defense applications during your tenure</p> <p>20 in the Trump Administration at the Department of</p> <p>21 Education?</p> <p>22 A. I don't recall delays specifically.</p> <p>23 I -- I'll try to -- I'm trying to remember what,</p> <p>24 if anything, happened around -- during the period</p> <p>25 of the --</p>
<p style="text-align: right;">Page 99</p> <p>1 - JAMES MANNING -</p> <p>2 A. Am -- am I aware of any -- of any</p> <p>3 what?</p> <p>4 Q. Borrower defense decisions being</p> <p>5 noticed or issued to borrowers.</p> <p>6 A. I don't recall.</p> <p>7 Q. Between July -- July, 2018 and March,</p> <p>8 2019 when you left the Department, are you aware</p> <p>9 of any borrower defense applications being</p> <p>10 approved?</p> <p>11 A. Did you say July, 2018 and '19?</p> <p>12 Q. Between July, 2018 and the time you</p> <p>13 left in March, 2019 are you aware of any borrower</p> <p>14 defense claims being approved by the Department?</p> <p>15 A. Between that time? I don't recall.</p> <p>16 Q. Between July, 2018 and March, 2019</p> <p>17 are you aware of any borrower defense applications</p> <p>18 being denied?</p> <p>19 A. I've had a weekly report on -- on</p> <p>20 numbers of applications that came in. I cannot</p> <p>21 recall whether or not there were reports on the</p> <p>22 numbers that were acted upon or approved.</p> <p>23 Q. During July, 2018 and March, 2019 you</p> <p>24 don't recall whether or not the Department of</p> <p>25 Education issued final decisions on borrower</p>	<p style="text-align: right;">Page 101</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Were you aware of any backlog in</p> <p>3 processing Borrowers Defense applications during</p> <p>4 the tenure -- your tenure at the Department of</p> <p>5 Education?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Tell me about what your</p> <p>8 awareness is of that backlog.</p> <p>9 A. Well, as I said earlier, I got a</p> <p>10 legal report on the growing numbers.</p> <p>11 MR. MERRITT: Joe, just that we're</p> <p>12 getting close to a lunch break.</p> <p>13 MR. JARAMILLO: Yes, and I'm sorry,</p> <p>14 we did pass a little, but I want to ask a few</p> <p>15 more questions. I think we'll be able to</p> <p>16 wrap up in -- in at least one or two minutes</p> <p>17 and then --</p> <p>18 MR. MERRITT: That's fine. Thank</p> <p>19 you. I just wanted to throw it out there.</p> <p>20 MR. JARAMILLO: Thank you, Mr.</p> <p>21 Merritt.</p> <p>22 A. So do you have a question, Joe?</p> <p>23 Q. Yes, Mr. Manning. Just during your</p> <p>24 tenure at the Department of Education, were you</p> <p>25 satisfied with the pace at which the Department</p>

<p style="text-align: right;">Page 102</p> <p>1 - JAMES MANNING -</p> <p>2 was issuing borrower defense decisions?</p> <p>3 A. Was I satisfied with the pace? I</p> <p>4 observed that the numbers were growing. I</p> <p>5 can't -- I can't recall -- generally that was a</p> <p>6 concern, that the numbers were growing. I can't</p> <p>7 recall anything more specific than that.</p> <p>8 Q. So you were -- were you aware or were</p> <p>9 you not concerned about the pace in which the</p> <p>10 Department was issuing Borrowers Defense decisions</p> <p>11 at any time during your tenure in the Trump</p> <p>12 Administration?</p> <p>13 A. I'm trying to recall what information</p> <p>14 I had in terms of how that number was growing and</p> <p>15 I'm re -- remembering a report that I saw weekly,</p> <p>16 but I don't recall -- I can't specifically recall</p> <p>17 what that number was do -- doing or if I had that</p> <p>18 number at the time.</p> <p>19 Q. So as you sit here today, you don't</p> <p>20 have any recollection of any concern over the pace</p> <p>21 at which the Department was issuing decisions?</p> <p>22 A. Well, I -- I think it was growing and</p> <p>23 I think that, you know, it -- it clearly needed</p> <p>24 additional attention.</p> <p>25 Q. Are -- are you aware of the fact that</p>	<p style="text-align: right;">Page 104</p> <p>1 - JAMES MANNING -</p> <p>2 March 31st, 2019. How do those numbers sound in</p> <p>3 terms of accuracy from what you remember?</p> <p>4 A. Well, I can't remember accurately.</p> <p>5 You know, I'm -- I'm assuming that you have them,</p> <p>6 they're the correct numbers.</p> <p>7 Q. Do you recall the numbers going up by</p> <p>8 over 73,000 or more between June 30th, 2018 and</p> <p>9 March 31st, 2019?</p> <p>10 A. I specifically do not remember that.</p> <p>11 Q. Okay. Isn't that something that</p> <p>12 would strike you as a significant increase?</p> <p>13 MR. MERRITT: Objection, speculation.</p> <p>14 Q. Impending applications, isn't that</p> <p>15 something that you -- that would sit in your mind</p> <p>16 as a -- as a lingering concern?</p> <p>17 A. I think the numbers growing -- sure,</p> <p>18 there were concerns they were growing.</p> <p>19 MR. JARAMILLO: Okay, I'm happy to</p> <p>20 take a lunch break now. Thank you, Mr.</p> <p>21 Manning.</p> <p>22 MR. MERRITT: Okay. Thanks, Joe.</p> <p>23 THE VIDEOGRAPHER: We're off the</p> <p>24 record, the time is 17:56 UTC.</p> <p>25 (Whereupon, a lunch break was taken</p>
<p style="text-align: right;">Page 103</p> <p>1 - JAMES MANNING -</p> <p>2 for the quarter ending June 30th, 2018, according</p> <p>3 to the Department there were 105,998 borrower</p> <p>4 defense applications pending?</p> <p>5 A. In what month was that did you say?</p> <p>6 Q. The quarter ending June 30th, 2018.</p> <p>7 A. 2018, June 30th was what number</p> <p>8 again?</p> <p>9 Q. 105,998 applications pending.</p> <p>10 MR. MERRITT: Objection, lack of</p> <p>11 foundation.</p> <p>12 Q. Does that sound accurate to you or</p> <p>13 does that sound way off?</p> <p>14 A. I -- I hear that number and it feels</p> <p>15 low.</p> <p>16 Q. Okay. Well, let's go -- if we go to</p> <p>17 March 31st, 2019 I'll represent to you that based</p> <p>18 on information provided by the Department, that</p> <p>19 number has grown to 179,377 for the quarter ending</p> <p>20 March 31st, 2019. Does that sound accurate to</p> <p>21 you?</p> <p>22 A. I don't know. What was the first</p> <p>23 number you gave me?</p> <p>24 Q. 105,998 for the quarter ending June</p> <p>25 30th, 2018 and 179.377 for the quarter ending</p>	<p style="text-align: right;">Page 105</p> <p>1 - JAMES MANNING -</p> <p>2 from 1:00 p.m. to 1:30 p.m.)</p> <p>3 THE VIDEOGRAPHER: We're now on the</p> <p>4 record, the time is 18:33.</p> <p>5 Q. Hi, Mr. Manning. I hope you had a</p> <p>6 good lunch break.</p> <p>7 A. Thank you.</p> <p>8 Q. Did you have any meetings over this</p> <p>9 platform or any other platform with anybody during</p> <p>10 the lunch break?</p> <p>11 A. No. I didn't have any meetings with</p> <p>12 anyone, but for the attorneys briefly at the</p> <p>13 beginning and briefly before we came back on.</p> <p>14 Q. Okay. Do you have anything to</p> <p>15 clarify from your prior testimony today?</p> <p>16 A. Not that I recall.</p> <p>17 Q. And I hate to ask this again, but I</p> <p>18 just want to check: Are you -- have you taken any</p> <p>19 medication in the past 24 hours that could impact</p> <p>20 your ability to recall facts?</p> <p>21 A. I don't believe the medication that I</p> <p>22 take affects my ability to recall facts.</p> <p>23 Q. Okay.</p> <p>24 A. I don't know that I have any</p> <p>25 medications that are causing an issue.</p>

12/17/2020

106 to 109

<p style="text-align: right;">Page 106</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Okay. Thank you.</p> <p>3 A. But, as I said earlier, being 67 as</p> <p>4 opposed to when I was 55 I can tell that there are</p> <p>5 issues there.</p> <p>6 Q. Okay. Let's turn to Tab 10 in the</p> <p>7 packet of documents and, for the record, this is</p> <p>8 already admitted as Exhibit 21 in a prior</p> <p>9 deposition and it's the declaration of Colleen</p> <p>10 Nevin.</p> <p>11 (Whereupon, Exhibit 21, having been</p> <p>12 previously marked, was tendered to the</p> <p>13 witness for identification.)</p> <p>14 Q. And, Mr. Manning, I believe you</p> <p>15 stated that you reviewed this, the declaration, in</p> <p>16 preparation for today's deposition; is that</p> <p>17 correct?</p> <p>18 A. I did read through it briefly, yes.</p> <p>19 Q. Okay. If I could have you turn to</p> <p>20 the last page.</p> <p>21 A. Signature page?</p> <p>22 Q. Yes, and can you -- can you read me</p> <p>23 the date on which Ms. Nevin executed this</p> <p>24 declaration?</p> <p>25 A. The 14th day of November, 2019.</p>	<p style="text-align: right;">Page 108</p> <p>1 - JAMES MANNING -</p> <p>2 Q. And if OUS did authorize the denial</p> <p>3 of over 10,000 applications, would you as acting</p> <p>4 Undersecretary have been involved in that</p> <p>5 authorization?</p> <p>6 A. I would expect the denials to come</p> <p>7 out of the Borrower Defense Unit as a</p> <p>8 recommendation. I didn't actively review</p> <p>9 individual applications.</p> <p>10 Q. Would you have been the person at</p> <p>11 OUS, as the acting Undersecretary, to authorize</p> <p>12 the denial?</p> <p>13 A. During that period of time, it would</p> <p>14 have come to my attention; and could I have had a</p> <p>15 document that I had to sign related to this, I</p> <p>16 could have. I could have signed it, but I do not</p> <p>17 recall.</p> <p>18 Q. If OUS authorizes the denial of these</p> <p>19 applications, would anyone else at OUS besides you</p> <p>20 have authorized them?</p> <p>21 A. During this period of time anyone</p> <p>22 else at OUS, no.</p> <p>23 Q. It would have had to have been you,</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Okay. So it may be obvious, but I</p> <p>3 think you would understand that her statements in</p> <p>4 here purports to be accurate as of that date; is</p> <p>5 that your understanding?</p> <p>6 A. I -- I believe that to be true.</p> <p>7 Q. Okay. Let's turn to Page 15 of Ms.</p> <p>8 Nevin's declaration.</p> <p>9 A. Okay, and could I point out that</p> <p>10 I -- I left the Department on March 14th of 2019.</p> <p>11 Q. Yes, we understand that. Let's turn</p> <p>12 to Page 15 of Ms. Nevin's declaration.</p> <p>13 A. Okay.</p> <p>14 Q. And if you look at Paragraph 64,</p> <p>15 Lines 14 and 15 of Page 15 it says, "Additionally</p> <p>16 between December, December, 2017 and May, 2018,</p> <p>17 OUS authorized the denial of over 10,000</p> <p>18 applications."</p> <p>19 Do you recall OUS authorizing the</p> <p>20 denial of over 10,000 applications during that</p> <p>21 time period?</p> <p>22 A. Do I recall it?</p> <p>23 Q. Yes.</p> <p>24 A. No, I actually do not. However is it</p> <p>25 likely to be correct, I expect that it is.</p>	<p style="text-align: right;">Page 109</p> <p>1 - JAMES MANNING -</p> <p>2 Q. In Paragraph 65, I'm not going to</p> <p>3 read the -- well, I'll read the whole sentence.</p> <p>4 Ms. Nevin writes, "While no additional decisions</p> <p>5 have been issued to borrowers since in or about</p> <p>6 June, 2018, BDU discontinued to make progress on</p> <p>7 adjudicating applications."</p> <p>8 Does this indicate to you that</p> <p>9 between in or about June, 2018 and the date Ms.</p> <p>10 Nevin's signed the declaration on November 14th,</p> <p>11 2019 that no additional decisions were issued to</p> <p>12 borrowers on their borrower defense applications?</p> <p>13 A. "The borrower defense has continued</p> <p>14 to make progress on adjudicating applications,</p> <p>15 specifically noting 50,000 applications have been</p> <p>16 adjudicated on merits" --</p> <p>17 Q. I'm sorry to interrupt, Mr. Manning.</p> <p>18 I'm not asking you about the -- that language that</p> <p>19 you're reading. I'm asking you specifically about</p> <p>20 the first sentence in Paragraph 65 which states,</p> <p>21 "While no additional decisions have been issued to</p> <p>22 borrowers since in or about June, 2018."</p> <p>23 And what I'm asking you is: Does</p> <p>24 that indicate to you that no decisions were issued</p> <p>25 to borrowers between in or about June, 2018 and at</p>

12/17/2020

110 to 113

<p style="text-align: right;">Page 110</p> <p>1 - JAMES MANNING -</p> <p>2 least, to your knowledge, the time you left the</p> <p>3 Department in March, 2019?</p> <p>4 A. Well, quite frankly, what I was</p> <p>5 reading was just the rest of the sentence;</p> <p>6 and -- and normally when I look at something like</p> <p>7 this, I look at the whole sentence just to make</p> <p>8 sure I understand what the whole sentence means.</p> <p>9 Q. I -- I understand, Mr. Manning, but I</p> <p>10 will point out that was not the rest of the</p> <p>11 sentence, you're starting to read the second</p> <p>12 sentence and I would like you to focus just on the</p> <p>13 first part of the first sentence and whether that</p> <p>14 indicates to you that no decisions were issued to</p> <p>15 borrowers on the borrower defense applications</p> <p>16 since in or about June, 2018 up until the date</p> <p>17 Colleen Nevin signed her declaration on November</p> <p>18 14th, 2019. Is that what it indicates to you?</p> <p>19 A. Again -- yeah, I had said that that</p> <p>20 seems to be correct.</p> <p>21 Q. Okay, and would it also be correct</p> <p>22 based on that, that no -- no decisions were issued</p> <p>23 to borrowers since in or about June, 2018 up until</p> <p>24 the time you left the Department in March 2019;</p> <p>25 yes or no?</p>	<p style="text-align: right;">Page 112</p> <p>1 - JAMES MANNING -</p> <p>2 testimony of Secretary DeVos in response to</p> <p>3 questions, for the record, submitted by U.S.</p> <p>4 Senator Patty Murray.</p> <p>5 A. Uh-huh.</p> <p>6 Q. And it has a total of 48 pages.</p> <p>7 A. I see it and I have it in hand.</p> <p>8 Q. Okay, I would like you to turn to</p> <p>9 Page 20 of 48, if you could.</p> <p>10 A. Okay, I'm there.</p> <p>11 Q. Okay. At the time bottom third of</p> <p>12 the page under the heading "Recent Activity on</p> <p>13 borrower defense approvals, Denials, and</p> <p>14 Findings," the question was posed "As of March 20,</p> <p>15 2019 when was the last time the Department, A,</p> <p>16 approved a borrower defense claim?"</p> <p>17 Can you read Secretary DeVos' answer</p> <p>18 to Part A?</p> <p>19 A. The last time a borrower defense</p> <p>20 application was approved was June 12th, 2018.</p> <p>21 Q. Okay, and then Part B of the question</p> <p>22 asks "For the same time period, when was the last</p> <p>23 time the Department denied a borrower defense</p> <p>24 claim." Can you just read for me the first</p> <p>25 sentence of Secretary DeVos' answer in Part B?</p>
<p style="text-align: right;">Page 111</p> <p>1 - JAMES MANNING -</p> <p>2 A. Say that again. Repeat it, what you</p> <p>3 just said.</p> <p>4 Q. No additional decisions were issued</p> <p>5 to borrowers under borrower defense applications</p> <p>6 since on or about June, 2018 --</p> <p>7 A. Right, I got that part. What's the</p> <p>8 rest?</p> <p>9 Q. -- through the time you left the</p> <p>10 Department and beyond in March, 2019?</p> <p>11 A. That appears to be correct.</p> <p>12 Q. Do you have any reason to doubt that?</p> <p>13 A. Not at all.</p> <p>14 Q. Okay. You're not aware of any</p> <p>15 decisions being issued during that time period?</p> <p>16 A. Not that I recall.</p> <p>17 Q. I would like you to turn to Tab 7</p> <p>18 and, for the record --</p> <p>19 A. Tab 7?</p> <p>20 Q. Yes, and I would like to mark this as</p> <p>21 Exhibit 33.</p> <p>22 (Whereupon, Exhibit 33 was marked at</p> <p>23 this time.)</p> <p>24 Q. And, for the record, this is a</p> <p>25 document from June 13, 2019 that includes the</p>	<p style="text-align: right;">Page 113</p> <p>1 - JAMES MANNING -</p> <p>2 A. The last time a borrower against</p> <p>3 application was denied was May 24th, 2018.</p> <p>4 Q. Does that indicate to you again that</p> <p>5 there were no borrower defense decisions issued to</p> <p>6 borrowers between June, 2018 and in this case as</p> <p>7 of March 28, 2019?</p> <p>8 A. I see that. I'm looking at -- this</p> <p>9 is all I've been doing. I'm looking at the -- the</p> <p>10 -- her answer A and then B and the last time a</p> <p>11 borrower -- from A, the last time a borrower</p> <p>12 defense application was approved was June 12,</p> <p>13 2018.</p> <p>14 Q. Are you aware of any reasons why the</p> <p>15 Department stopped approving or denying borrower</p> <p>16 defense claims during this time period?</p> <p>17 A. I'm not aware.</p> <p>18 Q. Do you have any recollection of</p> <p>19 anything that would have caused the Department of</p> <p>20 Education to stop issuing borrower defense</p> <p>21 decisions during this time?</p> <p>22 MR. MERRITT: Objection, calls for</p> <p>23 speculation.</p> <p>24 Q. Do you have any recollection, sir?</p> <p>25 A. Do I have any recollection? I'm</p>

<p style="text-align: right;">Page 114</p> <p>1 - JAMES MANNING -</p> <p>2 sorry, repeat the question again. Do I have any</p> <p>3 recollection of?</p> <p>4 Q. Why did the Department stop issuing</p> <p>5 borrower defense decisions during this time</p> <p>6 period?</p> <p>7 A. I don't recall.</p> <p>8 Q. Can you recall anything happening</p> <p>9 during this time period that would have caused the</p> <p>10 Department to stop issuing borrower defense</p> <p>11 decisions?</p> <p>12 MR. MERRITT: Objection, vague.</p> <p>13 Q. You can answer the question.</p> <p>14 A. Sorry repeat the question.</p> <p>15 Q. Mr. Manning, you were acting</p> <p>16 Undersecretary of the Department of Education, the</p> <p>17 third-in-command, is that right, during this time</p> <p>18 period?</p> <p>19 A. Yes.</p> <p>20 Q. You were the third-in-command in the</p> <p>21 Department of Education and the Department of</p> <p>22 Education was responsible for issuing borrower</p> <p>23 defense decisions to over 100,000 applicants who</p> <p>24 claimed that they had been harmed by school</p> <p>25 misconduct and, therefore, their federal student</p>	<p style="text-align: right;">Page 116</p> <p>1 - JAMES MANNING -</p> <p>2 Unit, the Borrower Defense Unit, how could you not</p> <p>3 know why this important practice or decision was</p> <p>4 made in or about June, 2018 to stop issuing</p> <p>5 decisions; how could you not know, sir?</p> <p>6 MR. MERRITT: Objection,</p> <p>7 argumentative.</p> <p>8 Q. Did you at one time know?</p> <p>9 A. I believe so.</p> <p>10 Q. When -- when do you think you knew?</p> <p>11 A. I don't recall.</p> <p>12 Q. Who would know the answer to this,</p> <p>13 Mr. Manning?</p> <p>14 MR. MERRITT: Objection.</p> <p>15 Q. To your personal knowledge within the</p> <p>16 realm of what you can recall, who do you think</p> <p>17 would know the answer to this question of why the</p> <p>18 Department of Education stopped issuing decisions</p> <p>19 and did not resume issuing decisions for</p> <p>20 approximately 18 months? Who would you expect to</p> <p>21 know the answer to that?</p> <p>22 A. I don't know. I wish I could recall</p> <p>23 the answer to that, but I don't.</p> <p>24 Q. All right.</p> <p>25 A. If there was a document that -- that</p>
<p style="text-align: right;">Page 115</p> <p>1 - JAMES MANNING -</p> <p>2 loans should be discharged, correct?</p> <p>3 A. I'm not sure that 100,000 students is</p> <p>4 the correct number, but aside from that it does</p> <p>5 sound like a correct statement.</p> <p>6 Q. Well, I'll tell you, sir, I would</p> <p>7 expect you to have an understanding as the</p> <p>8 third-in-command of this important program</p> <p>9 affecting over 100,000 borrowers with pending</p> <p>10 applications. I would expect you to know the</p> <p>11 answer to this. Is, is -- is my expectation</p> <p>12 unreasonable?</p> <p>13 MR. MERRITT: Objection, misstates</p> <p>14 prior testimony. He said he didn't recall.</p> <p>15 MR. JARAMILLO: Which means he</p> <p>16 doesn't know the reason.</p> <p>17 MR. MERRITT: Now.</p> <p>18 THE WITNESS: That's correct.</p> <p>19 MR. JARAMILLO: I didn't ask -- I'm</p> <p>20 asking him now, what's your recollection.</p> <p>21 Q. You have no recollection whatsoever</p> <p>22 of why -- the Department of which you were</p> <p>23 third-in-command responsible for FSA, responsible</p> <p>24 for Borrower's Defense, underneath your chain of</p> <p>25 command directly reporting to you the Enforcement</p>	<p style="text-align: right;">Page 117</p> <p>1 - JAMES MANNING -</p> <p>2 would refresh my memory I could consider that, but</p> <p>3 I do not remember.</p> <p>4 Q. Okay. Who would you have expected to</p> <p>5 makes such a decision to stop issuing borrower</p> <p>6 defense decisions for such a long time period?</p> <p>7 MR. MERRITT: Objection, calls for</p> <p>8 speculation.</p> <p>9 Q. Who would you expect to know the</p> <p>10 answer, sir? That's not speculating. Either you</p> <p>11 would expect somebody to know or you wouldn't.</p> <p>12 A. I don't know.</p> <p>13 Q. I'll represent to you that Colleen</p> <p>14 Nevin testified in her deposition that she was</p> <p>15 informed of a decision to stop making -- to stop</p> <p>16 issuing decisions on borrower defense applications</p> <p>17 as a result of an injunction order in the</p> <p>18 Manriquez -- the Calvillo Manriquez case, that she</p> <p>19 was informed by Justin Riemer.</p> <p>20 Do you recall any communications with</p> <p>21 Justin Riemer about the decision to stop issuing</p> <p>22 applications as a result of the Calvillo Manriquez</p> <p>23 injunction order?</p> <p>24 A. So I don't remember specifically a</p> <p>25 conversation regarding that. I don't recall that.</p>

<p style="text-align: right;">Page 118</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 I -- I do recall that that case effectively put 2 aside the methodology that we had established and 3 to -- to use going forward. 4 5 Q. Sir, what category of claims did that 6 methodology apply; do you know? 7 A. No, I don't recall. 8 Q. It only applied to the class members 9 involved in to Calvillo Manriquez case; is that 10 right? 11 A. I don't know if that's correct or 12 not. I don't recall the specifics of the finding. 13 Q. And -- and when you submitted the 14 declaration in the Calvillo Manriquez case, did 15 you have an understanding of what that case 16 involved? 17 A. At that time when I wrote -- when I 18 signed the document I understood all of that, yes. 19 Q. But as you sit here today you don't 20 have a clear recollection of it? 21 A. I absolutely do not have a clear 22 recollection of it. 23 Q. Do you recall that the methodology 24 enjoined in the Calvillo Manriquez case was 25 developed specifically for CCI students, the</p>	<p style="text-align: right;">Page 120</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 A. (Unintelligible cross talk) 2 3 Q. Please repeat your answer, Mr. 4 Manning, about Mr. Riemer. 5 A. What was -- what was your question 6 again directly, so I make sure I'm answering the 7 right question. 8 Q. Okay, I'm sorry. Did Justin Riemer 9 make the decision? 10 A. I don't expect that could be the case 11 because he personally didn't have that authority 12 and wouldn't have made a mistake like that. He 13 would have come to me, if he needed. 14 Q. Who had the authority to make a 15 decision like that? 16 A. Well -- 17 MR. MERRITT: Objection, vague. 18 MR. JARAMILLO: That's not vague. 19 Q. You just testified Mr. Riemer 20 that -- I mean, excuse me, Mr. Manning, that 21 Justin Riemer did not have the authority to make 22 as such a decision? 23 A. Well, in the first one -- go back and 24 repeat the original question because I didn't -- 25 MR. MERRITT: I'll say vague as to</p>
<p style="text-align: right;">Page 119</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 current in-school students, at issue in that case? 2 3 A. Only the CCI students, is that what 4 you said? 5 Q. For the class members of that case 6 which were CCI students, I believe, with job 7 placement race claims -- I apologize if I'm not 8 getting that correctly -- correct? 9 A. I specifically didn't recall that was 10 only CCI students. 11 Q. So your recollection is that the 12 Calvillo Manriquez's case included students other 13 than CCI students? 14 A. No. You asked the question -- I 15 didn't recall one way or the other that there was 16 specified schools. I didn't recall. 17 Q. Okay. Did you review the Calvillo 18 injunction order? 19 A. I don't believe I did review the 20 injunction order. I'm not an attorney and I would 21 have attorneys like Justin Riemer of -- look at 22 that form. 23 Q. Is it possible that Justin Riemer 24 made the decision to stop issuing borrower defense 25 --</p>	<p style="text-align: right;">Page 121</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 what the decision was. 2 3 Q. What we're talking about here, Mr. 4 Manning, is who made the decision to stop issuing 5 borrower's defense decisions during the time 6 period? 7 A. Well -- well, in --in Justin Riemer's 8 time? I'm -- I'm a little confused here. 9 I think that I need to go back and 10 have, you know, the last couple of questions and 11 answers repeated to me so I -- cause I've lost my 12 place in thought here. 13 Q. Well, why don't we just -- why don't 14 we just move on. I'm just going to ask -- try to 15 make my questions clear and specific. 16 A. Well, that would be good. 17 Q. Yes. Did Secretary DeVos make a 18 decision to stop issuing decisions on borrower 19 defense applications? 20 A. I don't know the answer to that 21 question. 22 Q. Would she have the authority to issue 23 such a decision? 24 A. Probably counsel -- I'll the 25 double-check with OGC, but I believe that the</p>

12/17/2020

122 to 125

<p style="text-align: right;">Page 122</p> <p>1 - JAMES MANNING -</p> <p>2 Secretary has the authority to give a part in the</p> <p>3 whole in that -- in principle, but again I'd want</p> <p>4 guidance from general counsel at the Department</p> <p>5 before going forward but --</p> <p>6 Q. Would anyone else besides Secretary</p> <p>7 DeVos have authority to issue such a decision?</p> <p>8 A. I don't know.</p> <p>9 Q. Would you have authority to issue</p> <p>10 such a decision?</p> <p>11 A. I would have to see the decisions</p> <p>12 like in front of me for consideration. I --</p> <p>13 Q. Well, we don't -- I'm not aware of</p> <p>14 such a decision document per se, but there was</p> <p>15 obviously as you've seen a stoppage in the</p> <p>16 issuance of borrower defense claims and for an</p> <p>17 extended period of time.</p> <p>18 A. Right.</p> <p>19 Q. So you would expect that decision to</p> <p>20 come from Department leadership, correct?</p> <p>21 A. I would expect that's correct, but I</p> <p>22 don't know where that decision ultimately came</p> <p>23 from.</p> <p>24 Q. Would you have authority to issue</p> <p>25 such a decision?</p>	<p style="text-align: right;">Page 124</p> <p>1 - JAMES MANNING -</p> <p>2 briefed by others, including general counsel on an</p> <p>3 issue before an action like that was taken.</p> <p>4 Q. But she would have the authority to</p> <p>5 take the action after that briefing, correct?</p> <p>6 A. I expect that's correct. I --</p> <p>7 Q. Did you ever at any time issue an</p> <p>8 order regarding borrower defense?</p> <p>9 MR. MERRITT: Objection, vague.</p> <p>10 Q. Did you ever issue a decision</p> <p>11 regarding borrower defense in your tenure at the</p> <p>12 Department of Education?</p> <p>13 A. Did I have --</p> <p>14 MR. MERRITT: Objection, vague.</p> <p>15 Q. You can answer the question, Mr.</p> <p>16 Manning, and I'll repeat it. Did you ever at any</p> <p>17 time issue a decision regarding borrower defense?</p> <p>18 A. A specific decision?</p> <p>19 Q. Any decision.</p> <p>20 A. I don't recall.</p> <p>21 Q. But you might have issued a decision</p> <p>22 about borrower defense, but you just don't recall;</p> <p>23 is that right?</p> <p>24 A. It's possible.</p> <p>25 Q. I want you to turn to Tab 16, if you</p>
<p style="text-align: right;">Page 123</p> <p>1 - JAMES MANNING -</p> <p>2 A. I would have -- if I had that option</p> <p>3 in front of me, I would have discussed so with the</p> <p>4 general counsel's office to clarify that because</p> <p>5 it's not clear to me.</p> <p>6 Q. But you -- in consultation with the</p> <p>7 Office of General Counsel, you would have the</p> <p>8 authority to issue such a decision or not?</p> <p>9 A. I, I -- I don't know. I'd have to</p> <p>10 have their counsel advise me to that. I don't</p> <p>11 know.</p> <p>12 Q. But one thing that's absolutely clear</p> <p>13 is that Secretary DeVos would have that</p> <p>14 decision-making authority, correct?</p> <p>15 MR. MERRITT: Objection,</p> <p>16 mischaracterization of prior testimony.</p> <p>17 Q. I'm just asking the question: One</p> <p>18 thing that's clear, Mr. Manning, is that of</p> <p>19 anybody at the Department of Education, Secretary</p> <p>20 DeVos would have the authority to issue a decision</p> <p>21 that would require stopping the issuance of</p> <p>22 borrower defense approvals and denials; is that</p> <p>23 right?</p> <p>24 A. I expect the Secretary has that</p> <p>25 authority and so I would expect that she'd be</p>	<p style="text-align: right;">Page 125</p> <p>1 - JAMES MANNING -</p> <p>2 could. This was previously marked as Exhibit 12</p> <p>3 and it appears to be a PowerPoint presentation</p> <p>4 that's titled "Borrower Defense to Repayment</p> <p>5 August 21, 2019."</p> <p>6 (Whereupon, Exhibit 12, having been</p> <p>7 previously marked, was tendered to the</p> <p>8 witness for identification.)</p> <p>9 Q. And I recognize, Mr. Manning, that</p> <p>10 this postdates your tenure at the Department, but</p> <p>11 there is something in this document that I want to</p> <p>12 ask you about.</p> <p>13 A. Okay, fair enough. I have it.</p> <p>14 Q. Okay. Thank you, Mr. Manning. If</p> <p>15 you could turn -- the page numbers are located in</p> <p>16 the lower left-hand corner.</p> <p>17 A. I see them. What number?</p> <p>18 Q. I want to go to Page 6 or Slide 6.</p> <p>19 A. Okay.</p> <p>20 Q. And there's a question on top "Why</p> <p>21 are BD applications on Hold" and for approvals it</p> <p>22 says, "'Manriquez' tier relief methodology for CCI</p> <p>23 subject to injunction (as of May, 2018) and no</p> <p>24 alternative methodology available."</p> <p>25 Do you have any recollection of that</p>

12/17/2020

126 to 129

<p style="text-align: right;">Page 126</p> <p>1 - JAMES MANNING -</p> <p>2 being a reason why BD applications or borrower</p> <p>3 defense applications were on hold?</p> <p>4 A. Well, I'm trying to understand the</p> <p>5 page as I look at this.</p> <p>6 Q. I just want to ask you about that</p> <p>7 bullet point. I really -- I mean, that's what I</p> <p>8 would like to focus on at this point, if you</p> <p>9 would.</p> <p>10 MR. MERRITT: The witness is entitled</p> <p>11 to familiarize himself with document you're</p> <p>12 showing him.</p> <p>13 Q. Okay, Mr. Manning, but if I</p> <p>14 recall and I don't want to rush you, but sometimes</p> <p>15 you can take a while and I'm not sure it's</p> <p>16 pertinent to read each and every line of this; but</p> <p>17 if -- if that's what you want to do we can go off</p> <p>18 the record so you could do it, if that's okay with</p> <p>19 Mr. Merritt.</p> <p>20 MR. MERRITT: I don't think there's</p> <p>21 any need to go off the record for that. I</p> <p>22 mean, when you show the witness documents he</p> <p>23 has every right to read them and make sure he</p> <p>24 understands what it is before he answers.</p> <p>25 MR. JARAMILLO: Okay, and use up</p>	<p style="text-align: right;">Page 128</p> <p>1 - JAMES MANNING -</p> <p>2 time you left.</p> <p>3 A. Right.</p> <p>4 Q. And so we're looking at this document</p> <p>5 and I want you to tell me if you have any comments</p> <p>6 or if it refreshes your recollection at all as to</p> <p>7 the first bullet point, as to that being a reason</p> <p>8 why borrower defense applications were on hold.</p> <p>9 A. "Tiered relief methodology for CCI</p> <p>10 subject to injunction (as of May, 2018) and no</p> <p>11 alternative methodology available." No relief</p> <p>12 methodology developed for non-CCI claims.</p> <p>13 Q. Does this refresh your recollection</p> <p>14 at all, Mr. Manning, about why borrower defense</p> <p>15 decisions were put on hold?</p> <p>16 A. Not -- no, it doesn't. I remember</p> <p>17 that Manriquez put aside methodology; and could</p> <p>18 that have led to delay in approvals, I expect it</p> <p>19 could have, but --</p> <p>20 Q. Would the Department have been</p> <p>21 legally required to stop issuing decisions on</p> <p>22 borrower defense as a result of the Calvillo</p> <p>23 Manriquez's decision and injunction order, to your</p> <p>24 knowledge? I'm not asking you as a lawyer, but</p> <p>25 just to your understanding.</p>
<p style="text-align: right;">Page 127</p> <p>1 - JAMES MANNING -</p> <p>2 record time, that's fine.</p> <p>3 Go ahead, Mr. Manning.</p> <p>4 Why don't we take a short break, Mr.</p> <p>5 Merritt, and we'll come back to this.</p> <p>6 A. Well, this is just a one-page slide.</p> <p>7 It's not going to take me a half an hour to read</p> <p>8 it.</p> <p>9 Q. I just want to know what you</p> <p>10 under -- if you understood the first bullet point,</p> <p>11 that one reason why BD applications were on hold</p> <p>12 according to this document was that "the Manriquez</p> <p>13 tier relief methodology for CCI subject to</p> <p>14 injunction as of May, 2018 and no alternative</p> <p>15 methodology available."</p> <p>16 Do you have -- was that anything that</p> <p>17 you recall, anything about that statement?</p> <p>18 A. Well, this, as you pointed out</p> <p>19 earlier, happened after.</p> <p>20 Q. Certainly the PowerPoint application</p> <p>21 is after your tenure, but we've already seen</p> <p>22 documentation and you have -- you testified you</p> <p>23 have no reason to doubt that there was a -- a</p> <p>24 stoppage in the issuance of borrower defense</p> <p>25 decisions between June, 2018 at least until the</p>	<p style="text-align: right;">Page 129</p> <p>1 - JAMES MANNING -</p> <p>2 A. Would the Department be required to</p> <p>3 what again?</p> <p>4 Q. Stop issuing decisions on all</p> <p>5 borrower defense applications as a result of the</p> <p>6 Manriquez -- the Calvillo Manriquez injunction</p> <p>7 order, to your understanding as layperson or the</p> <p>8 third-in-command at the Department of Education at</p> <p>9 the time.</p> <p>10 A. Well, yes, I am a layperson and this</p> <p>11 -- that question is something if I -- I was</p> <p>12 getting at the time, I'd be talking to my</p> <p>13 attorneys in OGC.</p> <p>14 Q. And did you do that?</p> <p>15 A. I can't recall.</p> <p>16 Q. As you can see, Mr. Manning, I'm</p> <p>17 trying to get to the bottom of who made the</p> <p>18 decision to stop issuing the borrower defense</p> <p>19 approvals and denials; and I appreciate your</p> <p>20 patience in trying to work with me to jog your</p> <p>21 memory about it and we're coming up blank from</p> <p>22 your memory, which it is what it is. Who would</p> <p>23 you expect to know the answer to my questions?</p> <p>24 A. What somebody in the Department you</p> <p>25 could go back to and ask, is that what you mean?</p>

<p style="text-align: right;">Page 130</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Who made the decision to stop issuing</p> <p>3 approvals and denials?</p> <p>4 MR. MERRITT: Objection, asked and</p> <p>5 answered.</p> <p>6 Q. Well, the -- the question is, who</p> <p>7 would you expect to know? I -- I understand that</p> <p>8 you say you don't know. Who would you expect to</p> <p>9 know?</p> <p>10 MR. MERRITT: I believe he answered</p> <p>11 that as well.</p> <p>12 Q. Refresh my memory please, Mr.</p> <p>13 Manning. Who would you expect to know, if</p> <p>14 anybody?</p> <p>15 A. Someone in the General Counsel's</p> <p>16 office.</p> <p>17 Q. Can you name somebody in the General</p> <p>18 Counsel's office that you would expect to know?</p> <p>19 A. I probably would go to Phil</p> <p>20 Rosenfelt.</p> <p>21 Q. Is Mr. Rosenfelt still at the Office</p> <p>22 of General Counsel, to your knowledge?</p> <p>23 A. Yes, he is.</p> <p>24 Q. Besides Phil Rosenfelt, would you</p> <p>25 expect anybody else to know who made the decision</p>	<p style="text-align: right;">Page 132</p> <p>1 - JAMES MANNING -</p> <p>2 go to Colleen.</p> <p>3 Q. From -- I'll represent to you, Mr.</p> <p>4 Manning, that both Colleen Nevin and Diane Auer</p> <p>5 Jones testified in their depositions they didn't</p> <p>6 know who made the decision, but that it was</p> <p>7 communicated -- that Nevin testified that it was</p> <p>8 communicated by Justin Riemer.</p> <p>9 Would you expect Wayne Johnson to</p> <p>10 know?</p> <p>11 A. It was communicated by Justin Riemer</p> <p>12 is what --</p> <p>13 Q. What Colleen Nevin testified to.</p> <p>14 A. I'm trying to recall. I'm -- I'm</p> <p>15 trying to recall the time frame and Julian</p> <p>16 Schmoke's responsibilities.</p> <p>17 Q. You're thinking about Julian Schmoke</p> <p>18 at this point in time?</p> <p>19 A. Yeah, I'm trying to recall when --</p> <p>20 when he --</p> <p>21 Q. Depending on The time frame in which</p> <p>22 Julian Schmoke worked at the Department, you might</p> <p>23 expect him to know as well?</p> <p>24 A. Well, I'm thinking out loud here.</p> <p>25 I'm sorry, I shouldn't be doing that, but</p>
<p style="text-align: right;">Page 131</p> <p>1 - JAMES MANNING -</p> <p>2 to stop issuing approvals and denials during the</p> <p>3 time period?</p> <p>4 A. I would expect other people to know,</p> <p>5 but I don't.</p> <p>6 Q. Which other people, sir?</p> <p>7 A. I don't know. I'm saying there</p> <p>8 certainly would be other people. I don't know</p> <p>9 who.</p> <p>10 Q. Would you expect Diane Auer Jones to</p> <p>11 know?</p> <p>12 A. Well, she became Undersecretary</p> <p>13 around this time so --</p> <p>14 Q. Would you expect her to know?</p> <p>15 A. I would ask her.</p> <p>16 Q. Would you expect her to know as the</p> <p>17 third-in-command as acting Undersecretary?</p> <p>18 MR. MERRITT: Objection, asked and</p> <p>19 answered.</p> <p>20 Q. Yes or no, sir, would you expect her</p> <p>21 to know or not?</p> <p>22 A. I would expect she knows.</p> <p>23 Q. Would you expect Colleen Nevin to</p> <p>24 know?</p> <p>25 A. I, I -- I do expect that that would</p>	<p style="text-align: right;">Page 133</p> <p>1 - JAMES MANNING -</p> <p>2 unfortunately I'm trying to recall when Julian</p> <p>3 Schmoke was assigned -- was delegated</p> <p>4 responsibility as chief of the Enforcement Unit.</p> <p>5 Q. Okay, that's fine. We can move on.</p> <p>6 Let me ask you this: Would you</p> <p>7 expect Martin Brown to know?</p> <p>8 A. At -- at this time May, 2018?</p> <p>9 Q. Well, I think what we saw from the</p> <p>10 prior documents was that there were no borrower</p> <p>11 defense decisions issued between June, 2018 until</p> <p>12 the time that Ms. Colleen Nevin had signed her</p> <p>13 declaration in November, 2019, but you -- you</p> <p>14 expect Mark Brown to know who issued that</p> <p>15 decision?</p> <p>16 A. I don't know. I don't remember. I</p> <p>17 don't remember what Mark Brown started at the</p> <p>18 Department.</p> <p>19 Q. Okay. Would you agree that for</p> <p>20 decisions to stop on borrower defense applications</p> <p>21 for such an extended period of time would have</p> <p>22 required the approval of Department leadership?</p> <p>23 A. In principle, I think that's right.</p> <p>24 MR. JARAMILLO: Why don't we take a</p> <p>25 short break. Is that okay, Charlie?</p>

<p style="text-align: right;">Page 134</p> <p>1 - JAMES MANNING -</p> <p>2 MR. MERRITT: Yes, that's okay.</p> <p>3 MR. JARAMILLO: All right. Let's</p> <p>4 take -- let's take ten minutes because I need</p> <p>5 to use the restroom. Let's go off the</p> <p>6 record, sorry.</p> <p>7 THE VIDEOGRAPHER: We're off the</p> <p>8 record, the time is 19:12 UTC.</p> <p>9 (Whereupon, there was a brief recess</p> <p>10 in the proceedings.)</p> <p>11 THE VIDEOGRAPHER: We're now on the</p> <p>12 record, the time 19:23 UTC.</p> <p>13 Q. Hi, Mr. Manning.</p> <p>14 A. Hi, Joe.</p> <p>15 Q. I don't want to belabor the point,</p> <p>16 but I do want to kind of ask a little bit more</p> <p>17 about this time period when there were no borrower</p> <p>18 defense decisions, which demonstrates in my mind a</p> <p>19 -- a policy decision for some reason or another</p> <p>20 to not issue the decisions and I want to ask you:</p> <p>21 Would such a policy decision to not issue borrower</p> <p>22 defense approvals or denials for such an extended</p> <p>23 period of time, would you expect that to be set</p> <p>24 forth in writing somewhere in the Department?</p> <p>25 A. I -- I don't know if that exists or</p>	<p style="text-align: right;">Page 136</p> <p>1 - JAMES MANNING -</p> <p>2 Exhibit 12, Page 6 about why are BD applications</p> <p>3 on hold?</p> <p>4 A. No, no, no. I was looking -- I was</p> <p>5 looking at this because it frustrated me that I</p> <p>6 couldn't to read the whole thing.</p> <p>7 Q. I apologize for not letting you read</p> <p>8 the whole thing, but that is Tab 16, correct, the</p> <p>9 PowerPoint?</p> <p>10 A. It was this one.</p> <p>11 Q. Yes, okay. That's right. Let the</p> <p>12 record reflect that you've shown Tab 16.</p> <p>13 A. Yes.</p> <p>14 Q. I apologize for the frustration, but</p> <p>15 I just want to know what -- what your expectation</p> <p>16 would be for such a decision to put applications</p> <p>17 on hold for so long. Would you expect that to be</p> <p>18 set forth in writing somewhere within the</p> <p>19 Department of Education?</p> <p>20 A. I don't know if I expect that or not.</p> <p>21 I'm -- I'm -- I'd be interested in trying to find</p> <p>22 out if it exists or not.</p> <p>23 Q. Would it poss -- I'm sorry, sir, I'll</p> <p>24 let you finish. I'm sorry for interrupting.</p> <p>25 A. I was about to say I'm speculating</p>
<p style="text-align: right;">Page 135</p> <p>1 - JAMES MANNING -</p> <p>2 not. I'd have to --</p> <p>3 Q. Yeah, I'm not asking you if it</p> <p>4 exists. I'm just asking you what your expectation</p> <p>5 would be as third-in-command at the time of the</p> <p>6 Department of Education. Would you expect such a</p> <p>7 decision to be put forth in writing within the</p> <p>8 Department?</p> <p>9 A. I'm trying to recall what actually</p> <p>10 was happening at that time and I don't recall. I</p> <p>11 don't know whether there was or was not a -- a</p> <p>12 document of that type put forward.</p> <p>13 Q. And my question is would you expect</p> <p>14 such a decision to be put in writing, not whether</p> <p>15 there was or wasn't but would you expect there to</p> <p>16 be a writing showing such a decision?</p> <p>17 A. Are you saying There is not any in</p> <p>18 writing, no decisions in writing?</p> <p>19 Q. I'm just asking you whether you would</p> <p>20 expect there to be something in writing and, if</p> <p>21 you don't mind, is there something that you're</p> <p>22 looking at, at this point?</p> <p>23 A. Yeah, I'm actually looking at the</p> <p>24 last document that you asked me to look at.</p> <p>25 Q. And this would be Tab 16 which was</p>	<p style="text-align: right;">Page 137</p> <p>1 - JAMES MANNING -</p> <p>2 and I shouldn't be speculating, you know.</p> <p>3 Q. All right. We don't want you to</p> <p>4 speculate. We just want to know what your</p> <p>5 expectation would be.</p> <p>6 So would it -- would it be normal</p> <p>7 under your -- to your recollection, would it be</p> <p>8 normal in the Department to -- at the Department</p> <p>9 to order FSA to stop issuing decisions on borrower</p> <p>10 defense applications without that being put forth</p> <p>11 in writing?</p> <p>12 A. Would that be what?</p> <p>13 Q. Would that be normal; is that</p> <p>14 something the Department, you would expect them to</p> <p>15 engage in?</p> <p>16 A. It was -- Well, no, I wouldn't expect</p> <p>17 that.</p> <p>18 Q. Would you expect such a decision to</p> <p>19 be put in writing?</p> <p>20 MR. MERRITT: Objection, asked and</p> <p>21 answered.</p> <p>22 Q. You can answer, sir.</p> <p>23 A. I'm -- I --</p> <p>24 Q. I'm giving you three choices; yes,</p> <p>25 no, I don't know?</p>

<p style="text-align: right;">Page 138</p> <p>1 - JAMES MANNING -</p> <p>2 A. Well, then it's I don't know.</p> <p>3 Q. Okay. Let's look back at Tab 16,</p> <p>4 Page 6, what you were looking at before, "Why are</p> <p>5 BD applications on the hold."</p> <p>6 A. Which page?</p> <p>7 Q. Page 6. It's the page we were</p> <p>8 looking at.</p> <p>9 A. Yes. So what I had left open on the</p> <p>10 desk here, yeah.</p> <p>11 Q. Yes, sir. So there's a heading in</p> <p>12 the left-hand side that says "Denials" and the</p> <p>13 first bullet point says, "Policy decisions spring</p> <p>14 2018 to not issue denials until approvals could be</p> <p>15 issued." Were you aware of such a policy</p> <p>16 decision?</p> <p>17 A. I think I heard some discussion about</p> <p>18 that issue. I don't recall policy decision around</p> <p>19 it.</p> <p>20 Q. Who would make such a policy decision</p> <p>21 if it were in fact made as stated here?</p> <p>22 A. I don't know.</p> <p>23 Q. Would the Office of the</p> <p>24 Undersecretary have authority to make such a</p> <p>25 decision?</p>	<p style="text-align: right;">Page 140</p> <p>1 - JAMES MANNING -</p> <p>2 -- that you authored or that has your name on it</p> <p>3 from May 4th, 2017 that was given to Secretary</p> <p>4 DeVos and that you looked at as Tab 11 which is</p> <p>5 Exhibit 7 in this case?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Is that a yes?</p> <p>8 A. No, it's not a yes to the question.</p> <p>9 I recognize what you're talking about. Tab 11,</p> <p>10 I'll look at it again to see what it says. You</p> <p>11 said Tab 11?</p> <p>12 Q. Yes.</p> <p>13 A. What was your question again about</p> <p>14 this?</p> <p>15 Q. Would you expect -- a policy decision</p> <p>16 like the bullet point under "Denials" to not issue</p> <p>17 denials until approvals could also be issued,</p> <p>18 would you expect that to be in writing -- strike</p> <p>19 that.</p> <p>20 You testified that you would expect</p> <p>21 that to be in writing and my question is: Is</p> <p>22 there a certain title that the document would have</p> <p>23 if a policy decision like that were put in</p> <p>24 writing?</p> <p>25 A. Well, then you're referring to like</p>
<p style="text-align: right;">Page 139</p> <p>1 - JAMES MANNING -</p> <p>2 A. I think on this issue, I would have</p> <p>3 to engage in further discussion.</p> <p>4 Q. On this issue, the Office of</p> <p>5 Undersecretary would have to engage further</p> <p>6 discussion --</p> <p>7 A. This type of a policy decision and</p> <p>8 policy, you know, the Office of Postsecondary</p> <p>9 Education has a voice there. OGC, you know, has a</p> <p>10 responsibility there, in -- In addition to OUS.</p> <p>11 Q. And after that consultation, would</p> <p>12 you expect such a decision to be set forth in</p> <p>13 writing?</p> <p>14 A. Generally once policy decisions are</p> <p>15 made as policy decisions, they are memorialized in</p> <p>16 writing.</p> <p>17 Q. What is a regulatory action memo?</p> <p>18 A. I don't recall.</p> <p>19 Q. What -- what would you call the</p> <p>20 writing that you would put a policy decision at</p> <p>21 the Department in; what -- is there a title, a</p> <p>22 certain title for the document that would reflect</p> <p>23 the policy decision?</p> <p>24 A. I don't recall.</p> <p>25 Q. Would it be similar to the memo that</p>	<p style="text-align: right;">Page 141</p> <p>1 - JAMES MANNING -</p> <p>2 this document that went to the Secretary from me</p> <p>3 on May 4th, '17 that she signed. Because, no, I</p> <p>4 would not expect it to be like this kind of</p> <p>5 document that I sent to the Secretary.</p> <p>6 Q. All right. What -- what would you --</p> <p>7 sorry, go ahead.</p> <p>8 A. So you know, I had -- I'm saying that</p> <p>9 this document I'm looking at from the Secretary,</p> <p>10 that would have been signed by the Secretary, is a</p> <p>11 memorandum for decision which is different than a</p> <p>12 policy document.</p> <p>13 It has a -- has a recommendation to</p> <p>14 her for approval or disapproval and that's --</p> <p>15 that's a decision memo, not an -- an established</p> <p>16 policy.</p> <p>17 Q. So is there a certain title that was</p> <p>18 used at the Department of Education for policy</p> <p>19 decisions?</p> <p>20 A. I don't recall.</p> <p>21 Q. But you would expect it to be in</p> <p>22 writing?</p> <p>23 A. Look, if it's -- if there's a new</p> <p>24 policy that impacts the general public, then it</p> <p>25 gets published in -- in the public register. It</p>

12/17/2020

142 to 145

<p style="text-align: right;">Page 142</p> <p>1 - JAMES MANNING -</p> <p>2 depends on what level of policy you're talking</p> <p>3 about.</p> <p>4 Q. So what level of policy was the</p> <p>5 policy decision of spring 2018 to not issue</p> <p>6 denials until approvals also could be issued?</p> <p>7 What type of policy would you classify that as?</p> <p>8 A. Well, ask me this question again</p> <p>9 because I don't --</p> <p>10 Q. Okay. You're looking at -- can you</p> <p>11 look at Page 6 of why are BD applications on hold</p> <p>12 at Tab 16, Exhibit 12, second bullet point;</p> <p>13 "Denials: Policy decision (spring 2018) to not</p> <p>14 issue denials until approvals could be issued"?</p> <p>15 A. Yes.</p> <p>16 Q. What type of policy decision do you</p> <p>17 classify that as?</p> <p>18 A. Well, this is a -- this is a --</p> <p>19 Q. I'm not asking you about the</p> <p>20 document, sir. I'm asking you about the policy</p> <p>21 decision described in that bullet point.</p> <p>22 Is that a policy decision that you</p> <p>23 would expect to be set forth in a certain type of</p> <p>24 document within the Department?</p> <p>25 A. Well, I don't have enough information</p>	<p style="text-align: right;">Page 144</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay.</p> <p>4 Mark Brown came in as COO of FSA af</p> <p>5 -- when you left the Department, is that right, he</p> <p>6 replaced you in that position?</p> <p>7 A. Correct.</p> <p>8 Q. Did you have any discussions --</p> <p>9 A. My -- my answer was -- Joe was</p> <p>10 correct, that Mark Brown succeeded me as -- as</p> <p>11 COO.</p> <p>12 Q. In connection with the transition</p> <p>13 from you as COO to Mark Brown as COO, did you have</p> <p>14 any discussions with Mr. Brown about borrower</p> <p>15 defense?</p> <p>16 A. I don't recall discussions we had.</p> <p>17 We had -- you know, it was a relatively quick I</p> <p>18 decided to leave; and I certainly had</p> <p>19 conversations with him, may have discussed</p> <p>20 borrower defense. I don't recall, you know.</p> <p>21 Q. Why did you leave the Department?</p> <p>22 MR. MERRITT: Objection, beyond the</p> <p>23 scope of the discovery the -- the court has</p> <p>24 authorized.</p> <p>25 Q. You can answer the question, Mr.</p>
<p style="text-align: right;">Page 143</p> <p>1 - JAMES MANNING -</p> <p>2 to know that this is a policy decision that was in</p> <p>3 place based on what I'm looking at.</p> <p>4 Q. Okay. Well, it says "Policy decision</p> <p>5 spring 2018" and you were at the Department at</p> <p>6 that time, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you were acting as Undersecretary</p> <p>9 at that time, correct?</p> <p>10 A. 'Til May. May, 2018.</p> <p>11 Q. Okay, and you were also COO of FSA at</p> <p>12 that time, correct?</p> <p>13 A. Yes. I had to stop and think about</p> <p>14 the calendar again but, yes, that's correct.</p> <p>15 Q. So wouldn't you have known about a</p> <p>16 policy decision like this?</p> <p>17 MR. MERRITT: Objection, asked and</p> <p>18 answered.</p> <p>19 Q. Let's just go back to -- to what</p> <p>20 I'm -- I just want to, you know, just get a solid</p> <p>21 answer from you.</p> <p>22 A. What's the question?</p> <p>23 Q. Would there be a certain title to a</p> <p>24 document that would contain a policy decision as</p> <p>25 is described here in that bullet point?</p>	<p style="text-align: right;">Page 145</p> <p>1 - JAMES MANNING -</p> <p>2 Manning.</p> <p>3 A. Okay, I had retired -- sorry.</p> <p>4 (Unintelligible crosstalk)</p> <p>5 A. I retired from the Department in</p> <p>6 2015, January 3rd, 2015.</p> <p>7 Q. I understand, but why -- why did you</p> <p>8 leave the Department in March, 2019?</p> <p>9 A. Keep listening. I'll answer that</p> <p>10 question.</p> <p>11 Q. Oh, I'm sorry, Mr. Manning. I</p> <p>12 didn't know.</p> <p>13 A. I -- I expected to be in a state of</p> <p>14 retirement and do different things; and I was</p> <p>15 approached to go back on the transition team and</p> <p>16 then I was asked to stay; and because I've been a</p> <p>17 public servant all of my life, I agreed to stay</p> <p>18 for a period of time; and I stayed for more than</p> <p>19 two years and it was time to, you know, retire</p> <p>20 again or resign again and did outside consulting</p> <p>21 myself before I ultimately moved into another</p> <p>22 position.</p> <p>23 Q. How many presidential administrations</p> <p>24 did you work for?</p> <p>25 A. All of them since Carter except for</p>

<p style="text-align: right;">Page 146</p> <p>1 - JAMES MANNING -</p> <p>2 Clinton, but I was a career officer, a career</p> <p>3 member of the senior executive service. At the</p> <p>4 beginning of my service, I was in the Career</p> <p>5 Foreign Service.</p> <p>6 Q. And immediately prior to joining the</p> <p>7 Trump transition team, were you self-employed</p> <p>8 doing consulting work?</p> <p>9 A. Yes.</p> <p>10 Q. So what were the types of clients</p> <p>11 that you had?</p> <p>12 MR. MERRITT: Objection, it's beyond</p> <p>13 the scope of the discovery that's been</p> <p>14 authorized.</p> <p>15 Q. Did you have any higher education</p> <p>16 clients?</p> <p>17 A. What's your definition of higher</p> <p>18 education?</p> <p>19 Q. How about student loan guarantors?</p> <p>20 A. I did work for Stratta Education, you</p> <p>21 know, a former student loan guarantee agency</p> <p>22 that's no longer a guarantee agency.</p> <p>23 Q. Anybody else?</p> <p>24 A. Nobody else in higher education.</p> <p>25 Q. No -- no institutions of higher</p>	<p style="text-align: right;">Page 148</p> <p>1 - JAMES MANNING -</p> <p>2 connection with the Penn Hill Group after leaving</p> <p>3 the Department of Education?</p> <p>4 MR. MERRITT: Objection, and I'm</p> <p>5 going to object to that question, beyond the</p> <p>6 scope. This has gone on long enough. I'm</p> <p>7 going to instruct the witness not to answer</p> <p>8 to enforce a court order limitation on</p> <p>9 discovery.</p> <p>10 Q. Have you done any work after leaving</p> <p>11 the administration related to the discharge of</p> <p>12 student loans?</p> <p>13 MR. MERRITT: Objection. Beyond the</p> <p>14 scope. I instruct not to answer to protect</p> <p>15 the limitation, the court ordered limitation</p> <p>16 on discovery.</p> <p>17 Q. Have you done any the work on behalf</p> <p>18 of institutions of higher education as in your --</p> <p>19 in your consulting work after leaving the Trump</p> <p>20 Administration?</p> <p>21 MR. MERRITT: Objection to this line</p> <p>22 of questioning, we objected to it, beyond the</p> <p>23 scope of what the court authorized discovery</p> <p>24 on. Continue to instruct not to answer.</p> <p>25 MR. JARAMILLO: Well, I think it's --</p>
<p style="text-align: right;">Page 147</p> <p>1 - JAMES MANNING -</p> <p>2 education?</p> <p>3 A. That I worked for as a consultant?</p> <p>4 Q. Yes, prior to joining the Department</p> <p>5 or the Trump transition team.</p> <p>6 MR. MERRITT: I going to object to</p> <p>7 the scope of this line of questioning and how</p> <p>8 it's relevant to the discovery the court</p> <p>9 authorized.</p> <p>10 Q. You can answer the question. You</p> <p>11 mentioned Stratta Education. Was there any other</p> <p>12 higher education-related institution that you had</p> <p>13 as a client?</p> <p>14 A. No.</p> <p>15 Q. What about USA Funds?</p> <p>16 A. USA -- USA Funds was a pre -- Stratta</p> <p>17 was spun off from USA Funds. I did not work for</p> <p>18 you USA Funds.</p> <p>19 Q. Did any of your consulting work</p> <p>20 involve the discharge of federal student loans?</p> <p>21 MR. MERRITT: Objection, it's beyond</p> <p>22 the scope.</p> <p>23 Q. Your answer, sir?</p> <p>24 A. No.</p> <p>25 Q. And did you ever consult in</p>	<p style="text-align: right;">Page 149</p> <p>1 - JAMES MANNING -</p> <p>2 I think it's relevant. It goes to</p> <p>3 credibility and it goes to bias.</p> <p>4 MR. MERRITT: Was that one of the</p> <p>5 topics the court authorized discovery on?</p> <p>6 MR. JARAMILLO: That's always an</p> <p>7 issue when you're talking about a discovery.</p> <p>8 I don't think Judge Alsup would disagree with</p> <p>9 that.</p> <p>10 MR. MERRITT: And this an ATA case</p> <p>11 and as you just said the Judge also</p> <p>12 recognized, a discovery of the agency is</p> <p>13 favored, that's the presumption. He</p> <p>14 obviously authorized discovery in this case,</p> <p>15 but it must be limited to the topics he</p> <p>16 actually set forth and this is not related to</p> <p>17 any of the -- the topics described --</p> <p>18 (unintelligible crosstalk).</p> <p>19 Q. Did your work at the President Forum</p> <p>20 involve any work for non-for-profit schools?</p> <p>21 MR. MERRITT: Objection, still beyond</p> <p>22 the scope.</p> <p>23 Q. Does your work at President Forum,</p> <p>24 Mr. Manning, involve any discharge of federal</p> <p>25 student loans?</p>

12/17/2020

150 to 153

<p style="text-align: right;">Page 150</p> <p>1 - JAMES MANNING -</p> <p>2 MR. MERRITT: Objection, beyond the</p> <p>3 scope of the court-authorized discovery. I</p> <p>4 instruct the witness not to answer to protect</p> <p>5 the limitation ordered by the court.</p> <p>6 Q. After leaving the Trump</p> <p>7 Administration, Mr. Manning, did you have any</p> <p>8 discussions with anybody at the Department of</p> <p>9 Education regarding borrower defense issues?</p> <p>10 A. After I left the Trump</p> <p>11 Administration?</p> <p>12 Q. Yes, sir.</p> <p>13 A. Did I have any conversations with</p> <p>14 people at the Department about borrower defense,</p> <p>15 is that what you said? Repeat the question ,</p> <p>16 please.</p> <p>17 Q. That's it. You got it, Mr. Manning.</p> <p>18 That's -- that's the question. You repeated it</p> <p>19 accurately.</p> <p>20 A. After I left the Trump</p> <p>21 Administration, did I have conversations</p> <p>22 with -- none that I recall.</p> <p>23 Q. I would like you to turn to Tab 12</p> <p>24 and this is a document that we need to mark as the</p> <p>25 next exhibit, which I believe is 34.</p>	<p style="text-align: right;">Page 152</p> <p>1 - JAMES MANNING -</p> <p>2 complete document?</p> <p>3 Q. Well, sir, I -- thanks for pointing</p> <p>4 that out. I think that we just excerpted here</p> <p>5 your -- your remarks as they appear in this</p> <p>6 transcript.</p> <p>7 A. Okay.</p> <p>8 Q. If you could turn to Page 8 on Line</p> <p>9 11. Can you read for me the second beginning with</p> <p>10 "As you know"?</p> <p>11 A. Yes. "As you know, the borrower</p> <p>12 defense regulations enacted in 2016 have been</p> <p>13 delayed and so the Department has and will</p> <p>14 continue to consider claims under the regulatory</p> <p>15 status quo which assesses a claim under applicable</p> <p>16 state law and commits to the Secretary's</p> <p>17 discretion how to fashion relief"</p> <p>18 Q. And do you recall making that</p> <p>19 statement to this committee?</p> <p>20 A. Yes.</p> <p>21 Q. I would like you to turn to Page 10.</p> <p>22 A. Okay.</p> <p>23 Q. Can you read the sentence beginning</p> <p>24 at Line 5.</p> <p>25 A. "Throughout the winter and early</p>
<p style="text-align: right;">Page 151</p> <p>1 - JAMES MANNING -</p> <p>2 (Whereupon, Exhibit 34 was marked at</p> <p>3 this time.)</p> <p>4 Q. And this is a document that has on</p> <p>5 top "U.S. Department of Education Borrower</p> <p>6 Defenses and Financial Responsibility Negotiated</p> <p>7 Rulemaking Committee 2017-2018 Session 1."</p> <p>8 A. Yes.</p> <p>9 Q. Have you seen this document before,</p> <p>10 Mr. Manning?</p> <p>11 A. It looks like a transcript of the</p> <p>12 remarks I gave at the beginning of this session.</p> <p>13 Q. Have you seen it before?</p> <p>14 A. Have I seen this document before?</p> <p>15 Q. Yes, sir.</p> <p>16 A. In this form, not that I recall.</p> <p>17 Q. Okay. I want you to turn to Page 8,</p> <p>18 please.</p> <p>19 A. Happy to.</p> <p>20 Q. And I would like you to look at the</p> <p>21 sentence beginning in the middle of Line 11.</p> <p>22 A. Can I just point out, just for my own</p> <p>23 clarification, this document -- there's a couple</p> <p>24 of pages Number 1 and the back of the cover page</p> <p>25 is Number 7, 8, 9, 10. So is this -- is this a</p>	<p style="text-align: right;">Page 153</p> <p>1 - JAMES MANNING -</p> <p>2 spring, a team consisting of both career and</p> <p>3 non-career Department leadership evaluated the</p> <p>4 program and worked to implement controls and</p> <p>5 procedures for reviewing claims and processes for</p> <p>6 discharging loans for successful claimants."</p> <p>7 Q. And was that the Borrower Review</p> <p>8 Defense Panel that we discussed earlier?</p> <p>9 A. I believe so.</p> <p>10 Q. And what controls and procedures were</p> <p>11 implemented? You -- you say that they "worked to</p> <p>12 implement controls and procedures for reviewing</p> <p>13 claims and processes for discharging loans for</p> <p>14 successful claimants."</p> <p>15 Do you recall any more about those</p> <p>16 controls and procedures?</p> <p>17 A. Well, what came out of that was the</p> <p>18 establishment of the methodology.</p> <p>19 Q. Did anything else come out of that</p> <p>20 that was related to controls and procedures for</p> <p>21 reviewing claims and processes for discharging</p> <p>22 loans?</p> <p>23 A. I don't recall.</p> <p>24 Q. Can you look at -- on the same page,</p> <p>25 the sentence starting at Line 17.</p>

<p style="text-align: right;">Page 154</p> <p>1 - JAMES MANNING -</p> <p>2 Could you read that one?</p> <p>3 A. Yeah. " Our review uncovered several</p> <p>4 areas of concern which required building an</p> <p>5 infrastructure to remain, to review claims and</p> <p>6 make programmatic tweaks, which in turn</p> <p>7 contributed to the time it has taken to adjudicate</p> <p>8 additional claims."</p> <p>9 Q. Do you recall what these several</p> <p>10 areas of concern were?</p> <p>11 A. I do not recall. No, I do not</p> <p>12 recall.</p> <p>13 Q. Do you recall what the programmatic</p> <p>14 tweaks were?</p> <p>15 A. I don't recall that.</p> <p>16 Q. Do you recall how all of this</p> <p>17 contributed to the time it has taken to adjudicate</p> <p>18 additional claims?</p> <p>19 A. I'm -- I'm sorry. Repeat that,</p> <p>20 please.</p> <p>21 Q. Do you recall how these things</p> <p>22 contributed to the time it has taken to adjudicate</p> <p>23 additional claims?</p> <p>24 A. I don't recall how this -- no. No, I</p> <p>25 don't recall.</p>	<p style="text-align: right;">Page 156</p> <p>1 - JAMES MANNING -</p> <p>2 adjustments to the program during the short-term</p> <p>3 hiatus in adjudicating claims will yield long term</p> <p>4 improvements and efficiencies beneficial to all."</p> <p>5 Q. So at that point in time in November,</p> <p>6 2017 did you believe that the approval of some of</p> <p>7 these claims was imminent?</p> <p>8 A. That's what I said. I believed it</p> <p>9 then.</p> <p>10 Q. Did -- did anything about your belief</p> <p>11 change after that point in time whether the</p> <p>12 approval was imminent or not?</p> <p>13 A. I -- I don't recall.</p> <p>14 Q. Do you know if any of those claims</p> <p>15 you believed were about to be approved were, in</p> <p>16 fact, improved -- approved during your tenure?</p> <p>17 A. At this point, I do not recall.</p> <p>18 Q. And you mentioned that there was a</p> <p>19 short-term hiatus in adjudicating claims. Do you</p> <p>20 remember what caused the short term hiatus?</p> <p>21 A. I do not remember.</p> <p>22 Q. Do you remember how long that hiatus</p> <p>23 actually was?</p> <p>24 A. I do not remember.</p> <p>25 Q. Do you know if -- up to this point,</p>
<p style="text-align: right;">Page 155</p> <p>1 - JAMES MANNING -</p> <p>2 Q. At this point in time which was in</p> <p>3 November of 2017, do you recall there being a</p> <p>4 delay in the issuance of borrower defense claims</p> <p>5 decisions?</p> <p>6 A. I specifically do not recall that.</p> <p>7 Q. If I can have you turn to Page 13.</p> <p>8 A. Okay.</p> <p>9 Q. Can you read -- sorry. Can you read</p> <p>10 the sentence starting in the middle of Line 6?</p> <p>11 A. "Moving forward"?</p> <p>12 Q. Yes.</p> <p>13 A. "Moving forward, we have</p> <p>14 approximately 95,000 pending claims of which</p> <p>15 roughly 65 percent are from former Corinthian</p> <p>16 students."</p> <p>17 Q. And can you read the next sentence.</p> <p>18 A. "While I cannot give you a specific</p> <p>19 date or number, I can tell you that approval of</p> <p>20 some these claims is imminent. While it has taken</p> <p>21 some time" -- or did you want me to keep on going?</p> <p>22 Q. You can keep on going, sir. Thank</p> <p>23 you.</p> <p>24 A. "While it has some time, I am</p> <p>25 confident that the work done to assess and make</p>	<p style="text-align: right;">Page 157</p> <p>1 - JAMES MANNING -</p> <p>2 November 14th, 2017, do you recall any approvals</p> <p>3 other than the 16,000 approximate claims that</p> <p>4 were approved in the prior administration that</p> <p>5 Secretary DeVos decided to discharge; are you</p> <p>6 aware of any other approvals between the time you</p> <p>7 started in the Department in January, 2017 up</p> <p>8 until now this point in November, 2017?</p> <p>9 A. I don't recall.</p> <p>10 Q. You don't know one way or the other</p> <p>11 whether there were any approvals during that time</p> <p>12 period?</p> <p>13 A. I don't recall one way or the other.</p> <p>14 Q. Do you know if there were any denials</p> <p>15 during that time period?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you know when the short -- the</p> <p>18 hiatus that you call short term, do you know when</p> <p>19 it ended?</p> <p>20 A. I -- no, I don't recall.</p> <p>21 Q. Okay. Do you recall anything about</p> <p>22 the hiatus?</p> <p>23 A. Not -- no, I don't recall anything</p> <p>24 about the hiatus. I remember saying it here, but</p> <p>25 I -- I don't have any recollection now.</p>

<p style="text-align: right;">Page 158</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Okay. If we could, turn to Page 14.</p> <p>3 A. Okay.</p> <p>4 Q. Mr. Manning, could you please read</p> <p>5 for me the sentence beginning on Line 18.</p> <p>6 A. "The Department is also working to</p> <p>7 adjudicate pending claims related to other</p> <p>8 schools. We are making progress on that front.</p> <p>9 Q. Was that an accurate statement?</p> <p>10 A. I believe it to be true when I said</p> <p>11 it.</p> <p>12 Q. What did you base that statement on?</p> <p>13 A. Discussion with others I'm sure at</p> <p>14 the time, but I don't recall who was consulted on</p> <p>15 this or who initially had a -- a hand in writing</p> <p>16 it.</p> <p>17 Q. So when you had made these remarks,</p> <p>18 was --- was it sort of a written speech you had</p> <p>19 prepared beforehand?</p> <p>20 A. It certainly was written and prepared</p> <p>21 beforehand.</p> <p>22 Q. Did you write it yourself or did</p> <p>23 someone on your staff help you write it?</p> <p>24 A. I had help. I -- there was staff</p> <p>25 writer, I'm sure. I don't remember who it was. I</p>	<p style="text-align: right;">Page 160</p> <p>1 - JAMES MANNING -</p> <p>2 what did I say here? I stand by what I said.</p> <p>3 Q. And you said the Department is also</p> <p>4 working to adjudicate pending claims related to</p> <p>5 other schools?</p> <p>6 A. Right.</p> <p>7 Q. And you stand by that?</p> <p>8 A. Yes.</p> <p>9 Q. And you state that "We are making</p> <p>10 progress on that front." Do you recall what</p> <p>11 progress was being made on that front?</p> <p>12 A. No, but I expect that it was slow.</p> <p>13 Q. Why did you expect that it was slow?</p> <p>14 A. Because I'm sure the desire was to</p> <p>15 move them quicker than they were being moved.</p> <p>16 Q. Do you recall being dissatisfied with</p> <p>17 the pace at which they were moving at that time?</p> <p>18 A. My hope always was to move them</p> <p>19 quicker. It was a small staff who was handling it</p> <p>20 at borrower defense, which was an issue and that</p> <p>21 remained an issue for a long time. I understand</p> <p>22 now that the -- the staffing there is much better</p> <p>23 than it used to be now.</p> <p>24 Q. Did you take any steps to try to make</p> <p>25 the -- the pace of the claim adjudication go more</p>
<p style="text-align: right;">Page 159</p> <p>1 - JAMES MANNING -</p> <p>2 definitely saw it before I read it -- before I,</p> <p>3 you know, delivered it and made adjustments.</p> <p>4 Q. Have you ever --</p> <p>5 A. I can't recall.</p> <p>6 Q. Go ahead. We spoke over each other.</p> <p>7 Go ahead, Mr. Manning.</p> <p>8 A. If I put my voice to it, I couldn't</p> <p>9 tell you now which -- which parts were written by</p> <p>10 somebody else or which were written by me.</p> <p>11 Q. And you don't recall who would have</p> <p>12 been involved in -- in writing it besides you?</p> <p>13 A. I don't recall.</p> <p>14 Q. Normally, who would write your</p> <p>15 speeches for you or, or -- or write drafts of them</p> <p>16 for your review?</p> <p>17 A. I -- I didn't give that many.</p> <p>18 Q. Okay. That's fine, if you don't</p> <p>19 recall.</p> <p>20 A. I don't.</p> <p>21 Q. And is it true that the Department at</p> <p>22 that time in November, 2017 was also working to</p> <p>23 adjudicate pending claims related to schools other</p> <p>24 than Corinthian?</p> <p>25 A. If they were doing it at that time,</p>	<p style="text-align: right;">Page 161</p> <p>1 - JAMES MANNING -</p> <p>2 quickly?</p> <p>3 A. I don't recall.</p> <p>4 Q. Did you take any steps to increase</p> <p>5 the -- the staff of the Borrower Defense Unit?</p> <p>6 A. There was some discussions about that</p> <p>7 and in principle supported additional staff. I</p> <p>8 know it was some time before there was a</p> <p>9 significant growth in staff, though.</p> <p>10 Q. Did anyone at FSA ever make a request</p> <p>11 to you for additional staff for the Borrower</p> <p>12 Defense Unit?</p> <p>13 A. Oh, I'm sure I had conversations</p> <p>14 with Colleen where additional staff were discussed</p> <p>15 and --</p> <p>16 Q. Did Colleen ever request additional</p> <p>17 staff for the Borrower Defense Unit?</p> <p>18 A. We discussed that.</p> <p>19 Q. Did she request it?</p> <p>20 A. I can't remember a specific request,</p> <p>21 but she and I agreed that there should be more</p> <p>22 staff. I don't know when the -- the staff grew.</p> <p>23 You know, when it grew I don't recall.</p> <p>24 Q. What did Ms. Nevin tell you about her</p> <p>25 concerns about staff?</p>

<p style="text-align: right;">Page 162</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't remember specifically. Just</p> <p>3 knowing that we had -- we had the conversation</p> <p>4 that we needed more staff.</p> <p>5 Q. Do you know why it took some time for</p> <p>6 additional staff to be added to the Borrower</p> <p>7 Defense Unit?</p> <p>8 A. I don't recall.</p> <p>9 Q. Did you ever make a request to</p> <p>10 increase the staff of the DBU or Borrower Defense</p> <p>11 Unit?</p> <p>12 A. I can't remember specifically making</p> <p>13 that request, but I believe I did. I don't</p> <p>14 recall. I don't recall.</p> <p>15 Q. What was the process addition -- for</p> <p>16 requesting additional staff for the BDU?</p> <p>17 A. I don't recall.</p> <p>18 Q. And do you recall having a request</p> <p>19 for additional staff for the BDU ever having been</p> <p>20 denied by the Department?</p> <p>21 A. Denied by who?</p> <p>22 Q. Denied by anybody at the Department.</p> <p>23 A. I don't recall that.</p> <p>24 Q. If you wanted -- if you were to</p> <p>25 request additional staff for the BDU, what would</p>	<p style="text-align: right;">Page 164</p> <p>1 - JAMES MANNING -</p> <p>2 September, 2017?</p> <p>3 A. November, 2016 and November,</p> <p>4 2017 --</p> <p>5 Q. To September, 2017.</p> <p>6 A. I do recall, not specifically what</p> <p>7 you said, but that people left between late '16</p> <p>8 and is early '17, including both the -- the</p> <p>9 gentlemen whose names I can't remember; Robert who</p> <p>10 led the Enforcement Unit left early and his deputy</p> <p>11 ultimately left as well and there were other</p> <p>12 attorneys that left. Colleen Nevin had been</p> <p>13 principal of -- Number 3 person there and she</p> <p>14 remains to this day.</p> <p>15 Staff did go. I don't recall how low</p> <p>16 the number got and I know now that they have</p> <p>17 significantly more staff.</p> <p>18 Q. And how do you know that, Mr.</p> <p>19 Manning?</p> <p>20 A. I'm trying to recall who told me</p> <p>21 that. I can't remember.</p> <p>22 Q. During your tenure at the Department,</p> <p>23 was there any assessment made of the amount of</p> <p>24 staff needed to reduce the backlog of pending</p> <p>25 borrower defense applications?</p>
<p style="text-align: right;">Page 163</p> <p>1 - JAMES MANNING -</p> <p>2 you do?</p> <p>3 MR. MERRITT: Objection, calls for</p> <p>4 speculation.</p> <p>5 Q. You can answer the question.</p> <p>6 A. You mean now or then?</p> <p>7 Q. Then.</p> <p>8 A. I don't recall what --</p> <p>9 Q. Do you recall now what would be done?</p> <p>10 A. I don't recall. You know, I don't</p> <p>11 recall.</p> <p>12 Q. Do you -- do you recall the number of</p> <p>13 staffing that was in place when you were acting</p> <p>14 Undersecretary in terms of staffing at the BDU?</p> <p>15 A. No, I don't recall what it was then.</p> <p>16 I do understand that it's significantly higher</p> <p>17 now --</p> <p>18 Q. Okay. Would --</p> <p>19 A. -- which is a good thing. I had added</p> <p>20 which is a good thing. I understand that there's</p> <p>21 more staffing now and I said which is a good</p> <p>22 thing.</p> <p>23 Q. Are you aware that the contractor</p> <p>24 staffing at the Borrower Defense Unit went from</p> <p>25 twenty to six between November, 2016 and</p>	<p style="text-align: right;">Page 165</p> <p>1 - JAMES MANNING -</p> <p>2 A. A formal assessment, not that I</p> <p>3 recall.</p> <p>4 Q. How about an in formal assessment?</p> <p>5 A. Well, I think that Colleen had ideas.</p> <p>6 Q. What became of Colleen's ideas, if</p> <p>7 you know?</p> <p>8 A. I don't recall. I can't remember,</p> <p>9 you know, what the level fell to or -- or where</p> <p>10 it, you know, rose to over the following years. I</p> <p>11 just don't remember.</p> <p>12 Q. I would like to have you turn back</p> <p>13 to Tab 7, which was marked as Exhibit 33.</p> <p>14 A. Okay.</p> <p>15 Q. And these again are the questions</p> <p>16 submitted by Senator Patty Murray and Secretary</p> <p>17 DeVos' answers.</p> <p>18 A. All right. I'm trying to keep these</p> <p>19 things in order.</p> <p>20 Okay, I have it.</p> <p>21 Q. If you could turn to Page 19 and I'm</p> <p>22 just going to read to you the question that</p> <p>23 appears there.</p> <p>24 A. Okay.</p> <p>25 Q. Are you at Page 19 of 48?</p>

12/17/2020

166 to 169

<p style="text-align: right;">Page 166</p> <p>1 - JAMES MANNING -</p> <p>2 A. I was making the mistake of reading</p> <p>3 the page numbers from the top.</p> <p>4 Q. I should point out I'm -- I'm going</p> <p>5 by the ones at the bottom.</p> <p>6 The ones at the top appear because of</p> <p>7 electronically filing the document with the court,</p> <p>8 but I'm just going to go with the bottom.</p> <p>9 A. And I found it. I'm with you.</p> <p>10 Gotcha.</p> <p>11 Q. Okay, Mr. Manning. At the bottom of</p> <p>12 the page there is a heading that says "Resources</p> <p>13 required to address borrower defense backlog."</p> <p>14 I'm going to read the question and</p> <p>15 then we can talk about Secretary DeVos' answer.</p> <p>16 The question at that time --</p> <p>17 A. May I ask the time frame when this</p> <p>18 was happening?</p> <p>19 Q. Yes, and I -- this was from June</p> <p>20 13th, 2019. Recognize that this postdates your</p> <p>21 time at the Department, but it does discuss some</p> <p>22 things that I wanted to ask you about just in case</p> <p>23 you were involved with any related items during</p> <p>24 your time at the Department.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 168</p> <p>1 - JAMES MANNING -</p> <p>2 sentences, I want to ask you about it. Can you</p> <p>3 read it out loud for the record.</p> <p>4 A. "Yes. The Department recently</p> <p>5 completed a preliminary estimate of the full-time</p> <p>6 and contractor resources needed to eliminate or</p> <p>7 substantially reduce the number of pending</p> <p>8 borrower defense applications."</p> <p>9 Q. I want to ask you about that, Mr.</p> <p>10 Manning.</p> <p>11 A. Oh, that was two sentences. "Yes"</p> <p>12 was the first sentence, okay. I got it.</p> <p>13 Q. Were you involved with this</p> <p>14 preliminary estimate at all?</p> <p>15 A. Well, considering that these were</p> <p>16 asked after I left, I would say that -- no. I</p> <p>17 have no recollection. I mean, I was gone then and</p> <p>18 then was not involved in assisting in answering</p> <p>19 these kind of questions and stuff like that.</p> <p>20 Q. I understand, Mr. Manning. I was</p> <p>21 just curious as to -- you know -- I wanted to just</p> <p>22 probe a little bit about whether that estimate was</p> <p>23 undertaken during the time you were at the</p> <p>24 Department, and I understand the answers to these</p> <p>25 questions are from a few months afterward and I</p>
<p style="text-align: right;">Page 167</p> <p>1 - JAMES MANNING -</p> <p>2 Q. And I'm going to read the question</p> <p>3 from Senator Murray and then we'll go over Ms.</p> <p>4 DeVos' answer and I just wanted to pick your brain</p> <p>5 a little bit about -- I would'nt know anything</p> <p>6 about what she's saying here.</p> <p>7 So the question is, "Has the</p> <p>8 Department conducted any analysis of the</p> <p>9 resources, including staff full-time equivalencies</p> <p>10 and any contract funding necessary to clear the</p> <p>11 backlog of pending borrower defense claims, now</p> <p>12 totaling at least 158,000 from the end of quarter</p> <p>13 4 of 2018? If so, please describe how such</p> <p>14 analysis was conducted and the principal</p> <p>15 findings of such analysis, including staffing or</p> <p>16 contracting resources that could be utilized or</p> <p>17 necessary."</p> <p>18 Mr. Manning, can you read for me just</p> <p>19 the first two sentences of the answer, "Yes" being</p> <p>20 the first sentence and then after that the second</p> <p>21 sentence.</p> <p>22 A. Only the first two sentences, not the</p> <p>23 whole response?</p> <p>24 Q. Yes, because I -- yeah, I just want</p> <p>25 to ask you -- after you read that first two</p>	<p style="text-align: right;">Page 169</p> <p>1 - JAMES MANNING -</p> <p>2 just wanted to see if you had any knowledge of</p> <p>3 such an effort being undertaken during your</p> <p>4 tenure.</p> <p>5 A. I don't recall. May have, but I</p> <p>6 don't recall.</p> <p>7 Q. All right. So you don't know when</p> <p>8 this preliminary estimate was undertaken that's</p> <p>9 described here?</p> <p>10 A. I'm looking at the question just to</p> <p>11 make sure I get it correctly.</p> <p>12 Yeah, I don't recall.</p> <p>13 Q. Are you aware of any time when the</p> <p>14 Department undertook this type of preliminary</p> <p>15 estimate of the full-time and contractor resources</p> <p>16 needed to eliminate or substantially reduce the</p> <p>17 number of pending BD applications during your</p> <p>18 tenure?</p> <p>19 A. I don't recall.</p> <p>20 Q. And, you know, as we discussed, this</p> <p>21 statement was made in June, 2019. Assuming that</p> <p>22 preliminary estimate was in or around that time,</p> <p>23 do you know why it took the Department so long to</p> <p>24 conduct such an estimate of resources to reduce</p> <p>25 the backlog with -- with additional staffing?</p>

12/17/2020

170 to 173

<p style="text-align: right;">Page 170</p> <p>1 - JAMES MANNING -</p> <p>2 A. I do not.</p> <p>3 Q. And you're not aware of any prior</p> <p>4 estimate made by the Department about this issue?</p> <p>5 A. About the time to complete -- I don't</p> <p>6 recall.</p> <p>7 Q. Okay. I'll just represent to you</p> <p>8 that the Department has produced a chart that</p> <p>9 shows the -- the number of staffers of the</p> <p>10 Borrower Defense Unit from May, 2018 to the</p> <p>11 present.</p> <p>12 I'm not going to show it to you, it's</p> <p>13 not in your packet, but I'll represent to you that</p> <p>14 it shows the total of sixteen attorneys and</p> <p>15 contracting staff in May, 2018 when you were at</p> <p>16 the Department and then it fluctuates, but it ends</p> <p>17 up at a total of seventeen attorney and contractor</p> <p>18 staff in March, 2019.</p> <p>19 Can you explain why there was not an</p> <p>20 increase in staff to address the backlog in</p> <p>21 borrower defense applications?</p> <p>22 A. Could you just give me those numbers</p> <p>23 again so I can try to get my head around it. May,</p> <p>24 2018 you said was the first thing you gave me.</p> <p>25 Q. Yeah, so a total of sixteen attorney</p>	<p style="text-align: right;">Page 172</p> <p>1 - JAMES MANNING -</p> <p>2 Department in January 20, 2017 and you left</p> <p>3 March --</p> <p>4 A. I misread my own note here. You're</p> <p>5 correct. If I had a plan why there's only an</p> <p>6 increase of one attorney, is that it?</p> <p>7 Q. Were you concerned about this issue</p> <p>8 of staffing?</p> <p>9 A. Yes, in principle I was concerned</p> <p>10 that they didn't have everyone that they needed to</p> <p>11 have.</p> <p>12 Q. What did you do to address your</p> <p>13 concern?</p> <p>14 A. I don't recall, to tell you the</p> <p>15 truth.</p> <p>16 Q. Do you recall doing anything to</p> <p>17 address that issue?</p> <p>18 A. I do remember, you know, having</p> <p>19 conversations with, you know, Colleen.</p> <p>20 Q. Did you ever have any conversations</p> <p>21 with Secretary DeVos about the staffing issue?</p> <p>22 A. I don't recall.</p> <p>23 Q. You don't recall Secretary DeVos ever</p> <p>24 asking you about whether additional resources were</p> <p>25 needed for borrower defense?</p>
<p style="text-align: right;">Page 171</p> <p>1 - JAMES MANNING -</p> <p>2 and contractor staff at the BDU.</p> <p>3 A. Okay, and then the second date, what</p> <p>4 was it?</p> <p>5 Q. As of March, 2019 that number was</p> <p>6 seventeen and -- and I'll recognize that there was</p> <p>7 some fluctuation in the middle, but by March, 2019</p> <p>8 around the time you left the Department, it was at</p> <p>9 seventeen.</p> <p>10 A. Uh-huh.</p> <p>11 Q. My question is: why wasn't there a</p> <p>12 steady increase to address the backlog in borrower</p> <p>13 defense applications by hiring more staff for the</p> <p>14 BDU?</p> <p>15 A. You -- you don't have a -- a number</p> <p>16 that represents what the onboard number is today,</p> <p>17 by chance?</p> <p>18 Q. Well, yes, the number is there, but</p> <p>19 I'm not asking you about that because you're not</p> <p>20 at the Department anymore, Mr. Manning.</p> <p>21 A. I was -- I wasn't at the Department</p> <p>22 during this -- this period that you're talking</p> <p>23 about here either and so...</p> <p>24 Q. I'm talking about May, 2018 to March,</p> <p>25 2019. My understanding is you started at the</p>	<p style="text-align: right;">Page 173</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't recall that specific question</p> <p>3 being asked, and I -- I don't recall specifically</p> <p>4 having a conversation about this issue, about the</p> <p>5 staffing issue with Secretary DeVos. I simply do</p> <p>6 not recall. Not to mean that I didn't, but I</p> <p>7 don't recall.</p> <p>8 Q. Do you recall there being a hiring</p> <p>9 freeze at the Department that affected the ability</p> <p>10 to hire staff at the beginning of the Trump</p> <p>11 Administration?</p> <p>12 A. Yes, I do understand that.</p> <p>13 Q. Do you know how long that hiring</p> <p>14 freeze lasted?</p> <p>15 A. Pretty much from the beginning</p> <p>16 through most of '17. That's -- I can't -- I can't</p> <p>17 say authoritatively when it ended. It was for a</p> <p>18 significant period of time, if not most of '17.</p> <p>19 Q. Were you surprised at how long that</p> <p>20 hiring freeze was in place?</p> <p>21 A. Well, I've been in federal service</p> <p>22 for a long time and hiring freezes happen from</p> <p>23 time to time and so I wasn't completely surprised</p> <p>24 that there was a freeze.</p> <p>25 Q. Who ordered the hiring freeze?</p>

<p style="text-align: right;">Page 174</p> <p>1 - JAMES MANNING -</p> <p>2 A. I have no idea.</p> <p>3 Q. How did you find out about the hiring</p> <p>4 freeze?</p> <p>5 A. It was announced, I'm sure. There</p> <p>6 was notice given that it would be -- there would</p> <p>7 be a hiring freeze.</p> <p>8 Q. Where did that notice come from?</p> <p>9 A. I don't recall. It came -- normally</p> <p>10 those kinds of announcements would come from the</p> <p>11 Office of Administration, but I don't recall</p> <p>12 specifically where they come from.</p> <p>13 Q. What is the Office of Administration?</p> <p>14 A. The management office that</p> <p>15 coordinates general management issues, including</p> <p>16 personnel. It was headed by Denise Carter then</p> <p>17 and I think today --</p> <p>18 Q. And is that within the Department of</p> <p>19 Education?</p> <p>20 A. Yes.</p> <p>21 Q. How did you find out that the hiring</p> <p>22 freeze was lifted?</p> <p>23 A. I don't recall.</p> <p>24 Q. Do you recall ever finding out that</p> <p>25 it was lifted?</p>	<p style="text-align: right;">Page 176</p> <p>1 - JAMES MANNING -</p> <p>2 A. No, I don't recall any e-mail groups</p> <p>3 like that that -- I was not aware of any e-mail</p> <p>4 groups like that.</p> <p>5 Q. Was this hiring freeze specific to</p> <p>6 the Department of Education only or was it within</p> <p>7 particular units of the Department?</p> <p>8 A. I think it impacted the entire</p> <p>9 Department my recollection, but I can't be sure.</p> <p>10 Q. After the freeze was lifted, do you</p> <p>11 recall having any -- any discussions with anyone</p> <p>12 at FSA about oh, now that the freeze is lifted we</p> <p>13 can try to get more staff for the borrower defense</p> <p>14 claims review process?</p> <p>15 A. I don't recall.</p> <p>16 Q. Let me have you turn, Mr. Manning,</p> <p>17 back to Tab 7 which is Exhibit 33, the question</p> <p>18 and answer between Senator Patty Murray and</p> <p>19 Secretary DeVos.</p> <p>20 A. Oh, thank goodness I didn't put it</p> <p>21 away. Here it is. What page?</p> <p>22 Q. Turn to Page 21 of 48.</p> <p>23 A. Okay, got it.</p> <p>24 Q. I'll read the -- the question and</p> <p>25 then I'll just have you read the answer and we can</p>
<p style="text-align: right;">Page 175</p> <p>1 - JAMES MANNING -</p> <p>2 A. I do believe that I was there when it</p> <p>3 was lifted, but I can't specifically recall when</p> <p>4 that was or when it was lifted.</p> <p>5 Q. How would you expect to find out</p> <p>6 about whether -- about how it was lifted, would</p> <p>7 you expect to receive a written document?</p> <p>8 A. Well, an announcement of one type or</p> <p>9 another and I think by that point, you know,</p> <p>10 e-mails were sent probably, but I don't recall how</p> <p>11 it actually was done.</p> <p>12 Q. Was there some sort of e-mail group</p> <p>13 at the Department that was for leadership only?</p> <p>14 A. I don't know what that means.</p> <p>15 Q. In other words, was there a certain</p> <p>16 e-mail group designated for people such as</p> <p>17 yourself who were in higher command positions</p> <p>18 within the Department.</p> <p>19 MR. MERRITT: Objection. Sorry, go</p> <p>20 ahead.</p> <p>21 MR. JARAMILLO: No, go ahead.</p> <p>22 MR. MERRITT: I'm am just going to</p> <p>23 state an objection to that being outside the</p> <p>24 scope of court-ordered discovery.</p> <p>25 Q. You can answer the question.</p>	<p style="text-align: right;">Page 177</p> <p>1 - JAMES MANNING -</p> <p>2 talk about it.</p> <p>3 A. Okay.</p> <p>4 Q. This is under "Staff allocated to</p> <p>5 borrower defense activity. Question: "How many</p> <p>6 full-time equivalent positions with the primary</p> <p>7 job function of forward-responsibility of</p> <p>8 reviewing or providing analysis of borrower</p> <p>9 claims, including attorneys' advisors, were filled</p> <p>10 with active employees as of January 19, 2017, have</p> <p>11 become vacant since January 20, 2017, have been</p> <p>12 listed with a vacancy announcement by the</p> <p>13 Department since January 20, 2017, have been hired</p> <p>14 by the Department since January 20, 2017, are</p> <p>15 employed as of the date of the response inquiry?"</p> <p>16 And, Mr. Manning, can you read</p> <p>17 Secretary DeVos's answer for the record?</p> <p>18 A. Well, I'm trying to -- answer: "As</p> <p>19 of January 19, 2017, there were eleven employees</p> <p>20 in the borrower defense group. Since January 20,</p> <p>21 '17, four of those employees voluntarily separated</p> <p>22 from the Department. As of March 31st, 2019,</p> <p>23 seven employees remained in the borrower defense</p> <p>24 group which included six full time employees and</p> <p>25 one part-time employee. As of January 20th, 2017</p>

<p style="text-align: right;">Page 178</p> <p>1 - JAMES MANNING -</p> <p>2 no additional employees have been hired in the</p> <p>3 borrower defense group. The Department currently</p> <p>4 is preparing announcements to fill the vacant</p> <p>5 positions."</p> <p>6 Q. Thank you for reading that, Mr.</p> <p>7 Manning.</p> <p>8 Do you know why as of this date in</p> <p>9 this document, since January 20, 2017 no</p> <p>10 additional employees have been hired into the</p> <p>11 borrower defense group?</p> <p>12 A. In this documentation June 13th,</p> <p>13 2019, is that what you're saying?</p> <p>14 Q. Yes, and we -- and, you know, just</p> <p>15 because I know you left in March, 2017 so I can</p> <p>16 rephrase it -- I mean 2019. I can rephrase the</p> <p>17 question: Do you know why since January 20, 2017</p> <p>18 up until the time you left the Department, no</p> <p>19 additional employees have been hired in the</p> <p>20 borrower defense group?</p> <p>21 A. That surprises me.</p> <p>22 Q. Why does that surprise you?</p> <p>23 A. I was -- I would have thought that</p> <p>24 there had been a one -- you know, minimal number</p> <p>25 of additional employees hired I would have</p>	<p style="text-align: right;">Page 180</p> <p>1 - JAMES MANNING -</p> <p>2 hires for the borrower defense group, would that</p> <p>3 request necessarily be communicated to you?</p> <p>4 A. While I was COO, probably.</p> <p>5 Q. What about when you were acting</p> <p>6 Undersecretary, during the time period you were</p> <p>7 not COO at the same time?</p> <p>8 A. Yeah, I don't recall what we were</p> <p>9 doing then around this, and I don't recall -- and</p> <p>10 beyond this, my understanding -- and I'm not with</p> <p>11 the Department, but my understanding that if you</p> <p>12 were answering -- if she was answering this</p> <p>13 question now, that there are a significantly more</p> <p>14 hires that have been made since she answered this.</p> <p>15 Q. Thank you for that, Mr. Manning. We</p> <p>16 are fully aware the staffing at this point and</p> <p>17 that's not what I want to ask you about.</p> <p>18 This response from Ms. DeVos also</p> <p>19 says "The Department currently is preparing</p> <p>20 announcements to fill the vacant positions." Were</p> <p>21 you aware of any announcement being prepared to</p> <p>22 fill vacant positions at borrower defense group</p> <p>23 during your tenure in the Trump Administration?</p> <p>24 A. I don't recall.</p> <p>25 Q. And this refers to the vacancies</p>
<p style="text-align: right;">Page 179</p> <p>1 - JAMES MANNING -</p> <p>2 guessed, but apparently -- I'm sure the Secretary</p> <p>3 was correct when she said this, but --</p> <p>4 Q. Well, wouldn't you -- wouldn't you</p> <p>5 have known if there were additional hires?</p> <p>6 A. Wouldn't what?</p> <p>7 Q. Would -- wouldn't you have known if</p> <p>8 there had been additional hires in the borrower</p> <p>9 defense group?</p> <p>10 A. You're asking me if I would have</p> <p>11 known. If I would have known, is that your</p> <p>12 question?</p> <p>13 Q. That's my question, yes.</p> <p>14 A. In -- in principle, yes, but I don't</p> <p>15 recall.</p> <p>16 Q. In principle, yes, you would have</p> <p>17 known or is should have known what --</p> <p>18 A. Because I'm sure I had conversations</p> <p>19 with Colleen in -- about new hires, so I would</p> <p>20 have heard that.</p> <p>21 I -- I specifically don't recall that</p> <p>22 -- that there were none and I don't recall --</p> <p>23 obviously if there were none, there were none and</p> <p>24 I don't -- my recollection --</p> <p>25 Q. If -- if there were requests for more</p>	<p style="text-align: right;">Page 181</p> <p>1 - JAMES MANNING -</p> <p>2 basically for attorneys. Do you think four</p> <p>3 additional attorneys at that time would have been</p> <p>4 sufficient to address the backlog in borrower</p> <p>5 defense applications.</p> <p>6 MR. MERRITT: Objection, calls for</p> <p>7 speculation.</p> <p>8 MR. JARAMILLO: Well, let -- let me</p> <p>9 rephrase the question.</p> <p>10 Q. Do you think at any time during your</p> <p>11 tenure at the Department of Education in the Trump</p> <p>12 Administration, that merely adding four attorneys</p> <p>13 to the borrower defense group would have been</p> <p>14 sufficient to address the backlog in borrower</p> <p>15 defense applications that needed to be</p> <p>16 adjudicated?</p> <p>17 A. I don't know what that number would</p> <p>18 have been, but where I would start was to look and</p> <p>19 see how many were onboard as of January 19, 2017</p> <p>20 when there were eleven and that was the number</p> <p>21 that apparently was working for the previous</p> <p>22 administration. That -- that would be a target</p> <p>23 number to have used.</p> <p>24 Q. Mr. Manning, what if the backlog was</p> <p>25 significantly more in March, 2019 than it was in</p>

<p style="text-align: right;">Page 182</p> <p>1 - JAMES MANNING -</p> <p>2 January, 2017; would you agree that perhaps more</p> <p>3 than four staff attorneys would be necessary to</p> <p>4 address the backlog?</p> <p>5 A. No, I'd have to go to experts in the</p> <p>6 staffing to project what -- how many additional</p> <p>7 staffing would be needed.</p> <p>8 Q. Mr. Manning, one of the remarks that</p> <p>9 you read earlier which was in Tab 12 -- which I</p> <p>10 hope we marked as an exhibit, I think we did as</p> <p>11 Exhibit 34 -- you said "Moving forward we have</p> <p>12 approximately 95,000 pending claims" and that was</p> <p>13 in November, 2017. If we ran that round that up</p> <p>14 to 100,000 pending claims --</p> <p>15 A. I'm sorry, what exhibit was that?</p> <p>16 Q. I don't need you to look at it now.</p> <p>17 I just want -- I'm representing to you</p> <p>18 what's -- what's in the document.</p> <p>19 A. Okay. Well, go ahead. Then start</p> <p>20 over if, you wouldn't mind.</p> <p>21 Q. Okay, sir. You read that the</p> <p>22 Borrower Defenses and Financial Responsibility</p> <p>23 Negotiated Rulemaking Committee November 14, 2017,</p> <p>24 that at that time there were 95,000 pending</p> <p>25 claims.</p>	<p style="text-align: right;">Page 184</p> <p>1 - JAMES MANNING -</p> <p>2 MR. MERRITT: He stated his knowledge</p> <p>3 about this time period. You are also making</p> <p>4 up numbers, so the speculation objection</p> <p>5 stands.</p> <p>6 Q. One of the --</p> <p>7 MR. MERRITT: You can -- you can</p> <p>8 answer the question.</p> <p>9 THE WITNESS: I can answer the</p> <p>10 question? I can?</p> <p>11 MR. MERRITT: Yes, Mr. Manning. You</p> <p>12 can answer the question.</p> <p>13 THE WITNESS: Okay.</p> <p>14 A. The answer is I -- I don't know the</p> <p>15 right number and I would have to consult with</p> <p>16 experts and staffing.</p> <p>17 Q. Did you ever consult with experts</p> <p>18 about this staffing issue?</p> <p>19 A. I'm sure I discussed the issue. I</p> <p>20 can't recall. Outside of Colleen, I don't -- I</p> <p>21 can't recall specifically who.</p> <p>22 Q. Do you believe you discussed this</p> <p>23 issue with anybody, but Colleen Nevin who was not</p> <p>24 in a position to obtain more staffing for the BDU?</p> <p>25 A. Yeah, I expect that I talked to</p>
<p style="text-align: right;">Page 183</p> <p>1 - JAMES MANNING -</p> <p>2 And let's just -- let's assume that</p> <p>3 there were ten staff attorneys at that time and</p> <p>4 let's round it up to 100,000 claims.</p> <p>5 Do you think it's reasonable for the</p> <p>6 Department to expect there to only be ten Borrower</p> <p>7 Defense Unit attorneys for 100,00 claims, making</p> <p>8 it like 10,000 claims per attorney if you were to</p> <p>9 divide through by straight division? Would that</p> <p>10 --</p> <p>11 MR. MERRITT: Objection. Sorry.</p> <p>12 Please, continue. I'm sorry.</p> <p>13 MR. JARAMILLO: Okay.</p> <p>14 MR. MERRITT: But if you're done, I'm</p> <p>15 going to object, court stipulation.</p> <p>16 Q. I would think, Mr. Manning, as the</p> <p>17 third-in-command, also wearing two hats during a</p> <p>18 certain period of time as COO of FSA and the</p> <p>19 acting U.S. Undersecretary regularly communicating</p> <p>20 with Colleen Nevin, the director of the BDU, you</p> <p>21 would have a sense of whether seven staff</p> <p>22 attorneys would be sufficient for 95,000 pending</p> <p>23 claims or even eleven staff attorneys for 95,000</p> <p>24 claims. Would that be a reasonable workload to</p> <p>25 expect of the BDU staff?</p>	<p style="text-align: right;">Page 185</p> <p>1 - JAMES MANNING -</p> <p>2 somebody in personnel. I don't recall who,</p> <p>3 though.</p> <p>4 Q. And what would you have talked to</p> <p>5 them about?</p> <p>6 A. Appropriate numbers of staff under</p> <p>7 certain criteria, but I don't recall.</p> <p>8 Q. What kind of criteria?</p> <p>9 A. I don't recall.</p> <p>10 Q. Looking back from today's vantage</p> <p>11 point, would you have approached staffing for the</p> <p>12 BDU any differently than you did when you were at</p> <p>13 the Department in the Trump Administration?</p> <p>14 A. Perhaps, but I don't -- I don't know.</p> <p>15 I think that the staffing level that's there right</p> <p>16 now is better from, what I understand. I don't</p> <p>17 have an informed position there.</p> <p>18 Q. In -- in hindsight, do you wish you</p> <p>19 would have got that level of staffing when you</p> <p>20 were at the Department?</p> <p>21 A. I think, you know, any manager always</p> <p>22 wants to have the proper level of staffing.</p> <p>23 Q. That's an important issue, right?</p> <p>24 A. Certainly.</p> <p>25 Q. And you were aware of Ms. Nevin's</p>

<p style="text-align: right;">Page 186</p> <p>1 - JAMES MANNING -</p> <p>2 concern as a director of BDU that she wanted more</p> <p>3 staff, correct?</p> <p>4 A. Yes.</p> <p>5 Q. But as you sit here today you cannot</p> <p>6 recall taking any concrete action to request more</p> <p>7 staff for the BDU, correct?</p> <p>8 A. I don't recall.</p> <p>9 Q. To your knowledge, was -- was the</p> <p>10 lack of adequate staffing a cause of the delay in</p> <p>11 issuing borrower defense decisions during your</p> <p>12 tenure at the Department?</p> <p>13 MR. MERRITT: Objection, calls for</p> <p>14 speculation.</p> <p>15 Q. To your knowledge, sir, was the lack</p> <p>16 of staffing a cause of the delay in processing</p> <p>17 borrower defense applications?</p> <p>18 A. I don't know.</p> <p>19 MR. MERRITT: Joe, I'll let you keep</p> <p>20 going, but I just wanted to ask for a break</p> <p>21 at some point relatively soon.</p> <p>22 MR. JARAMILLO: We can -- we can take</p> <p>23 a break now. I actually need it myself?</p> <p>24 MR. MERRITT: Okay, great.</p> <p>25 MR. JARAMILLO: Thank you.</p>	<p style="text-align: right;">Page 188</p> <p>1 - JAMES MANNING -</p> <p>2 enforcement officer and worked closely with Wayne.</p> <p>3 Q. Did you have discussions with Julian</p> <p>4 Schmoke about borrower defense?</p> <p>5 A. I'm sure I did. I don't recall the</p> <p>6 discussions that I -- yeah.</p> <p>7 Q. Do you recall discussing staffing</p> <p>8 levels for the BDU with Julian Schmoke?</p> <p>9 A. Not specifically. I would expect</p> <p>10 that I did, but I can't attest to that I</p> <p>11 absolutely did. I don't recall.</p> <p>12 Q. Do you recall Julian Schmoke</p> <p>13 discussing the need for more staffing for the BDU</p> <p>14 with you?</p> <p>15 A. I don't specifically recall that.</p> <p>16 Could have happened, but I don't recall that.</p> <p>17 Q. And when -- when Mr. Johnson left his</p> <p>18 position of COO of FSA and you took that over in</p> <p>19 the acting role did, you have discussions with him</p> <p>20 at that point about the status of borrower</p> <p>21 defense?</p> <p>22 A. Did I have discussions with who at</p> <p>23 that point?</p> <p>24 Q. Mr. Johnson.</p> <p>25 A. I don't recall.</p>
<p style="text-align: right;">Page 187</p> <p>1 - JAMES MANNING -</p> <p>2 THE WITNESS: I'll take advantage of</p> <p>3 it, too.</p> <p>4 MR. JARAMILLO: All right. Okay.</p> <p>5 THE VIDEOGRAPHER: We're off the</p> <p>6 record, the time is 20:36 UTC.</p> <p>7 (Whereupon, there was a brief recess</p> <p>8 in the proceedings.)</p> <p>9 THE VIDEOGRAPHER: We're back on the</p> <p>10 record, the time is 20:53 UTC.</p> <p>11 Q. Mr. Manning, did you ever have any</p> <p>12 discussions with a Wayne Johnson about borrower</p> <p>13 defense when you were at the Department?</p> <p>14 A. I -- I must have, but I don't recall</p> <p>15 any of them.</p> <p>16 Q. Do you recall Mr. Johnson expressing</p> <p>17 any opinions about how the borrower defense claims</p> <p>18 review was going at the Department?</p> <p>19 A. No, not specifically but when Mr.</p> <p>20 Johnson became the COO he brought Julian Schmoke</p> <p>21 and put him in the vacant chief enforcement</p> <p>22 officer position; and Julian -- Wayne Johnson</p> <p>23 became COO in July of 2017 and Julian came in -- I</p> <p>24 don't recall. It would have been a couple of</p> <p>25 months after that and he became a chief</p>	<p style="text-align: right;">Page 189</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Did you do anything to educate</p> <p>3 yourself more about the operations of BDU or</p> <p>4 borrower defense claims processing when you took</p> <p>5 on the acting role as COO of FSA?</p> <p>6 A. I don't recall.</p> <p>7 Q. I'll have you turn back, Mr. Manning,</p> <p>8 to Tab 12, which we have marked previously as</p> <p>9 Exhibit 34. Your remarks at BD Negotiated</p> <p>10 Rulemaking Committee on November 14, 2017.</p> <p>11 A. Okay, yes.</p> <p>12 Q. And if you could turn to Page 13,</p> <p>13 please:</p> <p>14 A. Okay.</p> <p>15 Q. And can you read for me the sentence</p> <p>16 that begins on Line 18?</p> <p>17 A. " Even the most strident borrower</p> <p>18 defense advocate would recognize that undoubtedly</p> <p>19 some claims are going to be denied. "</p> <p>20 Q. What did you mean by "strident</p> <p>21 borrower defense advocate"?</p> <p>22 A. I don't recall.</p> <p>23 Q. Well, sitting here today what does</p> <p>24 that mean to you, "strident borrower defense</p> <p>25 advocate"?</p>

<p style="text-align: right;">Page 190</p> <p>1 - JAMES MANNING -</p> <p>2 A. It makes me wonder why I used the</p> <p>3 word "strident."</p> <p>4 Q. What does the word "strident" mean to</p> <p>5 you?</p> <p>6 A. Well, I think I misused the word</p> <p>7 here.</p> <p>8 Q. And why do you think you misused it?</p> <p>9 A. I don't know why I misused. I'm not</p> <p>10 reading it now thinking that even the most --</p> <p>11 Q. Do you have an understanding of what</p> <p>12 the word "strident" means, Mr. Manning?</p> <p>13 A. Yes, I have an understanding.</p> <p>14 Q. Please inform us of your</p> <p>15 understanding.</p> <p>16 A. Dogmatic.</p> <p>17 Q. Okay. Anything else?</p> <p>18 And what do you mean by dogmatic?</p> <p>19 MR. MERRITT: Objection. This is all</p> <p>20 beyond the scope of the discovery the court</p> <p>21 ordered.</p> <p>22 MR. JARAMILLO: I don't think</p> <p>23 referring to borrower defense advocates of</p> <p>24 which -- as strident is beyond --</p> <p>25 A. My --</p>	<p style="text-align: right;">Page 192</p> <p>1 - JAMES MANNING -</p> <p>2 especially a controversial one, in an</p> <p>3 excessively and unpleasant forceful way and</p> <p>4 this is how Mr. Manning describes borrower</p> <p>5 defense advocate. This is -- goes directly</p> <p>6 to pretext and this goes directly to why</p> <p>7 there was potentially other reasons for the</p> <p>8 delay beyond any difficulty in reviewing</p> <p>9 borrower defense applications and so I'm</p> <p>10 going to ask him again.</p> <p>11 MR. MERRITT: (Unintelligible</p> <p>12 crosstalk) In response to your point, the</p> <p>13 court did not authorize an open-ended</p> <p>14 discovery into pretext. Pretext was defined</p> <p>15 -- the court defined pretext as based on the</p> <p>16 fact that, you know, the described difficulty</p> <p>17 of reviewing borrower defense applications do</p> <p>18 not necessary appear on the face of denial</p> <p>19 notices.</p> <p>20 He's carefully specified -- Judge</p> <p>21 Alsup carefully specified three topics in</p> <p>22 discovery, but certainly we can't interpret</p> <p>23 that so broadly to mean any kind of inquiries</p> <p>24 of pretext and some of these inquiries, and</p> <p>25 particularly in your line of questioning</p>
<p style="text-align: right;">Page 191</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Go ahead, Mr. Manning.</p> <p>3 MR. MERRITT: Well, I mean just how</p> <p>4 does that relate to the extent to which the</p> <p>5 difficulty of reviewing borrower defense</p> <p>6 applications -- how does relate to any of the</p> <p>7 three topics that court authorized discovery</p> <p>8 on?</p> <p>9 MR. JARAMILLO: Well, the -- the</p> <p>10 court-ordered discovery on the extent to</p> <p>11 which the difficulty of reviewing borrower</p> <p>12 defense applications contributed to the</p> <p>13 18-month delay, implicit in that part of it</p> <p>14 is the extent to which the difficulty did not</p> <p>15 and the extent to which there were other</p> <p>16 reasons.</p> <p>17 And the court in the prior page,</p> <p>18 before setting forth the three topics, listed</p> <p>19 a clear showing of pretext as being something</p> <p>20 that was apparent to him in potentially</p> <p>21 causing the delay and I'm probing about</p> <p>22 pretext, because he's referring to both a --</p> <p>23 a strident borrower defense advocate.</p> <p>24 In my mind, strident means loud and</p> <p>25 harsh or grating presenting a point of view,</p>	<p style="text-align: right;">Page 193</p> <p>1 - JAMES MANNING -</p> <p>2 right now, is particularly, you know, an</p> <p>3 open-ended discussion into pretext and not</p> <p>4 based on or relevant to any of the topics the</p> <p>5 court authorized discovery into.</p> <p>6 MR. JARAMILLO: The Judge did say on</p> <p>7 Page 15 of his order on October 19th, 2020,</p> <p>8 "In sum, we are faced with a strong showing</p> <p>9 of agency pretext and the class has been</p> <p>10 prejudiced by delaying that. We need to know</p> <p>11 what is really going on. This compels</p> <p>12 expedited discovery." And so --</p> <p>13 MR. MERRITT: Bearing in my mind,</p> <p>14 discovery of this agency is disfavored it</p> <p>15 will be limited, but broad enough to be</p> <p>16 effective which" -- you know, and then it</p> <p>17 goes on to say what exactly it will be. So</p> <p>18 what discovery is into is the three topics,</p> <p>19 not pretext stated that broadly. There would</p> <p>20 be no limitations on that and this is still</p> <p>21 an ATA case.</p> <p>22 MR. JARAMILLO: This relates to Topic</p> <p>23 2, and I'm going to press unless you instruct</p> <p>24 him not to answer. I want to know what he</p> <p>25 meant by strident.</p>

12/17/2020

194 to 197

<p style="text-align: right;">Page 194</p> <p>1 - JAMES MANNING -</p> <p>2 MR. MERRITT: Okay. I mean, I'm not</p> <p>3 going to instruct him not to answer that</p> <p>4 question, but just stating that it's</p> <p>5 irrelevant to the case, to the topics the</p> <p>6 court authorized discovery on.</p> <p>7 MR. JARAMILLO: Duly noted.</p> <p>8 Q. Mr. Manning, why did you refer to</p> <p>9 borrower defense advocates as strident?</p> <p>10 A. I don't recall, reading this now. I</p> <p>11 already told you that I'm surprised that word was</p> <p>12 used.</p> <p>13 Q. Do you think -- do you think it would</p> <p>14 be strident for a borrower defense advocate to</p> <p>15 assert the rights of student and borrowers?</p> <p>16 A. That's not what this sentence has to</p> <p>17 do with. This has to do with a borrower -- using</p> <p>18 a borrower defense advocate to recognize that</p> <p>19 undoubtedly some claims are going to be denied and</p> <p>20 that's absolutely true. Some claims are going to</p> <p>21 be denied.</p> <p>22 Q. How do you define "some claims"?</p> <p>23 A. More than one.</p> <p>24 Q. Okay. Would you be surprised --</p> <p>25 would you expect there to be a 90 percent denial</p>	<p style="text-align: right;">Page 196</p> <p>1 - JAMES MANNING -</p> <p>2 A. I was briefed on some, but I didn't</p> <p>3 review them. I didn't see them regularly.</p> <p>4 Q. And from your briefing, did you have</p> <p>5 any understanding of whether they were easy to</p> <p>6 resolve or difficult to resolve?</p> <p>7 A. As I recall, some were easy to</p> <p>8 resolve and some were difficult to resolve.</p> <p>9 Q. And what did you understand about the</p> <p>10 ones that were easy to resolve, why were they</p> <p>11 easy to resolve?</p> <p>12 A. Because the attorneys reviewing them</p> <p>13 made the judgment that they weren't sufficient to</p> <p>14 be considered further.</p> <p>15 Q. And what was your understanding of</p> <p>16 why they were not sufficient to be considered</p> <p>17 further?</p> <p>18 A. I have no idea. I -- I relied on the</p> <p>19 attorneys to make that call. I didn't review</p> <p>20 their work or make decisions about those</p> <p>21 applications.</p> <p>22 Q. In your opinion, to what extent did</p> <p>23 the difficulty of reviewing borrower defense</p> <p>24 applications actually cause a delay in issuing</p> <p>25 decisions during your tenure?</p>
<p style="text-align: right;">Page 195</p> <p>1 - JAMES MANNING -</p> <p>2 rate by the Department of Education for borrower</p> <p>3 defense claims?</p> <p>4 A. I don't know.</p> <p>5 Q. Does that surprise you?</p> <p>6 A. Well, borrower defense claims are,</p> <p>7 you know, reviewed one at a time and...</p> <p>8 Q. Did you harbor some bias against</p> <p>9 borrowers --</p> <p>10 A. No.</p> <p>11 Q. -- if they were just asserting</p> <p>12 frivolous claims?</p> <p>13 MR. MERRITT: Objection. It's beyond</p> <p>14 the scope.</p> <p>15 Q. You can answer, Mr. Manning.</p> <p>16 A. Restate your question.</p> <p>17 Q. Did you harbor any --</p> <p>18 A. You're halfway through it, but go</p> <p>19 ahead.</p> <p>20 Q. Did you harbor any bias towards</p> <p>21 student borrower applicants for borrower defense</p> <p>22 discharge?</p> <p>23 A. No, I did not.</p> <p>24 Q. Did you ever -- are you familiar with</p> <p>25 the content of borrower defense applications?</p>	<p style="text-align: right;">Page 197</p> <p>1 - JAMES MANNING -</p> <p>2 A. I -- I don't know. I don't know.</p> <p>3 Q. Is it your understanding that</p> <p>4 generally the applications were easy to be</p> <p>5 decided?</p> <p>6 A. I think there were some very easy to</p> <p>7 be decide and some that were very difficult, so I</p> <p>8 don't know specifically; but I would I stand by</p> <p>9 what I said subsequent to the sentence we're</p> <p>10 talking about, is that we had been working</p> <p>11 carefully to ensure that any denial until there</p> <p>12 was a total review of the claim. We were</p> <p>13 absolutely committed to that.</p> <p>14 Q. And what did you do to demonstrate</p> <p>15 your commitment to that?</p> <p>16 A. I don't recall.</p> <p>17 Q. What did anyone at the Department due</p> <p>18 to demonstrate a commitment to that?</p> <p>19 MR. MERRITT: Objection, overbroad.</p> <p>20 Q. To the extent you know, what did</p> <p>21 anyone at the Department do?</p> <p>22 A. I think Colleen Nevin was absolutely</p> <p>23 committed to that with her staff and reviewed</p> <p>24 every application that came in appropriately.</p> <p>25 Q. Were -- were you aware of the use of</p>

<p style="text-align: right;">Page 198</p> <p>1 - JAMES MANNING -</p> <p>2 legal mem -- memoranda at the Department that set</p> <p>3 forth categories of claims that would qualify for</p> <p>4 discharge under borrower defense?</p> <p>5 A. Repeat that again.</p> <p>6 Q. Were you aware of any legal memoranda</p> <p>7 or category of claims that would qual -- that</p> <p>8 would set forth criteria to qualifying applicants</p> <p>9 for borrower defense discharge?</p> <p>10 A. I don't recall.</p> <p>11 Q. You don't recall memoranda in place</p> <p>12 for seven categories of claims that -- from the</p> <p>13 prior administration that included job placement</p> <p>14 rates claims from Hiel and from Ever -- Everest</p> <p>15 and Wyo -- Wyotech, transfer of credit</p> <p>16 misrepresentation claims?</p> <p>17 A. I -- I remember -- I remember</p> <p>18 those -- those schools and the issues that you</p> <p>19 just mentioned because I just heard you say that,</p> <p>20 but I don't remember -- I do not remember the</p> <p>21 legal memorandum that were circulated on that</p> <p>22 during previous administrations, probably have</p> <p>23 seen them.</p> <p>24 Q. Do you know if the Borrower Defense</p> <p>25 Unit relied on those memoranda in order to make</p>	<p style="text-align: right;">Page 200</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Mr. Manning, I want to show you</p> <p>3 something --</p> <p>4 A. I can't hear you.</p> <p>5 Q. Say it again.</p> <p>6 A. I couldn't hear you. You -- you</p> <p>7 faded.</p> <p>8 Q. I apologize. Bear with me one</p> <p>9 second.</p> <p>10 A. Yeah, of course.</p> <p>11 Q. You mentioned, Mr. Manning, that</p> <p>12 during the review of the borrower defense program</p> <p>13 during the transition, that you -- you had</p> <p>14 reviewed as part of that effort established</p> <p>15 protocols in place at the time; is that right?</p> <p>16 A. I think formerly the -- what that --</p> <p>17 that issue after the 20th, normally we had -- you</p> <p>18 know -- had meetings previously raising, you know,</p> <p>19 the -- the question involved.</p> <p>20 Q. Did you review any protocols in place</p> <p>21 at that time?</p> <p>22 A. Not during the transition.</p> <p>23 Q. How about once you started on with</p> <p>24 the Department in the new administration?</p> <p>25 A. Yes, absolutely. We sent two people.</p>
<p style="text-align: right;">Page 199</p> <p>1 - JAMES MANNING -</p> <p>2 decisions?</p> <p>3 A. If those were provided by the</p> <p>4 previous administration, I expect fully that the</p> <p>5 Borrower Defense Unit was, you know, aware for all</p> <p>6 of them. That -- that would be my belief. I</p> <p>7 don't know for sure.</p> <p>8 Q. Were you aware of any memoranda or</p> <p>9 protocols that the Borrower Defense Unit used in</p> <p>10 order to adjudicate borrower defense claims?</p> <p>11 A. Memoranda?</p> <p>12 Q. Let's start with memoranda, yes.</p> <p>13 A. Oh, I haven't -- I don't recall any</p> <p>14 legal memoranda.</p> <p>15 Q. What about protocols?</p> <p>16 A. I -- I remember that when we</p> <p>17 conducted the review, before we asked the</p> <p>18 Inspector General to -- from the beginning on the</p> <p>19 transition team and then subsequently instruction</p> <p>20 looking for established protocols and -- you know,</p> <p>21 and other types of guides for decision-making in</p> <p>22 the process and recognizing that they were short;</p> <p>23 that they, the -- the protocols, were not clearly</p> <p>24 established and that more work had to be done by</p> <p>25 them to improve those -- those types of documents.</p>	<p style="text-align: right;">Page 201</p> <p>1 - JAMES MANNING -</p> <p>2 I can't remember the second person, but one was</p> <p>3 Justin Riemer, attorney from the Department, to</p> <p>4 look at operations and documentation in the</p> <p>5 Borrower Defense Unit.</p> <p>6 Q. Are you aware of what documentation</p> <p>7 they looked at?</p> <p>8 A. I don't recall.</p> <p>9 Q. Did you look at any of that</p> <p>10 documentation?</p> <p>11 A. Personally, no.</p> <p>12 Q. Okay. I'm going to have you look at</p> <p>13 Tab 4, which was previously marked as Exhibit 9.</p> <p>14 A. Okay.</p> <p>15 (Whereupon, Exhibit 9, having been</p> <p>16 previously marked, was tendered to the</p> <p>17 witness for identification.)</p> <p>18 A. Okay, I have it.</p> <p>19 Q. And the first page we can -- we can</p> <p>20 ignore. This is -- it says "Exhibit 9" there</p> <p>21 because it was submitted to the court as an</p> <p>22 exhibit, but I want you to look at the second page</p> <p>23 where it says "Borrowers' Defense Unit Claims</p> <p>24 Rreview Protocol."</p> <p>25 Have you ever -- do you ever recall</p>

<p style="text-align: right;">Page 202</p> <p>1 - JAMES MANNING -</p> <p>2 seeing a Borrower Defense Unit Claims Review</p> <p>3 Protocol?</p> <p>4 A. No, I don't recall that.</p> <p>5 Q. I don't think you need to read this</p> <p>6 document line by line, but if you could just flip</p> <p>7 through and tell me whether any of the contents</p> <p>8 look familiar to you or whether you don't recall</p> <p>9 ever seeing those.</p> <p>10 A. I don't remember seeing this</p> <p>11 document. There's certainly some facts</p> <p>12 represented here that can be replicated other</p> <p>13 places I've read outside, but I've never seen this</p> <p>14 document before.</p> <p>15 Q. Can you point out the facts that</p> <p>16 you've seen replicated in other places, and you</p> <p>17 can let us know the Bates number?</p> <p>18 A. "The legal framework "BD application</p> <p>19 must state a claim under state law."</p> <p>20 Q. And that -- that would be on the</p> <p>21 third page of this document? If you look at the</p> <p>22 lower right-hand corner, there's a 3?</p> <p>23 A. Yes. Yep.</p> <p>24 Q. All right, and when did you see that</p> <p>25 language before?</p>	<p style="text-align: right;">Page 204</p> <p>1 - JAMES MANNING -</p> <p>2 just to be sure.</p> <p>3 Q. Okay.</p> <p>4 MR. MERRITT: Just to be clear, you</p> <p>5 -- you asked specifically whether he was</p> <p>6 familiar with any of the language in there,</p> <p>7 so --</p> <p>8 MR. JARAMILLO: That's true.</p> <p>9 A. The legal threshold for eligibility</p> <p>10 equals preponderance of the evidence." I've seen</p> <p>11 that any number of times.</p> <p>12 "Must base decisions granting or</p> <p>13 denying relief on a record sufficient to withstand</p> <p>14 court scrutiny." Most of the rest of it I haven't</p> <p>15 seen.</p> <p>16 Q. Okay. Thank you, Mr. Manning. I</p> <p>17 would like you to turn to Tab 5.</p> <p>18 A. Okay.</p> <p>19 Q. And the first page of this tab has</p> <p>20 Exhibit 10 and I would like to just move on and</p> <p>21 ignore that. That was submitted for purposes of</p> <p>22 getting it into the court.</p> <p>23 I want to look at the second page</p> <p>24 that says "Borrower Defense Unit Claims Review</p> <p>25 Protocol" and let's mark this --</p>
<p style="text-align: right;">Page 203</p> <p>1 - JAMES MANNING -</p> <p>2 A. When did I see it before?</p> <p>3 Q. Yes.</p> <p>4 A. When -- when did I see it before?</p> <p>5 Q. That's the question, sir.</p> <p>6 A. I was repeating it for, Hope.</p> <p>7 So I couldn't tell you, but that</p> <p>8 certainly was a part of the legal framework that</p> <p>9 BD application must have a state -- must state a</p> <p>10 claim under state law. Elsewhere I've seen that,</p> <p>11 you know, plenty of times. Like I -- I can't say</p> <p>12 where -- where. I have never seen this document</p> <p>13 in this form. I mean --</p> <p>14 Q. All right. Have you seen -- is there</p> <p>15 any other language here that looks familiar to</p> <p>16 you?</p> <p>17 A. I'm -- I'm having to read to make</p> <p>18 sure to satisfy --</p> <p>19 Q. I'll tell you what, if you're going</p> <p>20 to read line by line we can move on.</p> <p>21 A. You are going to do what?</p> <p>22 Q. If you want -- if you're going to</p> <p>23 read to this line by line, I would just like to</p> <p>24 move on.</p> <p>25 A. Let me just take another minute here</p>	<p style="text-align: right;">Page 205</p> <p>1 - JAMES MANNING -</p> <p>2 MR. MERRITT: I'm sorry. I just want</p> <p>3 to make sure we're on the same page. The</p> <p>4 document I'm looking at doesn't say -- have</p> <p>5 an exhibit marking.</p> <p>6 MR. JARAMILLO: Oh, okay.</p> <p>7 MR. MERRITT: It does -- it does say</p> <p>8 "Borrower Defense Unit Claims Review</p> <p>9 Protocol."</p> <p>10 MR. JARAMILLO: Right, right.</p> <p>11 A. It looks like -- it looks similar to</p> <p>12 the last thing I just looked at.</p> <p>13 Q. Okay.</p> <p>14 MR. JARAMILLO: And let's just --</p> <p>15 just to clarify the record, thank you for</p> <p>16 pointing that out, Charlie. I think I might</p> <p>17 have -- when I sent the document, I took off</p> <p>18 the exhibit page just to go straight to the</p> <p>19 first page of the actual document.</p> <p>20 And so this is Tab 5 and I would like</p> <p>21 to mark it as Exhibit 35.</p> <p>22 MR. MERRITT: Again, just to confirm</p> <p>23 what we're talking about, like at the top</p> <p>24 it's a document filed in this case; 66-3</p> <p>25 Page 118 of 137. I was going to ask a</p>

<p style="text-align: right;">Page 206</p> <p>1 - JAMES MANNING -</p> <p>2 question, Mr. Jaramillo, but --</p> <p>3 MR. JARAMILLO: I'll, I'll -- let's</p> <p>4 clarify just to -- I think to identify this.</p> <p>5 This is Tab 5 which is now Exhibit 35.</p> <p>6 (Whereupon, Exhibit 35 was marked at</p> <p>7 this time.)</p> <p>8 MR. JARAMILLO: At the top of the</p> <p>9 page above the title of the document, you</p> <p>10 can see a case file number, Case</p> <p>11 3:19-cv-03674-WHA Document 66-3, filed</p> <p>12 12/23/19, page 118 of 137.</p> <p>13 And there's another case stamp on the</p> <p>14 right-hand side. I'm not going to go over it</p> <p>15 because I think we've sufficiently identified</p> <p>16 this.</p> <p>17 MR. MERRITT: That's good enough for</p> <p>18 me. Thank you.</p> <p>19 A. I'll just say that this document</p> <p>20 looks remarkably like the document you just had me</p> <p>21 look at previously, that Borrower Defense Unit</p> <p>22 Claims Review Protocol, the one that was Exhibit 9</p> <p>23 we looked at just a few minutes ago, and I was --</p> <p>24 I made some comments about particular lines.</p> <p>25 This -- what I'm looking at now, the</p>	<p style="text-align: right;">Page 208</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Okay.</p> <p>3 A. I see the chart.</p> <p>4 Q. And have you ever seen that chart</p> <p>5 before?</p> <p>6 A. I've seen a thousand charts that look</p> <p>7 like this at first glance, and even with my</p> <p>8 glasses the printing on these boxes is a -- a</p> <p>9 little tough.</p> <p>10 I -- I don't recall specifically</p> <p>11 seeing this chart. It was updated on January 30,</p> <p>12 2017, so --</p> <p>13 Q. Yes, it does say "Updated January 30,</p> <p>14 2017" --</p> <p>15 A. Right.</p> <p>16 Q. -- and which I recognize is only ten</p> <p>17 days after you came into the Department under the</p> <p>18 new administration, correct?</p> <p>19 A. Without responsibility for this issue</p> <p>20 at the time.</p> <p>21 Q. Right, because you were senior</p> <p>22 advisor to the Secretary, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And just to do a little side</p> <p>25 questioning on that, what, what -- did -- did any</p>
<p style="text-align: right;">Page 207</p> <p>1 - JAMES MANNING -</p> <p>2 second document you just had us look through,</p> <p>3 looks very similar.</p> <p>4 Q. Okay, great. Thank you. Thank you,</p> <p>5 Mr. Manning.</p> <p>6 A. Am I looking at something or --</p> <p>7 Q. You know, you were looking at the</p> <p>8 right thing. There are some additional pages --</p> <p>9 there are some pages in this document that were</p> <p>10 redacted, so it's not exactly the same.</p> <p>11 And then at the end, there are --</p> <p>12 it's the last three pages -- I'm sorry, the last</p> <p>13 one, two, three, four -- the last five pages are</p> <p>14 what I want to just focus in on --</p> <p>15 A. Okay.</p> <p>16 Q. -- to identify them. I'm going --</p> <p>17 look at case file stamp at the top of the document</p> <p>18 it looks -- I want you to turn to Page 133 of 137</p> <p>19 because that's how it's represented.</p> <p>20 A. I'm there now.</p> <p>21 Q. Gotcha, and there's chart that says</p> <p>22 "Approvals Borrower Defense Claims." Do you see</p> <p>23 that?</p> <p>24 A. Yes, let me just get reorganized here</p> <p>25 so I -- I'm looking at the right things.</p>	<p style="text-align: right;">Page 209</p> <p>1 - JAMES MANNING -</p> <p>2 of that ad -- advisory responsibility include</p> <p>3 advice on borrower defense for that particular</p> <p>4 position when you first came into the</p> <p>5 administration?</p> <p>6 A. Not to that particular position, but</p> <p>7 I -- I did speak with the Secretary on issues</p> <p>8 around borrower defense, in -- in particular the,</p> <p>9 the -- the previous administration's actions at</p> <p>10 the end of the administration that led to the</p> <p>11 16,000 cases that were to be ultimately discharged</p> <p>12 by the Secretary.</p> <p>13 Q. And when you had those discussions</p> <p>14 with the Secretary, you at that point were acting</p> <p>15 Undersecretary?</p> <p>16 A. No.</p> <p>17 Q. Okay. You were senior policy</p> <p>18 advisor?</p> <p>19 A. Yes -- no, senior advisor.</p> <p>20 Q. Senior advisor, I'm sorry.</p> <p>21 And besides that particular topic,</p> <p>22 did you speak to the Secretary as senior advisor</p> <p>23 about anything else related to borrower defense?</p> <p>24 A. Not that I recall. The issue was,</p> <p>25 you know, what was there and ready for review and</p>

12/17/2020

210 to 213

<p style="text-align: right;">Page 210</p> <p>1 - JAMES MANNING -</p> <p>2 signature.</p> <p>3 Q. Okay. Let's turn back to the -- I'm</p> <p>4 sorry, did I interrupt you, sir.</p> <p>5 A. Well, I was going to say I don't</p> <p>6 remember specifically when she first was</p> <p>7 Secretary, but I think it was, you know, the first</p> <p>8 week of February. I could be wrong.</p> <p>9 Q. That's fine. Looking at this</p> <p>10 approval chart and what we marked as Exhibit 35 --</p> <p>11 A. Am I still on Page 133?</p> <p>12 Q. Yes.</p> <p>13 A. Okay. I'm looking at the chart.</p> <p>14 Q. Yeah, I'm kind of following like the</p> <p>15 little people symbols from the left to the right</p> <p>16 and I see three people and then there's an arrow</p> <p>17 and then I see a person sitting at a desk and then</p> <p>18 an arrow going down that says "FSA Internal</p> <p>19 Control notification." Do you have any idea what</p> <p>20 that means?</p> <p>21 A. No, I'm not exactly -- I don't recall</p> <p>22 what that means. It looks like it's something I</p> <p>23 -- I'd get from executive Secretary, but this is</p> <p>24 outside the executive Secretary process.</p> <p>25 Q. Okay, and then if I follow the arrows</p>	<p style="text-align: right;">Page 212</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. Were you aware of any borrower</p> <p>5 defense process during your tenure where the</p> <p>6 Undersecretary would need to approve a -- a</p> <p>7 borrower defense claim if the -- or set of claims</p> <p>8 if the impact was greater than 10 million or it</p> <p>9 raised policy issues?</p> <p>10 A. I don't specifically remember that.</p> <p>11 Q. And do you have -- okay, you don't</p> <p>12 remember that.</p> <p>13 Let's -- let's just move on to the</p> <p>14 next page which says Page 134 of 137, "Denials</p> <p>15 Borrower Defense Claims."</p> <p>16 A. Right.</p> <p>17 Q. Have you ever seen this chart before?</p> <p>18 A. No. Not to my -- best of my</p> <p>19 recollection. I don't remember seeing this.</p> <p>20 Q. Okay, and for -- for both of these</p> <p>21 charts, the approvals and denials, are you aware</p> <p>22 of the Borrowers Defense Unit ever using them?</p> <p>23 A. Using these charts?</p> <p>24 Q. Yes.</p> <p>25 A. I -- I don't remember if I was ever</p>
<p style="text-align: right;">Page 211</p> <p>1 - JAMES MANNING -</p> <p>2 to the right there's two more people sitting at</p> <p>3 desks and then I see a diamond.</p> <p>4 A. Yes.</p> <p>5 Q. And inside that diamond it says;</p> <p>6 "Fiscal impact greater than 10 million or raises</p> <p>7 policy issues?" Do you know what that means, Mr.</p> <p>8 Manning?</p> <p>9 And no need to speculate. I just</p> <p>10 want to know if you know what it means or not. If</p> <p>11 you could -- yeah, if you're familiar with that</p> <p>12 language.</p> <p>13 A. Well, I'm -- I'm reading it. It --</p> <p>14 it would mean different things to me depending on</p> <p>15 what day you were reading it, effectively.</p> <p>16 Q. Okay, that's -- that's understood and</p> <p>17 I don't think we need to get into that in detail.</p> <p>18 My next question is; from that</p> <p>19 diamond there's an arrow down with a box that says</p> <p>20 "Yes"?</p> <p>21 A. Yes.</p> <p>22 Q. And then there's a person sitting at</p> <p>23 a desk and to the left it says "Undersecretary</p> <p>24 Approved." Were you --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 213</p> <p>1 - JAMES MANNING -</p> <p>2 aware. I don't recall anything about these charts</p> <p>3 at this point.</p> <p>4 Q. Okay. If we could turn to the next</p> <p>5 page of this document. It's a little hard to read</p> <p>6 the page number because the two cases have a Bates</p> <p>7 stamp on the top -- or on the right-hand side I</p> <p>8 think.</p> <p>9 I'm not sure how you're seeing it. I</p> <p>10 printed my out a little different, but they seem</p> <p>11 to be superimposed.</p> <p>12 A. It looks like -- it looks like it</p> <p>13 says 135 of 137 on the -- one of them.</p> <p>14 Q. That's correct, and it says "Number</p> <p>15 of Borrower Defense Claims" and it looks like on</p> <p>16 the right- hand side there's different lines that</p> <p>17 represent CCI, ITT and other schools?</p> <p>18 A. Yes.</p> <p>19 Q. Have you seen this chart before?</p> <p>20 A. I, I -- I don't know if I've seen</p> <p>21 this one before or not. It has a familiar look to</p> <p>22 it, but all these kinds of charts they look -- I</p> <p>23 can't authoritatively attest that I've absolutely</p> <p>24 seen this before. I don't know if I've seen this</p> <p>25 before or not.</p>

12/17/2020

214 to 217

<p style="text-align: right;">Page 214</p> <p>1 - JAMES MANNING -</p> <p>2 Q. And can you see on the chart that by</p> <p>3 January, 2017 according to this chart there were</p> <p>4 about 60,000 CCI borrower defense claims?</p> <p>5 A. Yes, I see that.</p> <p>6 Q. And so is that -- did you</p> <p>7 have -- were you -- did you realize that there</p> <p>8 were that amount of claims when you came into the</p> <p>9 administration?</p> <p>10 A. I don't recall that I knew when I</p> <p>11 came into the administration and I don't remember</p> <p>12 the number was 60,000 in particular.</p> <p>13 Q. Okay. Earlier, Mr. Manning, you had</p> <p>14 mentioned an Inspector General's report --</p> <p>15 A. Yes.</p> <p>16 Q. -- do you recall that?</p> <p>17 A. Yes.</p> <p>18 Q. What do you recall about this</p> <p>19 Inspector General report?</p> <p>20 A. The Secretary asked the Inspector</p> <p>21 General to do a review of the Enforcement involved</p> <p>22 defense units.</p> <p>23 Q. And did you have any communication</p> <p>24 yourself with the Inspector General's Office about</p> <p>25 that review?</p>	<p style="text-align: right;">Page 216</p> <p>1 - JAMES MANNING -</p> <p>2 proper -- proper management documents in order to</p> <p>3 maintain records appropriately and that type of</p> <p>4 thing.</p> <p>5 Q. Did you communicate with the</p> <p>6 Inspector General's Office about their reviews?</p> <p>7 A. Quite possibly. I don't specifically</p> <p>8 recall. I do recall that their -- their review</p> <p>9 came black with a few findings, some</p> <p>10 recommendations on improvements and -- but I don't</p> <p>11 remember the particulars beyond that.</p> <p>12 Q. Are you aware of a Department policy</p> <p>13 that requires developing a corrective action plan</p> <p>14 within 30 days of the issuance of an Inspector</p> <p>15 General's report?</p> <p>16 MR. MERRITT: Objection as beyond the</p> <p>17 scope of the court-ordered discovery.</p> <p>18 MR. JARAMILLO: Are you instructing</p> <p>19 him not to answer it?</p> <p>20 MR. MERRITT: No.</p> <p>21 A. I am familiar with that.</p> <p>22 Q. Okay, and are you familiar with</p> <p>23 communications from the Inspector General to the</p> <p>24 COO of FSA at the time, Dr. A. Wayne Johnson ad --</p> <p>25 advising him of that policy?</p>
<p style="text-align: right;">Page 215</p> <p>1 - JAMES MANNING -</p> <p>2 A. The Secretary wrote the Inspector</p> <p>3 General. I don't recall I had conversation with</p> <p>4 the Inspector General at that point about this</p> <p>5 issue.</p> <p>6 They took it up and they delivered a</p> <p>7 report later in the year.</p> <p>8 Q. And did you see a copy of what the</p> <p>9 Secretary wrote to the Inspector General?</p> <p>10 A. I -- I don't recall I had. I</p> <p>11 probably did, but I don't recall.</p> <p>12 Q. Do you know if it was a letter?</p> <p>13 A. Well, I -- I think most of the</p> <p>14 correspondence that came from the Secretary go as</p> <p>15 letters, but I'm not absolutely certain that it</p> <p>16 was a letter, so it's not something that you'd</p> <p>17 have to see. The Secretary wouldn't send an</p> <p>18 e-mail like that informal request. I expect it</p> <p>19 was a letter, but I don't know.</p> <p>20 Q. Do you know what the Secretary</p> <p>21 communicated to the Inspector General about the</p> <p>22 request?</p> <p>23 A. I don't recall what the specific</p> <p>24 language was that was used, but once again I feel</p> <p>25 for operations there and if they had the -- the</p>	<p style="text-align: right;">Page 217</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't specifically remember that,</p> <p>3 but I would expect that I saw it, seen it and read</p> <p>4 it.</p> <p>5 Q. I'm sorry, can you -- can you --</p> <p>6 A. I -- I can't speak to the particulars</p> <p>7 because I don't re -- recall particulars in the</p> <p>8 report.</p> <p>9 Q. And are you aware of any final</p> <p>10 corrective action plan as it -- as developed by</p> <p>11 FSA in response to the report?</p> <p>12 A. I don't recall.</p> <p>13 Q. Would you expect that there would</p> <p>14 have been a corrective action plan developed by</p> <p>15 FSA in response to the report?</p> <p>16 A. I --</p> <p>17 MR. MERRITT: Objection, calls for</p> <p>18 speculation.</p> <p>19 Q. Just -- just what you would expect as</p> <p>20 Undersecretary at the time?</p> <p>21 A. I -- I think the -- the question</p> <p>22 calls for a response that is generally uniformly</p> <p>23 followed and so I would -- I -- I don't recall</p> <p>24 seeing a response, but I expect that there was</p> <p>25 one.</p>

12/17/2020

218 to 221

<p style="text-align: right;">Page 218</p> <p>1 - JAMES MANNING -</p> <p>2 Q. You -- you expect that there was a</p> <p>3 response to this?</p> <p>4 A. I -- I expect there would have been a</p> <p>5 response.</p> <p>6 Q. And you expect that that response</p> <p>7 would have been a corrective action plan?</p> <p>8 A. Well, I, I -- I don't know how it</p> <p>9 might have been structured. Normally you address</p> <p>10 some of the issues that were raised and agree with</p> <p>11 some and disagree with others, but I don't -- I</p> <p>12 don't recall the specificity what that included.</p> <p>13 Q. Did you, yourself, read the Inspector</p> <p>14 General's report?</p> <p>15 A. I believe I did.</p> <p>16 Q. And who within the Department would</p> <p>17 you expect to review such a report when it comes</p> <p>18 back from the Inspector General?</p> <p>19 A. When the report comes back from the</p> <p>20 Inspector General?</p> <p>21 Q. Yes.</p> <p>22 A. It goes to the office that makes the</p> <p>23 request, the leadership there.</p> <p>24 Q. Okay, in this case being the Office</p> <p>25 of the Secretary?</p>	<p style="text-align: right;">Page 220</p> <p>1 - JAMES MANNING -</p> <p>2 3? I have something labeled Exhibit 19.</p> <p>3 Q. No, I'll explain that. This was just</p> <p>4 previously introduced as an exhibit with the</p> <p>5 court, so we can skip over that page.</p> <p>6 A. Okay. So here it is, the "Federal</p> <p>7 Student Aid's Borrower Defense to Repayment -- I</p> <p>8 have the Inspector General's report entitled</p> <p>9 "Federal Student Aid's Borrower Defense to</p> <p>10 Repayment Loan Discharge Process."</p> <p>11 Q. All right, and the date on that is</p> <p>12 December 8, 2017?</p> <p>13 A. Date on that is December 8, 2017,</p> <p>14 correct.</p> <p>15 Q. And would you say this is the report</p> <p>16 that we have been discussing that was requested by</p> <p>17 the Department for a review of the borrower</p> <p>18 defense process?</p> <p>19 A. I expect it is, yeah, just looking at</p> <p>20 the letter.</p> <p>21 Q. Okay, so you're looking at the page</p> <p>22 that I'm going -- we'll just look at the -- the</p> <p>23 court stamp page numbers, so Page 182 of 270 and</p> <p>24 it looks like it's a December 8, 2017 memo to Dr.</p> <p>25 A. Wayne Johnson?</p>
<p style="text-align: right;">Page 219</p> <p>1 - JAMES MANNING -</p> <p>2 A. I -- I'm not -- it might have been</p> <p>3 delegated to FSA. Did you say that -- you</p> <p>4 commented earlier about A. Wayne Johnson and IG,</p> <p>5 can you refresh my memory on that. Just a few</p> <p>6 minutes ago, you mentioned that.</p> <p>7 Q. Yeah, sure. The report has a cover</p> <p>8 letter from Patrick J. Howard, assistant Inspector</p> <p>9 General for audit to Dr. A. Wayne Johnson COO of</p> <p>10 FSA and so does that refresh your recollection as</p> <p>11 to who the report would have come back to at the</p> <p>12 Department?</p> <p>13 A. Well, is a name on the report? Is</p> <p>14 this a report based on the review of the</p> <p>15 Enforcement and Borrower Defense Unit?</p> <p>16 Q. Yeah. Normally I don't answer like</p> <p>17 the witness to ask questions, but that is a good</p> <p>18 question that you just raised and I'll just show</p> <p>19 it to you.</p> <p>20 If you could, look to Tab 3 which has</p> <p>21 been previously introduced as Exhibit 3.</p> <p>22 (Whereupon, Exhibit 3, having been</p> <p>23 previously marked, was tendered to the</p> <p>24 witness for identification.)</p> <p>25 A. Does it matter that I don't have Tab</p>	<p style="text-align: right;">Page 221</p> <p>1 - JAMES MANNING -</p> <p>2 A. Yes.</p> <p>3 Q. And it looks -- you wanted to look at</p> <p>4 this letter. Does this refresh your recollection</p> <p>5 about anything about how the report --</p> <p>6 A. Give me a minute. I was reading.</p> <p>7 Q. All right, and I'm just going to</p> <p>8 request you don't read the whole report during</p> <p>9 this deposition.</p> <p>10 A. But I want to read the letter.</p> <p>11 Q. I understand.</p> <p>12 A. Read the letter.</p> <p>13 Okay.</p> <p>14 Q. All right. Does this -- after</p> <p>15 reviewing the December 8th letter included in this</p> <p>16 report, does that refresh your recollection about</p> <p>17 who this report would come back to at the</p> <p>18 Department?</p> <p>19 A. Yes, it was through correspondence</p> <p>20 from Dr. Johnson and that appears, according to</p> <p>21 this letter, that they received comments from FSA.</p> <p>22 Let's see -- just a second.</p> <p>23 Q. Do you have anything else to answer,</p> <p>24 Mr. Manning? We can move on.</p> <p>25 A. Okay, just give me 30 seconds more,</p>

<p style="text-align: right;">Page 222</p> <p>1 - JAMES MANNING -</p> <p>2 please.</p> <p>3 Okay, thank you.</p> <p>4 Q. Now, does anything else about this</p> <p>5 letter refresh your recollection about the report</p> <p>6 coming back in to the Department?</p> <p>7 A. No.</p> <p>8 Q. Okay. If you look at the bottom</p> <p>9 left-hand corner, there's a CC and it has your</p> <p>10 name as Acting Undersecretary. Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And you remember getting a copy of</p> <p>13 this letter?</p> <p>14 A. Not specifically, but I'm sure I got</p> <p>15 a copy of the report so I --</p> <p>16 Q. When a report like this is issued, do</p> <p>17 you expect people in the Department to read it?</p> <p>18 A. The parties that are impacted, yes.</p> <p>19 Q. And in this case, who would be the</p> <p>20 impacted parties?</p> <p>21 A. Well, Dr. Johnson, the folks in the</p> <p>22 borrower defense that were involved in this, the</p> <p>23 FSA, the Undersecretary, copies would also go to,</p> <p>24 you know, other senior leaders, OGC.</p> <p>25 Q. What other senior leaders?</p>	<p style="text-align: right;">Page 224</p> <p>1 - JAMES MANNING -</p> <p>2 would have borrower defense as part of her</p> <p>3 portfolio?</p> <p>4 A. Yes, and I'm not sure that she didn't</p> <p>5 get it and read it, but she wouldn't have --</p> <p>6 Q. Would you be surprised to learn that</p> <p>7 she testified she -- she never read it?</p> <p>8 MR. MERRITT: Objection, asked and</p> <p>9 answered.</p> <p>10 Q. Would that surprise you, sir?</p> <p>11 A. I don't know if that surprises me or</p> <p>12 not, but there are other avenues of communication</p> <p>13 when a new senior leader comes and is reassigned</p> <p>14 issues as important as this one was to the</p> <p>15 Department and in particular the Undersecretary,</p> <p>16 but this was the report that was -- I'm assuming</p> <p>17 that there was a corrective action plan and she</p> <p>18 might have seen the corrective action plan but,</p> <p>19 you know, I don't know.</p> <p>20 I don't know what transpired once she</p> <p>21 arrived. I wouldn't expect that she'd be in a</p> <p>22 position to look back and read every document</p> <p>23 that, you know, was made available from the</p> <p>24 Inspector General necessarily.</p> <p>25 Q. Okay. Let's turn to Page 186 of 270</p>
<p style="text-align: right;">Page 223</p> <p>1 - JAMES MANNING -</p> <p>2 A. Deputy Secretary.</p> <p>3 Q. And --</p> <p>4 A. (Unintelligible crosstalk) Yes,</p> <p>5 generally the folks that get this routinely.</p> <p>6 Q. And would you expect folks in the</p> <p>7 Department afterwards, let's say relatively</p> <p>8 shortly afterward would then -- within six months,</p> <p>9 would you expect them to review a report like this</p> <p>10 even if they had not been one of the directly</p> <p>11 impacted parties to begin with?</p> <p>12 MR. MERRITT: Objection, vague.</p> <p>13 Q. In other words, would ex -- would you</p> <p>14 be surprised to learn that Diane Auer Jones</p> <p>15 testified in her deposition that she never read</p> <p>16 it?</p> <p>17 A. I guess it wouldn't surprise me</p> <p>18 because it was -- she -- she wasn't at the</p> <p>19 Department for more than a year after this. Right</p> <p>20 -- no, December 8th. It was before -- it was --</p> <p>21 it was before her time in terms of -- she wasn't</p> <p>22 at the Department when this was issued. She</p> <p>23 started in her position later -- in '17, '18.</p> <p>24 Q. But wouldn't it be important</p> <p>25 background for her to know, taking on a role that</p>	<p style="text-align: right;">Page 225</p> <p>1 - JAMES MANNING -</p> <p>2 of this document. I'm just using the court</p> <p>3 stamps --</p> <p>4 A. I got it, 186.</p> <p>5 Q. Out of 270.</p> <p>6 A. I'm there.</p> <p>7 Q. All right. That was really quick,</p> <p>8 Mr. Manning. I appreciate it. Under -- you see</p> <p>9 there's a chart there, "Table 1: FSA's Borrower</p> <p>10 Defense Outcomes"?</p> <p>11 A. I see that, yes.</p> <p>12 Q. And then underneath that there's</p> <p>13 some text that starts with "From January 20, 2017?"</p> <p>14 A. Yes.</p> <p>15 Q. All right. Well just follow along.</p> <p>16 I'm going to do the reading this time and then I</p> <p>17 want to pause after some reading and then ask you</p> <p>18 a few questions.</p> <p>19 A. Okay.</p> <p>20 Q. "From January" -- this is, I'm</p> <p>21 reading from the report, "From January 20th, 2017</p> <p>22 to July 31, 2017 business operations continued to</p> <p>23 receive borrowers defense claims. From January</p> <p>24 20, 2017 through March, 2017 BDU continued to</p> <p>25 review transfer of credit and guaranteed</p>

<p style="text-align: right;">Page 226</p> <p>1 - JAMES MANNING -</p> <p>2 employment claims."</p> <p>3 I want to pause there even though</p> <p>4 it's mid-sentence just because I want to ask about</p> <p>5 this date, January 20th, 2017 through March, 2017?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Do you -- do you have any idea why</p> <p>8 BDU would have stopped reviewing those claims in</p> <p>9 March, 2017?</p> <p>10 A. I'm sorry, where does it tell me that</p> <p>11 they stopped March, 2017?</p> <p>12 Q. Well, it says that's when they</p> <p>13 reviewed them. Let's go a little further. Maybe</p> <p>14 it will be more clear.</p> <p>15 A. Yeah, it wasn't as clear. It didn't</p> <p>16 say stopped at that point, but go ahead.</p> <p>17 Q. Right. So, I mean, implicit in that</p> <p>18 is that -- that there was -- that they didn't</p> <p>19 continue after March, 2017. Would you agree or</p> <p>20 you disagree about that?</p> <p>21 A. Now -- well -- well, let me read it</p> <p>22 myself again because I -- that's not what I got</p> <p>23 out of it. So I'll tell you one thing that</p> <p>24 surprised me here though is that "January 20th,</p> <p>25 2017 to July 31st, 2017 business operations</p>	<p style="text-align: right;">Page 228</p> <p>1 - JAMES MANNING -</p> <p>2 sentence says; "However, the acting Undersecretary</p> <p>3 has not approved or denied these claims." You</p> <p>4 were the under act -- you were the acting</p> <p>5 Undersecretary at that time, right, Mr. Manning?</p> <p>6 A. Not from January 20th but</p> <p>7 from --</p> <p>8 Q. Right. And refresh my memory was</p> <p>9 it --</p> <p>10 A. April, I think, yeah.</p> <p>11 Q. April, okay. Sorry about that.</p> <p>12 A. Then late April. Yes.</p> <p>13 Q. Who was -- was there an Acting</p> <p>14 Undersecretary before you from January to April?</p> <p>15 A. You know, there probably was. I'm</p> <p>16 thinking out loud here. You know, Joe Connolly</p> <p>17 was Acting Deputy Secretary at the beginning.</p> <p>18 Phil Rosenfelt was the Acting Secretary. I don't</p> <p>19 recall who the person was. It could have --</p> <p>20 possibly have been Lynn Haffey who was -- who was</p> <p>21 the Acting Assistant Secretary to secondary for</p> <p>22 Postsecondary Education at the time. She happens</p> <p>23 to be an attorney in OGC now, but I -- I don't</p> <p>24 know at the time who was the Acting</p> <p>25 Undersecretary.</p>
<p style="text-align: right;">Page 227</p> <p>1 - JAMES MANNING -</p> <p>2 continued to receive borrower defense claims" --</p> <p>3 I'm sorry. I was saying that the -- the sentence</p> <p>4 at the beginning of the paragraph "From January</p> <p>5 20, 2017 to July 31, 2017 business operations</p> <p>6 continued to receive borrower defense claims."</p> <p>7 Q. Why does that surprise you, Mr.</p> <p>8 Manning?</p> <p>9 A. Because I, I -- borrower defense</p> <p>10 claims should have been going to -- directly to</p> <p>11 the Borrower Defense Unit.</p> <p>12 Q. Okay.</p> <p>13 A. I wasn't expected to take over</p> <p>14 directly Borrower Defense Unit business</p> <p>15 operations; but beyond that "BD continued to</p> <p>16 review transfer credit and guaranteed employment</p> <p>17 claims, and from January 20, 2017 through May 4,</p> <p>18 2017, BDU continued to review job placement rate</p> <p>19 claims where they were able to make preliminary</p> <p>20 determinations of denial or approval based on</p> <p>21 existing legal memoranda or reports. However, the</p> <p>22 acting Under Secretary has not approve or denied</p> <p>23 these claims."</p> <p>24 Q. I would like to pause right there if</p> <p>25 I could and I appreciate you reading it. The last</p>	<p style="text-align: right;">Page 229</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Okay, let's, let's -- let's go back</p> <p>3 to the document.</p> <p>4 A. Okay.</p> <p>5 Q. What I'm getting from what you read</p> <p>6 so far, is that the BDU was continuing to review</p> <p>7 and receive these claims.</p> <p>8 A. Right.</p> <p>9 Q. And they were able to make</p> <p>10 preliminary determinations of denial or approval.</p> <p>11 A. Right.</p> <p>12 Q. Based on existing legal memoranda or</p> <p>13 reports. However the acting under Secretary has</p> <p>14 not approved or denied these claims, understanding</p> <p>15 that you didn't come into that role or -- or</p> <p>16 position until April, 2017, but by the time of</p> <p>17 this report in December, 2017 certainly you had</p> <p>18 been in -- in that role for several months and I</p> <p>19 want to ask you why you did not approve or deny</p> <p>20 those claims at that time?</p> <p>21 A. Does it say I didn't approve them by</p> <p>22 that time?</p> <p>23 Q. It says "However, the Acting</p> <p>24 Undersecretary has not approved or denied these</p> <p>25 claims" and this report is dated from December,</p>

<p style="text-align: right;">Page 230</p> <p>1 - JAMES MANNING -</p> <p>2 2017.</p> <p>3 A. Okay.</p> <p>4 Q. So the question is, do you know why</p> <p>5 you, at that point in time, had not approved or</p> <p>6 denied those claims?</p> <p>7 A. I -- I don't recall.</p> <p>8 Q. Okay. Were you aware that the BDU</p> <p>9 had made preliminary determinations of denial or</p> <p>10 approval for those claims?</p> <p>11 A. I don't recall when I learned that,</p> <p>12 but I understood that that was what the BDU did.</p> <p>13 Q. That they made preliminary</p> <p>14 determinations of denial or approval?</p> <p>15 A. Yes.</p> <p>16 Q. And so who made the final decisions,</p> <p>17 if their decisions were preliminary?</p> <p>18 A. Well, I guess the approval of the</p> <p>19 Undersecretary apparently.</p> <p>20 Q. Okay, but I -- so did you approve or</p> <p>21 deny claims based on the preliminary</p> <p>22 determinations of the BDU?</p> <p>23 A. Talking about these ones that are</p> <p>24 referenced here? I, I -- I don't recall.</p> <p>25 Q. Okay. How about any preliminary</p>	<p style="text-align: right;">Page 232</p> <p>1 - JAMES MANNING -</p> <p>2 this page that continues on to the next page, I'll</p> <p>3 just read it and we can talk about it.</p> <p>4 A. Okay.</p> <p>5 Q. It says "According to the director of</p> <p>6 BDU, FSA's former Deputy Chief Enforcement Officer</p> <p>7 communicated to the BDU not to submit additional</p> <p>8 claims for approval or to continue developing</p> <p>9 memoranda on additional categories of claims that</p> <p>10 qualify for discharge because the borrower defense</p> <p>11 policies are being reviewed with the change in</p> <p>12 administrations."</p> <p>13 Now, I want to -- that's a long</p> <p>14 sentence. I want to just kind of ask you about</p> <p>15 different pieces of it, if you don't mind.</p> <p>16 A. Sure, and to clarify that begins by</p> <p>17 saying "According to the director of BDU, FSA's</p> <p>18 former Deputy Chief Enforcement Officer</p> <p>19 communicated to the BDU."</p> <p>20 Q. Yes, sir. So let's -- do you know</p> <p>21 who the director of BDU was at that time?</p> <p>22 A. And which dates are we talking about</p> <p>23 there for that?</p> <p>24 Q. I'm talking about -- well, this</p> <p>25 report was written in December, 2017 and I'll just</p>
<p style="text-align: right;">Page 231</p> <p>1 - JAMES MANNING -</p> <p>2 determinations -- did you make, did you approve or</p> <p>3 deny claims based on other claims, any other</p> <p>4 claims for borrower defense based on the BDU</p> <p>5 preliminary determination?</p> <p>6 MR. MERRITT: Objection, asked and</p> <p>7 answered.</p> <p>8 MR. JARAMILLO: Well, I don't think</p> <p>9 he answered. He answered -</p> <p>10 MR. MERRITT: We've gone through</p> <p>11 several -- sorry.</p> <p>12 MR. JARAMILLO: He answered about the</p> <p>13 particular claims that are listed here and</p> <p>14 I'm asking beyond that about any claims.</p> <p>15 MR. MERRITT: We've gone through this</p> <p>16 several times what his memory of approving or</p> <p>17 denying borrower defense claims during his</p> <p>18 tenure but you can answer the question, Mr.</p> <p>19 Manning.</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall whether you approved</p> <p>22 or denied any claims based on preliminary</p> <p>23 determinations from the BDU?</p> <p>24 A. I -- I don't -- do not recall.</p> <p>25 Q. Okay. Now, the last sentence on</p>	<p style="text-align: right;">Page 233</p> <p>1 - JAMES MANNING -</p> <p>2 say that my understanding was it was Collin Nevin</p> <p>3 was the director of BDU at that time; was that</p> <p>4 your understanding?</p> <p>5 A. Well, Colleen was the director of --</p> <p>6 of BDU after the gentleman left -- someone should</p> <p>7 help me with that name -- and -- and Laura Kim was</p> <p>8 -- was the top two folks left, yes, that's correct</p> <p>9 that Colleen Nevin became direct -- was definitely</p> <p>10 director of BDU.</p> <p>11 Q. Do you take the sentence to be</p> <p>12 referring to Colleen Nevin when it says director</p> <p>13 of BDU?</p> <p>14 A. If we -- reading it from the</p> <p>15 assumption that this is as of, you know, December</p> <p>16 8th then -- I just don't remember specifically</p> <p>17 when she became the director of BDU.</p> <p>18 Q. Okay, and then it says "FSA's former</p> <p>19 Deputy Chief Enforcement Officer communicated to</p> <p>20 the BDU not to submit additional claims for</p> <p>21 approval."</p> <p>22 A. Right.</p> <p>23 Q. Are you aware of that communication?</p> <p>24 Were you aware of that communication when you were</p> <p>25 at the Department?</p>

<p style="text-align: right;">Page 234</p> <p>1 - JAMES MANNING -</p> <p>2 A. I wasn't aware of it when it occurred</p> <p>3 that former Deputy Chief Enforcement Officer</p> <p>4 communicated to BDU not to submit additional</p> <p>5 claims.</p> <p>6 Q. Did you ever become aware of that</p> <p>7 communication?</p> <p>8 A. Apparently when I read this, I must</p> <p>9 have become aware of it, but I skimmed over it. I</p> <p>10 don't recall but --</p> <p>11 Q. Did you direct FSA's former Deputy</p> <p>12 Chief Enforcement Officer to communicate to BDU</p> <p>13 not to submit additional claims for approval?</p> <p>14 A. I don't remember anything like that.</p> <p>15 Q. Do you --</p> <p>16 MR. MERRITT: Joe, we -- oh, sorry.</p> <p>17 MR. JARAMILLO: Go ahead.</p> <p>18 MR. MERRITT: I was going to say</p> <p>19 we've gone for a little over an hour again.</p> <p>20 We missed our break window, sometime soon.</p> <p>21 MR. JARAMILLO: All right. Let's</p> <p>22 unpack this sentence a little bit and then</p> <p>23 we'll take our break. I don't think it will</p> <p>24 take that long.</p> <p>25 THE WITNESS: Sure.</p>	<p style="text-align: right;">Page 236</p> <p>1 - JAMES MANNING -</p> <p>2 Manning.</p> <p>3 So your answer is you don't know.</p> <p>4 You're telling me that as you sit here today you</p> <p>5 don't remember one way or another whether you</p> <p>6 directed FSA to stop issuing decisions for</p> <p>7 approval?</p> <p>8 A. I don't have any recollection of</p> <p>9 relaying that information to the former Deputy</p> <p>10 Chief Enforcement Officer to, to -- to relay; and</p> <p>11 if I had I -- I expect that I would remember that,</p> <p>12 but I have no recollection of doing anything like</p> <p>13 that. That's outside of a normal procedure.</p> <p>14 Q. Now, let's put aside the relaying</p> <p>15 information. I want to just back up because my</p> <p>16 question really was focused on whether you</p> <p>17 directed FSA to stop issuing decisions for</p> <p>18 approval.</p> <p>19 A. I --</p> <p>20 Q. Did you?</p> <p>21 A. I don't recall doing that, no, but I</p> <p>22 don't see that reference or inference being made</p> <p>23 here.</p> <p>24 Q. I'm not asking for an inference. I'm</p> <p>25 kind of backing up for now because I don't want to</p>
<p style="text-align: right;">Page 235</p> <p>1 - JAMES MANNING -</p> <p>2 MR. JARAMILLO: All right.</p> <p>3 Q. Do you have any idea who would have</p> <p>4 made a decision to communicate to the BDU not to</p> <p>5 submit additional claims for approval?</p> <p>6 A. I don't know. I can't tell from</p> <p>7 this. I -- I read this and --</p> <p>8 Q. At this time, sir. I'm just asking</p> <p>9 for your memory.</p> <p>10 A. Well, I, I, I -- I know, but I read</p> <p>11 this and the "FSA's former Deputy Chief</p> <p>12 Enforcement Officer communicated to the BDU not to</p> <p>13 submit additional claims." According to the</p> <p>14 director of BDU, FSA's former Deputy Chief</p> <p>15 Enforcement Officer communicated to the BDU not to</p> <p>16 submit additional claims for approval or to</p> <p>17 continue developing memoranda."</p> <p>18 It goes on, but the confusion for me</p> <p>19 here is that former Deputy Chief Enforcement</p> <p>20 Officer, I mean is -- is that Laura Kim? Is that</p> <p>21 who we're talking about, communicating to the --</p> <p>22 the BDU to Colleen Nevin not to submit additional</p> <p>23 claims? On whose authority was that? I don't</p> <p>24 know. I can't tell by reading this.</p> <p>25 Q. Those are precisely my questions, Mr.</p>	<p style="text-align: right;">Page 237</p> <p>1 - JAMES MANNING -</p> <p>2 get caught up in, in the -- you know -- in the</p> <p>3 relay of information.</p> <p>4 I just --- really just the important</p> <p>5 part of this for my purposes is to know whether</p> <p>6 you directed FSA to stop issuing decisions for</p> <p>7 approval and your answer was you don't recall; is</p> <p>8 that correct?</p> <p>9 A. I don't recall.</p> <p>10 Q. Could you have directed FSA to stop</p> <p>11 issuing decisions for approval?</p> <p>12 A. When are we talking about, what date?</p> <p>13 As what?</p> <p>14 Q. Any time -- any time in your tenure</p> <p>15 as Acting Undersecretary, could you have directed</p> <p>16 FSA to stop issuing decisions for approval?</p> <p>17 A. Well, would I have had the legal</p> <p>18 authority? I'm not -- it's not clear to me that I</p> <p>19 would have to do that and would have done that.</p> <p>20 Q. It's not clear to you whether you had</p> <p>21 the legal authority to do that?</p> <p>22 A. I would have to -- to consult with</p> <p>23 the attorneys at OGC to be clear on that.</p> <p>24 Q. Did you ever direct that no more</p> <p>25 decisions for borrower defense be issued?</p>

<p style="text-align: right;">Page 238</p> <p>1 - JAMES MANNING -</p> <p>2 A. I have no recollection of ever saying</p> <p>3 that.</p> <p>4 Q. Is that something that you would have</p> <p>5 had the authority to do?</p> <p>6 A. As I said, I would want to check with</p> <p>7 the OGC to confirm that before I made a statement</p> <p>8 like that.</p> <p>9 Q. Did you ever check with OGC about</p> <p>10 that issue?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Did you ever check with anybody about</p> <p>13 that issue of being able to direct that no more</p> <p>14 decisions by borrower defense be issued?</p> <p>15 A. No, I don't remember.</p> <p>16 Q. And it's your testimony that within</p> <p>17 the department, it's office-of-the-general-counsel</p> <p>18 that would know whether or not you had the</p> <p>19 authority to do something like that?</p> <p>20 A. I think checking with the attorneys</p> <p>21 always a good thing to do at the Department of</p> <p>22 Education when you have a question about lawful</p> <p>23 authority.</p> <p>24 Q. Certainly Secretary DeVos would have</p> <p>25 authority to issue such a decision, correct?</p>	<p style="text-align: right;">Page 240</p> <p>1 - JAMES MANNING -</p> <p>2 MR. MERRITT: Objection, asked and</p> <p>3 answered.</p> <p>4 Q. You can answer, sir.</p> <p>5 A. I don't recall ever hearing Secretary</p> <p>6 DeVos say that.</p> <p>7 Q. And you don't recall anybody ever</p> <p>8 saying that Secretary DeVos issued such a</p> <p>9 decision?</p> <p>10 A. That -- I don't recall that.</p> <p>11 Q. You don't have any awareness that she</p> <p>12 issued such a decision?</p> <p>13 MR. MERRITT: Objection, asked and</p> <p>14 answered several times.</p> <p>15 Q. Do you have any awareness, sir, as</p> <p>16 you sit here today that she issued such a</p> <p>17 decision?</p> <p>18 A. Awareness as I sit here today?</p> <p>19 Q. Yes, sir.</p> <p>20 A. Do you have a document here to show</p> <p>21 me this and I can see --</p> <p>22 Q. I'm just asking whether you have any</p> <p>23 awareness, you can tell me --</p> <p>24 A. No, I don't --</p> <p>25 Q. You can tell me --</p>
<p style="text-align: right;">Page 239</p> <p>1 - JAMES MANNING -</p> <p>2 A. I -- I expect that is correct.</p> <p>3 Q. Did the Secretary ever direct FSA</p> <p>4 that no mire borrower defense decisions should be</p> <p>5 issued?</p> <p>6 A. I never heard her say that.</p> <p>7 Q. Did you ever see any documents that</p> <p>8 -- implying that she make such a decision?</p> <p>9 A. I never -- I don't recall seeing</p> <p>10 anything like that.</p> <p>11 Q. Did anyone ever tell you that she had</p> <p>12 made such a decision?</p> <p>13 A. I don't recall ever hearing that.</p> <p>14 Q. Did you ever hear Secretary DeVos</p> <p>15 express an interest in stopping borrower defense</p> <p>16 decisions?</p> <p>17 MR. MERRITT: Objection, vague.</p> <p>18 Q. Did you ever come to know that the</p> <p>19 Secretary directed that no decisions on borrower</p> <p>20 defense should be issued?</p> <p>21 A. I don't recall ever hearing that.</p> <p>22 Q. As you sit here today, you're not</p> <p>23 aware of Secretary DeVos ever directing that no</p> <p>24 borrower defense decisions be issued by the</p> <p>25 Department?</p>	<p style="text-align: right;">Page 241</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't have any awareness or</p> <p>3 recollection. No, do not.</p> <p>4 Q. Okay. Now, let's turn back to the</p> <p>5 bottom of Page 3.</p> <p>6 A. Do you mind, could I take two</p> <p>7 minutes.</p> <p>8 MR. JARAMILLO: Oh, I'm sorry, you</p> <p>9 had asked about that earlier. We can go off</p> <p>10 the record.</p> <p>11 THE VIDEOGRAPHER: Off the record.</p> <p>12 The time is 22:09 UTC.</p> <p>13 (Whereupon, there was a brief recess</p> <p>14 in the proceedings.)</p> <p>15 THE VIDEOGRAPHER: We are now on the</p> <p>16 record, the time is 22:22 UTC.</p> <p>17 Q. Mr. Manning, we were looking at Tab 3</p> <p>18 which has been marked as Exhibit 3. That's the</p> <p>19 Inspector General's report and I think when we</p> <p>20 left off, we were at the bottom of Page 3 of the</p> <p>21 report and in a sentence that carried over to Page</p> <p>22 4.</p> <p>23 A. Page 3 -- okay, at the bottom?</p> <p>24 Q. Or if you want to look at the top, it</p> <p>25 would say Page 186 of 270.</p>

<p style="text-align: right;">Page 242</p> <p>1 - JAMES MANNING -</p> <p>2 A. No, I got it. I got it. I got it.</p> <p>3 Q. So that last sentence which is pretty</p> <p>4 long and -- and pretty packed with information,</p> <p>5 the second part of that, when it describes the</p> <p>6 communication from FSA as -- that, you know,</p> <p>7 according to the -- the director of BDU</p> <p>8 communications to the BDU.</p> <p>9 A. Yeah.</p> <p>10 Q. The second part says -- basically</p> <p>11 says that there was a communication not to</p> <p>12 continue developing memoranda and additional</p> <p>13 categories of claims that qualify for discharge</p> <p>14 because the borrower defense policies are being</p> <p>15 reviewed with the change in administration.</p> <p>16 Were you aware of that particular</p> <p>17 decision not to continue developing memoranda?</p> <p>18 A. Well, I -- I wasn't aware that the</p> <p>19 chief enforcement officer had anything to</p> <p>20 communicate period.</p> <p>21 Q. Okay. So -- so you were not aware of</p> <p>22 a communication not to develop legal memoranda?</p> <p>23 A. Not that way it's represented here,</p> <p>24 "the former Deputy Chief Enforcement Officer</p> <p>25 communicated to the BDU not to submit" -- I -- I</p>	<p style="text-align: right;">Page 244</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Giving directions to the Chief</p> <p>3 Enforcement Officer?</p> <p>4 A. In -- in terms of a chain of command</p> <p>5 type of thing, that's the way I would have</p> <p>6 recalled that.</p> <p>7 Q. Okay. Are you aware if the COO of</p> <p>8 FSA made the decision to -- to tell the B-- to</p> <p>9 have the BDU stop developing memoranda?</p> <p>10 A. No. I'm -- I'm not aware of that.</p> <p>11 Q. Are you aware of anyone issuing such</p> <p>12 a decision?</p> <p>13 A. I'm sorry?</p> <p>14 Q. Are you aware of anyone making such a</p> <p>15 decision?</p> <p>16 A. No, I don't -- I don't recall that.</p> <p>17 Q. Do you -- do you ever recall BDU</p> <p>18 stopping their development of memoranda on</p> <p>19 additional categories of claims that qualify for</p> <p>20 discharge?</p> <p>21 A. I don't recall all that.</p> <p>22 Q. Let me turn to Page 193 of 270 in</p> <p>23 this document, which is Tab 3 in Exhibit 3, that</p> <p>24 Inspector General's report.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 243</p> <p>1 - JAMES MANNING -</p> <p>2 don't know whether -- I don't know whether the</p> <p>3 former Deputy Chief Enforcement Officer would</p> <p>4 accept that.</p> <p>5 Q. Were you aware of any decisions to</p> <p>6 tell the BDU to stop developing memoranda and</p> <p>7 additional categories of claims that qualify for</p> <p>8 discharge?</p> <p>9 A. I -- I don't recall that.</p> <p>10 Q. Who in -- in your experience at the</p> <p>11 Department of Education, who would be the person</p> <p>12 at Department of Education that would make such a</p> <p>13 decision to tell the BDU to stop developing</p> <p>14 memoranda on additional categories of claims that</p> <p>15 qualify for discharge?</p> <p>16 A. Well, I don't remember who would be</p> <p>17 the correct person, perhaps what individual.</p> <p>18 Potentially it could be the Undersecretary. It</p> <p>19 might be the COO at FSA. It might be the Chief</p> <p>20 Enforcement Officer relaying that after getting</p> <p>21 direction from someone else.</p> <p>22 Q. After getting direction from someone</p> <p>23 else? Who else?</p> <p>24 A. Well, like -- like the COO or the</p> <p>25 Undersecretary and --</p>	<p style="text-align: right;">Page 245</p> <p>1 - JAMES MANNING -</p> <p>2 Q. At the top of the page, the first</p> <p>3 full sentence says; "FSA established seven</p> <p>4 categories of borrower defense claims that</p> <p>5 supported the cause of action under applicable</p> <p>6 state law and thus qualified the borrowers for a</p> <p>7 loan discharge."</p> <p>8 Were you aware of these seven</p> <p>9 categories when you worked at the Department?</p> <p>10 A. Well, let me take a look at them.</p> <p>11 Okay. This, this -- these are</p> <p>12 familiar. I don't recall specifically all the</p> <p>13 detail, but when it says "FSA established seven</p> <p>14 categories, who is FSA in that reference?</p> <p>15 Q. I'm not -- you know -- I'm not --</p> <p>16 you're -- I'm the one asking the questions so --</p> <p>17 A. I'm sorry, but I'm reading this and</p> <p>18 I, I -- I don't know what's meant by that so I --</p> <p>19 Q. Okay. You don't know what's meant</p> <p>20 FSA, Federal Student Aid?</p> <p>21 A. "FSA established seven categories."</p> <p>22 Well, some -- I mean, there are human beings that,</p> <p>23 you know, worked on that. I -- I'm trying to, you</p> <p>24 know, envision -- you know -- there -- there are</p> <p>25 plenty of folks that work at FSA that are capable</p>

<p style="text-align: right;">Page 246</p> <p>1 - JAMES MANNING -</p> <p>2 of doing this, of writing this.</p> <p>3 But, you know, it's like, as I</p> <p>4 mentioned earlier, importance of chain of command</p> <p>5 a few minutes ago, I would like to know who the</p> <p>6 responsible people are and to be able to go to</p> <p>7 them; and so I read this, I see "FSA established"</p> <p>8 and my first question is okay, who do I talk to</p> <p>9 there?</p> <p>10 Q. Who would you talk to?</p> <p>11 A. Well, I'd -- I'd start with, you</p> <p>12 know, the -- the COO at FSA, an explanation as to</p> <p>13 what this is, you know, and where did it come</p> <p>14 from.</p> <p>15 Q. Because the leadership makes the</p> <p>16 decisions, right?</p> <p>17 MR. MERRITT: Objection, overbroad.</p> <p>18 Q. You said human -- you want to talk to</p> <p>19 a human being. It's not an organization that</p> <p>20 makes the decision; it's the human being, correct?</p> <p>21 A. Well, it's a human being of several</p> <p>22 human beings in a group of human beings, but it's</p> <p>23 -- it's ul -- ultimately you can identify folks</p> <p>24 that were part of the, you know, conversation and</p> <p>25 discussion and decision and good to know the</p>	<p style="text-align: right;">Page 248</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Could the BDU adjudicate applications</p> <p>3 from borrowers whose claims did not fall within</p> <p>4 the categories of -- the seven categories?</p> <p>5 MR. MERRITT: Objection, ambiguous on</p> <p>6 timing.</p> <p>7 Q. During your tenure at the Department.</p> <p>8 A. I -- I don't recall.</p> <p>9 Q. So to your recollection, was it</p> <p>10 possible for the BDU to adjudicate claims that</p> <p>11 involved pools that were not mentioned in these</p> <p>12 seven categories?</p> <p>13 A. I -- I don't recall.</p> <p>14 Q. Do you know if during your tenure the</p> <p>15 Department ever adopted any one of these seven</p> <p>16 categories?</p> <p>17 A. They -- They look familiar, but I</p> <p>18 can't, you know, state that they -- whether any of</p> <p>19 them were specifically adopted. I would need to</p> <p>20 get more information.</p> <p>21 Q. Okay, and you -- and you looked</p> <p>22 through the -- each of the seven categories as</p> <p>23 they're described there, correct?</p> <p>24 A. Generally, yeah. I mean job</p> <p>25 placement (unintelligible) -- yes. Yes, I looked</p>
<p style="text-align: right;">Page 247</p> <p>1 - JAMES MANNING -</p> <p>2 answer to who they are; so it's sufficient to say</p> <p>3 they established.</p> <p>4 Q. Okay. So for this particular</p> <p>5 sentence, you would talk to -- you would start</p> <p>6 with the COO who was A. Wayne Johnson at the time?</p> <p>7 A. Was the COO at the time this was</p> <p>8 issued, yes.</p> <p>9 Q. You would start with Mr. Johnson,</p> <p>10 right?</p> <p>11 A. Yes, but I'm also trying to figure</p> <p>12 out when this particular act was supposed to have</p> <p>13 taken place.</p> <p>14 Q. Okay, it's not -- it's really not</p> <p>15 that important, so I'm going to have you put the</p> <p>16 document down, if you will.</p> <p>17 A. Okay, it's down.</p> <p>18 Q. So your understanding of the borrower</p> <p>19 defense review process, could the Borrower Defense</p> <p>20 Unit adjudicate applications from borrowers whose</p> <p>21 claims did not fall within the established</p> <p>22 categories that support -- the claims that</p> <p>23 supported a cause of action under applicable state</p> <p>24 law?</p> <p>25 A. Re -- repeat the question.</p>	<p style="text-align: right;">Page 249</p> <p>1 - JAMES MANNING -</p> <p>2 at them.</p> <p>3 Q. Okay. And you -- and you saw that</p> <p>4 each of these categories that describes the</p> <p>5 particular document or memoranda with -- that that</p> <p>6 provides the grounds for each of the categories?</p> <p>7 A. Well, yes, I can see that. There are</p> <p>8 -- as I look at this, there are more questions</p> <p>9 that are raised I'd be asking yes.</p> <p>10 Heald College transfer of credit rate</p> <p>11 misrepresentation claims based on a May, 2015</p> <p>12 memorandum. Was that May, 2015 memorandum</p> <p>13 superseded by a -- another action.</p> <p>14 Q. Do -- do you know?</p> <p>15 A. I believe it was, but I'm not -- I</p> <p>16 don't -- can't say authoritatively that --</p> <p>17 Q. Okay, and why do you believe it was</p> <p>18 superseded?</p> <p>19 A. I might be confusing it with</p> <p>20 something else.</p> <p>21 Q. Would you agree that all of these</p> <p>22 seven categories were established by memoranda</p> <p>23 that were drafted during the prior administration;</p> <p>24 prior to -- in other words, the Obama</p> <p>25 Administration?</p>

<p style="text-align: right;">Page 250</p> <p>1 - JAMES MANNING -</p> <p>2 A. I, I -- I can't be sure that they</p> <p>3 were all drafted during the Obama Administration.</p> <p>4 I spent six years in the Obama</p> <p>5 Administration. The -- questions in my mind are</p> <p>6 raised about the ones that were based on the</p> <p>7 January '17 memorandum.</p> <p>8 Q. Okay, the question is because January</p> <p>9 1st through 19th was the Obama Administration and</p> <p>10 January 20th afterwards was the Trump</p> <p>11 Administration?</p> <p>12 A. Correct.</p> <p>13 Q. So in your mind, it's not clear to</p> <p>14 you whether the memorandum reference that -- that</p> <p>15 had a January, 2017 date were in -- which</p> <p>16 administration they were in?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 A. Is it clear to you?</p> <p>20 Q. I'm sorry? Go ahead.</p> <p>21 A. Is it clear to you?</p> <p>22 Q. Well, I'm not -- you're not -- I'm</p> <p>23 not answering the questions here today. I just</p> <p>24 want to know your knowledge.</p> <p>25 So, I mean, I'll -- I'll represent to</p>	<p style="text-align: right;">Page 252</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay. Are you aware that in</p> <p>4 November, 2017 COO Johnson of FSA prepared --</p> <p>5 addressed to Christopher Gamble, Regional</p> <p>6 Inspector General for Audit of the U.S. Department</p> <p>7 of Education, a response to the draft review</p> <p>8 report that we're looking at?</p> <p>9 A. Was I aware? I -- I don't recall</p> <p>10 that, but I expect that that was possible that</p> <p>11 was -- that's correct, but I don't know with</p> <p>12 certainty.</p> <p>13 It was -- the report was addressed to</p> <p>14 Wayne Johnson and it was asked that to send a</p> <p>15 response to Gamble and apparently what you're</p> <p>16 talking about is a letter that he sent, is that</p> <p>17 right. I haven't seen that letter --</p> <p>18 Q. All right.</p> <p>19 A. -- at least not recently.</p> <p>20 Q. Right. Did you -- did you work with</p> <p>21 Mr. Johnson on any such response?</p> <p>22 A. I -- I don't recall working with him</p> <p>23 on that letter. I might have seen it in -- in</p> <p>24 drafts, but I don't recall that either.</p> <p>25 Q. I'll have you turn to Page 30 of this</p>
<p style="text-align: right;">Page 251</p> <p>1 - JAMES MANNING -</p> <p>2 you that they were -- none of these were adopted</p> <p>3 or, you know, drafted and put into effect during</p> <p>4 -- during the Trump Administration. They're all</p> <p>5 from the Obama Administration.</p> <p>6 Did the Trump Administration or the</p> <p>7 Department during your tenure ever retract any of</p> <p>8 these -- the memos for these categories?</p> <p>9 A. I don't know.</p> <p>10 Q. Are you aware of any memoranda</p> <p>11 regarding borrower defense written during the</p> <p>12 Trump Administration?</p> <p>13 A. Any -- any mem -- memoranda on</p> <p>14 borrower defense written during Trump</p> <p>15 Administration?</p> <p>16 Q. Yes.</p> <p>17 A. I can't specifically recall. I would</p> <p>18 expect there were things written.</p> <p>19 Q. Are you aware of any eligibility</p> <p>20 categories beyond the seven listed here that were</p> <p>21 created during the Trump Administration?</p> <p>22 A. I don't recall.</p> <p>23 Q. You don't know one way or the other</p> <p>24 whether there were any additional categories</p> <p>25 created?</p>	<p style="text-align: right;">Page 253</p> <p>1 - JAMES MANNING -</p> <p>2 report or if you look at the top of Page 213 of</p> <p>3 270 and the top of it says "Appendix C: FSA</p> <p>4 Comments."</p> <p>5 A. 213 of 270, I got it. Yeah, okay so</p> <p>6 this is the document letter that you were talking</p> <p>7 about.</p> <p>8 Q. Have you seen this before?</p> <p>9 A. I -- I don't know. I'll take a look</p> <p>10 at it and see if I can refresh my memory.</p> <p>11 Q. All right, fair enough. I don't want</p> <p>12 you to read it line by line, but if you could --</p> <p>13 A. I don't know whether I can say I saw</p> <p>14 it or did not.</p> <p>15 Q. Yeah, there you go, Mr. Manning. You</p> <p>16 know, I'm trying to -- we don't want this to be a</p> <p>17 basketball game, you know, with the last fifteen</p> <p>18 seconds, you know --</p> <p>19 A. I have a ball if you want to play</p> <p>20 though.</p> <p>21 Q. I see it, but let's take a look at</p> <p>22 this and let me know if you've seen the Appendix C</p> <p>23 document, FSA comments before.</p> <p>24 Have you had a good enough glance,</p> <p>25 Mr. Manning, to let us know whether you've seen</p>

<p style="text-align: right;">Page 254</p> <p>1 - JAMES MANNING -</p> <p>2 this before?</p> <p>3 A. And the entire letter is just this</p> <p>4 one page, right.</p> <p>5 Q. Well, no. It's, it's -- I think</p> <p>6 Appendix C goes on for several pages and I can --</p> <p>7 A. The Wayne Johnson letter is it -- was</p> <p>8 all --</p> <p>9 Q. Oh, are you -- you're not looking at</p> <p>10 Page 30 of the report. You're now back to the</p> <p>11 beginning of the report with the cover letter; is</p> <p>12 that what you're doing, Mr. Manning?</p> <p>13 A. I'm looking at Page 30 --</p> <p>14 Q. Yes.</p> <p>15 A. -- of the report. It's the November</p> <p>16 29, 2017 memo from Wayne Johnson to Christopher</p> <p>17 Gamble, SIG.</p> <p>18 Q. There you go. So have you seen this</p> <p>19 document before or does it look familiar?</p> <p>20 A. I don't recall seeing it before, but</p> <p>21 I very well could have.</p> <p>22 Q. Okay. Thank you.</p> <p>23 I want to have you look at Page 31</p> <p>24 and there's a Footnote 17.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 256</p> <p>1 - JAMES MANNING -</p> <p>2 whether it's vague or ambiguous has nothing</p> <p>3 to do with whether it would be relevant to</p> <p>4 the topics the court ordered discovery on.</p> <p>5 MR. JARAMILLO: I think we need to,</p> <p>6 to -- to explore this topic.</p> <p>7 Are you going to instruct him not to</p> <p>8 answer or let him answer it.</p> <p>9 MR. MERRITT: I'll just note, it's a</p> <p>10 year before the delay began -- or, sorry, a</p> <p>11 few months before the delay began. I'm not</p> <p>12 going to instruct him not to answer yet, but</p> <p>13 I wanted to lay down a mark on this line of</p> <p>14 questioning.</p> <p>15 MR. JARAMILLO: So he can answer the</p> <p>16 question.</p> <p>17 MR. MERRITT: He can answer the</p> <p>18 question.</p> <p>19 Q. Mr. Manning, this footnote refers to</p> <p>20 a claim approval memo. Are you aware of any such</p> <p>21 document?</p> <p>22 A. I don't recall.</p> <p>23 Q. Are you aware of any approval from</p> <p>24 OUS?</p> <p>25 A. Regarding what --</p>
<p style="text-align: right;">Page 255</p> <p>1 - JAMES MANNING -</p> <p>2 Q. All right. I'm just going to read it</p> <p>3 and ask you about it --</p> <p>4 A. Go ahead.</p> <p>5 Q. -- to see if you know about it.</p> <p>6 Footnote 17 says, "The Report suggests OIG</p> <p>7 misunderstood the legal memoranda approval process</p> <p>8 to require that OUS find any legal memorandum that</p> <p>9 provided the legal framework to approve a</p> <p>10 particular type of claim. That was not the</p> <p>11 process. OUS's approval is found on the claim</p> <p>12 'Approval Memos' not on the legal memoranda."</p> <p>13 Are you aware of -- of any such claim</p> <p>14 approval memos in which the Office of the</p> <p>15 Undersecretary registered its approval?</p> <p>16 MR. MERRITT: Objection. This is</p> <p>17 beyond the scope of the court-ordered</p> <p>18 discovery.</p> <p>19 MR. JARAMILLO: Are you instructing</p> <p>20 him not to answer the question because this</p> <p>21 is a pretty vague and ambiguous description</p> <p>22 here and I would think he could give us some</p> <p>23 clarity and it may, in fact, relate to why</p> <p>24 there was a delay.</p> <p>25 MR. MERRITT: I would say that</p>	<p style="text-align: right;">Page 257</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Regarding borrower -- borrower</p> <p>3 defense decisions during your tenure.</p> <p>4 A. So that question has nothing to do</p> <p>5 with the 17th Footnote, is that correct? I'm</p> <p>6 confused.</p> <p>7 Q. Yeah, well, no. I mean, listen, you</p> <p>8 -- you don't know about the 17th Footnote so let's</p> <p>9 put that in the past and I'm just asking you if</p> <p>10 you're aware of any memo that OUS would issue</p> <p>11 during your tenure at the Department that concerns</p> <p>12 approval for a decision that had anything to do</p> <p>13 with borrowers defense?</p> <p>14 A. I do not.</p> <p>15 Q. Okay. If you could, turn to Page 33.</p> <p>16 There's the heading that -- are you there, Mr.</p> <p>17 Manning?</p> <p>18 A. I am. Thank you. Thantingview of</p> <p>19 Claims" in the middle of that paragraph, I'm just</p> <p>20 going to read it. "However, BDU's proposed</p> <p>21 protocols for addressing claims that are unique or</p> <p>22 unsupported by existing legal memos were included</p> <p>23 in the February 2017 'Borrower Defense Unit Claims</p> <p>24 Review Protocol' document presented to the landing</p> <p>25 team."</p>

12/17/2020

258 to 261

<p style="text-align: right;">Page 258</p> <p>1 - JAMES MANNING -</p> <p>2 Does that refresh your recollection</p> <p>3 about whether you, in your capacity on the landing</p> <p>4 team, saw a Borrower Defense Unit Claims Review</p> <p>5 Protocol?</p> <p>6 A. Well, they were included in the</p> <p>7 February, 2017 Borrower Defense Unit Claims Review</p> <p>8 Protocol.</p> <p>9 Q. I really just want to know if you saw</p> <p>10 any such Borrower Defense Unit Claims --</p> <p>11 A. I don't recall, but I'm telling you</p> <p>12 I'm also confused about what we're talking about</p> <p>13 February, 2017, a document presented to the</p> <p>14 landing team. There was no landing team February,</p> <p>15 '17.</p> <p>16 Q. Okay. When did the landing team stop</p> <p>17 its --</p> <p>18 A. Well, I, I -- who was the landing</p> <p>19 team then? Some of us were already -- we sat in</p> <p>20 on the first and were -- I don't recall.</p> <p>21 I'm, I'm, I'm -- I'm reading this</p> <p>22 and it confused me and I -- presented to the</p> <p>23 landing team --</p> <p>24 Q. I understand, Mr. Manning. It sounds</p> <p>25 like, to your recollection, by that time in</p>	<p style="text-align: right;">Page 260</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Well, sir, I'm going to -- because</p> <p>3 this report was in December, 2017 I'm -- let's</p> <p>4 assume -- let's just assume for purposes of the</p> <p>5 question that this is talking about August, 2017.</p> <p>6 A. Okay. I don't recall.</p> <p>7 Q. All right, you don't recall -- okay,</p> <p>8 and you were act -- and just to be clear: In</p> <p>9 August of 2017 you were the acting Undersecretary,</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And would there be anyone else at OUS</p> <p>13 that would agree with OGC and FSA on a procedure</p> <p>14 to deny claims at that time?</p> <p>15 A. I don't think there would be anyone</p> <p>16 else in the Office of the Undersecretary that</p> <p>17 would have had that authority, no.</p> <p>18 Q. All right. Only you would have had</p> <p>19 that authority, correct?</p> <p>20 A. In OUS, correct.</p> <p>21 Q. All right. Well, let me back up --</p> <p>22 well, let me get through this document.</p> <p>23 A. I don't know if -- above it talks</p> <p>24 about the -- I was just -- I guess I'm not</p> <p>25 supposed to ask questions though, right?</p>
<p style="text-align: right;">Page 259</p> <p>1 - JAMES MANNING -</p> <p>2 February, 2017 the landing team had stopped its</p> <p>3 work and the new administration was in full swing?</p> <p>4 A. Well, yes. Yes, that's my instinct,</p> <p>5 but could it formally exist still with members</p> <p>6 that were on the landing team that were -- I -- I</p> <p>7 don't know, but in -- in principle there could</p> <p>8 have been; but when we say it was presented to the</p> <p>9 landing team, that doesn't tell me to who it was</p> <p>10 presented and --</p> <p>11 Q. Okay, and if you look under Item 3,</p> <p>12 "Processing of Claims Flagged for Denial" --</p> <p>13 A. Yes.</p> <p>14 Q. -- I'm just going to read it for you.</p> <p>15 "The Report also cites as a weakness that 'BDU did</p> <p>16 not have a process for closing out and issuing</p> <p>17 decisions on borrower defense claims it flagged</p> <p>18 for denial.' As described above with respect to</p> <p>19 the review of unique claims, no procedures had</p> <p>20 been submitted to the previous administration for</p> <p>21 approval and these claims were not being</p> <p>22 processed. In August OUS, OGC, and FSA agreed on</p> <p>23 a procedure to deny claims."</p> <p>24 Do you recall --</p> <p>25 A. August when, what year in August?</p>	<p style="text-align: right;">Page 261</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Well, is there something you want to</p> <p>3 say, Mr. Manning?</p> <p>4 A. Well, I'm just trying to be clear on</p> <p>5 when things were done and the -- well, in the</p> <p>6 paragraph above it -- it talks about the review</p> <p>7 panel to make recommendations to the Secretary on</p> <p>8 how to address defense claims.</p> <p>9 Q. Okay, Mr. Manning, let's move on. If</p> <p>10 we could go to Page 34 and just to kind of keep it</p> <p>11 pointed, I'm just going to read to you the second</p> <p>12 to the last sentence in the first paragraph of</p> <p>13 that Page 34; and I'll just represent to you that</p> <p>14 this is talking about that -- the review panel</p> <p>15 that looked at borrower defense.</p> <p>16 A. Okay.</p> <p>17 Q. I'm just going to read it. It says,</p> <p>18 "The panel's work also laid the foundation to</p> <p>19 approve new claims."</p> <p>20 Are you aware of the Borrower Review</p> <p>21 Defense Panel laying a foundation to approve new</p> <p>22 claims?</p> <p>23 A. I don't have any specific</p> <p>24 recollection, but that was kind of what we hoped</p> <p>25 they would do and I don't -- I don't have any</p>

<p style="text-align: right;">Page 262</p> <p>1 - JAMES MANNING -</p> <p>2 specific recollection.</p> <p>3 Q. Who would know from the Borrower</p> <p>4 Review Defense Panel about this issue of laying</p> <p>5 the foundation to approving claims?</p> <p>6 A. Well, Joe Connolly was the convenor</p> <p>7 of that panel. He was then Acting Deputy</p> <p>8 Secretary. He might recall. Phil Rosenfelt might</p> <p>9 recall. I'm not sure if Joe Schmoke -- Joe</p> <p>10 Schmoke is still at the Department.</p> <p>11 Q. Okay. If you could look in the same</p> <p>12 page underneath "Recommendation 1," I'm just going</p> <p>13 to read it.</p> <p>14 "Request approval from the Acting</p> <p>15 Undersecretary to resume the review, approval, and</p> <p>16 discharge processes for claims qualifying under</p> <p>17 the seven established categories, including claims</p> <p>18 that have been flagged for approval.</p> <p>19 We agree with this recommendation.</p> <p>20 Pursuant to OUS' May 4th, 2017 memorandum to the</p> <p>21 Secretary, OUS, and the Chief Financial Officer's</p> <p>22 Internal Control's Unit, CFOICU are working with</p> <p>23 FSA to 'develop interim procedures' to review</p> <p>24 claims."</p> <p>25 Do you recall, as Acting</p>	<p style="text-align: right;">Page 264</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you recall anything about interim</p> <p>4 procedures to review claims?</p> <p>5 A. I, I -- I don't recall, no.</p> <p>6 Q. Okay. If we the look at</p> <p>7 "Recommendation 2" on Page 34, I'm going to read</p> <p>8 it.</p> <p>9 "Request approval from the Acting</p> <p>10 Undersecretary to resume consideration and</p> <p>11 determination of whether additional categories of</p> <p>12 claims with common facts qualifies for discharge.</p> <p>13 We agree with this recommendation. And with</p> <p>14 respect to our response to Recommendation 1, we</p> <p>15 will work with the CFOICU to strengthen BDU's</p> <p>16 processes and protocols so the work on these</p> <p>17 claims can proceed."</p> <p>18 Do you recall receiving a request for</p> <p>19 approval to resume consideration and determination</p> <p>20 of whether additional categories of claims with</p> <p>21 common facts qualify for discharge?</p> <p>22 A. I -- I don't recall.</p> <p>23 Q. Okay, and so you do recall that this</p> <p>24 document we're looking at is from A. Wayne</p> <p>25 Johnson, correct? The particular response to</p>
<p style="text-align: right;">Page 263</p> <p>1 - JAMES MANNING -</p> <p>2 Undersecretary, working with FSA to develop</p> <p>3 interim procedures to review claims?</p> <p>4 A. Well, I would say this is to -- to</p> <p>5 work on the establishment of the methodology.</p> <p>6 Q. So you think the interim procedures</p> <p>7 just to review claims actually meant the</p> <p>8 development of a relief methodology?</p> <p>9 MR. MERRITT: Objection, asked and</p> <p>10 answered including when we discussed this</p> <p>11 memorandum before.</p> <p>12 Q. You can answer the question.</p> <p>13 A. Well, let me take another look at it.</p> <p>14 I'm getting a little tired and I have -- you know</p> <p>15 -- to be careful reading.</p> <p>16 Q. Understood.</p> <p>17 A. Well, I can't say this was intended</p> <p>18 to say what I -- what we're saying.</p> <p>19 I will -- I will say that the -- that</p> <p>20 some of the same -- some of the same people were</p> <p>21 working on the -- the methodology, but this is</p> <p>22 something outside of that so, no.</p> <p>23 Q. Was -- was this the development of</p> <p>24 interim procedures to review claims pending the</p> <p>25 development of a new methodology?</p>	<p style="text-align: right;">Page 265</p> <p>1 - JAMES MANNING -</p> <p>2 Christopher Gamble from A. Wayne Johnson; is that</p> <p>3 correct?</p> <p>4 A. The -- the response, the letter is</p> <p>5 from Wayne Johnson.</p> <p>6 Q. And that -- that's what we're looking</p> <p>7 at here. Page 34, do you understand that this was</p> <p>8 part of Mr. Johnson's response?</p> <p>9 A. No, I'm -- no.</p> <p>10 Q. You don't understand that, Mr.</p> <p>11 Manning? What do you think -- as it says, Mr.</p> <p>12 Manning, there is a recommendation in bold and</p> <p>13 then there's a response. Who do you think drafted</p> <p>14 the response?</p> <p>15 A. I don't know -- confused myself. It</p> <p>16 is from Wayne Johnson, you're right.</p> <p>17 Q. Okay, and Wayne Johnson agreed with</p> <p>18 this recommendation, correct, approval should be</p> <p>19 requested from you; is that right?</p> <p>20 A. On which question?</p> <p>21 Q. "Recommendation 2: Request approval</p> <p>22 from the acting Undersecretary to resume</p> <p>23 consideration and determination of whether</p> <p>24 additional categories of claims with common facts</p> <p>25 qualify for discharge."</p>

12/17/2020

266 to 269

<p style="text-align: right;">Page 266</p> <p>1 - JAMES MANNING -</p> <p>2 The response listed here says "We</p> <p>3 agree with this recommendation?"</p> <p>4 Doesn't that signal to you, Mr.</p> <p>5 Manning, that Mr. Johnson is acting -- as COO of</p> <p>6 FSA is agreeing to request approval from you to</p> <p>7 "resume consideration and determination of whether</p> <p>8 additional categories of claims with common facts</p> <p>9 qualify for discharge"?</p> <p>10 A. I don't recall receiving anything</p> <p>11 from Wayne specific to this.</p> <p>12 Q. Okay. Do you recall receiving</p> <p>13 anything from anybody specific to this?</p> <p>14 A. No, I don't recall.</p> <p>15 Q. If can look at Footnote Number 21 at</p> <p>16 the bottom of this Page 34. I'm just going to</p> <p>17 read it. "We want to clarify statement in the</p> <p>18 Report regarding the pause in submitting claims</p> <p>19 for approval and in developing additional</p> <p>20 memoranda for new categories of claims that</p> <p>21 qualify for discharge. Although the Report</p> <p>22 suggests that the Deputy Chief Enforcement Officer</p> <p>23 made a decision to stay this work, we wanted to</p> <p>24 clarify that the Deputy Chief Enforcement Officer</p> <p>25 actually just communicated to the Director of BDU</p>	<p style="text-align: right;">Page 268</p> <p>1 - JAMES MANNING -</p> <p>2 Q. And is it your understanding that</p> <p>3 borrower defense is a matter of policy?</p> <p>4 A. Borrower de -- borrower defense is a</p> <p>5 matter of policy?</p> <p>6 Q. Is that your understanding?</p> <p>7 A. I -- I'm not sure that I -- I</p> <p>8 understand what you mean when you say that.</p> <p>9 Q. Was the Department's policy during</p> <p>10 your tenure at Department of Education to</p> <p>11 implement a -- to have a program for borrowers to</p> <p>12 discharge their federal student loans based on</p> <p>13 borrower defense to repayment policies?</p> <p>14 A. Yes.</p> <p>15 Q. And -- and how was that a matter of</p> <p>16 policy?</p> <p>17 A. I -- I don't understand where you're</p> <p>18 coming from on that.</p> <p>19 Q. That's okay. Earlier we did have a</p> <p>20 discussion, if you'll recall, that the Office of</p> <p>21 the Undersecretary was involved in the policy end</p> <p>22 in -- in creating policy and FSA was involved in</p> <p>23 standard operating procedures and implementing</p> <p>24 policy; is that correct?</p> <p>25 A. Generally, and -- but they -- the</p>
<p style="text-align: right;">Page 267</p> <p>1 - JAMES MANNING -</p> <p>2 the guidance and direction provided by OUS and the</p> <p>3 Review Panel."</p> <p>4 So does that refresh your</p> <p>5 recollection about whether or not OUS provided</p> <p>6 guidance and direction to the BDU to pause</p> <p>7 submitting claims for approval?</p> <p>8 A. The direction provided by OUS to the</p> <p>9 Review Panel.</p> <p>10 Q. And does that refresh your</p> <p>11 recollection about providing the guidance and</p> <p>12 direction?</p> <p>13 A. No, it doesn't.</p> <p>14 Q. Okay. What about providing direction</p> <p>15 for the development of additional memorandum for</p> <p>16 new categories of claims that qualify for</p> <p>17 discharge, does that refresh your recollection</p> <p>18 that the pause --</p> <p>19 A. I don't recall that either. Sorry.</p> <p>20 Q. Borrower defense was part of your</p> <p>21 portfolio in your tenure at the Department as</p> <p>22 Acting Undersecretary, right?</p> <p>23 A. It was housed at FSA, but OUS oversaw</p> <p>24 all of higher education so, yes, borrower defense</p> <p>25 is under it.</p>	<p style="text-align: right;">Page 269</p> <p>1 - JAMES MANNING -</p> <p>2 Office of the Undersecretary during my tenure --</p> <p>3 I'm trying to remember how many staff people were</p> <p>4 there; two or three, the Secretary, young intern.</p> <p>5 The policy work that it would move forward through</p> <p>6 involving, you know, other members, including the</p> <p>7 Office of Postsecondary Education, FSA, the other</p> <p>8 -- those higher education organizations within</p> <p>9 FSA.</p> <p>10 Q. And, and -- and who was in charge of</p> <p>11 the borrower defense policy at the Department?</p> <p>12 A. I think it was shared responsibility.</p> <p>13 Q. Okay. Who -- who shared the</p> <p>14 responsibility?</p> <p>15 A. All the people that were part of the</p> <p>16 borrower defense review team.</p> <p>17 Q. Anybody else?</p> <p>18 A. Well, the head of -- the Acting</p> <p>19 Deputy Secretary. Generally those people.</p> <p>20 Q. Well, the borrower defense review</p> <p>21 team, wouldn't they be part of FSA in -- involved</p> <p>22 in implementing policy rather than establishing</p> <p>23 and creating policy?</p> <p>24 MR. MERRITT: Objection, misstatement</p> <p>25 of prior testimony.</p>

<p style="text-align: right;">Page 270</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Would the Borrower Defense Unit be in</p> <p>3 charge of creating borrower defense policy or</p> <p>4 would that come from somewhere else in the</p> <p>5 Department?</p> <p>6 A. The Borrower Defense Unit at FSA?</p> <p>7 Q. Yes.</p> <p>8 A. Would they be in charge of developing</p> <p>9 policy?</p> <p>10 Q. Correct.</p> <p>11 A. Without oversight?</p> <p>12 Q. Sure, let's start there. I mean, I'm</p> <p>13 -- I think I have an idea what the answer is, but</p> <p>14 I want to hear it from you.</p> <p>15 A. No, they didn't develop their own</p> <p>16 policy.</p> <p>17 Q. Okay. Who developed their policy</p> <p>18 with regard to borrower defense?</p> <p>19 A. I don't recall all the participants</p> <p>20 who were involved.</p> <p>21 Q. Okay.</p> <p>22 MR. MERRITT: (Unintelligible</p> <p>23 crosstalk) the witness mentioned he was</p> <p>24 tired, so I mean we can go off the record if</p> <p>25 you want to, but I just want to ask for a</p>	<p style="text-align: right;">Page 272</p> <p>1 - JAMES MANNING -</p> <p>2 ask you a few more questions and then we'll</p> <p>3 take the break and then we'll get a time</p> <p>4 check and wrap up.</p> <p>5 THE VIDEOGRAPHER: The time --</p> <p>6 THE WITNESS: You know what, if we're</p> <p>7 going to do it that way, let me go ahead and</p> <p>8 just take a -- a break now and let's get back</p> <p>9 and finish it up.</p> <p>10 MR. JARAMILLO: Okay, fine. Off the</p> <p>11 record.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 THE VIDEOGRAPHER: And the time is</p> <p>14 23:09 UTC.</p> <p>15 (Whereupon, there was a brief recess</p> <p>16 in the proceedings.)</p> <p>17 THE VIDEOGRAPHER: We're now on the</p> <p>18 record. The time is 23:17 UTC.</p> <p>19 Q. So, Mr. Manning, we were talking</p> <p>20 about pol -- policy decisions at the Department</p> <p>21 regarding borrower discharge and I would like to</p> <p>22 know: If there was a policy to delay issuing</p> <p>23 borrower defense decisions for an extended period</p> <p>24 of time, who is the person responsible in the</p> <p>25 Department for making such a decision or who would</p>
<p style="text-align: right;">Page 271</p> <p>1 - JAMES MANNING -</p> <p>2 time check and maybe a break.</p> <p>3 MR. JARAMILLO: Let's -- let's -- I</p> <p>4 mean, if you don't mind, just a couple more</p> <p>5 questions on this topic and then we can do</p> <p>6 that. If that -- unless -- Mr. Manning, are</p> <p>7 you requesting a break right now or can you</p> <p>8 bear with a couple more annoying questions?</p> <p>9 MR. MERRITT: Okay.</p> <p>10 THE WITNESS: You're just doing your</p> <p>11 job. How -- how much longer are we going to</p> <p>12 go?</p> <p>13 MR. JARAMILLO: Well, I have a few</p> <p>14 more questions on this topic and then we</p> <p>15 might not have that much time left, but with</p> <p>16 the time left I do have some other things I</p> <p>17 wanted to cover relatively quickly.</p> <p>18 THE WITNESS: Go ahead. What were</p> <p>19 you saying?</p> <p>20 MR. JARAMILLO: So can I ask you a</p> <p>21 few more questions or do you want to take a</p> <p>22 break now?</p> <p>23 THE WITNESS: Well, let's power</p> <p>24 through it because I --</p> <p>25 MR. JARAMILLO: All right. Let me</p>	<p style="text-align: right;">Page 273</p> <p>1 - JAMES MANNING -</p> <p>2 be, to your experience? Who?</p> <p>3 A. I'm thinking. I just -- you know --</p> <p>4 who would be the person responsible for</p> <p>5 recommending a decision like that?</p> <p>6 Q. And for making a decision like that.</p> <p>7 A. Well, responsible or have the</p> <p>8 authority or -- I mean --</p> <p>9 Q. Okay, let's -- who would have the</p> <p>10 authority to make a decision like that?</p> <p>11 A. Well, it depends on what the policy</p> <p>12 is you're talking about.</p> <p>13 Are you talking about real policy or</p> <p>14 policy changes, then that was the purpose of us</p> <p>15 reopening the negotiated rulemaking in November,</p> <p>16 2017.</p> <p>17 Q. Okay, let's -- I don't want to talk</p> <p>18 about the administrative policy that required, you</p> <p>19 know, publication and notice.</p> <p>20 I want to talk about an internal</p> <p>21 Department policy about how to handle borrower</p> <p>22 discharge claims and specifically a policy or</p> <p>23 decision that would call for not reviewing -- I</p> <p>24 mean, strike that -- not issuing decisions on</p> <p>25 borrower defense claims.</p>

<p style="text-align: right;">Page 274</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't -- I don't know that there's</p> <p>3 an individual that is responsible for that.</p> <p>4 Certainly the -- and -- and I don't</p> <p>5 recall discussions around that particular issue</p> <p>6 or --</p> <p>7 Q. And if there's not one individual,</p> <p>8 would it be a group of individuals at the</p> <p>9 Department responsible for making a decision on</p> <p>10 pausing the issuance of borrower defense decisions</p> <p>11 for a certain time period?</p> <p>12 A. There was no group that was</p> <p>13 responsible for that. I don't know --</p> <p>14 Q. Was there a group responsible for</p> <p>15 making such policy decisions about borrower</p> <p>16 defense?</p> <p>17 A. You're talking about decisions on</p> <p>18 delays and I don't recall.</p> <p>19 Q. You don't recall -- you're saying you</p> <p>20 don't recall delays, but if there were and -- and</p> <p>21 if there was a decision to delay issuance of</p> <p>22 approvals and denials of these claims, where would</p> <p>23 that authority lie within the Department to make</p> <p>24 such a decision?</p> <p>25 MR. MERRITT: Objection.</p>	<p style="text-align: right;">Page 276</p> <p>1 - JAMES MANNING -</p> <p>2 COO, the Deputy Secretary. I mean, the -- the</p> <p>3 Assistant Secretary of Postsecondary Education.</p> <p>4 It's just making this up. I -- I don't know.</p> <p>5 I -- I suppose the, you know, the</p> <p>6 borrower defense panel, the -- the review team put</p> <p>7 together. My anticipation was that a group would</p> <p>8 come up with ideas in terms of how to move</p> <p>9 forward.</p> <p>10 Q. Right, and somebody had to approve</p> <p>11 these ideas in order to move forward, correct?</p> <p>12 MR. MERRITT: Can we get a time</p> <p>13 check?</p> <p>14 Q. You can answer the question, Mr.</p> <p>15 Manning, and then we'll do the time check.</p> <p>16 A. I mean, I don't have to approve some</p> <p>17 recommendations that could have gone to the</p> <p>18 Undersecretary's approval.</p> <p>19 Q. Didn't -- didn't that group make --</p> <p>20 MR. MERRITT: That's -- that's it.</p> <p>21 Let me -- let's check the time.</p> <p>22 THE VIDEOGRAPHER: We just hit seven</p> <p>23 hours after that.</p> <p>24 MR. MERRITT: You said we just hit</p> <p>25 seven hours?</p>
<p style="text-align: right;">Page 275</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Do you know, Mr. Manning, or you just</p> <p>3 don't know?</p> <p>4 A. Oh, oh. Well, yeah, I'm -- I -- I'm</p> <p>5 not sure.</p> <p>6 Q. Let's say, for example, that there</p> <p>7 was a decision-maker at the Department that said</p> <p>8 we -- we ought to hold off on issuing borrower</p> <p>9 defense decisions until we work out how we're</p> <p>10 going to measure relief. Who would make such a</p> <p>11 decision, to your knowledge, at the Department?</p> <p>12 A. Hold off on decisions until we</p> <p>13 have -- I -- I don't know if there's an individual</p> <p>14 that is responsible for --</p> <p>15 Q. Okay. Who -- is there a group of</p> <p>16 individuals responsible?</p> <p>17 A. I -- I don't recall who was involved</p> <p>18 in conversations around that issue. Again, I</p> <p>19 don't recall any conversation about that issue.</p> <p>20 Q. That's not my question. I'm asking</p> <p>21 if you're aware of any group of individuals at the</p> <p>22 Department that would be involved in making such a</p> <p>23 decision if it were to be made, to your knowledge?</p> <p>24 A. Well, I mean there are any number of</p> <p>25 folks. It would be Undersecretary, the -- the</p>	<p style="text-align: right;">Page 277</p> <p>1 - JAMES MANNING -</p> <p>2 THE VIDEOGRAPHER: Yes.</p> <p>3 MR. JARAMILLO: Okay. Mr. Merritt,</p> <p>4 with your indulgence I just want to have one</p> <p>5 -- have him just look at one document and</p> <p>6 then authenticate it, if possible.</p> <p>7 MR. MERRITT: We're at seven hours.</p> <p>8 I'm not gonna -- I think it's over.</p> <p>9 MR. JARAMILLO: Okay. Do you have</p> <p>10 any questions for the witness?</p> <p>11 MR. MERRITT: I do not.</p> <p>12 MR. JARAMILLO: Okay. Mr. Manning, I</p> <p>13 want to thank you for your time today. I</p> <p>14 know you voluntarily appeared here and we</p> <p>15 appreciate that.</p> <p>16 And you want the witness to read and</p> <p>17 sign, Mr. Merritt?</p> <p>18 MR. MERRITT: Yes, thank you. I</p> <p>19 would like that.</p> <p>20 MR. JARAMILLO: I think we're done.</p> <p>21 THE VIDEOGRAPHER: We are off the</p> <p>22 record and this concludes today's testimony</p> <p>23 given by Jim Manning at 23:25 UTC.</p> <p>24 (Whereupon, the deposition concluded</p> <p>25 at 6:25 p.m.)</p>

Page 278

1

2 A C K N O W L E D G E M E N T

3

4 STATE OF NEW YORK)

5) ss.

6 COUNTY OF NEW YORK)

7

8 I, JAMES MANNING, hereby certify that I have

9 read the transcript of my testimony taken under

10 oath in my deposition of December 17, 2020; that

11 the transcript is a true, complete and correct

12 record of my testimony, and that the answers on

13 the record as given by me are true and correct.

14

15 _____

16 JAMES MANNING

17

18 Subscribed and sworn

19 to before me on this the

20 _____ day of _____, 2020.

21 Notary Public, State of New York

22

23

24

25

Page 279

1

2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4) ss.

5 COUNTY OF NEW YORK)

6

7 I, HOPE LYNN MENAKER, a Notary Public within

8 and for the State of New York, do hereby certify:

9 That JAMES MANNING, the witness whose

10 deposition is hereinbefore set forth, was duly

11 sworn by me and that such deposition is a true

12 record of the testimony given by the witness.

13 I further certify that I am not related to

14 any of the parties to this action by blood or


15 marriage, and that I am in no way interested in

16 the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereunto

18 set my hand this 22nd day of December, 2020.

19

20 

21 HOPE LYNN MENAKER

22

23

24

25

Page 280

1

2

3 INDEX

4 WITNESS: JAMES MANNING

5 EXAMINATION BY PAGE

6 MR. JARAMILLO 7

7

8 INSTRUCTED NOT TO ANSWER PAGE

9 And what specifically did he recommend

10 with respect to the -- with the relief

11 methodology? 52

12 And did you ever consult in connection

13 with the Penn Hill Group after leaving

14 the Department of Education? 147

15 Have you done any work after leaving the

16 administration related to the discharge

17 of student loans? 148

18 Have you done any the work on behalf of

19 institutions of higher education as in

20 your -- in your consulting work after

21 leaving the Trump Administration? 148

22 Does your work at President Forum,

23 Mr. Manning, involve any discharge

24 of federal student loans? 150

25

26 EXHIBITS FOR IDENTIFICATION

27

NUMBER	DESCRIPTION	PAGE
28	Exhibit 31 Tab 1	28
29	Exhibit 32 Tab 2	28

Page 281

1

NUMBER	DESCRIPTION	PAGE
30	Exhibit 33 Tab 7	111
31	Exhibit 34 Tab 12	151
32	Exhibit 35 Tab 5	206

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

<hr/> Exhibits <hr/>	135 213:13	1:00 105:2
EX 0031 James Manning 12 1720 27:25 28:6 280:22	137 205:25 206:12 207:18 212:14 213:13	1:30 105:2
EX 0032 James Manning 12 1720 28:5,8 29:19,20 280:23	13th 166:20 178:12	1have 165:12
EX 0033 James Manning 12 1720 111:21,22 165:13 176:17 281:3	14 107:15 158:2 182:23 189:10	1st 21:16,17 250:9
EX 0034 James Manning 12 1720 151:2 182:11 189:9 281:4	14:36 5:14	1were 196:10
EX 0035 James Manning 12 1720 205:21 206:5,6 210:10 281:5	14:38 6:22 7:7	<hr/> 2 <hr/>
<hr/> \$ <hr/>	14th 106:25 107:10 109:10 110:18 157:2	2 21:9 26:18 27:18 28:11 29:6 33:2,10 37:20 87:23 193:23 264:7 265:21
\$200 66:8	15 107:7,12,15 193:7	20 19:5 32:17 45:25 112:9, 14 172:2 177:11,13,14,20 178:9,17 225:13,24 227:5, 17
<hr/> - <hr/>	158,000 167:12	20006 7:13
--in 121:7	15:08 27:12	2001 7:12
<hr/> 1 <hr/>	15:11 27:16	2015 145:6 249:11,12
1 5:10 12:8,10,17,19 26:20, 21 28:21 87:19 151:7,24 225:9 262:12 264:14	15:35 38:22	2016 40:23 152:12 163:25 164:3
10 106:6 151:25 152:21 204:20 211:6 212:8	15:52 39:2	2017 19:5 32:2,10,16,20 33:8 34:17,22,23 35:5 39:20 40:8,15 41:2 45:25 46:18 48:5 73:11 74:11 77:18 90:14 107:16 140:3 155:3 156:6 157:2,7,8 159:22 164:2,4,5 172:2 177:10,11, 13,14,19,25 178:9,15,17 181:19 182:2,13,23 187:23 189:10 208:12,14 214:3 220:12,13,24 225:13,21,22, 24 226:5,9,11,19,25 227:5, 17,18 229:16,17 230:2 232:25 250:15 252:4 254:16 257:23 258:7,13 259:2 260:3,5,9 262:20 273:16
10,000 107:17,20 108:3 183:8	16 124:25 135:25 136:8,12 138:3 142:12 164:7	2017-2018 151:7
100,00 183:7	16,000 54:16 65:19 66:7 68:19 70:15 72:25 90:15 157:3 209:11	2018 18:10 21:17 22:3 33:9, 14 35:7,16 39:13,15,21,25 40:2 65:12 72:19 98:22 99:7,11,12,16,23 100:15 103:2,6,7,25 104:8 107:16 109:6,9,22,25 110:16,23 111:6 112:20 113:3,6,13 116:4 125:23 127:14,25 128:10 133:8,11 138:14 142:5,13 143:5,10 167:13 170:10,15,24 171:24
100,000 114:23 115:3,9 182:14 183:4	17 5:13 7:9 32:3,22 72:16 79:16 80:13 81:5,6 141:3 153:25 164:8 173:16,18 177:21 223:23 250:7 254:24 255:6 258:15	2019 33:14 39:11,16 98:23 99:8,13,16,23 100:16 103:17,20 104:2,9 106:25 107:10 109:11 110:3,18,24
105,998 103:3,9,24	179,377 103:19	
11 66:21 73:13 140:4,9,11 151:21 152:9	179,377 103:25	
118 205:25 206:12	17:07 75:11	
12 18:10 113:12 125:2,6 136:2 142:12 150:23 182:9 189:8	17:56 104:24	
12/23/19 206:12	17th 257:5,8	
12th 112:20	18 35:12 39:24 80:13 100:3 116:20 158:5 189:16 223:23	
13 111:25 155:7 189:12	18-month 64:9 65:11 191:13	
133 207:18 210:11	182 220:23	
134 212:14	186 224:25 225:4 241:25	
	18:33 105:4	
	19 99:11 100:4 165:21,25 177:10,19 181:19 220:2	
	193 244:22	
	1970 32:20	
	1975 15:14	
	1977 16:2	
	1978 15:14 16:2	
	1983 14:10	
	19:12 134:8	
	19:23 134:12	
	19th 41:2 44:9 193:7 250:9	

<p>111:10,25 112:15 113:7 125:5 133:13 145:8 166:20 169:21 170:18 171:5,7,25 177:22 178:13,16 181:25 2020 5:13 7:9 193:7 20:36 187:6 20:53 187:10 20th 32:20 40:15 177:25 200:17 225:21 226:5,24 228:6 250:10 21 106:8,11 125:5 176:22 266:15 213 253:2,5 22 12:9,10 22:09 241:12 22:22 241:16 23:09 272:14 23:17 272:18 23:25 277:23 24 105:19 24th 113:3 270 220:23 224:25 225:5 241:25 244:22 253:3,5 28 113:7 29 254:16</p>	<p style="text-align: center;">4</p> <hr/> <p>4 69:9 73:14 167:13 201:13 227:17 241:22 48 112:6,9 165:25 176:22 4th 39:11 73:11 77:18 90:14 140:3 141:3 262:20</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 33:2 152:24 204:17 205:20 206:5 50 23:15 50,000 109:15 55 106:4 57 82:25</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 125:18 136:2 138:4,7 142:11 155:10 60,000 214:4,12 64 107:14 65 109:2,20 155:15 66-3 205:24 206:11 67 82:25 106:3 6:25 277:25</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 66:23,24 67:4 73:12,14 111:17,19 140:5 151:25 165:13 176:17 73,000 104:8 7th 32:20</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 151:17,25 152:8 220:12, 13,24 81 15:9 82 15:9 83 15:8 8th 221:15 223:20 233:16</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 151:25 201:13,15,20</p>	<p>206:22 90 5:19 194:25 95,000 155:14 182:12,24 183:22,23</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>ability 105:20,22 173:9 absolutely 52:16 118:21 123:12 188:11 194:20 197:13,22 200:25 213:23 215:15 accept 243:4 acceptable 10:6 71:11 accepted 50:8 account 27:6 63:8 accuracy 19:22 104:3 accurate 21:25 29:18 103:12,20 107:4 158:9 accurately 29:9 104:4 150:19 acknowledge 6:4,8 act 59:12 228:4 247:12 260:8 acted 99:22 acting 32:23 33:6,12,24 34:2,5,7,13 35:15 36:6,15 39:9,14,18 40:2,3,7 47:22, 24 48:17 75:23 78:5 83:17, 18,21 108:3,11 114:15 131:17 143:8 163:13 180:5 183:19 188:19 189:5 209:14 222:10 227:22 228:2,4,13, 17,18,21,24 229:13,23 237:15 260:9 262:7,14,25 264:9 265:22 266:5 267:22 269:18 action 5:21 15:21 49:22 54:25 55:2,6,12,13 56:14,23 66:12,15,18 68:17 69:17 70:10 124:3,5 139:17 186:6 216:13 217:10,14 218:7 224:17,18 245:5 247:23 249:13 actions 54:11 74:10 209:9 active 84:2 177:10 actively 108:8 activities 41:22,24 84:3 activity 112:12 177:5 actual 28:15 65:9 66:9 67:6 205:19</p>
<hr/> <p style="text-align: center;">3</p> <hr/> <p>3 32:4,6 164:13 202:22 219:20,21,22 220:2 241:5, 17,18,20,23 244:23 259:11 30 208:11,13 216:14 221:25 252:25 254:10,13 30th 103:2,6,7,25 104:8 31 27:25 28:6 225:22 227:5 254:23 31st 103:17,20 104:2,9 177:22 226:25 32 28:5,8 29:20 33 111:21,22 165:13 176:17 257:15 34 150:25 151:2 182:11 189:9 261:10,13 264:7 265:7 266:16 35 205:21 206:5,6 210:10 3:19-cv-03674-wha 206:11 3rd 145:6</p>	<hr/> <p style="text-align: center;">3</p> <hr/> <p>3 32:4,6 164:13 202:22 219:20,21,22 220:2 241:5, 17,18,20,23 244:23 259:11 30 208:11,13 216:14 221:25 252:25 254:10,13 30th 103:2,6,7,25 104:8 31 27:25 28:6 225:22 227:5 254:23 31st 103:17,20 104:2,9 177:22 226:25 32 28:5,8 29:20 33 111:21,22 165:13 176:17 257:15 34 150:25 151:2 182:11 189:9 261:10,13 264:7 265:7 266:16 35 205:21 206:5,6 210:10 3:19-cv-03674-wha 206:11 3rd 145:6</p>	<hr/> <p style="text-align: center;">3</p> <hr/> <p>3 32:4,6 164:13 202:22 219:20,21,22 220:2 241:5, 17,18,20,23 244:23 259:11 30 208:11,13 216:14 221:25 252:25 254:10,13 30th 103:2,6,7,25 104:8 31 27:25 28:6 225:22 227:5 254:23 31st 103:17,20 104:2,9 177:22 226:25 32 28:5,8 29:20 33 111:21,22 165:13 176:17 257:15 34 150:25 151:2 182:11 189:9 261:10,13 264:7 265:7 266:16 35 205:21 206:5,6 210:10 3:19-cv-03674-wha 206:11 3rd 145:6</p>

ad 209:2 216:24
added 162:6 163:19
adding 181:12
addition 18:22 139:10
162:15
additional 87:17 88:15
102:24 109:4,11,21 111:4
154:8,18,23 161:7,11,14,16
162:6,16,19,25 169:25
172:24 178:2,10,19,25
179:5,8 181:3 182:6 207:8
232:7,9 233:20 234:4,13
235:5,13,16,22 242:12
243:7,14 244:19 251:24
264:11,20 265:24 266:8,19
267:15
Additionally 107:15
address 59:3 166:13 170:20
171:12 172:12,17 181:4,14
182:4 218:9 261:8
addressed 252:5,13
addressing 257:21
adequate 186:10
adjudicate 154:7,17,22
158:7 159:23 160:4 199:10
247:20 248:2,10
adjudicated 85:7 109:16
181:16
adjudicating 87:19 109:7,14
156:3,19
adjudication 54:12 87:16
160:25
adjustments 156:2 159:3
admin 87:2
adminis 59:21
administered 6:9
administration 23:19 34:3,4,
15 36:7,16 38:6 39:4,19
41:17 44:3 45:3 46:18 48:6
54:4,5,10,25 55:13 59:2,7,
17 61:17 63:7,19 64:20
65:21 70:11 83:22 88:13
98:12 100:20 102:12
148:11,20 150:7,11,21
157:4 173:11 174:11,13
180:23 181:12,22 185:13
198:13 199:4 200:24 208:18
209:5,10 214:9,11 242:15
249:23,25 250:3,5,9,11,16
251:4,5,6,12,15,21 259:3,20
administration's 62:2 209:9

administrations 145:23
198:22 232:12
administrative 273:18
admitted 106:8
adopted 74:2,8 248:15,19
251:2
Adult 78:10
advantage 187:2
advice 209:3
advise 123:10
advising 216:25
advisor 32:9,14,19 34:18
40:9,14,18 76:8 208:22
209:18,19,20,22
advisors 76:10 177:9
advisory 209:2
advocate 189:18,21,25
191:23 192:5 194:14,18
advocates 190:23 194:9
af 144:4
affected 92:4,6,14,25 173:9
affecting 95:12 115:9
affects 105:22
afterward 168:25 223:8
agency 64:12 146:21,22
149:12 193:9,14
agent 14:22
agree 6:18 95:22 133:19
182:2 218:10 226:19 249:21
260:13 262:19 264:13 266:3
agreed 41:12 145:17 161:21
259:22 265:17
agreeing 266:6
agreement 5:6 6:14,15 8:10
9:3
agrees 6:20
ahead 15:7 38:9 53:10 68:22
71:14 75:2 80:14 81:3 98:17
127:3 141:7 159:6,7 175:20,
21 182:19 191:2 195:19
226:16 234:17 250:20 255:4
271:18 272:7
Aid 19:4,13 33:11 35:8
245:20
Aid's 220:7,9
allegations 100:9
allege 100:10
allocated 177:4
allowed 84:5

Alsup 149:8 192:21
alternative 125:24 127:14
128:11
alternatives 58:10
ambiguous 73:8 97:2,13
248:5 255:21 256:2
amount 49:14 164:23 214:8
analysis 167:8,14,15 177:8
and/or 5:7
announced 174:5
announcement 175:8
177:12 180:21
announcements 174:10
178:4 180:20
annoying 271:8
answering 37:5 120:6
168:18 180:12 250:23
answers 8:19 9:21 10:3
36:21 121:11 126:24 165:17
168:24
anticipation 276:7
anymore 83:2 171:20
apologize 82:9 119:7 136:7,
14 200:8
apparent 191:20
apparently 179:2 181:21
230:19 234:8 252:15
appeared 277:14
appearing 7:25 13:21
appears 32:24 33:2 111:11
125:3 165:23 221:20
Appendix 253:3,22 254:6
applicable 152:15 245:5
247:23
applicants 60:10,21 114:23
195:21 198:8
application 86:23 91:12,15,
22 112:20 113:3,12 127:20
197:24 202:18 203:9
applications 46:10,20 63:18
64:3,8,21 65:18,25 70:15
71:7,9 85:8 86:20 88:2,20,
22 89:5,12 90:13 92:11
99:9,17,20 100:2,11,15,19
101:3 103:4,9 104:14
107:18,20 108:3,9,19 109:7,
12,14,15 110:15 111:5
115:10 117:16,22 121:19
125:21 126:2,3 127:11
128:8 129:5 133:20 136:2,
16 137:10 138:5 142:11

164:25 168:8 169:17 170:21
171:13 181:5,15 186:17
191:6,12 192:9,17 195:25
196:21,24 197:4 247:20
248:2
applied 86:21 92:12 118:8
apply 74:18 118:6
appointment 32:19
appreciative 94:17
approach 22:19 49:24,25
50:11,21 59:13 60:16,17
61:17 62:2
approached 54:6 59:18
145:15 185:11
appropriately 197:24 216:3
approval 54:22 55:8 65:25
89:24 93:9 133:22 141:14
155:19 156:6,12 210:10
227:20 229:10 230:10,14,18
232:8 233:21 234:13 235:5,
16 236:7,18 237:7,11,16
255:7,11,12,14,15 256:20,
23 257:12 259:21 262:14,
15,18 264:9,19 265:18,21
266:6,19 267:7 276:18
approvals 112:13 123:22
125:21 128:18 129:19 130:3
131:2 134:22 138:14 140:17
142:6,14 157:2,6,11 207:22
212:21 274:22
approve 65:18 88:21,23
89:4 90:14 91:6 212:6
227:22 229:19,21 230:20
231:2 255:9 261:19,21
276:10,16
approved 56:24 65:20
69:14,17 72:25 91:13 99:10,
14,22 112:16,20 113:12
156:15,16 157:4 211:24
228:3 229:14,24 230:5
231:21
approving 87:25 88:3 90:12
113:15 231:16 262:5
approximate 16:22 157:3
approximately 15:25 23:15
54:16 65:19 68:19 72:25
90:14 116:20 155:14 182:12
approximation 31:7
April 18:10 32:3,13,16,22
33:8 34:6,18 39:20 40:8,15
228:10,11,12,14 229:16

area 34:25
areas 154:4,10
argumentative 116:7
arm 94:21
arrangement 6:12
arrived 55:2 224:21
arrow 210:16,18 211:19
arrows 210:25
asks 89:24 112:22
assert 46:5 194:15
asserting 195:11
assess 155:25
assesses 152:15
assessment 164:23 165:2,4
assigned 133:3
assistant 219:8 228:21
276:3
assisting 168:18
assume 11:25 183:2 260:4
assuming 8:14 104:5 169:21
224:16
assumption 233:15
ATA 149:10 193:21
attached 18:21,23 21:4 30:3
31:9
attaches 30:23 31:12
attachments 21:2,3 27:2
attended 64:22
attention 54:17 102:24
108:14
attest 188:10 213:23
attesting 19:22
attorney 119:20 170:17,25
172:6 183:8 201:3 228:23
attorney-client 5:8
attorneys 6:3 7:18 10:11
48:13 49:12 75:17 105:12
119:21 129:13 164:12
170:14 181:2,3,12 182:3
183:3,7,22,23 196:12,19
237:23 238:20
attorneys' 177:9
audible 9:21
audit 219:9 252:6
Auditorium 23:12
Auer 25:9 131:10 132:4
223:14
August 79:17 125:5 259:22,
25 260:5,9

authenticate 277:6
author 67:18
authored 67:19 140:2
authoritatively 47:5 173:17
213:23 249:16
authority 55:3 58:13 93:12
94:10 120:11,14,21 121:22
122:2,7,9,24 123:8,14,20,25
124:4 138:24 235:23
237:18,21 238:5,19,23,25
260:17,19 273:8,10 274:23
authorization 55:16 73:16
108:5
authorize 54:22 73:6 108:2,
11 192:13
authorized 54:13 55:19
63:11,25 64:5 66:12 107:17
108:20 144:24 146:14 147:9
148:23 149:5,14 191:7
193:5 194:6
authorizes 108:18
authorizing 44:19 68:19
107:19
Avenue 7:12
avenues 224:12
average 53:14
awarded 60:20 62:20
awarding 59:15
aware 5:3 25:2 26:9 46:18
74:21 82:7,11,16,18 86:9
92:15,24 96:4,9,11,21 97:5,
16,20 98:2,10,24 99:2,8,13,
17 100:5,8,14,17,18 101:2
102:8,25 111:14 113:14,17
122:13 138:15 157:6 163:23
169:13 170:3 176:3 180:16,
21 185:25 197:25 198:6
199:5,8 201:6 212:4,21
213:2 216:12 217:9 230:8
233:23,24 234:2,6,9 239:23
242:16,18,21 243:5 244:7,
10,11,14 245:8 251:10,19
252:3,9 255:13 256:20,23
257:10 261:20 275:21
awareness 101:8 240:11,15,
18,23 241:2
awkward 11:6 82:20

B

B-- 244:8

back 10:25 11:2 18:16,17
28:14 30:2 31:13 33:19 38:9
44:22,24 47:10 51:8 53:25
75:12,22 91:19 105:13
120:23 121:9 127:5 129:25
138:3 143:19 145:15 151:24
165:12 176:17 185:10 187:9
189:7 210:3 218:18,19
219:11 221:17 222:6 224:22
229:2 236:15 241:4 254:10
260:21 272:8
background 26:16 63:17
68:12 223:25
backing 236:25
backlog 101:2,8 164:24
166:13 167:11 169:25
170:20 171:12 181:4,14,24
182:4
backwards 39:10
balance 59:23 60:4,19 62:9
balancing 60:2
ball 253:19
Barnard 23:12
base 158:12 204:12
based 103:17 110:22 143:3
192:15 193:4 219:14 227:20
229:12 230:21 231:3,4,22
249:11 250:6 268:12
basically 28:25 181:2
242:10
basketball 253:17
Bates 202:17 213:6
BD 25:21 125:21 126:2
127:11 136:2 138:5 142:11
169:17 189:9 202:18 203:9
227:15
BDTR 25:22,23
BDU 87:11 92:21 109:6
162:16,19,25 163:14 171:2,
14 183:20,25 184:24 185:12
186:2,7 188:8,13 189:3
225:24 226:8 227:18 229:6
230:8,12,22 231:4,23 232:6,
7,17,19,21 233:3,6,10,13,
17,20 234:4,12 235:4,12,14,
15,22 242:7,8,25 243:6,13
244:9,17 248:2,10 259:15
266:25 267:6
BDU's 257:20 264:15
bear 200:8 271:8
Bearing 193:13

began 34:25 39:20 41:19
65:12 256:10,11
begin 223:11
beginning 39:15 60:25
105:13 146:4 151:12,21
152:9,23 158:5 173:10,15
199:18 227:4 228:17 254:11
begins 189:16 232:16
behalf 5:18,24 148:17
beings 245:22 246:22
belabor 134:15
belief 156:10 199:6
believed 156:8,15
beneficial 156:4
BERMAN 13:3,7 26:23
bias 149:3 195:8,20
bigger 48:11
Bill 42:19,20
billion 66:8
bit 18:17 54:2 75:22 134:16
167:5 168:22 234:22
black 216:9
blank 129:21
block 36:8
board 62:10
Bob 43:20,22 77:2
bold 265:12
bor 59:23 60:3
borrower 19:3,12 24:9
25:16,20,23 42:25 44:14
45:4,10,17 46:4,5,9,19
47:17 48:7,15,19,24 49:20
50:2 52:23 53:17,19 54:6
59:14 60:3,10,21 61:11
62:4,24 64:2,7 68:5,20 69:5,
7 71:4,5,6,20 72:5,24 74:2,
4,8,10 76:15,21,24 77:21
78:18,19,23 79:15 81:22
83:8,12,16,21 84:7,15,20,23
85:6,8,10,17,21,22 86:10,22
87:4,12 88:2,5,6,20,22 89:4,
11,18 90:8,12,19,22,24
91:2,12,22 92:4,9,15,21,25
95:13,15,19,24,25 96:6,12,
17,18,21,24 97:6,8,10,11,
16,17,21 98:3,13,24 99:4,9,
13,17,25 100:11,15,19
102:2 103:3 108:7 109:12,
13 110:15 111:5 112:13,16,
19,23 113:2,5,11,15,20
114:5,10,22 116:2 117:5,16

119:24 121:18 122:16
123:22 124:8,11,17,22
125:4 126:2 127:24 128:8,
14,22 129:5,18 133:10,20
134:17,21 137:9 144:14,20
150:9,14 151:5 152:11
153:7 155:4 160:20 161:5,
11,17 162:6,10 163:24
164:25 166:13 167:11 168:8
170:10,21 171:12 172:25
176:13 177:5,8,20,23 178:3,
11,20 179:8 180:2,22 181:4,
13,14 182:22 183:6 186:11,
17 187:12,17 188:4,20
189:4,17,21,24 190:23
191:5,11,23 192:4,9,17
194:9,14,17,18 195:2,6,21,
25 196:23 198:4,9,24 199:5,
9,10 200:12 201:5 202:2
204:24 205:8 206:21 207:22
209:3,8,23 212:4,7,15
213:15 214:4 219:15 220:7,
9,17 222:22 224:2 225:9
227:2,6,9,11,14 231:4,17
232:10 237:25 238:14
239:4,15,19,24 242:14
245:4 247:18,19 251:11,14
257:2,23 258:4,7,10 259:17
261:15,20 262:3 267:20,24
268:3,4,13 269:11,16,20
270:2,3,6,18 272:21,23
273:21,25 274:10,15 275:8
276:6
borrower's 115:24 121:5
borrowers 19:4,13 50:7
58:20 59:23 61:2 62:17,20
63:20 65:19 69:2 72:6 73:23
89:19,21,22 92:7 98:25 99:5
101:3 102:10 109:5,12,22,
25 110:15,23 111:5 113:6
115:9 194:15 195:9 212:22
225:23 245:6 247:20 248:3
257:13 268:11
Borrowers' 201:23
Boston 15:13,22 16:8
bottom 69:21 112:11 129:17
166:5,8,11 222:8 241:5,20,
23 266:16
box 211:19
boxes 208:8
brain 167:4
break 11:14,16 36:20 37:22
38:11 74:24 75:3,13,16

101:12 104:20,25 105:6,10
127:4 133:25 186:20,23
234:20,23 271:2,7,22 272:3,
8

breaks 11:13
briefed 66:2 124:2 196:2
briefing 124:5 196:4
briefly 75:17 105:12,13
106:18
bring 48:3
broad 5:19 84:21 193:15
broadly 192:23 193:19
brought 48:12 187:20
Brown 25:11 133:7,14,17
144:4,10,13,14
building 154:4
bullet 126:7 127:10 128:7
138:13 140:16 142:12,21
143:25
business 7:14 225:22
226:25 227:5,14

C

cadre 78:13
calendar 143:14
call 17:19,21 41:7 139:19
157:18 196:19 273:23
called 7:8 28:22 42:3
calling 57:12
calls 52:6 56:4 57:5,13
60:12 91:8 113:22 117:7
163:3 181:6 186:13 217:17,
22
Calvillo 19:24 24:7 52:25
53:15 117:18,22 118:9,14,
24 119:12,17 128:22 129:6
camera 7:3 18:13,19
capable 245:25
capacity 35:6 258:3
captures 31:12
career 26:15 31:3 34:20 36:2
51:5 78:10 146:2,4 153:2
careful 263:15
carefully 29:12 58:14
192:20,21 197:11
carried 241:21
carries 9:13
Carter 145:25 174:16

case 7:19 8:2 9:20 14:17
15:4,20,25 16:4 19:25 20:4,
11,13,15,19 24:4,7,13,19
25:3 50:10 52:25 53:15
73:12 100:6,9 113:6 117:18
118:2,9,14,15,24 119:2,5,12
120:10 140:5 149:10,14
166:22 193:21 194:5 205:24
206:10,13 207:17 218:24
222:19
cases 15:11,17,18,19 16:10
209:11 213:6
categories 198:3,12 232:9
242:13 243:7,14 244:19
245:4,9,14,21 247:22 248:4,
12,16,22 249:4,6,22 251:8,
20,24 262:17 264:11,20
265:24 266:8,20 267:16
category 118:5 198:7
caught 237:2
caused 64:8 113:19 114:9
156:20
causing 105:25 191:21
CCI 118:25 119:3,6,10,13
125:22 127:13 128:9 213:17
214:4
certainty 252:12
CFO's 69:3 73:6,19,24 74:13
CFOICU 262:22 264:15
CFOS' 74:6
chain 79:24 115:24 244:4
246:4
chance 28:10 171:17
change 59:16 88:11 94:20
156:11 232:11 242:15
charge 84:7,15,19 85:15
87:8 269:10 270:3,8
charged 51:7
Charlie 6:19 10:10 17:17,19,
21 133:25 205:16
chart 170:8 207:21 208:3,4,
11 210:10,13 212:17 213:19
214:2,3 225:9
charts 208:6 212:21,23
213:2,22
check 105:18 238:6,9,12
271:2 272:4 276:13,15,21
check-in 81:9
checked 69:13
checking 238:20

chief 33:12,24 34:2,5,7,14,
21 35:2,3,4 77:2 133:4
187:21,25 232:6,18 233:19
234:3,12 235:11,14,19
236:10 242:19,24 243:3,19
244:2 262:21 266:22,24
chiefs 77:4
choices 137:24
Christie 41:10
Christopher 252:5 254:16
265:2
chronological 34:11
circulated 198:21
cites 259:15
civil 15:21
claim 50:7 56:18 58:17
85:10 86:7 112:16,24
152:15 160:25 197:12
202:19 203:10 212:7
255:10,11,13 256:20
claimants 153:6,14
claimed 34:7 114:24
claims 50:22 54:6,13,16
63:20 68:12,14,20 69:5
73:7,25 74:7,15 85:14,17
87:19 88:5 96:18,24 97:8,
12,17,21 98:3,14 99:14
113:16 118:5 119:7 122:16
128:12 152:14 153:5,13,21
154:5,8,18,23 155:4,14,20
156:3,7,14,19 157:3 158:7
159:23 160:4 167:11 176:14
177:9 182:12,14,25 183:4,7,
8,23,24 187:17 189:4,19
194:19,20,22 195:3,6,12
198:3,7,12,14,16 199:10
201:23 202:2 204:24 205:8
206:22 207:22 212:7,15
213:15 214:4,8 225:23
226:2,8 227:2,6,10,17,19,23
228:3 229:7,14,20,25 230:6,
10,21 231:3,4,13,14,17,22
232:8,9 233:20 234:5,13
235:5,13,16,23 242:13
243:7,14 244:19 245:4
247:21,22 248:3,10 249:11
257:19,21,23 258:4,7,10
259:12,17,19,21,23 260:14
261:8,19,22 262:5,16,17,24
263:3,7,24 264:4,12,17,20
265:24 266:8,18,20 267:7,
16 273:22,25 274:22

<p>clarification 151:23 clarify 39:17 75:18 105:15 123:4 205:15 206:4 232:16 266:17,24 clarity 28:17 39:8 255:23 class 64:13 118:8 119:5 193:9 classify 142:7,17 clear 10:3,23 38:3 76:22 95:23 118:20,21 121:15 123:5,12,18 167:10 191:19 204:4 226:14,15 237:18,20, 23 250:13,19,21 260:8 261:4 client 147:13 clients 146:10,16 Clinton 146:2 close 31:7 101:12 closely 94:15 188:2 closing 259:16 code 5:14 Colleen 16:17 20:25 25:7 44:4,5,10 49:10 79:11,13 80:20 81:2 83:6,8 84:3,7,12 106:9 110:17 117:13 131:23 132:2,4,13 133:12 161:14, 16 164:12 165:5 172:19 179:19 183:20 184:20,23 197:22 233:5,9,12 235:22 Colleen's 165:6 College 249:10 Collin 233:2 Columbia 14:16 command 115:25 175:17 244:4 246:4 commensurate 62:3 comment 69:20 commented 219:4 comments 128:5 206:24 221:21 253:4,23 commitment 197:15,18 commits 152:16 committed 197:13,23 committee 22:4 67:20,21 151:7 152:19 182:23 189:10 common 264:12,21 265:24 266:8 communicate 8:11 83:5 216:5 234:12 235:4 242:20 communicated 95:11,14 132:7,8,11 180:3 215:21</p>	<p>232:7,19 233:19 234:4 235:12,15 242:25 266:25 communicating 95:18 183:19 235:21 communication 8:22 66:18 95:23 96:5 214:23 224:12 233:23,24 234:7 242:6,11, 22 communications 20:6 77:7, 20 83:8 117:20 216:23 242:8 compel 64:16 compels 193:11 complainant 16:5 complete 152:2 170:5 completed 168:5 completely 173:23 concern 102:6,20 104:16 154:4,10 172:13 186:2 concerned 102:9 172:7,9 concerns 104:18 161:25 257:11 concluded 277:24 concludes 277:22 concrete 186:6 conduct 169:24 conducted 167:8,14 199:17 confidence 84:4,17 confident 155:25 confirm 8:6 205:22 238:7 confused 121:8 257:6 258:12,22 265:15 confusing 249:19 confusion 235:18 connection 144:12 148:2 Connolly 47:25 48:17 68:9, 10 228:16 262:6 consent 6:12 consideration 61:3 62:19,22 71:11 86:2,6,24,25 90:6 122:12 264:10,19 265:23 266:7 considerations 62:23 63:2,4 considered 61:9 86:4 196:14,16 consisting 68:8,10 153:2 consult 147:25 184:15,17 237:22 consultant 147:3</p>	<p>consultation 123:6 139:11 consulted 158:14 consulting 145:20 146:8 147:19 148:19 contacted 41:9 contained 30:17 content 195:25 contents 202:7 contest 11:13 continue 148:24 152:14 183:12 226:19 232:8 235:17 242:12,17 continued 109:13 225:22,24 227:2,6,15,18 continues 232:2 continuing 77:15 229:6 contract 167:10 contracting 167:16 170:15 contractor 163:23 168:6 169:15 170:17 171:2 contributed 154:7,17,22 191:12 Control 69:3 73:6,19,24 74:6,13 210:19 Control's 262:22 controls 153:4,10,12,16,20 controversial 192:2 convenor 262:6 conversation 23:4,7 56:16 60:24 94:19 117:25 162:3 173:4 215:3 246:24 275:19 conversations 5:5,7 58:9 144:19 150:13,21 161:13 172:19,20 179:18 275:18 COO 35:12,15 36:6,15 39:9, 12,14 40:3 77:15 80:11,12 83:25 143:11 144:4,11,13 180:4,7 183:18 187:20,23 188:18 189:5 216:24 219:9 243:19,24 244:7 246:12 247:6,7 252:4 266:5 276:2 coordinates 174:15 copies 222:23 copy 215:8 222:12,15 Corinthian 155:15 159:24 corner 125:16 202:22 222:9 correct 10:13 13:22 33:13, 15,17,21 35:21 46:2 52:11 53:16 59:18,19 65:3,22,23 69:11 78:6 79:20 93:5 95:15 104:6 106:17 107:25 108:24</p>
---	---	---

110:20,21 111:11 115:2,4,5,
18 118:11 119:8 122:20,21
123:14 124:5,6 136:8 143:6,
9,12,14 144:7,10 172:5
179:3 186:3,7 208:18,22,23
213:14 220:14 233:8 237:8
238:25 239:2 243:17 246:20
248:23 250:12 252:11 257:5
260:10,11,19,20 264:25
265:3,18 268:24 270:10
276:11

corrective 216:13 217:10,14
218:7 224:17,18

correctly 62:6,17 119:8
169:11

correspondence 93:20
215:14 221:19

cost 61:12

counsel 5:12 6:12 8:15,19
10:8 16:15,19 17:15 20:4,7
22:10,16 54:19 63:12 66:4
121:24 122:4 123:7,10
124:2 130:22

counsel's 19:20 22:25 123:4
130:15,18

couple 36:24 37:10,14 48:9
49:12 121:10 151:23 187:24
271:4,8

court 9:14,17 14:4,11,24
15:11,13,18,19,20 16:7,8
20:15 44:19,23 46:16 52:21,
24 53:13 55:19 58:23 59:10
63:11,24 64:5,11,14 65:11
67:5 72:19 144:23 147:8
148:8,15,23 149:5 150:5
166:7 183:15 190:20 191:7,
17 192:13,15 193:5 194:6
201:21 204:14,22 220:5,23
225:2 256:4

court's 53:13 63:23 65:6

court-authorized 150:3

court-ordered 175:24
191:10 216:17 255:17

cover 88:20 151:24 219:7
254:11 271:17

create 26:5 27:5

created 251:21,25

creating 268:22 269:23
270:3

creation 19:7

credibility 149:3

credit 198:15 225:25 227:16
249:10

criteria 185:7,8 198:8

cross 120:2

crosstalk 145:4 149:18
192:12 223:4 270:23

curious 168:21

current 51:24 94:18 119:2

cut 13:13

D

D.C. 7:13

date 13:18 21:12,15 28:25
72:20 106:23 107:4 109:9
110:16 155:19 171:3 177:15
178:8 220:11,13 226:5
237:12 250:15

dated 13:17 229:25

dates 16:22,23 33:13,18
37:11 40:13 232:22

day 23:10 46:21,22 47:12
106:25 164:14 211:15

days 16:24 34:24 208:17
216:14

DBU 162:10

de 268:4

dealt 84:2

decades 48:10

December 5:13 7:9 19:5
107:16 220:12,13,24 221:15
223:20 229:17,25 232:25
233:15 260:3

decide 197:7

decided 144:18 157:5 197:5

decided/recommended
50:20

deciding 62:17

decision 56:8,13 57:20 58:5
71:18,23,24 90:14 91:5,7,21
116:3 117:5,15,21 119:24
120:9,15,22 121:2,4,18,23
122:7,10,14,19,22,25 123:8,
20 124:10,17,18,19,21
128:23 129:18 130:2,25
132:6 133:15 134:19,21
135:7,14,16 136:16 137:18
138:16,18,20,25 139:7,12,
20,23 140:15,23 141:11,15
142:5,13,16,21,22 143:2,4,
16,24 235:4 238:25 239:8,

12 240:9,12,17 242:17
243:13 244:8,12,15 246:20,
25 257:12 266:23 272:25
273:5,6,10,23 274:9,21,24
275:11,23

decision-maker 275:7

decision-making 123:14
199:21

decisions 49:19 53:20 54:12
71:6,19 72:24 85:24 86:3
88:9 89:18 90:23,25 92:13
93:10,18 96:18,24 97:8,11,
17,20 98:13,24 99:4,25
102:2,10,21 109:4,11,21,24
110:14,22 111:4,15 113:5,
21 114:5,11,23 116:5,18,19
117:6,16 121:5,18 122:11
127:25 128:15,21 129:4
133:11,20 134:18,20 135:18
137:9 138:13 139:14,15
141:19 155:5 186:11
196:20,25 199:2 204:12
230:16,17 236:6,17 237:6,
11,16,25 238:14 239:4,16,
19,24 243:5 246:16 257:3
259:17 272:20,23 273:24
274:10,15,17 275:9,12

declaration 13:14 16:16
17:25 18:4,12,20,23 19:16
20:24,25 21:9 106:9,15,24
107:8,12 109:10 110:17
118:14 133:13

declarations 16:16

declare 6:10

defense 6:20 19:3,12 24:10
25:16,20,23 42:25 44:14
45:5,10,18 46:4,6,10,20
47:18 48:7,15,19,24 49:20
52:23 53:18,19 54:6 59:14
60:10,21 63:20 64:3,7 68:5,
20 69:5,8 71:4,5,6,20 72:24
74:2,4,8,10 76:15,21,24
77:21 78:18,19,23 81:22
83:9,12,16,21 84:8,15,20,23
85:6,8,17,21,22 86:10,15,22
87:4,12 88:2,5,7,20,22 89:5,
11,18 90:8,13,19,22,24
91:2,22 92:4,9,15,22,25
95:13,15,19,25 96:6,12,17,
18,22,24 97:6,8,10,12,16,
17,21 98:3,13,24 99:4,9,14,
17 100:2,11,15,19 101:3
102:2,10 103:4 108:7

109:12,13 110:15 111:5
 112:13,16,19,23 113:5,12,
 16,20 114:5,10,23 115:24
 116:2 117:6,16 119:24
 121:5,19 122:16 123:22
 124:8,11,17,22 125:4 126:3
 127:24 128:8,14,22 129:5,
 18 133:11,20 134:18,22
 137:10 144:15,20 150:9,14
 152:12 153:8 155:4 160:20
 161:5,12,17 162:7,10
 163:24 164:25 166:13
 167:11 168:8 170:10,21
 171:13 172:25 176:13
 177:5,20,23 178:3,11,20
 179:9 180:2,22 181:5,13,15
 183:7 186:11,17 187:13,17
 188:4,21 189:4,18,21,24
 190:23 191:5,12,23 192:5,9,
 17 194:9,14,18 195:3,6,21,
 25 196:23 198:4,9,24 199:5,
 9,10 200:12 201:5,23 202:2
 204:24 205:8 206:21 207:22
 209:3,8,23 212:5,7,15,22
 213:15 214:4,22 219:15
 220:7,9,18 222:22 224:2
 225:10,23 227:2,6,9,11,14
 231:4,17 232:10 237:25
 238:14 239:4,15,20,24
 242:14 245:4 247:19
 251:11,14 257:3,13,23
 258:4,7,10 259:17 261:8,15,
 21 262:4 267:20,24 268:3,4,
 13 269:11,16,20 270:2,3,6,
 18 272:23 273:25 274:10,16
 275:9 276:6
defense's 85:10
Defenses 151:6 182:22
defer 38:13
define 194:22
defined 192:14,15
definition 146:17
Defrauded 19:4,13
delay 53:18 63:17 64:9,14,
 24 65:11 100:14,18 128:18
 155:4 186:10,16 191:13,21
 192:8 196:24 255:24
 256:10,11 272:22 274:21
delayed 100:11 152:13
delaying 193:10
delays 100:22 274:18,20
delegated 93:13 133:3 219:3

deliberative 52:6 57:5,14
 60:12
delivered 159:3 215:6
demonstrate 197:14,18
demonstrates 134:18
denial 64:18 107:17,20
 108:2,12,18 192:18 194:25
 197:11 227:20 229:10
 230:9,14 259:12
denial.' 259:18
denials 108:6 112:13 123:22
 129:19 130:3 131:2 134:22
 138:12,14 140:16,17 142:6,
 13,14 157:14 212:14,21
 274:22
denied 64:21 99:18 112:23
 113:3 162:20,21,22 189:19
 194:19,21 227:22 228:3
 229:14,24 230:6 231:22
Denise 174:16
deny 88:21,23 89:11 91:6
 229:19 230:21 231:3 259:23
 260:14
denying 88:2,3 113:15
 204:13 231:17
department 10:10 14:23,24
 19:9 20:5 22:15 23:13 26:16
 33:12 34:23 35:8 38:5 39:5,
 11 40:4 41:18,21,25 42:11,
 12 44:2,11 46:9 47:15 51:5,
 22 55:2 56:22 58:24 59:22
 60:15 62:3 72:23 78:24
 81:22 82:14 84:8,16,22
 85:11,15,18 87:2 88:12
 90:21 91:23 93:4 94:11
 95:3,10,14 98:2,8,11,12,23
 99:8,14,24 100:9,10,20
 101:4,24,25 102:10,21
 103:3,18 107:10 110:3,24
 111:10 112:15,23 113:15,19
 114:4,10,16,21 115:22
 116:18 122:4,20 123:19
 124:12 125:10 128:20
 129:2,8,24 132:22 133:18,
 22 134:24 135:6,8 136:19
 137:8,14 139:21 141:18
 142:24 143:5 144:5,21
 145:5,8 147:4 148:3 150:8,
 14 151:5 152:13 153:3
 157:7 158:6 159:21 160:3
 162:20,22 164:22 166:21,24
 167:8 168:4,24 169:14,23
 170:4,8,16 171:8,20,21

172:2 173:9 174:18 175:13,
 18 176:6,7,9 177:13,14,22
 178:3,18 180:11,19 181:11
 183:6 185:13,20 186:12
 187:13,18 195:2 197:17,21
 198:2 200:24 201:3 208:17
 216:12 218:16 219:12
 220:17 221:18 222:6,17
 223:7,19,22 224:15 233:25
 238:17,21 239:25 243:11,12
 245:9 248:7,15 251:7 252:6
 257:11 262:10 267:21
 268:10 269:11 270:5
 272:20,25 273:21 274:9,23
 275:7,11,22
Department's 53:19 268:9
depending 77:3 132:21
 211:14
depends 142:2 273:11
deposed 24:23 25:2
deposition 5:11 6:4,6,7 8:4,
 12 9:5 10:9,13,17 12:12,20
 13:10,17,19,22,24 16:14
 20:23 22:12,17,19,21 23:25
 24:19 25:7 28:2,16,23 29:2
 66:23 106:9,16 117:14
 221:9 223:15 277:24
depositions 25:5 132:5
deputy 47:24 48:17 77:8,9,
 10 164:10 223:2 228:17
 232:6,18 233:19 234:3,11
 235:11,14,19 236:9 242:24
 243:3 262:7 266:22,24
 269:19 276:2
describe 167:13
describes 192:4 242:5 249:4
description 255:21
designated 175:16
desire 160:14
desk 138:10 210:17 211:23
desks 211:3
detail 30:4,20 211:17 245:13
determination 66:3 87:9,13,
 23 231:5 264:11,19 265:23
 266:7
determinations 51:9 227:20
 229:10 230:9,14,22 231:2,
 23
determined 65:17 86:5,22
develop 51:3 242:22 262:23
 263:2 270:15

developed 118:25 128:12
217:10,14 270:17

developing 50:21 216:13
232:8 235:17 242:12,17
243:6,13 244:9 266:19
270:8

development 92:3 244:18
263:8,23,25 267:15

developments 20:15

device 8:12

devices 8:22

Devos 5:16 23:20 68:18
69:12 77:19,21 100:6 112:2
121:17 122:7 123:13,20
140:4 157:5 172:21,23
173:5 176:19 180:18 238:24
239:14,23 240:6,8

Devos' 19:25 112:17,25
165:17 166:15 167:4

Devos's 177:17

diamond 211:3,5,19

Diane 16:17 20:24 25:9
39:21,22 77:5 131:10 132:4
223:14

differently 185:12

difficult 196:6,8 197:7

difficulty 64:2,7 191:5,11,14
192:8,16 196:23

diligence 55:11

direct 68:25 69:3 73:19,22,
24 74:6 233:9 234:11
237:24 238:13 239:3

directed 74:14 93:21 236:6,
17 237:6,10,15 239:19

directing 239:23

direction 75:21 243:21,22
267:2,6,8,12,14

directions 244:2

directives 94:9

directly 78:11 80:8,20 81:2
83:5 84:2,16 85:21 89:17
115:25 120:6 192:5,6
223:10 227:10,14

director 43:10,12 77:16
78:25 79:15,20,22,25 86:12,
15,17 183:20 186:2 232:5,
17,21 233:3,5,10,12,17
235:14 242:7 266:25

disagree 149:8 218:11
226:20

disapproval 141:14

discharge 19:3,12 46:4
49:24 54:14 56:20 57:19
66:7 68:19,25 73:22 91:24
147:20 148:11 149:24 157:5
195:22 198:4,9 220:10
232:10 242:13 243:8,15
244:20 245:7 262:16
264:12,21 265:25 266:9,21
267:17 268:12 272:21
273:22

discharged 55:4,5 56:19
65:21 70:16,19,22,24 115:2
209:11

discharges 25:16 55:7

discharging 66:10 91:14,15
153:6,13,21

discontinued 109:6

discovery 44:19 46:16 55:19
63:10,25 64:6,16 65:8
144:23 146:13 147:8 148:9,
16,23 149:5,7,12,14 150:3
175:24 190:20 191:7,10
192:14,22 193:5,12,14,18
194:6 216:17 255:18 256:4

discretion 152:17

discuss 20:20 38:8 76:15
166:21

discussed 63:4 76:21 123:3
144:19 153:8 161:14,18
169:20 184:19,22 263:10

discussing 25:15 76:23
188:7,13 220:16

discussion 27:13 38:23
49:23 50:19 53:4 54:23
58:10,18 72:2 138:17 139:3,
6 158:13 193:3 246:25
268:20

discussions 20:3,17,18 48:2
58:15 144:8,14,16 150:8
161:6 176:11 187:12 188:3,
6,19,22 209:13 274:5

disfavored 193:14

displeasure 69:21 70:4

dissatisfied 160:16

District 14:16 15:13 16:8

divide 183:9

division 183:9

document 12:17,21,23
28:11,18,20,22 29:3,19,22
30:9,14,18 31:22,23 32:5
33:3 35:25 37:20 66:9,15

67:7 69:16,24 70:3,14 73:9,
10 74:20 89:23 93:23
108:15 111:25 116:25
118:18 122:14 125:11
126:11 127:12 128:4
135:12,24 139:22 140:22
141:2,5,9,12 142:20,24
143:24 150:24 151:4,9,14,
23 152:2 166:7 175:7 178:9
182:18 202:6,11,14,21
203:12 205:4,17,19,24
206:9,11,19,20 207:2,9,17
213:5 224:22 225:2 229:3
240:20 244:23 247:16 249:5
253:6,23 254:19 256:21
257:24 258:13 260:22
264:24 277:5

documentation 127:22
178:12 201:4,6,10

documents 11:23,25 12:5,8,
13 13:4 20:20,21 21:4,6
22:6 26:19 30:22 66:22
106:7 126:22 133:10 199:25
216:2 239:7

dogmatic 190:16,18

double-check 121:25

doubt 111:12 127:23

draft 19:16 67:25 68:3 91:7
252:7

drafted 19:17,18 249:23
250:3 251:3 265:13

drafting 66:14

drafts 159:15 252:24

draw 36:3

drive 60:7

driven 95:2,3,4

Dropbox 26:25

due 55:11 197:17

duly 7:9 194:7

duty 46:9

E

E-I-T 43:19

E-I-T-E-L 43:19

e-mail 77:23 79:8 175:12,16
176:2,3 215:18

e-mails 77:25 78:2 83:11,13
175:10

earlier 32:24 59:2 65:17
79:10 101:9 106:3 127:19

<p>153:8 182:9 214:13 219:4 241:9 246:4 268:19 early 47:15 54:17 81:6 152:25 164:8,10 earnings 53:14 easy 196:5,7,10,11 197:4,6 educate 42:23 43:4 189:2 education 19:9 20:5 22:15 23:13 26:17 32:8,9,15 33:7, 12 38:6 39:5,18 40:4,8,10, 11 41:18 51:22 75:24 77:9, 11 78:9,10 84:8 94:16,22 95:2,3,5 98:3,11,12,23 99:25 100:21 101:5,24 113:20 114:16,21,22 116:18 123:19 124:12 129:8 135:6 136:19 139:9 141:18 146:15,18,20,24 147:2,11 148:3,18 150:9 151:5 174:19 176:6 181:11 195:2 228:22 238:22 243:11,12 252:7 267:24 268:10 269:7, 8 276:3 Education's 46:9 education-related 147:12 effect 52:17 69:6 72:11,14, 16,17 74:3 251:3 effective 193:16 effectively 42:9,16 49:2 56:24 79:12 84:6,14 118:2 211:15 effectuate 55:7 74:18 effectuated 59:10 effectuating 91:23,25 efficiencies 156:4 efficient 36:4 effort 169:3 200:14 Eitel 43:15,16,18,20,21 77:2 elected 41:19 electronic 8:12,21 9:2 12:18 13:4 electronically 166:7 eleven 177:19 181:20 183:23 eligibility 204:9 251:19 eliminate 168:6 169:16 Elisabeth 5:16 emphasize 9:12 employed 177:15 employee 45:23,25 47:13 177:25</p>	<p>employees 177:10,19,21,23, 24 178:2,10,19,25 employment 59:3,8 226:2 227:16 En 90:25 enacted 152:12 end 23:18 35:17 39:23 54:10 74:11 167:12 207:11 209:10 268:21 ended 157:19 173:17 ending 103:2,6,19,24,25 ends 170:16 endurance 11:12 enforce 148:8 enforcement 43:6,8,12 78:25 79:16,20,23 85:3 86:13,16,18 90:20,25 115:25 133:4 164:10 187:21 188:2 214:21 219:15 232:6, 18 233:19 234:3,12 235:12, 15,19 236:10 242:19,24 243:3,20 244:3 266:22,24 engage 137:15 139:3,5 engaged 88:8 enjoined 118:24 enjoining 53:14 ensure 197:11 entailed 46:4 enter 5:25 26:7 entire 176:8 254:3 entitled 19:2 126:10 220:8 entity 58:19 entry 32:7 33:2,6,11 envision 245:24 equals 204:10 equivalencies 167:9 equivalent 177:6 essence 75:25 established 48:18 58:18 68:8,9 87:6,7 118:3 141:15 199:20,24 200:14 245:3,13, 21 246:7 247:3,21 249:22 262:17 establishing 269:22 establishment 74:9 153:18 263:5 estimate 70:21 168:5,14,22 169:8,15,22,24 170:4 evaluate 63:21 71:5</p>	<p>evaluated 153:3 eventual 63:17 Everest 198:14 Evers 42:20 evidence 9:20 204:10 EXAMINATION 7:16 examine 42:23 examined 7:10 68:12 excerpted 152:4 excessively 192:3 excuse 26:24 120:20 executed 106:23 executive 93:21 146:3 210:23,24 exhibit 18:21,23,24 21:9 27:25 28:5,6,8 29:19 66:23, 24 67:4 69:10 73:12,14 106:8,11 111:21,22 125:2,6 136:2 140:5 142:12 150:25 151:2 165:13 176:17 182:10,11,15 189:9 201:13, 15,20,22 204:20 205:5,18, 21 206:5,6,22 210:10 219:21,22 220:2,4 241:18 244:23 exist 259:5 existing 227:21 229:12 257:22 exists 134:25 135:4 136:22 expand 47:14 expect 20:6 66:19 73:4 86:12,14 88:17 94:2 98:16 107:25 108:6 115:7,10 116:20 117:9,11 120:10 122:19,21 123:24,25 124:6 128:18 129:23 130:7,8,13, 18,25 131:4,10,14,16,20,22, 23,25 132:9,23 133:7,14 134:23 135:6,13,15,20 136:17,20 137:14,16,18 139:12 140:15,18,20 141:4, 21 142:23 160:12,13 175:5, 7 183:6,25 184:25 188:9 194:25 199:4 215:18 217:3, 13,19,24 218:2,4,6,17 220:19 222:17 223:6,9 224:21 236:11 239:2 251:18 252:10 expectation 115:11 135:4 136:15 137:5 expected 86:14 117:4 145:13 227:13</p>
--	---	---

<p>expedited 193:12 experience 26:16 31:17,19 243:10 273:2 expert 51:3 experts 182:5 184:16,17 explain 10:17 170:19 220:3 explaining 94:21 explanation 68:12 246:12 explore 256:6 express 239:15 expressing 187:16 extended 122:17 133:21 134:22 272:23 extent 52:5 57:4,13 60:11 63:25 64:6,20 191:4,10,14, 15 196:22 197:20 extreme 69:21 70:4</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 192:18 faced 193:8 fact 20:18 77:25 82:25 95:17 102:25 138:21 156:16 192:16 255:23 facts 22:7 81:10 98:18 105:20,22 202:11,15 264:12,21 265:24 266:8 faded 200:7 fair 31:2 49:25 50:2 58:20 60:23 61:2,11 62:10 125:13 253:11 fairly 72:4 faith 84:4,17 fall 247:21 248:3 familiar 195:24 202:8 203:15 204:6 211:11 213:21 216:21,22 245:12 248:17 254:19 familiarize 126:11 fashion 152:17 favored 149:13 feature 26:13 February 32:18 35:18 39:14, 25 79:10 210:8 257:23 258:7,13,14 259:2 federal 25:17 33:11 35:8 46:5 114:25 147:20 149:24 173:21 220:6,9 245:20 268:12</p>	<p>feel 59:22 215:24 feeling 50:5 feels 103:14 fell 165:9 fewer 42:8 fifteen 253:17 figure 247:11 file 12:19 67:5 206:10 207:17 filed 205:24 206:11 files 12:18 28:4 filing 166:7 fill 33:5 178:4 180:20,22 filled 177:9 final 54:25 55:2 71:19 72:24 92:10 99:25 217:9 230:16 finally 71:16 finance 51:6,20 Financial 151:6 182:22 262:21 financially 5:21 find 46:23 47:2 54:9 60:9 61:18 62:2 83:3 136:21 174:3,21 175:5 255:8 finding 35:24 60:20 118:12 174:24 findings 64:22 112:14 167:15 216:9 finds 30:22 fine 101:18 127:2 133:5 159:18 210:9 272:10 finish 29:15 136:24 272:9 Fiscal 211:6 flagged 259:12,17 262:18 flip 202:6 flowed 90:9 fluctuates 170:16 fluctuation 171:7 focus 81:23 110:12 126:8 207:14 focused 35:13 236:16 folks 42:10,11 43:5 48:9 51:2 56:10 76:24 78:13 222:21 223:5,6 233:8 245:25 246:23 275:25 follow 20:14 210:25 225:15 footnote 254:24 255:6 256:19 257:5,8 266:15 forceful 192:3</p>	<p>Foreign 146:5 forget 17:17 forgiveness 51:10 61:5 forgot 79:7 form 9:19 119:22 151:16 203:13 formal 48:18 71:22 165:2,4 formally 259:5 format 26:14 Forum 149:19,23 forward 56:25 59:9 61:7 66:13 67:24 72:2,4 118:4 122:5 135:12 155:11,13 182:11 269:5 276:9,11 forward-responsibility 177:7 forwarded 13:6 found 166:9 255:11 foundation 103:11 261:18, 21 262:5 four-hour 17:8 frame 132:15,21 166:17 framework 202:18 203:8 255:9 frankly 77:24 80:5 110:4 Franzi 34:22 freeze 173:9,14,20,24,25 174:4,7,22 176:5,10,12 freezes 173:22 frivolous 195:12 front 18:11,12 122:12 123:3 158:8 160:10,11 froze 53:6 frustrated 136:5 frustration 136:14 FSA 33:24 34:14 35:9,14 36:6,15 39:9 40:3 71:5 78:6, 9,11,22 79:20 80:3 83:24 90:20 94:10,12,15,23 95:5 97:20,22 115:23 137:9 143:11 144:4 161:10 176:12 183:18 188:18 189:5 210:18 216:24 217:11,15 219:3,10 221:21 222:23 236:6,17 237:6,10,16 239:3 242:6 243:19 244:8 245:3,13,14, 20,21,25 246:7,12 252:4 253:3,23 259:22 260:13 262:23 263:2 266:6 267:23 268:22 269:7,9,21 270:6</p>
---	--	--

FSA's 225:9 232:6,17
233:18 234:11 235:11,14
full 61:3 84:4,17 91:13,17
98:7 177:24 245:3 259:3
full-time 80:11 167:9 168:5
169:15 177:6
fully 70:10 71:16 94:17
180:16 199:4
function 30:8 177:7
fundamentally 49:25
funding 167:10
Funds 147:15,16,17,18
future 68:14

G

gainful 59:3,8
Gamble 252:5,15 254:17
265:2
game 253:17
gave 15:4 47:19 48:6 67:25
68:2 84:25 103:23 151:12
170:24
Gen 35:9 39:13 77:16
general 19:19 22:25 54:19
60:14 65:6 66:4 77:9,12
78:20 122:4 123:4,7 124:2
130:15,17,22 141:24 174:15
199:18 214:19,21 215:3,4,9,
21 216:23 218:18,20 219:9
224:24 252:6
General's 214:14,24 216:6,
15 218:14 220:8 241:19
244:24
generally 31:19 76:24 102:5
139:14 197:4 217:22 223:5
248:24 268:25 269:19
generate 26:14
generated 30:10 93:23
generates 30:8
Generation 35:9,14
gentleman 233:6
gentleman's 80:24
gentlemen 164:9
give 9:21 11:20 15:6 18:3
38:16 61:3 66:17 96:16
122:2 155:18 159:17 170:22
221:6,25 255:22
giving 15:10,18 16:11
137:24 244:2

glance 208:7 253:24
glasses 208:8
goo 163:20
good 7:17 93:15 105:6
121:16 163:19,21 206:17
219:17 238:21 246:25
253:24
goodness 176:20
Gotcha 166:10 207:21
government-issued 7:2
Governor 41:10
grant 91:21,24
granted 61:19 91:13
granting 204:12
grating 191:25
great 12:6 13:7 186:24 207:4
greater 211:6 212:8
grew 161:22,23
ground 8:4
grounds 249:6
group 43:6,8,12 48:11,12,
14,18,21 49:15,16,19,23
50:9,13,20 51:4 58:9 59:4,
14 68:16 76:9,12 77:6
78:14,25 86:13,16,18 89:9,
14,20,22,24 94:13 148:2
175:12,16 177:20,24 178:3,
11,20 179:9 180:2,22
181:13 246:22 274:8,12,14
275:15,21 276:7,19
groups 176:2,4
growing 101:10 102:4,6,14,
22 104:17,18
grown 103:19
growth 161:9
guarantee 146:21,22
guaranteed 225:25 227:16
guarantors 146:19
guess 13:11 31:12 65:13
76:8 223:17 230:18 260:24
guessed 179:2
guidance 122:4 267:2,6,11
guidepost 26:17
guides 199:21

H

Haffey 228:20
half 127:7

halfway 195:18
hand 31:22 58:25 61:13
112:7 158:15 213:16
handle 273:21
handled 70:13
handling 10:11 160:19
happen 55:14 57:20 173:22
happened 30:23 31:14
62:16 86:7 100:24 127:19
188:16
happening 114:8 135:10
166:18
happy 55:22,23 56:3,10,12
70:8,12 104:19 151:19
harbor 195:8,17,20
hard 213:5
harm 61:3,18 62:4 72:6
harmed 61:2,14 114:24
harsh 191:25
hat 49:22
hate 105:17
hats 40:2,5 183:17
hd 163:19
head 9:22 170:23 269:18
headed 174:16
heading 112:12 138:11
166:12 257:16
Heald 249:10
hear 53:8 103:14 200:4,6
239:14 270:14
heard 22:20 62:21 87:18
100:12 138:17 179:20
198:19 239:6
hearing 87:20,22,24 239:13,
21 240:5
held 5:5,8 27:14 38:24 53:5
hiatus 156:3,19,20,22
157:18,22,24
Hiel 198:14
higher 32:9,15 40:11 75:23
78:8 146:15,17,24,25
147:12 148:18 163:16
175:17 267:24 269:8
highly 90:17
Hill 77:6 148:2
hindsight 185:18
hire 173:10
hired 177:13 178:2,10,19,25
hires 179:5,8,19 180:2,14

hiring 171:13 173:8,13,20, 22,25 174:3,7,21 176:5
history 36:2 39:4
hit 276:22,24
hold 18:12,16 40:18 125:21 126:3 127:11 128:8,15 136:3,17 138:5 142:11 275:8,12
holding 7:3
holiday 23:18
homes 9:12
hope 5:23 105:5 160:18 182:10 203:6
hoped 261:24
hour 36:19 127:7 234:19
hours 16:25 17:5 105:19 276:23,25 277:7
house 15:22
housed 267:23
Howard 219:8
human 245:22 246:18,19,20, 21,22
hundred 35:13 50:8,23 51:11 56:19 58:11,17 59:16 61:4,15,19 70:25 72:8 91:18

I

I-- 88:14
idea 56:18 174:2 196:18 210:19 226:7 235:3 270:13
ideal 60:24
ideas 165:5,6 276:8,11
identification 7:3 28:9 67:2 106:13 125:8 201:17 219:24
identified 44:18 206:15
identify 8:21 206:4 207:16 246:23
IG 219:4
ignore 201:20 204:21
imagine 25:15
immediately 35:2 146:6
imminent 155:20 156:7,12
impact 82:5 88:17 94:20,22 105:19 211:6 212:8
impacted 69:2 73:23 176:8 222:18,20 223:11
impacting 82:8,12
impacts 20:19 141:24

impeding 82:2
Impending 104:14
implement 95:6 153:4,12 268:11
implementation 78:23
implemented 153:11
implementing 94:11 268:23 269:22
implicit 191:13 226:17
implying 239:8
importance 246:4
important 9:21,25 35:11 95:22 115:8 116:3 185:23 223:24 224:14 237:4 247:15
improve 199:25
improved 19:3,12 156:16
improvements 156:4 216:10
in-school 119:2
incident 14:23
include 77:2 209:2
included 119:12 177:24 198:13 218:12 221:15 257:22 258:6
includes 111:25
including 64:18 124:2 164:8 167:9,15 174:15 177:9 262:17 263:10 269:6
incoming 54:21 55:5
incorrect 34:6
increase 46:19 104:12 161:4 162:10 170:20 171:12 172:6
indirectly 51:16
individual 51:4 56:18 61:7 76:11 89:19,21,22 108:9 243:17 274:3,7 275:13
individually 89:6,12,13
individuals 274:8 275:16,21
indulgence 277:4
inference 236:22,24
influence 41:24
inform 190:14
informal 215:18
information 26:8 29:10,19, 20 30:17,18 31:12,15 47:16, 19 48:6 52:7 57:6,14 59:6, 11 60:13 90:9 102:13 103:18 142:25 236:9,15 237:3 242:4 248:20
informed 55:10 117:15,19 185:17

infrastructure 154:5
initially 41:16 77:15 85:3 87:3 88:4,10 158:15
initiative 35:7,14 77:17
injunction 117:17,23 119:18,20 125:23 127:14 128:10,23 129:6
input 30:18
inquiries 192:23,24
inquiry 177:15
inside 211:5
Inspector 199:18 214:14,19, 20,24 215:2,4,9,21 216:6, 14,23 218:13,18,20 219:8 220:8 224:24 241:19 244:24 252:6
instinct 259:4
institution 147:12
institutions 146:25 148:18
instruct 46:14 57:21 64:25 148:7,14,24 150:4 193:23 194:3 256:7,12
instructing 52:8 216:18 255:19
instruction 199:19
instructions 95:19 96:16
instructs 10:18 11:9 63:13
insufficient 86:3
intake 85:16
intended 263:17
interactions 5:8
interest 59:25 60:8,19 62:18 63:8 239:15
interested 5:21 136:21
interests 59:23
interface 5:9
interim 69:4 73:7,17,25 74:7,14,17,19 262:23 263:3, 6,24 264:3
intern 269:4
internal 69:3 73:6,19,24 74:6,13 210:18 262:22 273:20
interpret 192:22
interrupt 29:11 109:17 210:4
interrupting 136:24
introduced 219:21 220:4
involve 147:20 149:20,24
involved 20:3,9 45:4 55:6 65:24 66:14 71:21 87:11,12,

25 89:18 90:12,17,22 91:14,
23 92:3,14,22 93:4 108:4
118:9,16 159:12 166:23
168:13,18 200:19 214:21
222:22 248:11 268:21,22
269:21 270:20 275:17,22

involvement 19:6 83:15
involving 90:8 269:6
ipads 8:23
irrelevant 194:5
issuance 53:19 122:16
123:21 127:24 155:4 216:14
274:10,21

issue 20:7 35:11 47:18 51:7
59:3,18 64:18 71:6 72:23
78:19 105:25 119:2 121:22
122:7,9,24 123:8,20 124:3,
7,10,17 134:20,21 138:14,
18 139:2,4 140:16 142:5,14
149:7 160:20,21 170:4
172:7,17,21 173:4,5 184:18,
19,23 185:23 200:17 208:19
209:24 215:5 238:10,13,25
257:10 262:4 274:5 275:18,
19

issued 71:8 91:6 98:16 99:5,
25 109:5,11,21,24 110:14,
22 111:4,15 113:5 124:21
133:11,14 138:15 140:17
142:6,14 222:16 223:22
237:25 238:14 239:5,20,24
240:8,12,16 247:8

issues 40:11 48:3 76:16,21,
24 77:21 81:21 96:14 106:5
150:9 174:15 198:18 209:7
211:7 212:9 218:10 224:14

issuing 71:19 89:18 90:22,
24 96:17,24 97:7,11,17,20,
22 98:3,13 100:11,14,18
102:2,10,21 113:20 114:4,
10,22 116:4,18,19 117:5,16,
21 119:24 121:4,18 128:21
129:4,18 130:2 131:2 137:9
186:11 196:24 236:6,17
237:6,11,16 244:11 259:16
272:22 273:24 275:8

Item 259:11
items 166:23
ITT 213:17

J

J-E-U-N-S-T 51:15
J-U-E-N-S-T 51:16
James 5:1,11 6:1 7:1,8,22
8:1 9:1 10:1 11:1 12:1,20
13:1,10 14:1 15:1 16:1 17:1
18:1 19:1 20:1 21:1 22:1
23:1 24:1 25:1 26:1 27:1
28:1,2,23 29:1 30:1 31:1
32:1 33:1 34:1,22 35:1 36:1
37:1 38:1 39:1 40:1 41:1
42:1 43:1 44:1 45:1 46:1
47:1 48:1 49:1 50:1 51:1
52:1 53:1 54:1 55:1 56:1
57:1 58:1 59:1 60:1 61:1
62:1 63:1 64:1 65:1 66:1
67:1 68:1 69:1 70:1 71:1
72:1 73:1 74:1 75:1 76:1
77:1 78:1 79:1 80:1 81:1
82:1 83:1 84:1 85:1 86:1
87:1 88:1 89:1 90:1 91:1
92:1 93:1 94:1 95:1 96:1
97:1 98:1 99:1 100:1 101:1
102:1 103:1 104:1 105:1
106:1 107:1 108:1 109:1
110:1 111:1 112:1 113:1
114:1 115:1 116:1 117:1
118:1 119:1 120:1 121:1
122:1 123:1 124:1 125:1
126:1 127:1 128:1 129:1
130:1 131:1 132:1 133:1
134:1 135:1 136:1 137:1
138:1 139:1 140:1 141:1
142:1 143:1 144:1 145:1
146:1 147:1 148:1 149:1
150:1 151:1 152:1 153:1
154:1 155:1 156:1 157:1
158:1 159:1 160:1 161:1
162:1 163:1 164:1 165:1
166:1 167:1 168:1 169:1
170:1 171:1 172:1 173:1
174:1 175:1 176:1 177:1
178:1 179:1 180:1 181:1
182:1 183:1 184:1 185:1
186:1 187:1 188:1 189:1
190:1 191:1 192:1 193:1
194:1 195:1 196:1 197:1
198:1 199:1 200:1 201:1
202:1 203:1 204:1 205:1
206:1 207:1 208:1 209:1
210:1 211:1 212:1 213:1

214:1 215:1 216:1 217:1
218:1 219:1 220:1 221:1
222:1 223:1 224:1 225:1
226:1 227:1 228:1 229:1
230:1 231:1 232:1 233:1
234:1 235:1 236:1 237:1
238:1 239:1 240:1 241:1
242:1 243:1 244:1 245:1
246:1 247:1 248:1 249:1
250:1 251:1 252:1 253:1
254:1 255:1 256:1 257:1
258:1 259:1 260:1 261:1
262:1 263:1 264:1 265:1
266:1 267:1 268:1 269:1
270:1 271:1 272:1 273:1
274:1 275:1 276:1 277:1
January 22:2 32:3,13,15,17,
20,22 33:14 34:8,17,22
35:7,11,16,17 40:14 41:2
44:9 45:24 46:18 48:5 80:13
145:6 157:7 172:2 177:10,
11,13,14,19,20,25 178:9,17
181:19 182:2 208:11,13
214:3 225:13,20,21,23
226:5,24 227:4,17 228:6,14
250:7,8,10,15
Jaramillo 6:17,18 7:16,18
10:24 13:5 27:8,19,24 36:23
37:7,18 38:2,20 44:22 47:8
52:8,12 53:2 57:23 63:16
64:11 65:15 67:12 73:10
75:2 98:6 101:13,20 104:19
115:15,19 120:18 126:25
133:24 134:3 148:25 149:6
175:21 181:8 183:13
186:22,25 187:4 190:22
191:9 193:6,22 194:7 204:8
205:6,10,14 206:2,3,8
216:18 231:8,12 234:17,21
235:2 241:8 255:19 256:5,
15 271:3,13,20,25 272:10
277:3,9,12,20
Jeunst 51:6,13 52:14 53:12
Jillian 79:14 80:9,14
Jim 38:15 277:23
job 84:5 119:6 177:7 198:13
227:18 248:24 271:11
Joe 5:17 36:17 47:25 48:17
68:8,10 74:23 101:11,22
104:22 134:14 144:9 186:19
228:16 234:16 262:6,9
jog 82:23 129:20

Johnson 35:3 39:13 77:13
80:11,18 132:9 187:12,16,
20,22 188:17,24 216:24
219:4,9 220:25 221:20
222:21 247:6,9 252:4,14,21
254:7,16 264:25 265:2,5,16,
17 266:5

Johnson's 35:10 265:8

joining 146:6 147:4

Jones 16:17 25:9 39:21
66:23 77:5 131:10 132:5
223:14

Jones' 20:24

Joseph 6:17 7:18 13:3 26:23

Judge 149:8,11 192:20
193:6

judgment 196:13

judgments 50:22 71:10

Julian 80:17 85:4 132:15,17,
22 133:2 187:20,22,23
188:3,8,12

July 35:4 80:13 98:22 99:7,
11,12,16,23 100:15 187:23
225:22 226:25 227:5

June 34:25 39:22 103:2,6,7,
24 104:8 109:6,9,22,25
110:16,23 111:6,25 112:20
113:6,12 116:4 127:25
133:11 166:19 169:21
178:12

Justice 10:11

justified 64:8

Justin 49:13 68:11 117:19,
21 119:21,23 120:8,21
121:7 132:8,11 201:3

K

Kent 42:19

Kevin 17:19

Kim 79:10 80:25 233:7
235:20

kind 82:20,21 134:16 141:4
168:19 185:8 192:23 210:14
232:14 236:25 261:10,24

kindly 7:2

kinds 174:10 213:22

knew 22:23 37:15 46:22
70:11 116:10 214:10

knowing 162:3

knowledge 47:14 64:18
110:2 116:15 128:24 130:22
169:2 184:2 186:9,15
250:24 275:11,23

L

labeled 220:2

lack 103:10 186:10,15

laid 261:18

landing 42:3,13,17,18,25
44:6,13 45:6,11,15,18
257:24 258:3,14,16,18,23
259:2,6,9

language 109:18 202:25
203:15 204:6 211:12 215:24

laptop 8:25

lasted 173:14

late 35:6,11 164:7 228:12

launch 69:7 74:3

Laura 79:10 80:25 233:7
235:20

law 9:14 152:16 202:19
203:10 245:6 247:24

lawful 55:13 238:22

lawyer 128:24

lay 256:13

laying 261:21 262:4

layperson 129:7,10

leader 224:13

leaders 78:15 80:23 85:2
222:24,25

leadership 35:10 42:14
95:10,13 122:20 133:22
153:3 175:13 218:23 246:15

leading 57:20 63:17

learn 41:24 45:17 223:14
224:6

learned 45:20,21,22 230:11

learning 45:13

leave 15:23 144:18,21 145:8

leaving 148:2,10,19 150:6

led 41:10 42:17 58:18 64:15
85:3 128:18 164:10 209:10

left 34:24 39:10,23 79:9,10,
11 80:24 98:23 99:8,13
100:4 107:10 110:2,24
111:9 128:2 138:9 144:5

150:10,20 164:7,10,11,12
168:16 171:8 172:2 178:15,

18 188:17 210:15 211:23
233:6,8 241:20 271:15,16
left-hand 125:16 138:12
222:9

legal 5:18,24 10:8 20:14
22:16 101:10 198:2,6,21
199:14 202:18 203:8 204:9
227:21 229:12 237:17,21
242:22 255:7,8,9,12 257:22

legally 128:21

lens 50:12 61:10

lesser 50:24

letter 215:12,16,19 219:8
220:20 221:4,10,12,15,21
222:5,13 252:16,17,23
253:6 254:3,7,11 265:4

letters 94:7 215:15

letting 136:7

level 61:8 72:7 142:2,4
165:9 185:15,19,22

levels 188:8

liaison 94:14,25

lie 274:23

lieu 6:8

life 145:17

lifted 174:22,25 175:3,4,6
176:10,12

limit 60:9,20 62:3

limitation 148:8,15 150:5

limitations 193:20

limited 149:15 193:15

lined 38:17

lines 96:15 107:15 206:24
213:16

lingering 104:16

Linkedin 26:2,12,13 29:10,
21,23 30:8,11,12,14,19,22
31:9,10,11 35:25

list 32:25

listed 21:7 64:16 65:9 69:17
177:12 191:18 231:13
251:20 266:2

listen 257:7

listening 145:9

Liz 77:6

loan 91:15 146:19,21 220:10
245:7

loans 25:17 46:5 66:7,8,10
69:2 73:23 115:2 147:20
148:12 149:25 153:6,13,22

268:12
located 5:19 125:15
long 35:19 38:10 70:23 79:8
 117:6 136:17 148:6 156:3,
 22 160:21 169:23 173:13,
 19,22 232:13 234:24 242:4
longer 37:5 146:22 271:11
looked 21:5 26:12 50:4,6
 54:18 58:14 59:5 73:2,11
 140:4 201:7 205:12 206:23
 248:21,25 261:15
lost 121:11
lot 25:15
loud 132:24 168:3 191:24
 228:16
low 103:15 164:15
lower 125:16 202:22
lunch 101:12 104:20,25
 105:6,10
Lynn 68:9,10 228:20

M

Madam 44:23
made 13:14 16:16 21:10
 22:2 32:2 49:19 54:12 56:18
 58:17 68:13,15 85:24 86:2
 91:21 93:8,18,24 94:5 95:9,
 13 116:4 119:24 120:12
 121:4 129:17 130:2,25
 132:6 138:21 139:15 158:17
 159:3 160:11 164:23 169:21
 170:4 180:14 196:13 206:24
 224:23 230:9,13,16 235:4
 236:22 238:7 239:12 244:8
 266:23 275:23
Mahaffy 68:9,10
maintain 216:3
major 35:7
make 25:21,22 31:23 50:22
 51:9 62:10 81:25 82:6,24
 93:13 94:10,12 109:6,14
 110:7 120:6,9,14,21 121:15,
 17 126:23 138:20,24 154:6
 155:25 160:24 161:10 162:9
 169:11 196:19,20 198:25
 203:17 205:3 227:19 229:9
 231:2 239:8 243:12 261:7
 273:10 274:23 275:10
 276:19
makes 117:5 190:2 218:22

246:15,20
making 7:23 50:7 71:10
 87:8,11,12 90:22,24 92:25
 93:4 117:15 152:18 158:8
 160:9 162:12 166:2 183:7
 184:3 244:14 272:25 273:6
 274:9,15 275:22 276:4
management 174:14,15
 216:2
manager 185:21
mandatory 46:10
manner 6:13
Manning 5:1,11 6:1 7:1,8,17,
 22,23 8:1 9:1,9 10:1 11:1
 12:1,6,20 13:1,10 14:1 15:1
 16:1 17:1 18:1 19:1 20:1
 21:1 22:1 23:1 24:1 25:1,14
 26:1,2 27:1,17 28:1,3,4,10,
 23 29:1,11 30:1 31:1,18
 32:1 33:1 34:1,12 35:1,24
 36:1 37:1,18 38:1,11,14
 39:1,3 40:1 41:1 42:1 43:1
 44:1 45:1,2 46:1 47:1 48:1
 49:1 50:1 51:1 52:1 53:1,6
 54:1 55:1 56:1 57:1 58:1
 59:1 60:1 61:1 62:1 63:1
 64:1,17 65:1,5,16 66:1 67:1,
 16 68:1 69:1 70:1 71:1 72:1
 73:1,13 74:1 75:1,12 76:1
 77:1 78:1 79:1,18 80:1 81:1,
 7,24 82:1 83:1 84:1 85:1
 86:1 87:1 88:1 89:1 90:1
 91:1 92:1,20 93:1 94:1 95:1
 96:1 97:1 98:1 99:1 100:1,5
 101:1,23 102:1 103:1 104:1,
 21 105:1,5 106:1,14 107:1
 108:1 109:1,17 110:1,9
 111:1 112:1 113:1 114:1,15
 115:1 116:1,13 117:1 118:1
 119:1 120:1,4,20 121:1,4
 122:1 123:1,18 124:1,16
 125:1,9,14 126:1,13 127:1,3
 128:1,14 129:1,16 130:1,13
 131:1 132:1,4 133:1 134:1,
 13 135:1 136:1 137:1 138:1
 139:1 140:1 141:1 142:1
 143:1 144:1 145:1,2,11
 146:1 147:1 148:1 149:1,24
 150:1,7,17 151:1,10 152:1
 153:1 154:1 155:1 156:1
 157:1 158:1,4 159:1,7 160:1
 161:1 162:1 163:1 164:1,19
 165:1 166:1,11 167:1,18

168:1,10,20 169:1 170:1
 171:1,20 172:1 173:1 174:1
 175:1 176:1,16 177:1,16
 178:1,7 179:1 180:1,15
 181:1,24 182:1,8 183:1,16
 184:1,11 185:1 186:1 187:1,
 11 188:1 189:1,7 190:1,12
 191:1,2 192:1,4 193:1
 194:1,8 195:1,15 196:1
 197:1 198:1 199:1 200:1,2,
 11 201:1 202:1 203:1 204:1,
 16 205:1 206:1 207:1,5
 208:1 209:1 210:1 211:1,8
 212:1 213:1 214:1,13 215:1
 216:1 217:1 218:1 219:1
 220:1 221:1,24 222:1 223:1
 224:1 225:1,8 226:1 227:1,8
 228:1,5 229:1 230:1 231:1,
 19 232:1 233:1 234:1 235:1
 236:1,2 237:1 238:1 239:1
 240:1 241:1,17 242:1 243:1
 244:1 245:1 246:1 247:1
 248:1 249:1 250:1 251:1
 252:1 253:1,15,25 254:1,12
 255:1 256:1,19 257:1,17
 258:1,24 259:1 260:1 261:1,
 3,9 262:1 263:1 264:1
 265:1,11,12 266:1,5 267:1
 268:1 269:1 270:1 271:1,6
 272:1,19 273:1 274:1 275:1,
 2 276:1,15 277:1,12,23
Manriquez 19:25 24:7 52:25
 53:15 117:18,22 118:9,14,
 24 127:12 128:17 129:6
Manriquez' 125:22
Manriquez's 119:12 128:23
March 33:14 39:11,15 81:5
 98:23 99:7,13,16,23 100:16
 103:17,20 104:2,9 107:10
 110:3,24 111:10 112:14
 113:7 145:8 170:18 171:5,7,
 24 172:3 177:22 178:15
 181:25 225:24 226:5,9,11,
 19
Marcia 13:5 17:17,18
Marcia's 17:18,19
mark 25:11 27:20,21,24 28:3
 67:13,14 111:20 133:14,17
 144:4,10,13 150:24 204:25
 205:21 256:13
marked 12:17 28:6,8 66:25
 106:12 111:22 125:2,7
 151:2 165:13 182:10 189:8

201:13,16 206:6 210:10
219:23 241:18
marking 205:5
Martin 133:7
Massachusetts 15:14 16:9
matter 5:15 6:10 219:25
268:3,5,15
meaning 25:23
means 8:14 110:8 115:15
175:14 190:12 191:24
210:20,22 211:7,10
meant 193:25 245:18,19
263:7
measure 61:18 275:10
Media 5:10
medication 105:19,21
medications 82:4 105:25
meet 16:18 17:9 43:15 44:4
76:3,25 78:17
meeting 17:2,6,8 41:20 71:4
76:7
meetings 22:10 43:10 76:12,
16 77:10,14 78:21 105:8,11
200:18
mem 198:2 251:13
member 51:5 146:3
members 49:4 59:4 118:8
119:5 259:5 269:6
memo 49:22 67:10,16 68:15
73:2,5,11 77:18 88:20
139:17,25 141:15 220:24
254:16 256:20 257:10
memoranda 198:2,6,11,25
199:8,11,12,14 227:21
229:12 232:9 235:17
242:12,17,22 243:6,14
244:9,18 249:5,22 251:10,
13 255:7,12 266:20
memorandum 141:11
198:21 249:12 250:7,14
255:8 262:20 263:11 267:15
memorialized 139:15
memory 36:3 82:23 96:19
98:20 117:2 129:21,22
130:12 219:5 228:8 231:16
235:9 253:10
memos 251:8 255:12,14
257:22
Menaker 5:24 9:17 10:2,24
27:19,21 47:8

mentioned 24:16 31:25
92:20 147:11 156:18 198:19
200:11 214:14 219:6 246:4
248:11 270:23
mentioning 60:5
merits 109:16
Merritt 6:19,20 10:10,16
11:7 17:17 27:8,10 36:17
37:9,12 38:10,13,18 44:15,
17 46:11,14 52:5,10 53:21
55:18 56:4 57:4,12,17,25
60:11 61:21 62:13 63:9,14,
22 65:3 70:5 73:8 74:23
75:4 84:9 91:8 92:17,19
96:2,7,25 97:13 98:4
101:11,18,21 103:10
104:13,22 113:22 114:12
115:13,17 116:6,14 117:7
120:17,25 123:15 124:9,14
126:10,19,20 127:5 130:4,
10 131:18 134:2 137:20
143:17 144:22 146:12
147:6,21 148:4,13,21 149:4,
10,21 150:2 163:3 175:19,
22 181:6 183:11,14 184:2,7,
11 186:13,19,24 190:19
191:3 192:11 193:13 194:2
195:13 197:19 204:4 205:2,
7,22 206:17 216:16,20
217:17 223:12 224:8 231:6,
10,15 234:16,18 239:17
240:2,13 246:17 248:5
255:16,25 256:9,17 263:9
269:24 270:22 271:9 274:25
276:12,20,24 277:3,7,11,17,
18
messages 78:3
met 16:23 17:15 42:11 43:5,
7 44:5,10 47:21,23 49:5,7
76:5,6,9 78:15
meth 52:22
methodology 50:21 51:8
52:4,22 58:20 59:9 72:3,11
74:9,18 87:5,6,7 88:16 92:8,
11,22 118:3,6,23 125:22,24
127:13,15 128:9,11,12,17
153:18 263:5,8,21,25
mid-sentence 226:4
middle 151:21 155:10 171:7
257:19
million 211:6 212:8
mind 33:20 37:2,9 81:17
104:15 134:18 135:21

182:20 191:24 193:13
232:15 241:6 250:5,13
271:4
mine 21:2
minimal 178:24
minute 37:2 203:25 221:6
minutes 37:14 38:12,15,17,
19 74:25 75:3 101:16 134:4
206:23 219:6 241:7 246:5
mire 239:4
mischaracterization 61:22
84:10 123:16
misconduct 59:24 64:23
114:25
misread 172:4
misrepresentation 198:16
249:11
missed 234:20
misstatement 269:24
misstates 115:13
mistake 120:12 166:2
mistaken 34:9
misunderstandings 96:12
misunderstood 255:7
misused 190:6,8,9
moment 22:9 29:8
month 31:25 48:20 103:5
monthly 20:10
months 31:5,6 32:12 33:5
116:20 168:25 187:25 223:8
229:18 256:11
morning 7:17
move 18:15,17 20:20 29:6
56:25 65:15 72:4 121:14
133:5 160:15,18 203:20,24
204:20 212:13 221:24 261:9
269:5 276:8,11
moved 35:12 61:7 145:21
160:15
moving 72:2 155:11,13
160:17 182:11
multiple 14:7 79:4,6
Murray 112:4 165:16 167:3
176:18

N

nail 37:10
named 79:18

names 43:14 164:9
nature 8:23
necessarily 55:4 56:21 58:4,
 5 180:3 224:24
needed 50:4,6 55:4,14 65:18
 102:23 120:13 162:4 164:24
 168:6 169:16 172:10,25
 181:15 182:7
negotiate 22:3
negotiated 21:11 22:3,4
 151:6 182:23 189:9 273:15
Nevin 16:17 25:7 44:4,6
 49:10 79:12 80:20 83:8 84:7
 106:10,23 109:4 110:17
 117:14 131:23 132:4,7,13
 133:12 161:24 164:12
 183:20 184:23 197:22
 233:2,9,12 235:22
Nevin's 20:25 107:8,12
 109:10 185:25
nods 9:22
non-career 153:3
non-cci 128:12
non-direct 69:2 73:23
non-for-profit 149:20
normal 137:6,8,13 236:13
Northeastern 15:15
Notary 7:10
notations 31:23 32:3
note 26:24 172:4 256:9
noted 32:12 194:7
notice 12:20 13:2,9,17 28:2,
 14,16,23 91:7 174:6,8
 273:19
noticed 31:21,24 98:25 99:5
notices 192:19
notification 210:19
noting 109:15
November 106:25 109:10
 110:17 133:13 155:3 156:5
 157:2,8 159:22 163:25
 164:3 182:13,23 189:10
 252:4 254:15 273:15
number 12:19 29:25 46:19
 47:20,23 48:2 54:11,13
 56:10,21 90:6 102:14,17,18
 103:7,14,19,23 115:4
 125:17 151:24,25 155:19
 163:12 164:13,16 168:7
 169:17 170:9 171:5,15,16,
 18 178:24 181:17,20,23

184:15 202:17 204:11
 206:10 213:6,14 214:12
 266:15 275:24
numbers 12:8,14 88:8
 99:20,22 101:10 102:4,6
 104:2,6,7,17 125:15 166:3
 170:22 184:4 185:6 220:23
NW 7:12

O

oath 6:8 9:13
Obama 249:24 250:3,4,9
 251:5
object 10:16 11:7 147:6
 148:5 183:15
objected 10:19 148:22
objection 44:15,17 46:11
 52:5 53:21 55:18 56:4 57:4,
 12 60:11 61:21 62:13 63:9
 70:5 73:8 84:9 91:8 92:17
 96:2,7,25 97:13 98:4 103:10
 104:13 113:22 114:12
 115:13 116:6,14 117:7
 120:17 123:15 124:9,14
 130:4 131:18 137:20 143:17
 144:22 146:12 147:21
 148:4,13,21 149:21 150:2
 163:3 175:19,23 181:6
 183:11 184:4 186:13 190:19
 195:13 197:19 216:16
 217:17 223:12 224:8 231:6
 239:17 240:2,13 246:17
 248:5 255:16 263:9 269:24
 274:25
objections 6:13
obligated 56:25
obligation 10:20 70:12
observed 102:4
obtain 184:24
obvious 107:2
occasion 23:16
occurred 234:2
October 193:7
offense 81:8
offhand 48:23
office 19:8,20 22:25 32:8
 33:11 39:23 51:6,20 66:3
 90:11,16 93:3,7,13,17,24
 94:5,14,15,21 95:4,17,24
 96:5 123:4,7 130:16,18,21

138:23 139:4,8 174:11,13,
 14 214:24 216:6 218:22,24
 255:14 260:16 268:20
 269:2,7
**office-of-the-general-
 counsel** 238:17
officer 15:15 33:13,24 34:2,
 8,14,21 35:2,3,4 146:2
 187:22 188:2 232:6,18
 233:19 234:3,12 235:12,15,
 20 236:10 242:19,24 243:3,
 20 244:3 266:22,24
Officer's 262:21
offices 9:12
officially 54:18 76:8 79:2
OGC 48:13 121:25 129:13
 139:9 222:24 228:23 237:23
 238:7,9 259:22 260:13
OIG 69:7 74:3 255:6
ome 37:10
onboard 32:18 44:3,11
 45:22,25 54:18 77:5,14
 80:10 171:16 181:19
one-page 127:6
one-time 15:2
open 12:3 26:25 138:9
open-ended 192:13 193:3
opened 11:24
opening 27:4
operable 69:6
operating 33:13,24 34:2,8,
 14,21 35:2,3,4 268:23
operation 72:21,22 94:13
 95:8
operations 47:14 94:23
 189:3 201:4 215:25 225:22
 226:25 227:5,15
opinion 196:22
opinions 187:17
opposed 106:4
option 66:4 123:2
order 34:10,11 43:3 53:13
 61:16,25 117:17,23 119:18,
 20 124:8 128:23 129:7
 137:9 148:8 165:19 193:7
 198:25 199:10 216:2 276:11
ordered 46:16 71:24 148:15
 150:5 173:25 190:21 256:4
Orders 20:15
organization 94:24 95:7
 246:19

organizations 269:8
original 120:24
OUS 73:19,24 74:6,13
 107:17,19 108:2,11,18,19,
 22 139:10 255:8 256:24
 257:10 259:22 260:12,20
 262:21 267:2,5,8,23
OUS' 262:20
OUS's 255:11
outcome 5:22
Outcomes 225:10
overbroad 62:13 96:3,7
 197:19 246:17
oversaw 267:23
overseeing 78:23 83:16,20
oversees 83:24
oversight 78:8 84:23,25
 270:11

P

p.m. 105:2 277:25
pace 101:25 102:3,9,20
 160:17,25
package 11:22,24 12:3
 28:12 29:4 88:19 89:2
packages 90:6
packed 242:4
packet 28:18 106:7 170:13
pages 18:18,19 21:23 112:6
 151:24 207:8,9,12,13 254:6
panel 48:25 49:3,6 52:24
 53:18 59:15 68:5,8,10 71:4,
 20,22 153:8 261:7,14,21
 262:4,7 267:3,9 276:6
panel's 261:18
paper 80:22
paragraph 68:7 107:14
 109:2,20 227:4 257:19
 261:6,12
parameters 65:8
part 35:18 42:9 45:14 48:10
 49:10,23 51:4 58:13 59:8
 77:6,14 78:9 94:18 110:13
 111:7 112:18,21,25 122:2
 191:13 200:14 203:8 224:2
 237:5 242:5,10 246:24
 265:8 267:20 269:15,21
part-time 177:25
partial 52:22

participants 5:3 270:19
participating 6:4
particulars 14:20 216:11
 217:6,7
parties 6:11 222:18,20
 223:11
parts 159:9
party 5:20
pass 101:14
passage 82:13,15
password 13:4
past 67:3 105:19 257:9
patience 129:20
Patrick 219:8
Patty 112:4 165:16 176:18
pause 71:18 225:17 226:3
 227:24 266:18 267:6,18
pausing 274:10
paying 15:23
PDF 12:19 28:4
pen 31:22
penalty 6:11
pending 11:15 68:13 103:4,
 9 115:9 155:14 158:7
 159:23 160:4 164:24 167:11
 168:7 169:17 182:12,14,24
 183:22 263:24
Penn 148:2
Pennsylvania 7:12
people 23:14 24:22 25:2
 42:8 47:20 48:12 49:5 58:8
 68:16 79:4,6,18 80:7 82:10
 94:15 131:4,6,8 150:14
 164:7 175:16 200:25
 210:15,16 211:2 222:17
 246:6 263:20 269:3,15,19
percent 35:13 50:8,23,25
 51:10,11 56:20 58:11,17
 59:16 61:4,15,19 70:25
 72:8,9 91:18 155:15 194:25
percentage 50:24
performance 59:10
period 44:6 45:21 47:24
 71:3,19,21 72:18 84:7
 100:24 107:21 108:13,21
 111:15 112:22 113:16
 114:6,9,18 117:6 121:6
 122:17 131:3 133:21
 134:17,23 145:18 157:12,15
 171:22 173:18 180:6 183:18
 184:3 242:20 272:23 274:11

periodic 20:11
periods 34:2 38:4 83:24
perjury 6:11
permanent 35:4
permissible 8:16
person 6:9 17:10 27:2 34:21
 50:17 77:7 79:12 84:14
 108:10 164:13 201:2 210:17
 211:22 228:19 243:11,17
 272:24 273:4
person's 51:12
personal 116:15
personally 120:11 201:11
personnel 174:16 185:2
pertinent 126:16
Phil 47:22,23 52:14 68:11
 130:19,24 228:18 262:8
Phillip 51:6,13 53:12
phrased 57:18 62:5
physically 6:5
pick 167:4
picked 59:4
pieces 232:15
place 14:12,15 23:11 88:6
 92:8 121:12 143:3 163:13
 173:20 198:11 200:15,20
 247:13
placement 119:7 198:13
 227:18 248:25
places 31:24 202:13,16
plaintiffs 6:18 7:19 100:10
plan 172:5 216:13 217:10,14
 218:7 224:17,18
platform 22:11 105:9
play 253:19
played 94:20
plenty 203:11 245:25
point 8:7 13:10 38:7 54:7,21
 65:10,13 72:3 80:25 81:12
 86:7,18 88:11 96:22 100:13
 107:9 110:10 126:7,8
 127:10 128:7 132:18 134:15
 135:22 138:13 140:16
 142:12,21 143:25 151:22
 155:2 156:5,11,17,25 157:8
 166:4 175:9 180:16 185:11
 186:21 188:20,23 191:25
 192:12 202:15 209:14 213:3
 215:4 226:16 230:5
pointed 127:18 261:11

<p>pointing 152:3 205:16 pol 94:17 272:20 police 15:15 policies 92:4,6,23 93:10,13 94:18,19 95:2,25 232:11 242:14 268:13 policy 92:13 93:4,8,18,24 94:5,9,10,11,12,14,21,25 95:4,6,9,12,19,23 96:5,13 134:19,21 138:13,15,18,20 139:7,8,14,15,20,23 140:15,23 141:12,16,18,24 142:2,4,5,7,13,16,20,22 143:2,4,16,24 209:17 211:7 212:9 216:12,25 268:3,5,9,16,21,22,24 269:5,11,22,23 270:3,9,16,17 272:20,22 273:11,13,14,18,21,22 274:15 policymaking 94:13,24 95:7 pools 248:11 portfolio 39:14 224:3 267:21 posed 112:14 position 33:24 35:12,20 40:22 41:5,15 44:16 48:5 51:19,24 54:8 59:17 76:2 144:6 145:22 184:24 185:17 187:22 188:18 209:4,6 223:23 224:22 229:16 positions 40:6 175:17 177:6 178:5 180:20,22 poss 136:23 possibly 216:7 228:20 post 30:24 postdates 125:10 166:20 posting 30:5 Postsecondary 94:16 95:2,5 139:8 228:22 269:7 276:3 potential 64:24 potentiality 59:5 potentially 59:11 191:20 192:7 243:18 power 271:23 Powerpoint 125:3 127:20 136:9 practice 116:3 pre 58:19 147:16 precisely 235:25 preferred 70:9 prejudiced 64:13 193:10 prelim 65:20</p>	<p>preliminary 168:5,14 169:8,14,22 227:19 229:10 230:9,13,17,21,25 231:5,22 preparation 20:10,22 41:17 68:15 106:16 prepare 16:13 prepared 54:13 158:19,20 180:21 252:4 preparing 178:4 180:19 preponderance 204:10 presence 5:9 present 6:5 7:2 76:20 170:11 presentation 125:3 presented 37:17 257:24 258:13,22 259:8,10 presenting 191:25 President 149:19,23 presidential 145:23 press 19:2,5,7,8,10 77:7 193:23 presumption 149:13 pretext 64:13,23 65:7 191:19,22 192:6,14,15,24 193:3,9,19 pretty 173:15 242:3,4 255:21 previous 54:10,14,24 55:13 56:23 59:2 64:19 181:21 198:22 199:4 209:9 259:20 previously 13:15 24:23 25:3 30:16 66:22,25 68:18 100:12 106:12 125:2,7 189:8 200:18 201:13,16 206:21 219:21,23 220:4 primary 177:6 principal 78:7 164:13 167:14 principle 56:9 83:23 122:3 133:23 161:7 172:9 179:14,16 259:7 printed 213:10 printing 208:8 prior 21:10 40:7,17 44:12 45:2,4,6 54:5 59:17,21 61:22 63:6 65:20 75:19 84:10 105:15 106:8 115:14 123:16 133:10 146:6 147:4 157:4 170:3 191:17 198:13 249:23,24 269:25</p>	<p>privacy 59:12 Private 5:7 privileged 52:6 57:5,14 60:12 probe 168:22 probing 191:21 problems 96:4 procedure 236:13 259:23 260:13 procedures 69:4 73:7,17,25 74:7,14,19 153:5,10,12,16,20 259:19 262:23 263:3,6,24 264:4 268:23 proceed 68:14,25 73:22 74:3 264:17 proceeding 5:4 69:6 proceedings 6:2 75:8 134:10 187:8 241:14 272:16 process 19:3,13 66:12 69:4 73:7,25 74:7,14 85:9,14 87:6,15 88:18 92:7 93:11,20 162:15 176:14 199:22 210:24 212:5 220:10,18 247:19 255:7,11 259:16 processed 259:22 processes 74:17 153:5,13,21 262:16 264:16 processing 63:18 85:10 101:3 186:16 189:4 259:12 produced 9:19 170:8 production 20:10 profile 26:3,5,8,10,13,14 29:10,21,23 30:9,19 program 69:8 71:5 74:4 83:16,21 84:15 115:8 153:4 156:2 200:12 268:11 programmatic 154:6,13 programs 45:15 78:9 progress 109:6,14 158:8 160:10,11 project 182:6 projects 41:23 proper 55:3 185:22 216:2 proposal 51:8 proposed 257:20 protect 19:4,13 60:8 61:16,25 62:11 148:14 150:4 protecting 62:15 Protocol 201:24 202:3 204:25 205:9 206:22 258:5,8</p>
---	--	--

Protocol' 257:24
protocols 199:9,15,20,23
 200:15,20 257:21 264:16
provide 58:13
provided 59:7 61:5 103:18
 199:3 255:9 267:2,5,8
providing 72:7 177:8
 267:11,14
public 7:10 141:24,25
 145:17
publication 273:19
published 141:25
pull 18:8
purports 107:4
purpose 49:16 273:14
purposes 204:21 237:5
 260:4
Pursuant 262:20
put 9:4,7 26:9 29:20,23
 30:12,13,20 31:5 36:2 37:13
 52:15,16,18,20,24 53:12
 59:9 60:23 71:18 72:11,13,
 18 118:2 128:15,17 135:7,
 12,14 136:16 137:10,19
 139:20 140:23 159:8 176:20
 187:21 236:14 247:15 251:3
 257:9 276:6
putting 90:13

Q

qual 198:7
qualified 51:7 245:6
qualifies 264:12
qualify 198:3 232:10 242:13
 243:7,15 244:19 264:21
 265:25 266:9,21 267:16
qualifying 198:8 262:16
quarter 103:2,6,19,24,25
 167:12
question 8:15 10:18,20
 11:2,6,8,15,16 31:14 36:5,
 18,21 44:20,21,23,24 46:13,
 15 47:6,9,10 50:9 52:11
 53:9,22 55:20 56:6 57:7,9,
 13,15,18,22,24 58:2 60:2
 61:23,24 64:10 65:2,14 81:8
 83:19 84:11 91:3,20 93:15
 96:8 97:3,4 98:9 101:22
 112:14,21 114:2,13,14
 116:17 119:14 120:5,7,24

121:21 123:17 124:15
 125:20 129:11 130:6 135:13
 140:8,13,21 142:8 143:22
 144:25 145:10 147:10 148:5
 150:15,18 163:5 165:22
 166:14,16 167:2,7 169:10
 171:11 173:2 175:25
 176:17,24 177:5 178:17
 179:12,13 180:13 181:9
 184:8,10,12 194:4 195:16
 200:19 203:5 206:2 211:18
 217:21 219:18 230:4 231:18
 236:16 238:22 246:8 247:25
 250:8 255:20 256:16,18
 257:4 260:5 263:12 265:20
 275:20 276:14
questioning 147:7 148:22
 192:25 208:25 256:14
questions 8:18 10:3,16
 36:25 37:10 101:15 112:3
 121:10,15 129:23 165:15
 168:19,25 219:17 225:18
 235:25 245:16 249:8 250:5,
 23 260:25 271:5,8,14,21
 272:2 277:10
quick 81:9 144:17 225:7
quicker 160:15,19
quickly 161:2 271:17
quo 152:15

R

race 119:7
radar 37:13
Raguso 5:17
raised 50:9 62:21 212:9
 218:10 219:18 249:9 250:6
raises 211:6
raising 200:18
ran 84:23 182:13
range 50:24
rate 37:4 195:2 227:18
 249:10
rates 198:14
reach 9:4,7,8
react 55:17
read 10:25 11:2 25:4 44:22,
 24 47:10 67:23 73:5,20
 106:18,22 109:3 110:11
 112:17,24 126:16,23 127:7
 136:6,7 152:9,23 154:2

155:9,17 158:4 159:2
 165:22 166:14 167:2,18,25
 168:3 176:24,25 177:16
 182:9,21 189:15 202:5,13
 203:17,20,23 213:5 217:3
 218:13 221:8,10,12 222:17
 223:15 224:5,7,22 226:21
 229:5 232:3 234:8 235:7,10
 246:7 253:12 255:2 257:20
 259:14 261:11,17 262:13
 264:7 266:17 277:16
reading 69:9 74:5 109:19
 110:5 166:2 178:6 190:10
 194:10 211:13,15 221:6
 225:16,17,21 227:25 233:14
 235:24 245:17 258:21
 263:15
reads 68:7
ready 209:25
real 273:13
realize 214:7
realm 116:16
reason 9:20 11:19 81:9,11
 111:12 115:16 126:2
 127:11,23 128:7 134:19
reasonable 183:5,24
reasons 113:14 191:16
 192:7
reassigned 224:13
recall 12:25 13:9,11,16,20
 14:9,11,14,19,20 15:6,10,17
 16:10 17:3,18,20,23 18:7
 20:7,12 21:3 30:5 43:7,13,
 24 44:5 45:12,19 47:3 48:4,
 22 49:8 50:16,25 52:19
 54:15 58:15 60:5 63:5
 69:23,25 71:8,12,13,15,22,
 23 72:12 73:3 74:22 75:21
 77:22,25 79:5 83:10,14 86:8
 87:5,10,16,22,24 88:15,18,
 25 89:3,8,10,16,17,25 90:7
 92:2,7 93:2,11,16,22 94:2,4,
 8 97:9,10,18,24 98:15,18,21
 99:6,15,21,24 100:4,17,22
 102:5,7,13,16 104:7 105:16,
 20,22 107:19,22 108:17
 111:16 114:7,8 115:14
 116:11,16,22 117:20,25
 118:2,7,12,23 119:9,15,16
 124:20,22 126:14 127:17
 129:15 132:14,15,19 133:2
 135:9,10 138:18 139:18,24
 141:20 144:2,16,20 150:22

<p>151:16 152:18 153:15,23 154:9,11,12,13,15,16,21,24, 25 155:3,6 156:13,17 157:2, 9,13,16,20,21,23 158:14 159:5,11,13,19 160:10,16 161:3,23 162:8,14,17,18,23 163:8,9,10,11,12,15 164:6, 15,20 165:3,8 169:5,6,12,19 170:6 172:14,16,22,23 173:2,3,6,7,8 174:9,11,23, 24 175:3,10 176:2,11,15 179:15,21,22 180:8,9,24 184:20,21 185:2,7,9 186:6,8 187:14,16,24 188:5,7,11,12, 15,16,25 189:6,22 194:10 196:7 197:16 198:10,11 199:13 201:8,25 202:4,8 208:10 209:24 210:21 213:2 214:10,16,18 215:3,10,11, 23 216:8 217:7,12,23 218:12 228:19 230:7,11,24 231:20,21,24 234:10 236:21 237:7,9 238:11 239:9,13,21 240:5,7,10 243:9 244:16,17, 21 245:12 248:8,13 251:17, 22 252:2,9,22,24 254:20 256:22 258:11,20 259:24 260:6,7 262:8,9,25 264:2,3, 5,18,22,23 266:10,12,14 267:19 268:20 270:19 274:5,18,19,20 275:17,19</p> <p>recalled 244:6 recalling 81:10 receive 11:22 13:12 56:19 88:19 95:5 175:7 225:23 227:2,6 229:7 received 28:19 29:3 85:7 90:5 221:21 receiving 71:9 89:2 264:18 266:10,12 Recent 112:12 recently 168:4 252:19 reception 22:20 23:9,17,18 24:13 recess 6:23 75:7 134:9 187:7 241:13 272:15 recognition 54:24 recognize 67:7 125:9 140:9 166:20 171:6 189:18 194:18 208:16 recognized 56:22 149:12</p>	<p>recognizing 66:11 199:22 recollection 22:7 33:23 34:13 36:13,14 37:23 38:4 68:2 72:10 82:2,8,12 90:10, 20 102:20 113:18,24,25 114:3 115:20,21 118:20,22 119:11 125:25 128:6,13 137:7 157:25 168:17 176:9 179:24 212:19 219:10 221:4,16 222:5 236:8,12 238:2 241:3 248:9 258:2,25 261:24 262:2 267:5,11,17 recollections 82:5 recommend 52:3 recommendation 52:11 68:24 69:18 108:8 141:13 262:12,19 264:7,13,14 265:12,18,21 266:3 recommendations 68:13 216:10 261:7 276:17 recommended 66:5 recommending 273:5 reconstitute 37:15 record 5:3,7 6:2,16,22 7:7, 21 8:12,17 9:6 10:3 26:25 27:9,12,14,16 38:9,22,24 39:2 53:3,5 75:6,10 104:24 105:4 106:7 111:18,24 112:3 126:18,21 127:2 134:6,8,12 136:12 168:3 177:17 187:6,10 204:13 205:15 241:10,11,16 270:24 272:11,18 277:22 recorded 5:4,5 records 58:22,24,25 216:3 recruited 41:6,8 redacted 207:10 reduce 164:24 168:7 169:16, 24 refer 12:13 25:19 194:8 reference 236:22 245:14 250:14 referenced 65:12 230:24 referred 68:17 87:19,23 referring 53:13 140:25 190:23 191:22 233:12 refers 74:9 180:25 256:19 reflect 29:20 136:12 139:22 reflected 34:11 93:19 reflection 22:2</p>	<p>reflects 29:9 31:19 refresh 22:6 37:23 98:20 117:2 128:13 130:12 219:5, 10 221:4,16 222:5 228:8 253:10 258:2 267:4,10,17 refreshes 128:6 regard 270:18 Regional 252:5 register 141:25 registered 255:15 regularly 15:12 49:5,8 78:15,17 183:19 196:3 regulations 69:5 74:2,8,10 152:12 regulatory 139:17 152:14 relate 191:4,6 255:23 related 5:20 31:12 36:25 44:14,16 108:15 148:11 149:16 153:20 158:7 159:23 160:4 166:23 209:23 relates 64:10 193:22 relationship 80:16 relay 236:10 237:3 relaying 236:9,14 243:20 release 19:2,5,7,11 relevance 44:18 relevant 63:15,23 64:4 65:4 147:8 149:2 193:4 256:3 relied 196:18 198:25 relief 50:8 52:3,22 58:11,13 59:16 60:9,20 61:8,19 62:3, 19 70:25 72:7 85:8 86:2,7, 24,25 87:8,12,23 91:13,17, 22,25 125:22 127:13 128:9, 11 204:13 263:8 275:10 reliefl 152:17 remain 154:5 remained 160:21 177:23 remains 164:14 remarkably 206:20 remarks 21:10,14,20 22:2 151:12 152:5 158:17 182:8 189:9 remember 14:25 41:9 43:11 47:4 51:18 72:13,19 79:9 81:15,16 87:20 89:2,3 96:14,20 100:23 104:3,4,10 117:3,24 128:16 133:16,17 156:20,21,22,24 157:24 158:25 161:20 162:2,12 164:9,21 165:8,11 172:18</p>
--	---	---

<p>198:17,20 199:16 201:2 202:10 210:6 212:10,12,19, 25 214:11 216:11 217:2 222:12 233:16 234:14 236:5,11 238:15 243:16 269:3</p> <p>remembering 102:15 remote 5:9,17,25 remotely 6:7 remove 15:24 18:18 rent 15:23 reopening 273:15 reorganized 207:24 repayment 25:16,24 46:6 125:4 220:7,10 268:13 repeat 10:22 17:11 44:21 47:9 53:9,23 61:24 83:19 84:12 97:4 98:9 111:2 114:2,14 120:3,24 124:16 150:15 154:19 198:5 247:25 repeated 121:11 150:18 repeating 203:6 rephrase 52:13 53:25 57:25 178:16 181:9 replaced 144:6 replicated 202:12,16 report 75:24 80:21 88:7 99:19 101:10 102:15 214:14,19 215:7 216:15 217:8,11,15 218:14,17,19 219:7,11,13,14 220:8,15 221:5,8,16,17 222:5,15,16 223:9 224:16 225:21 229:17,25 232:25 241:19,21 244:24 252:8,13 253:2 254:10,11,15 255:6 259:15 260:3 266:18,21 reported 75:25 76:2 78:11 80:8,12 81:2 84:16 reporter 5:23 6:3,25 9:17 11:3 27:23 44:23,25 47:11 reporting 6:6,14 79:24 80:15 81:14 115:25 reports 20:10,11,12 99:21 227:21 229:13 represent 10:12 26:11 30:7 103:17 117:13 132:3 170:7, 13 213:17 250:25 261:13 representation 30:15 31:2 60:23</p>	<p>represented 10:8 68:16 202:12 207:19 242:23 representing 182:17 represents 171:16 request 5:6 11:15 161:10, 16,19,20 162:9,13,18,25 180:3 186:6 215:18,22 218:23 221:8 262:14 264:9, 18 265:21 266:6 requested 11:2 44:24 47:10 220:16 265:19 requesting 69:7 74:3 162:16 271:7 requests 179:25 require 123:21 255:8 required 56:13 128:21 129:2 133:22 154:4 166:13 273:18 requires 216:13 resign 145:20 resolution 92:10 resolve 46:9 68:13 196:6,8, 10,11 resolved 54:21 resources 166:12 167:9,16 168:6 169:15,24 172:24 respect 52:3 61:12,13 259:18 264:14 respective 9:12 response 112:2 167:23 177:15 180:18 192:12 217:11,15,22,24 218:3,5,6 252:7,15,21 264:14,25 265:4,8,13,14 266:2 responsibilities 45:14 95:21 132:16 responsibility 41:18 55:15 79:2 133:4 139:10 151:6 182:22 208:19 209:2 269:12,14 responsible 78:22 95:18 114:22 115:23 246:6 272:24 273:4,7 274:3,9,13,14 275:14,16 rest 110:5,10 111:8 204:14 restate 58:2 65:14 195:16 restroom 134:5 result 117:17,22 128:22 129:5 resulted 49:22 52:23 59:14 60:8 68:4</p>	<p>resume 29:24 30:9,15 31:7 34:10 116:19 262:15 264:10,19 265:22 266:7 resume-type 26:14 retained 34:22 retire 145:19 retired 41:11 145:3,5 retirement 145:14 retract 251:7 review 24:18 29:12 48:24 52:23 53:18 59:14 66:3 68:5,8,9 69:7 71:4,20 74:4 85:10 87:5 108:8 119:17,19 153:7 154:3,5 159:16 176:14 187:18 196:3,19 197:12 199:17 200:12,20 202:2 204:24 205:8 206:22 209:25 214:21,25 216:8 218:17 219:14 220:17 223:9 225:25 227:16,18 229:6 247:19 252:7 257:24 258:4, 7 259:19 261:6,14,20 262:4, 15,23 263:3,7,24 264:4 267:3,9 269:16,20 276:6 reviewed 17:24 19:21 20:22, 25 21:2,10 85:24 106:15 195:7 197:23 200:14 226:13 232:11 242:15 reviewing 31:21 64:2,7 153:5,12,21 177:8 191:5,11 192:8,17 196:12,23 221:15 226:8 273:23 reviews 88:6 216:6 revised 12:19,25 28:2,23 revising 62:19 revisited 16:16 Riemer 49:13 68:11 117:19, 21 119:21,23 120:4,8,19,21 132:8,11 201:3 Riemer's 121:7 right- 213:16 right-hand 202:22 206:14 213:7 rights 194:15 Robert 43:11,15 79:8 164:9 role 14:17 39:8,18 40:14,18, 25 41:14,23 42:13,14 43:24 76:4,6 79:19,22 80:8 83:20 84:2 85:6 92:10,24 94:21 188:19 189:5 223:25 229:15,18</p>
---	---	---

roles 38:5
room 6:6 8:7,8,22 9:2
rose 165:10
Rosenfelt 47:22 68:11
 130:20,21,24 228:18 262:8
roughly 155:15
round 182:13 183:4
routinely 223:5
Roxbury 16:8
Rreview 201:24
rule 53:14
ruled 59:10
rulemaking 21:11,13 22:3,4
 151:7 182:23 189:10 273:15
rules 8:4
rush 126:14

S

sat 258:19
satisfied 101:25 102:3
satisfy 203:18
Schmoke 79:14 80:9,17
 85:4 132:17,22 133:3
 187:20 188:4,8,12 262:9,10
Schmoke's 132:16
school 64:22 114:24
schools 59:24 62:18 119:16
 149:20 158:8 159:23 160:5
 198:18 213:17
scope 44:17 46:12,16 55:19
 63:10 144:23 146:13 147:7,
 22 148:6,14,23 149:22
 150:3 175:24 190:20 195:14
 216:17 255:17
screen 53:7
scrutiny 204:14
search 34:25
secondary 228:21
seconds 221:25 253:18
Secretary 19:25 23:20 32:8,
 9,15,19,24 34:5 40:9 47:22,
 23,25 48:18 54:14,21 55:5,9
 56:23 58:12 64:21 65:17
 66:17 67:11 68:18,24 69:12
 73:2 76:2,4,13,14,25 77:2,8,
 9,11,19,20 78:2,6 90:12
 93:21 94:22 95:9 112:2,17,
 25 121:17 122:2,6 123:13,
 19,24 140:3 141:2,5,9,10

157:5 165:16 166:15
 172:21,23 173:5 176:19
 177:17 179:2 208:22 209:7,
 12,14,22 210:7,23,24
 214:20 215:2,9,14,17,20
 218:25 223:2 227:22
 228:17,18,21 229:13 238:24
 239:3,14,19,23 240:5,8
 261:7 262:8,21 269:4,19
 276:2,3
Secretary's 55:8 64:9 65:25
 93:9,12 152:16
security 14:22 59:7
seek 79:13
self-employed 146:7
Senator 112:4 165:16 167:3
 176:18
send 215:17 252:14
sending 78:2
senior 32:8,14,19 34:17
 40:9,14,17 76:7,10 78:15
 79:12 80:23 146:3 208:21
 209:17,19,20,22 222:24,25
 224:13
sense 25:21,22 41:21
 183:21
sensitive 82:9
sentence 74:5 109:3,20
 110:5,7,8,11,12,13 112:25
 151:21 152:23 153:25
 155:10,17 158:5 167:20,21
 168:12 189:15 194:16 197:9
 227:3 228:2 231:25 232:14
 233:11 234:22 241:21 242:3
 245:3 247:5 261:12
sentences 167:19,22 168:2,
 11
separated 177:21
Separately 77:22
September 40:23 164:2,5
servant 145:17
serve 7:25 9:19 35:19
served 34:13,18 35:6 38:5
 39:15,21 40:9
service 14:22 31:5 146:3,4,5
 173:21
serving 14:21 36:6 40:17
session 21:13 151:7,12
sessions 21:11
set 12:7 52:24 65:7 69:4
 73:6,25 74:7,14,17,19

134:23 136:18 139:12
 142:23 149:16 198:2,8
 212:7
setting 73:16 191:18
settled 71:17
seventeen 170:17 171:6,9
shared 269:12,13
she'd 123:25 224:21
short 36:20 74:24 127:4
 133:25 156:20 157:17,18
 199:22
short-term 156:2,19
shorthand 25:20
shortly 21:15 46:25 79:11
 81:5 223:8
show 126:22 170:12 200:2
 219:18 240:20
showing 64:12 126:12
 135:16 191:19 193:8
shown 136:12
shows 69:16 170:9,14
side 36:3 138:12 206:14
 208:24 213:7,16
SIG 254:17
sign 18:4,6 55:15 66:5,6
 108:15 277:17
signal 266:4
signature 90:7 106:21 210:2
signed 18:10 19:21 54:16
 66:11 67:17 68:25 69:13,24
 70:3,12,14,23 94:7 108:16
 109:10 110:17 118:18
 133:12 141:3,10
significant 46:19 49:14
 104:12 161:9 173:18
significantly 163:16 164:17
 180:13 181:25
signing 94:4
signoff 90:7
similar 139:25 205:11 207:3
simply 12:18 173:5
sir 113:24 115:6 116:5
 117:10 118:5 131:6,20
 136:23 137:22 138:11
 142:20 147:23 150:12
 151:15 152:3 155:22 182:21
 186:15 203:5 210:4 224:10
 232:20 235:8 240:4,15,19
 260:2
sit 33:22 36:14 102:19
 104:15 118:19 186:5 236:4

<p>239:22 240:16,18 sitting 9:11 189:23 210:17 211:2,22 situation 56:11,13 58:22 sixteen 170:14,25 skimmed 234:9 skip 67:3 220:5 slide 125:18 127:6 slow 160:12,13 slowdowns 83:4 small 8:25 94:14 160:19 smaller 76:12 Social 59:7 solid 143:20 sort 26:17 158:18 175:12 sorts 27:5 sound 103:12,13,20 104:2 115:5 sounds 258:24 space 15:24 speak 8:19 22:11,14,18 23:22,24 24:3,6,9,12 49:22 58:8 209:7,22 217:6 special 14:22 specific 48:14 49:21 57:9 72:20 102:7 121:15 124:18 155:18 161:20 173:2 176:5 215:23 261:23 262:2 266:11,13 specifically 17:3 20:8,16 22:9 45:19 47:3 50:14 52:2 55:25 72:13 73:3 76:6 94:9 98:15 100:7,22 102:16 104:10 109:15,19 117:24 118:25 119:9 155:6 162:2, 12 164:6 173:3 174:12 175:3 179:21 184:21 187:19 188:9,15 197:8 204:5 208:10 210:6 212:10 216:7 217:2 222:14 233:16 245:12 248:19 251:17 273:22 specificity 218:12 specifics 118:12 speculate 137:4 211:9 speculating 117:10 136:25 137:2 speculation 56:5 91:9 104:13 113:23 117:8 163:4 181:7 184:4 186:14 217:18 speculative 96:2</p>	<p>speech 158:18 speeches 159:15 speed 48:3 spell 43:18 spelled 51:15,18 spend 16:25 spending 85:4 spent 49:14 250:4 spoke 75:15 159:6 spokesman 77:7 spring 138:13 142:5,13 143:5 153:2 spun 147:17 stack 26:18 staff 34:21 41:20 77:2,4 158:23,24 160:19 161:5,7,9, 11,14,17,22,25 162:4,6,10, 16,19,25 164:15,17,24 167:9 170:15,18,20 171:2, 13 173:10 176:13 177:4 182:3 183:3,21,23,25 185:6 186:3,7 197:23 269:3 staffers 43:13 170:9 staffing 160:22 163:13,14, 21,24 167:15 169:25 172:8, 21 173:5 180:16 182:6,7 184:16,18,24 185:11,15,19, 22 186:10,16 188:7,13 stamp 206:13 207:17 213:7 220:23 stamps 225:3 stand 72:15 160:2,7 197:8 standard 268:23 standby 75:9 standing 47:17 stands 184:5 start 33:19 40:22 61:13 72:20 74:11 181:18 182:19 199:12 246:11 247:5,9 270:12 started 28:13 34:17 35:10 47:16 72:16 76:7 133:17 157:7 171:25 200:23 223:23 starting 110:11 153:25 155:10 starts 225:13 state 7:20 14:14,23,24 65:6 145:13 152:16 160:9 175:23 202:19 203:9,10 245:6 247:23 248:18</p>	<p>stated 106:15 138:21 184:2 193:19 statement 5:25 10:25 65:7 84:21 115:5 127:17 152:19 158:9,12 169:21 238:7 266:17 statements 107:3 states 109:20 stating 6:15 194:4 status 41:25 47:17 55:10 152:15 188:20 stay 145:16,17 266:23 stayed 34:23 145:18 steady 171:12 step 11:7 85:9,14 87:15,19, 23 steps 49:18 87:17 88:15 160:24 161:4 stipulation 183:15 stop 40:24 96:17,23 97:7,22 113:20 114:4,10 116:4 117:5,15,21 119:24 121:4, 18 128:21 129:4,18 130:2 131:2 133:20 137:9 143:13 236:6,17 237:6,10,16 243:6, 13 244:9 258:16 stoppage 122:15 127:24 stopped 23:21 36:6,15 58:23 97:11,16,20 98:3,13, 16 113:15 116:18 226:8,11, 16 259:2 stopping 123:21 239:15 244:18 straight 183:9 205:18 Strata 146:20 Stratta 147:11,16 Street 5:19 strengthen 264:15 strident 189:17,20,24 190:3, 4,12,24 191:23,24 193:25 194:9,14 strike 56:20 59:21 67:14 83:6 91:20 92:19 95:11 104:12 140:18 273:24 strong 64:12 193:8 structure 31:4 structured 218:9 student 25:17 33:11 35:8 47:17 59:23 61:2 72:6 114:25 146:19,21 147:20 148:12 149:25 194:15</p>
--	--	--

<p>195:21 220:7,9 245:20 268:12 students 64:21 115:3 118:25 119:2,3,6,10,12,13 155:16 stuff 168:19 subject 64:22 125:23 127:13 128:10 submit 232:7 233:20 234:4, 13 235:5,13,16,22 242:25 submitted 66:22 112:3 118:13 165:16 201:21 204:21 259:20 submitting 266:18 267:7 subsequent 197:9 subsequently 45:21 199:19 substantially 168:7 169:16 succeeded 39:22 144:10 successful 61:7 153:6,14 sufficient 85:25 86:6 181:4, 14 183:22 196:13,16 204:13 247:2 sufficiently 63:7 206:15 suggested 30:21 31:11 50:13,14 52:15 53:12 suggesting 58:16 suggests 255:6 266:22 suit 64:19 sum 193:8 summer 79:16 100:3 superimposed 213:11 superseded 249:13,18 support 5:18,24 247:22 supported 161:7 245:5 247:23 suppose 276:5 supposed 247:12 260:25 surprise 178:22 195:5 223:17 224:10 227:7 surprised 173:19,23 194:11, 24 223:14 224:6 226:24 surprises 178:21 224:11 Sweet 5:15 100:6 swing 259:3 sworn 7:9 symbols 210:15 system 17:14</p>	<p style="text-align: center;">T</p> <hr/> <p>tab 12:13,17 26:18,20,21 27:18,22,25 28:4,11,21 29:6 37:20 66:21 73:13 106:6 111:17,19 124:25 135:25 136:8,12 138:3 140:4,9,11 142:12 150:23 165:13 176:17 182:9 189:8 201:13 204:17,19 205:20 206:5 219:20,25 241:17 244:23 tabbed 12:7,8 table 51:2 63:4 225:9 Tabs 12:10 taking 9:18 41:17 82:23 186:6 223:25 Talbert 42:19 talk 10:2,4,5 25:6,9,11 29:16 70:4 120:2 166:15 177:2 232:3 246:8,10,18 247:5 273:17,20 talked 16:15 54:19 71:14 75:14 184:25 185:4 talking 39:3 121:3 129:12 140:9 142:2 149:7 171:22, 24 197:10 205:23 230:23 232:22,24 235:21 237:12 252:16 253:6 258:12 260:5 261:14 272:19 273:12,13 274:17 talks 260:23 261:6 target 181:22 taxpayer 50:2 60:4 61:11,16, 25 62:8,12,16,24 63:8 72:5 taxpayers 19:4,14 58:21 59:25 60:8,19 team 27:3 40:20 41:6,11 42:4,7,9,14,17,18,25 44:6, 13 45:3,6,11,15,18 94:14 145:15 146:7 147:5 153:2 199:19 257:25 258:4,14,16, 19,23 259:2,6,9 269:16,21 276:6 technical 65:8 technician 5:18 telephone 17:10 telephones 8:23,25 9:2 telling 236:4 258:11 ten 38:11,16,19 50:25 51:10 72:8 78:15 134:4 183:3,6</p>	<p>208:16 tenant 15:22 tendered 66:25 106:12 125:7 201:16 219:23 tenure 20:4 78:24 79:3 86:25 88:12 96:23 97:6,15, 19,25 98:11 100:19 101:4, 24 102:11 124:11 125:10 127:21 156:16 164:22 169:4,18 180:23 181:11 186:12 196:25 212:5 231:18 237:14 248:7,14 251:7 257:3,11 267:21 268:10 269:2 term 156:3,20 157:18 terms 59:15 60:5 72:20 76:22 84:21 88:7 102:14 104:3 163:14 223:21 244:4 276:8 testified 7:11 15:12,21 16:6 65:16 117:14 120:19 127:22 132:5,7,13 140:20 223:15 224:7 testify 14:25 testimony 6:10 11:20 14:3 15:4,10,18 16:11 61:22 75:19 84:10 105:15 112:2 115:14 123:16 238:16 269:25 277:22 text 78:3 225:13 Thanksgiving 44:8 Thantingview 257:18 Theresa 5:15 thing 15:2 73:20 123:12,18 136:6,8 163:19,20,22 170:24 205:12 207:8 216:4 226:23 238:21 244:5 things 8:23 27:5 30:4 31:4 56:12 61:10 81:15,23 90:6 145:14 154:21 165:19 166:22 207:25 211:14 251:18 261:5 271:16 thinking 38:14 58:8 60:4 62:7 132:17,24 190:10 228:16 273:3 third-in-command 114:17, 20 115:8,23 129:8 131:17 135:5 183:17 thought 50:7 121:12 178:23 thousand 208:6 threshold 204:9</p>
--	---	---

throw 101:19
thrown 37:16
Thursday 5:13
tier 125:22 127:13
Tiered 128:9
Til 143:10
time 5:14,23 6:22,24 7:7
 10:15 13:18 14:8,21 27:12,
 16 28:7,15 33:23 35:13,14
 38:4,22 39:2,8 41:11 44:2
 45:10 46:3 47:6 48:11 49:14
 71:3,19 72:15,18 75:6,10
 76:12 77:3 78:20 79:13,14
 82:13,15,23 84:6 85:4,11
 88:11 93:6 96:22 97:15,19,
 25 98:10,22 99:12,15
 102:11,18 104:24 105:4
 107:21 108:13,21 110:2,24
 111:9,15,23 112:11,15,19,
 22,23 113:2,10,11,16,21
 114:5,9,17 116:8 117:6
 118:17 121:5,8 122:17
 124:7,17 127:2 128:2 129:9,
 12 131:3,13 132:15,18,21
 133:8,12,21 134:8,12,17,23
 135:5,10 143:6,9,12 145:18,
 19 151:3 154:7,17,22 155:2,
 21,24 156:5,11 157:6,11,15
 158:14 159:22,25 160:17,21
 161:8 162:5 166:16,17,21,
 24 168:23 169:13,22 170:5
 171:8 173:18,22,23 177:24
 178:18 180:6,7 181:3,10
 182:24 183:3,18 184:3
 187:6,10 195:7 200:15,21
 206:7 208:20 216:24 217:20
 223:21 225:16 228:5,22,24
 229:16,20,22 230:5 232:21
 233:3 235:8 237:14 241:12,
 16 247:6,7 258:25 260:14
 271:2,15,16 272:3,5,13,18,
 24 274:11 276:12,15,21
 277:13
timeline 33:20 40:6
times 14:6,7 16:18 29:25
 47:23 49:7 78:14 203:11
 204:11 231:16 240:14
timing 97:14 248:6
tired 263:14 270:24
title 19:10 32:21 42:15,16
 139:21,22 140:22 141:17
 143:23 206:9

titled 125:4
today 5:13 7:24 10:9 11:20,
 23 13:22 25:7,17 26:17 29:4
 33:22 36:14 37:17 81:10
 82:2,8 102:19 105:15
 118:19 171:16 174:17 186:5
 189:23 236:4 239:22
 240:16,18 250:23 277:13
today's 16:14 20:22 28:25
 106:16 185:10 277:22
told 164:20 194:11
top 125:20 151:5 166:3,6
 205:23 206:8 207:17 213:7
 233:8 241:24 245:2 253:2,3
topic 43:4 63:14,23,24 64:5,
 10,16 193:22 209:21 256:6
 271:5,14
topics 44:18 64:17 65:4,9
 149:5,15,17 191:7,18
 192:21 193:4,18 194:5
 256:4
total 17:5,7,8 112:6 170:14,
 17,25 197:12
totaling 167:12
tough 208:9
transcript 9:19 21:19,23,25
 151:11 152:6
transcripts 24:19
transfer 198:15 225:25
 227:16 249:10
transition 40:19,20 41:5,11
 42:3,7,9,24 43:25 44:13
 45:3 144:12 145:15 146:7
 147:5 199:19 200:13,22
transition-- 42:17
transpired 224:20
trial 14:11,15,21
trouble 27:3 81:10,13
true 61:20 62:4 72:23 73:4
 107:6 158:10 159:21 194:20
 204:8
Trump 34:3,4,15 36:7,16
 38:6 39:4,19 40:18,20 41:5,
 19 42:2,24 45:3 83:22 88:12
 98:11 100:20 102:11 146:7
 147:5 148:19 150:6,10,20
 173:10 180:23 181:11
 185:13 250:10 251:4,6,12,
 14,21
Trump's 70:10
truth 172:15

truthful 11:20
turn 26:18 67:6 106:6,19
 107:7,11 111:17 112:8
 124:25 125:15 150:23
 151:17 152:8,21 154:6
 155:7 158:2 165:12,21
 176:16,22 189:7,12 204:17
 207:18 210:3 213:4 224:25
 241:4 244:22 252:25 257:15
tweaks 154:6,14
twenty 163:25
two-family 15:22
type 17:14 30:4,9 135:12
 139:7 142:7,16,23 169:14
 175:8 216:3 244:5 255:10
typed 31:6
types 146:10 199:21,25

U

U.S. 5:18,24 23:12 33:12
 69:3 112:3 151:5 183:19
 252:6
uh-huh 9:22 67:8 112:5
 140:6 171:10 226:6
uh-uh 9:23
ul 246:23
ult 50:19
ultimately 48:17 49:10 50:20
 52:20 54:24 58:16,23 61:10
 67:23 72:8 77:8,13 87:4
 94:19 122:22 145:21 164:11
 209:11 246:23
un 74:15
uncovered 154:3
underneath 78:5 115:24
 225:12 262:12
Undersecretary 33:7 34:18
 39:18 40:4,8 75:23 78:8
 83:17,18,22,24 93:3,8,14,
 18,25 94:6 95:18,24 96:6
 108:4,11 114:16 131:12,17
 138:24 139:5 143:8 163:14
 180:6 183:19 209:15 211:23
 212:6 217:20 222:10,23
 224:15 228:2,5,14,25
 229:24 230:19 237:15
 243:18,25 255:15 260:9,16
 262:15 263:2 264:10 265:22
 267:22 268:21 269:2 275:25
Undersecretary's 276:18

understand 9:15,23 10:21
11:10,17 12:14 31:18 45:15
46:3,8 49:17 54:20 55:12
81:24 83:3 94:16 107:3,11
110:8,9 126:4 130:7 145:7
160:21 163:16,20 168:20,24
173:12 185:16 196:9 221:11
258:24 265:7,10 268:8,17
understandable 30:11
understanding 10:14 45:9
50:3 54:4 56:2,7 59:20 71:2
85:5,20 86:19 96:23 97:7
107:5 115:7 118:15 128:25
129:7 171:25 180:10,11
190:11,13,15 196:5,15
197:3 229:14 233:2,4
247:18 268:2,6
understands 126:24
understood 118:18 127:10
211:16 230:12 263:16
undertaken 168:23 169:3,8
undertook 169:14
undoubtedly 189:18 194:19
unhappy 56:8
unidentified 24:15
uniformly 217:22
unintelligible 15:13 120:2
145:4 149:18 192:11 223:4
248:25 270:22
unique 257:21 259:19
unit 5:10 69:4 73:6,19,24
74:6,13 79:16 84:20,23
85:3,6,21,23 86:11,22 87:4,
12 88:7 90:19,21,25 91:2
92:15,22,25 95:15,19,25
96:6,12,17,22 97:6,11,16
108:7 116:2 133:4 161:5,12,
17 162:7,11 163:24 164:10
170:10 183:7 198:25 199:5,
9 201:5,23 202:2 204:24
205:8 206:21 212:22 219:15
227:11,14 247:20 257:23
258:4,7,10 262:22 270:2,6
Unit's 92:5
units 176:7 214:22
university 15:15,16
unpack 234:22
unpleasant 192:3
unreasonable 115:12
unreasonably 100:10
unsupported 257:22

unusual 90:17
updated 84:3 208:11,13
USA 147:15,16,17,18
UTC 5:14 6:22 7:7 27:12,16
38:22 39:2 75:6,11 104:24
134:8,12 187:6,10 241:12,
16 272:14,18 277:23
utilized 167:16

V

vacancies 180:25
vacancy 177:12
vacant 177:11 178:4 180:20,
22 187:21
vague 53:21 96:25 114:12
120:17,18,25 124:9,14
223:12 239:17 255:21 256:2
vantage 185:10
verbally 6:10
verification 7:4
Verified 7:5
versus 5:16 19:25 100:6
victims 59:24
video 5:17 53:7
video-recorded 5:11
view 62:23 63:6,19 191:25
viewed 62:4
violation 59:12
voice 139:9 159:8
voluntarily 7:25 13:21
177:21 277:14
volunteer 41:3,5,13

W

wait 22:4
waive 6:13
wanted 8:3,6 15:24 37:13
39:7 54:20 75:13 82:6,24
101:19 162:24 166:22 167:4
168:21 169:2 186:2,20
221:3 256:13 266:23 271:17
warrants 86:23
Washington 7:13
Wayne 35:3 39:13 77:13
80:11,12,17 132:9 187:12,
22 188:2 216:24 219:4,9
220:25 247:6 252:14 254:7,
16 264:24 265:2,5,16,17

266:11
ways 60:9,20 61:18 62:2
weakness 259:15
wearing 40:2 183:17
week 32:18 210:8
weekly 99:19 102:15
weeks 41:19 54:10 76:9
weight 9:14
West 16:8
what' 19:10
whatsoever 115:21
window 234:20
winter 152:25
withstand 204:13
woman 22:24 24:15
wondering 36:20
word 190:3,4,6,12 194:11
words 11:5 58:4 175:15
223:13 249:24
wore 40:5
work 27:7 31:19 39:4 40:24
42:2 44:12,13 45:4 81:20
87:14,18 92:5 129:20
145:24 146:8,20 147:17,19
148:10,17,19 149:19,20,23
155:25 196:20 199:24
245:25 252:20 259:3 261:18
263:5 264:15,16 266:23
269:5 275:9
worked 43:23 58:19 72:16
94:15 132:22 147:3 153:4,
11 188:2 245:9,23
working 8:24 36:15 39:10
41:10,12 45:2,6 47:13
48:12,14,18,21 49:14 58:9
158:6 159:22 160:4 181:21
197:10 252:22 262:22
263:2,21
workload 183:24
worth 66:8
worthy 61:4
would'nt 167:5
wrap 101:16 272:4
write 19:15 67:16 158:22,23
159:14,15
writer 158:25
writes 109:4
writing 52:15,18 134:24
135:7,14,16,18,20 136:18
137:11,19 139:13,16,20

140:18,21,24 141:22 158:15
159:12 246:2

written 36:9 66:15,18 77:20
83:7 93:23 158:18,20 159:9,
10 175:7 232:25 251:11,14,
18

wrong 36:12 210:8

wrote 118:17 215:2,9

Wyo 198:15

Wyotech 198:15

Y

year 21:16,17 215:7 223:19
256:10 259:25

years 14:7 31:5 145:19
165:10 250:4

yesterday 23:10 37:15

yield 156:3

York 5:19,20

young 22:24 269:4

Z

Z-E-I-Z 77:12

Zeiz 77:9,11

Zoom 8:5 17:10,14,16

Zoom-type 22:11

January 29, 2021

Lindsey Withem
WilmerHale Legal Services Center of Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130

Re: Deposition of **James Manning Transcript**
12/17/2020
Theresa Sweet v. Elisabeth Devos

Dear Attorney Withem:

The witness did not waive the right to read and sign his/her deposition in the above referenced matter. Enclosed are the completed and signed errata sheet, and the signed original signature page. These should be attached to the original transcript in your possession. Should you have any questions, please don't hesitate to call.

Sincerely,

Rose Heath
U.S. Legal Support

No. 335262
Enclosures

cc: Robert C. Merritt, Esquire

James Manning
12/17/2020

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, HOPE LYNN MENAKER, a Notary Public within
and for the State of New York, do hereby certify:

That JAMES MANNING, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by the witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage, and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 22nd day of December, 2020.

Hope Lynn Menaker

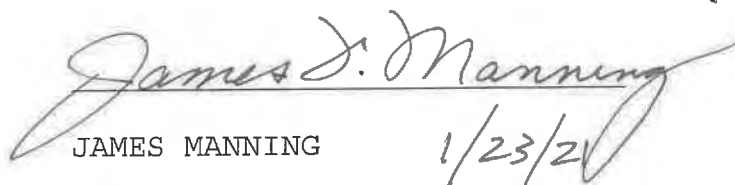
HOPE LYNN MENAKER

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A C K N O W L E D G E M E N T

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, JAMES MANNING, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of December 17, 2020; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.


JAMES MANNING 1/23/21

Subscribed and sworn
to before me on this the
_____ day of _____, 2020.
Notary Public, State of New York

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ERRATA SHEET
THERESA SWEET, ET AL. V. ELISABETH DEVOS, ET AL.
DATE OF DECEMBER 17, 2020
JAMES MANNING

PAGE/LINE(S) /	CHANGE	REASON
34 / 5	INSERT UNDER	I WAS UNDER SECRETARY. NOT SECRETARY
34 / 22	STRIKE FRANZI	THE NAME IS RUNCIE
44+45 / 12+13	2.5 ASKE Q. TO BERERO BACK	THE REDBACK WAS NOT IDENTICAL
47+48 / 25+17	STRIKE CONNOLLY	THE NAME IS CONATY. THIS ERROR IS ACROSS THE DOCUMENT
50 / 16	STRIKE INDIRECTLY	SP. ERROR REPLACE W/ INCORRECTLY
68 / 9+10	STRIKE CONNOLLY	NAME IS CONATY
69 / 3	DIRECT FOR U.S. ← STRIKE FOR U.S. INSERT OUS	STRIKE OR IN INSERT
70 / 10	STRIKE TRUMPS	INSERT THE PREVIOUS THIS TO READ DIRECT OUS AND
79 / 14	STRIKE JILLIAN -	INSERT JULIAN
80 / 9+14	STRIKE JILLIAN	INSERT JULIAN
94 / 14	STRIKE WAS INSERT WAS -	CORRECT WORD
101 / 10	STRIKE LEGAL	INSERT REGULAR
107 / 10	STRIKE 14TH	INSERT 4TH
133 / 7+17	STRIKE MARTIN ^{AND} WHAT	INSERT MARK AND WHEN
163 / 19+20	STRIKE hd Ad to GOO	CORRECTION GOO to GOOD

JANUARY 23, 2021

James J. Manning
Signature

Date

PAGE	LINE	CHANGE	REASON
223	23	STRIKE '17	IT IS AN ERROR
228	16	STRIKE CONNOLLY	NAME IS CONATY
246	21	STRIKE OF	INSERT OR
257	18	A WORD HERE MAKES NO SENSE "THANTINGVIEW" IT IS NOT CORRECT BUT I DO NOT KNOW HOW TO CORRECT IT	
262	6+9	STRIKE CONNOLLY	CORRECT NAME IS CONATY
		STRIKE JOE	INSERT JULIAN

Deposition Transcripts

Cited in Supplemental Complaint, March 19, 2021

Transcript 4 – Colleen Nevin

1
2
3
4
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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 COLLEEN M. NEVIN

Wednesday, December 9, 2020

9:11 a.m. (EST)

Job No. 332242

Pages: 1 - 268

Reported by: Dana C. Ryan, RPR, CRR

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3 December 9, 2020</p> <p>4 9:11 a.m. (EST)</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Remote Videotaped Deposition of COLLEEN M.</p> <p>9 NEVIN, held via Zoom video teleconference, before</p> <p>10 Dana C. Ryan, Registered Professional Reporter,</p> <p>11 Certified Realtime Reporter and Notary Public in</p> <p>12 and for the State of Alabama.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2</p> <p>3 JOSEPH JARAMILLO, ESQ.</p> <p>4 CLAIRE TORCHIANA, ESQ.</p> <p>5 Housing & Economic Rights Advocates</p> <p>6 3950 Broadway, Suite 200</p> <p>7 Oakland, California 94611</p> <p>8 Telephone: (510) 271-8443</p> <p>9 Email: jjaramillo@heraca.org</p> <p>10 Email: ctorchiana@heraca.org</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANTS:</p> <p>13 R. CHARLIE MERRITT, ESQ.</p> <p>14 KEVIN P. HANCOCK, ESQ.</p> <p>15 KATHRYN C. DAVIS, ESQ.</p> <p>16 MARCIA BERMAN, ESQ.</p> <p>17 U.S. Department of Justice</p> <p>18 Civil Division, Federal Programs Branch</p> <p>19 1100 L Street, Northwest</p> <p>20 Washington, D.C. 20530</p> <p>21 Telephone: (202) 307-0342</p> <p>22 Email: robert.c.merritt@usdoj.gov</p> <p>23 Email: kathryn.c.davis@usdoj.gov</p> <p>24 Email: kevin.p.hancock@usdoj.gov</p> <p>25 Email: marcia.berman@usdoj.gov</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFFS:</p> <p>4 REBECCA ELLIS, ESQ.</p> <p>5 MARGARET O'GRADY, ESQ.</p> <p>6 EILEEN CONNOR, ESQ.</p> <p>7 TOBY R. MERRILL, ESQ.</p> <p>8 Legal Services Center of</p> <p>9 Harvard Law School</p> <p>10 122 Boylston Street</p> <p>11 Jamaica Plain, Massachusetts 02130</p> <p>12 Telephone: (617) 390-3003</p> <p>13 Email: mogrady@law.harvard.edu</p> <p>14 Email: econnor@law.harvard.edu</p> <p>15 Email: rellis@law.harvard.edu</p> <p>16 Email: tmerrill@law.harvard.edu</p> <p>17</p> <p>18 - and -</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2</p> <p>3 Also present:</p> <p>4 Joe Raguso, Video Technician</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 6

C O N T E N T S

EXAMINATION OF COLLEEN M. NEVIN:

By Ms. Ellis 10

By Mr. Merritt 262

E X H I B I T S

(Attached to the Transcript)

DEPOSITION PAGE:

Exhibit 21 Declaration Of Colleen M. Nevin 17

Exhibit 22 Defendants' Responses And Objections To Plaintiffs' First Set Of Interrogatories 29

Exhibit 23 Exhibit 18 To The Declaration Of Colleen M. Nevin Titled Standard Protocol 184

Page 8

P R O C E E D I N G S

THE VIDEOGRAPHER: We are 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 attorney-client interactions should be held outside the presence of the remote interface. This is the remote video recorded deposition of Colleen Nevin being taken by counsel.

Today is Wednesday, December 9th, 2020. The time now is 14:11 in the UTC time code. We're here in the matter of Theresa Sweet versus Elisabeth DeVos.

My name is Joe Raguso, the remote video technician, on behalf of U.S. Legal Support 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 the outcome.

At this time will the reporter, Dana Ryan, on behalf of U.S. Legal Support, please enter the statement for remote proceedings into the record.

THE COURT REPORTER: The attorneys

Page 7

P R E V I O U S L Y M A R K E D E X H I B I T S

DEPOSITION PAGE:

Exhibit 5 October 24, 2016 Email 237

Exhibit 7 May 4, 2017 Email 129

Exhibit 12 April 21, 2019 PowerPoint Titled Borrower Defense To Repayment 157

Exhibit 13 Defendants' Response To August 31, 2020 Order 80

Exhibit 15 Declaration Of Eileen Connor 92

Exhibit 19 Defendants' Response Regarding The Court's Request At The October 1, 2020 Class Hearing 173

Page 9

participating in this deposition acknowledge that I am not physically present in the room and that I will be reporting this deposition remotely.

They further acknowledge that, in lieu of an oath administered in person, the witness will be sworn in remotely and will verbally declare her testimony in this matter is under penalty of perjury.

The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Now, if I could ask all parties to please state their agreement to the stipulation on the record.

MS. ELLIS: We agree.

MR. MERRITT: I agree.

THE COURT REPORTER: All right. Now, Ms. Nevin, if I could have you please hold up your driver's license for me.

THE WITNESS: This is going to be part of the record, part of the videotape, you know, the personal information?

THE COURT REPORTER: I guess we could actually get him to cut that off while I look at it.

Page 10

1 MR. MERRITT: Yeah, I think last time
 2 we did this part off the record, and we can do
 3 that off the record.
 4 THE COURT REPORTER: Okay.
 5 THE VIDEOGRAPHER: So would you like me
 6 to go off the record real quick?
 7 THE COURT REPORTER: Please, Joe.
 8 THE VIDEOGRAPHER: We are now off the
 9 record. Time is 14:13 UTC.
 10 (Witness presents government-issued
 11 photo ID to the camera and identity is verified.)
 12 THE VIDEOGRAPHER: We are now on the
 13 record. Time is 14:13 UTC.
 14 *****
 15 COLLEEN M. NEVIN,
 16 having been duly sworn, testified as follows:
 17 *****
 18 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
 19 BY MS. ELLIS:
 20 Q Okay. And will the witness please
 21 state your name for the record?
 22 A Colleen Nevin.
 23 Q And since we're in remote deposition,
 24 can I please ask you to confirm that there's
 25 nobody else in the room with you right now?

Page 11

1 A There is nobody else in the room with
 2 me.
 3 Q And can you please confirm that you
 4 won't communicate with anyone during the
 5 deposition while we're on the record by email,
 6 chat or text, other electronic means?
 7 A I agree.
 8 Q Sorry.
 9 Do you have a smartphone in the room
 10 with you right now?
 11 A No, I put it in the other room.
 12 Q Okay. Great. Thank you.
 13 So as we talked about before we got
 14 started, we can take breaks whenever you need, not
 15 when a question is pending, but we'll take short
 16 breaks throughout the day.
 17 We do have a video recording of this
 18 deposition, but please answer questions yes or no
 19 out loud so that we have a record for the written
 20 transcript. I know you're an attorney, so you're
 21 probably familiar with all this initial matter,
 22 but I'm going to go through it anyway.
 23 Government counsel might object to some
 24 questions today on bases other than privilege, but
 25 you can still answer those questions unless

Page 12

1 counsel instructs you not to answer.
 2 There's nothing that's preventing you
 3 from answering truthfully today?
 4 A That's correct, yes.
 5 Q And what did you do to prepare for this
 6 deposition?
 7 A I met with DOJ and our Office of
 8 General Counsel a few times, and they asked me to
 9 review some records.
 10 Q Okay. You reviewed those records to
 11 refresh your recollection?
 12 A Yes.
 13 Q What records did you review?
 14 A My declaration, the declarations of
 15 Diane Jones and I think two declarations of Mark
 16 Brown, the attachments. I think the
 17 administrative record generally, I believe, and
 18 the attachments to those declarations.
 19 Q Okay. About how long did you spend
 20 meeting with the government attorneys to prepare
 21 for this deposition?
 22 A Total over the course of a few days, I
 23 would say -- I'm tallying it up. Twelve hours,
 24 somewhere in that neighborhood.
 25 Q Okay. And did you discuss this

Page 13

1 deposition with anyone else?
 2 A My team is aware that I'm being
 3 deposed, and they were assisting me with pulling
 4 documents for the discovery responses and things
 5 along those lines. My boss was aware of me being
 6 deposed, probably some other folks in the office
 7 that I'm not thinking of right now; Mark Brown is
 8 aware that I'm being deposed, and I would imagine
 9 that there's some people I'm not remembering
 10 within FSA with just awareness that I'm being
 11 deposed. I think that's it.
 12 Q When you referred to your boss, who is
 13 that?
 14 A Robin Minor.
 15 Q I'm sorry. The audio was a little
 16 funny. Can you say that again?
 17 A Sure. Robin Minor, M-I-N-O-R.
 18 Q Okay.
 19 A She's the acting chief enforcement
 20 officer.
 21 Q Okay. Great. Thank you.
 22 Have you been deposed before?
 23 A I have not.
 24 Q Okay. Fun.
 25 So we're just going to start with some

12/09/2020

14 to 17

<p style="text-align: right;">Page 14</p> <p>1 background first. When did you graduate from 2 college? 3 A 1993. 4 Q And law school? 5 A '97. 6 Q And after you graduated from law 7 school, what was your first job? 8 A I was in private practice. I worked at 9 a firm in Chicago named Clausen Miller, and I was 10 there for a few years, and then I went to another 11 firm named Vedder Price. 12 Do you want me to go through -- I 13 changed jobs a few times. I was at the AA -- the 14 Illinois -- excuse me, Illinois State's Attorney's 15 Office. Then I moved to Massachusetts and joined 16 Adler Pollock & Sheehan, was there for several 17 years, and, then, just prior to coming to the 18 Department of Education, I was an assistant 19 attorney general in Massachusetts for a few years. 20 Q When you were at the Illinois State's 21 Attorney's Office, did you work at all on student 22 loan issues? 23 A No, I was handling criminal appeals. 24 Q And at the Mass AG's office, did you 25 work on student loans issues?</p>	<p style="text-align: right;">Page 16</p> <p>1 of the goals and priorities for the unit? 2 A That's a broad question. I mean, as 3 a -- the main goal was to adjudicate the borrower 4 defense claims that were coming in, and in order 5 to do that, extend a process and systems that 6 would allow us to do that. 7 Q And is that still your understanding of 8 the goals and priorities? 9 A As a general proposition, yes, yes. 10 Q What about specifically? 11 A Can you reframe, rephrase? 12 Q Well, you said, as a general matter, 13 you have the same understanding of the goals and 14 priorities, so I was asking, rather than 15 generally, in the specific is there -- are there 16 things that -- where your understanding about 17 goals and priorities have changed? 18 A That's the overarching goal. There are 19 a lot of components to that, so I was just 20 intending to state that, obviously, there are a 21 lot of pieces to that, but that's the overarching 22 goal. 23 Q Okay. Understood. And we'll get into 24 some of the specifics. 25 So I'd like to look at tab 22 in your</p>
<p style="text-align: right;">Page 15</p> <p>1 A I did. Yes, I was in the consumer 2 protection division, so that was some of our work. 3 Q Okay. Could you describe some of the 4 work you did at Mass consumer protection with 5 respect to student loans? 6 A Primarily, I was the lead on the 7 investigation of the lawsuit relating to a 8 proprietary school called American Career 9 Institute. I also did some work related to 10 servicers and probably was tangentially involved 11 with some other kind of unrelated issues, but 12 those were the main focuses. 13 Q And when did you start in your current 14 position? 15 A October of 2016. 16 Q At -- sorry. 17 A I'm sorry. That was my fault. 18 October of 2016 is when I started. 19 Q And that position is as the director of 20 the borrower defense unit? 21 A That's correct. 22 Q That's still your position today? 23 A It is. 24 Q When you started as the director of the 25 borrower defense unit, what was your understanding</p>	<p style="text-align: right;">Page 17</p> <p>1 materials and on the Dropbox. That's the document 2 with the bracketed number 22, ECF56-4 Declaration 3 of Colleen M. Nevin. 4 MS. ELLIS: And I would like to mark 5 this as an exhibit. The judge's standing order 6 asks us to do consecutive numbering, so I'd like 7 to pick up where we left off. The last deposition 8 in the -- the last exhibit in the Jones deposition 9 was 20, so I'd like to mark the Declaration of 10 Colleen Nevin as Exhibit 21. 11 (Deposition Exhibit 21 was marked for 12 identification and attached to the transcript.) 13 BY MS. ELLIS: 14 Q So do you recognize this document? 15 A I do. 16 Q And on the last page, page 17, that's 17 your signature? 18 A (Witness reviews document.) Yes. 19 Q Did you write the document? 20 A Yes. 21 Q Did anyone help you write it? 22 A I believe I worked with our Office of 23 General Counsel and the Department of Justice 24 attorneys on some of it, but it's my work. 25 Q Okay. So if you'll turn to</p>

12/09/2020

18 to 21

<p style="text-align: right;">Page 18</p> <p>1 paragraph 2, please. You write here, I'm the</p> <p>2 director of the borrower defense unit of the</p> <p>3 Enforcement Office within the Office of Federal</p> <p>4 Student Aid for the United States Department of</p> <p>5 Education.</p> <p>6 So is that still an accurate</p> <p>7 description of your job title?</p> <p>8 A Technically, we've had a restructuring</p> <p>9 within Federal Student Aid since this was filed,</p> <p>10 so the borrower defense unit is now referred to as</p> <p>11 the borrower defense group. Additionally, the</p> <p>12 Enforcement Office is now known as the Partner</p> <p>13 Enforcement and Consumer Protection Directorate.</p> <p>14 So the naming conventions have changed,</p> <p>15 but the scope of my work has not.</p> <p>16 Q Okay. Is it all right if we refer to</p> <p>17 it as the borrower defense unit today --</p> <p>18 A Sure.</p> <p>19 Q -- since that's how it's called in the</p> <p>20 documents generally?</p> <p>21 A That's fine.</p> <p>22 Q So who do you report to?</p> <p>23 A Robin Minor, M-I-N-O-R. She's the</p> <p>24 acting director -- acting chief enforcement</p> <p>25 officer and also the deputy chief operating</p>	<p style="text-align: right;">Page 20</p> <p>1 a political appointee?</p> <p>2 A No.</p> <p>3 Q How often do you meet with the chief</p> <p>4 enforcement officer?</p> <p>5 A It's very ad hoc. I mean, at a</p> <p>6 minimum, I have a weekly meeting, but borrower</p> <p>7 defense has a lot of things going on, so I would</p> <p>8 say at least maybe -- formal meetings, probably</p> <p>9 not more than once or twice a week, but I speak</p> <p>10 with Robin Minor regularly.</p> <p>11 Q And how often do you meet with the</p> <p>12 chief operating officer of FSA?</p> <p>13 A Over what period of time?</p> <p>14 Q Well, I know 2020 is unusual, but, yes,</p> <p>15 let's start with 2020 and work backwards.</p> <p>16 A Specific to borrower defense, twice a</p> <p>17 week. I think it was three times a week for some</p> <p>18 period of 2020, but I provide very regular updates</p> <p>19 to him regarding our progress on adjudicating the</p> <p>20 cases.</p> <p>21 In addition to the, you know, regular</p> <p>22 meetings to report on the status of BD, we also</p> <p>23 have fairly regular meetings in anticipation of</p> <p>24 his meetings. He has weekly meetings with the</p> <p>25 under secretary, Diane Jones, and so I generally</p>
<p style="text-align: right;">Page 19</p> <p>1 officer at FSA.</p> <p>2 Q Okay. And throughout your time at the</p> <p>3 department, has the person who you report to</p> <p>4 changed?</p> <p>5 A Yes.</p> <p>6 Q Okay. So starting -- starting from now</p> <p>7 and working backwards, can you tell me who are the</p> <p>8 different people you've reported to and what their</p> <p>9 roles are?</p> <p>10 A Well, I've always reported to the</p> <p>11 person in the role of chief enforcement officer.</p> <p>12 That has changed. So for the past just about a</p> <p>13 year, Robin Minor has been in that position in an</p> <p>14 acting capacity. Prior to that, it was Jeffrey</p> <p>15 Appel, A-P-P-E-L. Prior to Mr. Appel, it was</p> <p>16 Julian Schmoke, S-C-H-M-O-K-E.</p> <p>17 And prior to Julian Schmoke, Laura Kim,</p> <p>18 I believe, who was originally the deputy chief</p> <p>19 enforcement officer, was in an acting role for a</p> <p>20 period of time, so I believe she was the acting</p> <p>21 chief enforcement officer for some period of 2017.</p> <p>22 And prior to that -- and this was when I was</p> <p>23 hired -- the chief enforcement officer was Robert</p> <p>24 Kaye, K-A-Y-E.</p> <p>25 Q Okay. Is the chief enforcement officer</p>	<p style="text-align: right;">Page 21</p> <p>1 participate in meetings with him to address any</p> <p>2 open questions that either he has for me or to</p> <p>3 find out what the open issues are that we have for</p> <p>4 the -- for OUS for the under secretary.</p> <p>5 In addition to that, I think, you know,</p> <p>6 broader things in terms of FSA that other managers</p> <p>7 and supervisors may participate in, so they're not</p> <p>8 specific to borrower defense, that's probably</p> <p>9 weekly or more.</p> <p>10 Q Okay. In terms of the organizational</p> <p>11 structure, how does the chief enforcement officer</p> <p>12 relate to the chief operating officer?</p> <p>13 A The chief enforcement officer reports</p> <p>14 to the deputy COO, deputy chief operating officer,</p> <p>15 and that's Robin Minor since she's in an acting</p> <p>16 chief enforcement officer capacity. She's wearing</p> <p>17 two hats in that role right now, and, then, she</p> <p>18 reports directly to Mark Brown, who's the chief</p> <p>19 operating officer. That's been the structure</p> <p>20 since the reorganization.</p> <p>21 I believe at some point it changed to</p> <p>22 the chief enforcement officer reporting to the</p> <p>23 deputy COO. That was probably 2019, but I'm not</p> <p>24 sure exactly what the timing was. Prior to that,</p> <p>25 I believe the chief enforcement officer reported</p>

12/09/2020

22 to 25

<p style="text-align: right;">Page 22</p> <p>1 directly to the chief operating officer.</p> <p>2 Q And how often do you meet with Under</p> <p>3 Secretary Diane Auer Jones?</p> <p>4 A Not often. Maybe a -- it's not</p> <p>5 scheduled. It's very ad hoc, and I think that</p> <p>6 there's probably been a total of somewhere in five</p> <p>7 to ten meetings together since we were both at the</p> <p>8 department.</p> <p>9 Q Have you reviewed the transcript of</p> <p>10 Ms. Jones' deposition?</p> <p>11 A No.</p> <p>12 Q And how often have you met with</p> <p>13 Secretary DeVos?</p> <p>14 A I've never met her. Actually, I take</p> <p>15 that back. The day she started, she did a walk</p> <p>16 around, and I think I saw her then, so I don't</p> <p>17 know if that counts as meeting, but . . .</p> <p>18 Q Okay. So then who reports to you?</p> <p>19 A I have a team of attorneys that report</p> <p>20 to me. That number has varied pretty dramatically</p> <p>21 from 2016 to the present, but they're all</p> <p>22 attorneys that report to me.</p> <p>23 Since we staffed up starting last fall,</p> <p>24 some of my original team moved into supervisory</p> <p>25 roles, and, then, we also hired some additional</p>	<p style="text-align: right;">Page 24</p> <p>1 did we, you know, post the job and start, you</p> <p>2 know, interviewing candidates or when did they</p> <p>3 start?</p> <p>4 Q Let's start with when did you post the</p> <p>5 jobs.</p> <p>6 A I believe that was the summer of</p> <p>7 2019 -- was when we first started posting to --</p> <p>8 actually, that was for what we call backfills, so</p> <p>9 we had attrition in the borrower defense unit</p> <p>10 between 2016 and 2019 and had not been able to</p> <p>11 replace the attorneys that had left. So we were</p> <p>12 able to post to -- to fill those positions, and</p> <p>13 then also bring on -- we got the authority to hire</p> <p>14 up to 60 term-appointed attorneys.</p> <p>15 They were at varying levels. As I</p> <p>16 mentioned, some of the folks that we brought on</p> <p>17 are in more senior roles and have supervisory</p> <p>18 positions. The vast majority are recent law</p> <p>19 grads, junior attorneys. And they started</p> <p>20 onboarding, which is the term we used for starting</p> <p>21 in -- the first group of junior attorneys started</p> <p>22 in September of 2019.</p> <p>23 Q Okay. When you say "term-appointed,"</p> <p>24 what is the term?</p> <p>25 A In the federal government -- two years.</p>
<p style="text-align: right;">Page 23</p> <p>1 more senior attorneys to -- acting in supervisory</p> <p>2 roles because I was bringing on several dozen</p> <p>3 junior attorneys.</p> <p>4 Q So when you say your "original team,"</p> <p>5 are those people who have been in the borrower</p> <p>6 defense unit since you started in 2016?</p> <p>7 A Yes, that's correct.</p> <p>8 Q Okay. How many of those people are</p> <p>9 there?</p> <p>10 A Five full-time and one part-time.</p> <p>11 Q And can you tell me their names,</p> <p>12 please?</p> <p>13 A Brian Bayne, B-A-Y-N-E; Mike Garry,</p> <p>14 G-A-R-R-Y; Mike Page, P-A-G-E; John Stephenson,</p> <p>15 S-T-E-P-H-E-N-S-O-N; Andrew Bronstein</p> <p>16 B-R-O-N-S-T-E-I-N; and the part-time attorney is</p> <p>17 Erin (phonetic) Joyce, J-O-Y-C-E.</p> <p>18 Q Thank you.</p> <p>19 And, so, those original attorneys are</p> <p>20 in supervisory roles within the unit now?</p> <p>21 A Not all of them. Four of them are.</p> <p>22 Q Okay. And you referred to staffing up</p> <p>23 in the fall. When did you start hiring additional</p> <p>24 attorneys for the borrower defense unit in 2019?</p> <p>25 A When you say "hiring," do you mean when</p>	<p style="text-align: right;">Page 25</p> <p>1 It's -- but there's a potential for kind of</p> <p>2 reupping it or extending their period of service,</p> <p>3 but the initial term that they were hired for is</p> <p>4 two years.</p> <p>5 Q Why had you been unable to replace the</p> <p>6 attorneys who you lost due to attrition since</p> <p>7 2017?</p> <p>8 A Well, in early 2017, there was a hiring</p> <p>9 freeze put in place, and that lasted for a fairly</p> <p>10 extended period of time across all of -- I think</p> <p>11 all of the departments, certainly all of FSA.</p> <p>12 And, then, you know, beyond that, there</p> <p>13 was a process for getting approval to hire</p> <p>14 additional staff that went through leadership at</p> <p>15 FSA and then over to senior leadership at -- at --</p> <p>16 when I say LBJ, I'm referring to senior leadership</p> <p>17 in the department, as opposed to within FSA. But</p> <p>18 the folks over at LBJ were making the calls on who</p> <p>19 we could hire back then.</p> <p>20 So we didn't get the authority to hire</p> <p>21 anybody in borrower defense until May of 2019 --</p> <p>22 or summer of 2019.</p> <p>23 Q Had you requested to hire additional</p> <p>24 attorneys before May 2019?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q When did you make that request?</p> <p>2 A Several times.</p> <p>3 Q When was the first time that you recall</p> <p>4 requesting to hire additional attorneys?</p> <p>5 A Well, we were considering bringing on</p> <p>6 additional staff at the time of the transition</p> <p>7 from one administration to the next, And then did</p> <p>8 not end up doing that. And, obviously, during the</p> <p>9 hiring freeze, nobody was allowed to hire anybody,</p> <p>10 so I don't think that -- you know, I had raised</p> <p>11 concerns about staffing throughout that period of</p> <p>12 time, but there was kind of a department-wide</p> <p>13 freeze.</p> <p>14 Once there was a change in the process</p> <p>15 in terms of hiring, Julian Schmoke was the chief</p> <p>16 enforcement officer at the time, and I would, you</p> <p>17 know, in my weekly meetings with him reiterate</p> <p>18 that we needed to increase our staffing. So that</p> <p>19 happened on a very regular basis, and he would</p> <p>20 submit the requests up, and we wouldn't get</p> <p>21 authority to do that.</p> <p>22 I don't know how regularly he submitted</p> <p>23 them, but I know it was kind of a recurring issue.</p> <p>24 Q Do you know why the hiring freeze was</p> <p>25 put in place?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q It sounds like you meet with the COO</p> <p>2 frequently to discuss borrower defense issues?</p> <p>3 A That's correct.</p> <p>4 Q Is the COO responsible for setting</p> <p>5 policy for borrower defense?</p> <p>6 A No. Federal Student Aid does not make</p> <p>7 the policy at all.</p> <p>8 Q Uh-huh.</p> <p>9 A The department makes policy, and then</p> <p>10 Federal Student Aid implements it.</p> <p>11 Q When you say "the department," are</p> <p>12 there specific individuals you're referring to?</p> <p>13 A Not for the -- for the general</p> <p>14 proposition I just stated, I -- it could be. I</p> <p>15 have no idea how many different people would be</p> <p>16 involved, so, no.</p> <p>17 Q Okay. When -- when you draw the</p> <p>18 distinction between -- you say FSA doesn't make</p> <p>19 policy; the department makes policy, could you</p> <p>20 explain what you mean?</p> <p>21 A Yeah. You know, FSA is not -- it's a</p> <p>22 performance-based apolitical organization, so the</p> <p>23 top of the Federal Student Aid organization is the</p> <p>24 chief operating officer who -- I don't know how</p> <p>25 else to explain it. It's a performance-based</p>
<p style="text-align: right;">Page 27</p> <p>1 A I don't.</p> <p>2 Q And was there a specific time when the</p> <p>3 department-wide hiring freeze ended?</p> <p>4 A I'm sure there was. I don't recall</p> <p>5 what it was.</p> <p>6 Q Do you know who ultimately was</p> <p>7 responsible for the decision whether or not to</p> <p>8 approve a hiring request? Once Julian Schmoke</p> <p>9 submitted that request, do you know who ultimately</p> <p>10 was the decision maker?</p> <p>11 A My understanding from discussions with</p> <p>12 him is that it was the -- that the request went to</p> <p>13 the secretary's chief of staff. I don't know if</p> <p>14 he made the decisions or if they went to the</p> <p>15 secretary or some other process, but, you know, he</p> <p>16 would communicate to me that he had heard back</p> <p>17 from the chief of staff that we weren't getting</p> <p>18 approved.</p> <p>19 Q Okay. So let's talk a minute about the</p> <p>20 COO. That's currently Mark Brown?</p> <p>21 A That's correct.</p> <p>22 Q And what -- how overall would you</p> <p>23 describe the COO's role with respect to borrower</p> <p>24 defense?</p> <p>25 A Fairly active.</p>	<p style="text-align: right;">Page 29</p> <p>1 organization that's apolitical.</p> <p>2 We apply the policies that are made by</p> <p>3 the political appointees within the Department of</p> <p>4 Education, so everybody from the secretary down</p> <p>5 through whatever her structure is for -- for the</p> <p>6 different parts that inform policy for</p> <p>7 student-loan-related issues.</p> <p>8 Q Okay. I'd like to turn for a second to</p> <p>9 the defendants' responses to -- responses and</p> <p>10 objections to plaintiffs' first set of</p> <p>11 interrogatories. I believe you have -- you said</p> <p>12 you have a copy of that?</p> <p>13 A I do. I do not have a second screen,</p> <p>14 so I'm going to put it up. I'm not going to be</p> <p>15 able to see you or anyone else. I just wanted</p> <p>16 everybody to be aware of that.</p> <p>17 Q Okay. No problem.</p> <p>18 And in the Dropbox, this is -- the</p> <p>19 document, it does not have a bracketed number</p> <p>20 before it. The file name is Sweet Defendants'</p> <p>21 Interrogatory Responses 12/7/20, and I'd like to</p> <p>22 mark this as Exhibit 22.</p> <p>23 (Deposition Exhibit 22 was marked for</p> <p>24 identification and attached to the transcript.)</p> <p>25 BY MS. ELLIS:</p>

<p style="text-align: right;">Page 30</p> <p>1 Q So if you could please turn to page 3, 2 and at the top of page 3 is interrogatory number 3 2. 4 Could you read that, please? 5 A (Witness reviews document.) 6 Sorry. Just want to make sure -- 7 Okay. Identify every person who has 8 knowledge of the facts and circumstances alleged 9 in the complaint and in this -- in this action, 10 and for each person identified describe with 11 specificity each person's knowledge. 12 Q Okay. And then you can see at the 13 bottom of page 3 begins the response, and that 14 continues onto page 4. You'll see at the top of 15 page 4 is your name, and it describes your 16 knowledge as borrower defense processes and 17 decisions. 18 Would you say that's accurate? 19 A Yes, I think so. 20 Q Okay. And then right beneath your name 21 is Jim Manning, and it describes his knowledge as 22 borrower defense policy and processes. 23 Do you see that? 24 A I do. 25 Q And a little further down the list is</p>	<p style="text-align: right;">Page 32</p> <p>1 knowledge of the policy in order to oversee 2 implementation of it. 3 Q And where were they getting their 4 knowledge or instructions regarding the policies 5 from? 6 A Who specifically are you asking about? 7 Q Okay. Jim Manning, you said, wore 8 multiple hats, so that's a little more 9 complicated. But for Robin Minor and Julian 10 Schmoke, who was instructing them on department 11 policy? 12 A I think it depends on what period of 13 time. 14 Q Okay. 15 A Can you be more specific? 16 Q Yes, let's take them one at a time. So 17 Julian Schmoke, you said, he at one time was the 18 chief enforcement officer at FSA? 19 A Correct. 20 Q And do you know the dates he held that 21 role? 22 A Oh, gosh. He started in 2018. I -- I 23 don't remember exactly. Yeah, I wouldn't want to 24 guess. 25 Q Okay. During the time that Julian</p>
<p style="text-align: right;">Page 31</p> <p>1 Robin Minor, also describing her knowledge as 2 borrower defense policies and processes? 3 A Right. 4 Q And a couple of lines down from that, 5 Julian Schmoke, borrower defense policies and 6 processes? 7 A Right. 8 Q So is it accurate to say that all three 9 of those people were within FSA? 10 MR. MERRITT: Object to the form. 11 BY MS. ELLIS: 12 Q Robin Minor and Julian Schmoke? 13 A Jim Manning wore multiple hats, but 14 Robin Minor and Julian Schmoke have always just 15 been within FSA. 16 Jim Manning was the acting under 17 secretary in 2017. And I'm not sure about what 18 the dates were, but he wore two hats in that he 19 also was the chief operating officer of FSA. So 20 he's been involved in multiple roles. 21 Q Uh-huh. 22 And they -- they would have knowledge 23 of borrower defense policy even though FSA, you 24 say, was not the policymaker? 25 A That's right. Yeah, they would have</p>	<p style="text-align: right;">Page 33</p> <p>1 Schmoke was chief enforcement officer, who was 2 instructing him on borrower defense policy? 3 A Well, the chief operating officer 4 position has also changed. There have been five 5 since I started in 2016. So the first chief 6 operating officer when I was there was James 7 Runcie. He left early in 2017, I believe, and the 8 acting chief officer was Matthew Sessa. 9 I believe both of them precede Julian 10 Schmoke because he was hired by the third person 11 on that list, Wayne Johnson, who was the chief 12 operating officer -- I don't know if he started 13 maybe in late 2017, early 2018 -- maybe a little 14 bit later than that, but -- so Julian first 15 reported to Wayne Johnson. 16 Johnson was subsequently moved to a 17 different position, and I believe that's when 18 James Manning took over as the acting chief 19 operating officer, and then Julian reported to him 20 for some period of time. 21 And when Manning was the chief 22 operating officer, he, I believe, brought over 23 from LBJ a deputy chief operating officer named 24 Kathleen Smith, and I think Julian met regularly 25 with her as well.</p>

Colleen M. Nevin
12/09/2020

34 to 37

<p style="text-align: right;">Page 34</p> <p>1 I think those were all the people that 2 he reported to.</p> <p>3 Q Okay. Did instructions on borrower 4 defense policy come from the Office of the Under 5 Secretary during the period when James Manning was 6 the acting under secretary?</p> <p>7 A Yes.</p> <p>8 Q And what about the current period when 9 Diane Jones has been the under secretary?</p> <p>10 A Well, the chain of communication has 11 changed a little bit, so when Mark Brown became 12 the chief operating officer, he put a number of 13 processes, kind of chains of communication or 14 paths of communication in place.</p> <p>15 So, generally speaking, I think most of 16 the instruction from the Office of the Under 17 Secretary during Mark Brown's tenure has been 18 through him.</p> <p>19 Q Okay. But it's your understanding that 20 the Office of the Under Secretary sets borrower 21 defense policy and those policy instructions then 22 come to FSA through Mark Brown?</p> <p>23 A I don't know that the Office of the 24 Under Secretary sets all policy. I know that OUS 25 sets some policy. I believe Robert Eitel, who is</p>	<p style="text-align: right;">Page 36</p> <p>1 to the secretary's office, but I think the under 2 secretary's office may have had input on that.</p> <p>3 Policy in terms of applications with 4 the schools, how we advise schools of the claim 5 against them, the, you know, evidence-exchange 6 process, things along those lines, and the 7 development of any kind of written communications 8 are all areas that -- that the Office of the Under 9 Secretary would provide input on.</p> <p>10 Q Did anyone summarize Diane Auer Jones' 11 deposition testimony for you?</p> <p>12 A No.</p> <p>13 Q Okay. If we could turn back to your 14 declaration, which we've marked as Exhibit 21. 15 You know, before -- before we do that, I just want 16 to follow up on one thing you just said that OUS 17 sets or contributes to policy on written 18 communications.</p> <p>19 Written communications with who?</p> <p>20 A With schools, with borrowers. 21 Those would be the two main ones.</p> <p>22 Q Okay. Thank you.</p> <p>23 So next I wanted to turn to paragraph 4 24 of your declaration -- that's on page 2 -- to just 25 walk through some of your responsibilities as the</p>
<p style="text-align: right;">Page 35</p> <p>1 the fifth person on the list, and Nathan Bailey, 2 who is the secretary's chief of staff, I believe, 3 have both been involved as well. So I'm not 4 exactly sure what the structure is over there, but 5 it -- whatever the LBJ policy is -- would 6 typically come to Mark Brown.</p> <p>7 Q But the Office of the Under Secretary 8 is one source of borrower defense policy at least?</p> <p>9 A Yes.</p> <p>10 Q And is that true with respect to policy 11 on the adjudication of borrower defense 12 applications?</p> <p>13 A That some of the policy comes from the 14 Office of the Under Secretary?</p> <p>15 Q Yes.</p> <p>16 A Yes.</p> <p>17 Q Specifically, can you identify any 18 policy directives on the adjudication of borrower 19 defense applications that comes from the Office of 20 the Under Secretary?</p> <p>21 A Well, that's communicated from the 22 Office of the Under Secretary to FSA?</p> <p>23 Q Yes.</p> <p>24 A Sure. So I don't know if staffing is a 25 policy issue that went through the under secretary</p>	<p style="text-align: right;">Page 37</p> <p>1 director of BDU?</p> <p>2 MR. MERRITT: I'm sorry. Rebecca, can 3 you state again what that document -- how it's 4 labeled? I have to --</p> <p>5 MS. ELLIS: Sorry, yes that's the --</p> <p>6 MR. MERRITT: -- click in separately 7 each document.</p> <p>8 MS. ELLIS: The Declaration of Colleen 9 Nevin in the Dropbox, that is tab 22. We've 10 marked it as Exhibit 21.</p> <p>11 MR. MERRITT: Thank you.</p> <p>12 BY MS. ELLIS:</p> <p>13 Q Okay. So you have here a list of your 14 responsibilities as director of BDU. The first 15 one says, Conducting legal research and analyses 16 of borrower defense claims.</p> <p>17 So can you describe what sort of legal 18 research and analyses you do or that you oversee?</p> <p>19 A Sure. Well, so one of the three 20 regulations that apply to borrower defense claims 21 is the 1995 regulation which is based on an 22 application in state law, and that means that the 23 borrower's application has to be adjudicated to 24 determine whether the borrower states an act or 25 omission that would provide a cause of action</p>

12/09/2020

38 to 41

<p style="text-align: right;">Page 38</p> <p>1 under state law.</p> <p>2 So that requires legal analysis and</p> <p>3 research in connection with those individual state</p> <p>4 laws. There are other related issues in terms of,</p> <p>5 you know, state licensing requirements, different</p> <p>6 things related to accreditation, but the kind of</p> <p>7 legal research is related to those '95 claims.</p> <p>8 Q Okay. Does your department -- does the</p> <p>9 borrower defense unit create memoranda describing</p> <p>10 the research and analysis of state law for</p> <p>11 purposes of the 1995 regs?</p> <p>12 A Yes.</p> <p>13 Q Are those memoranda communicated to the</p> <p>14 attorneys who are reviewing borrower defense</p> <p>15 applications?</p> <p>16 A Can you rephrase that? Can you repeat</p> <p>17 it?</p> <p>18 Q So -- so memoranda are created</p> <p>19 describing the research and analysis of state law;</p> <p>20 correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. So do -- do the individuals who</p> <p>23 are actually reviewing individual borrower defense</p> <p>24 applications have access to those memoranda in</p> <p>25 order to apply state law to an individual claim?</p>	<p style="text-align: right;">Page 40</p> <p>1 would need to meet. That goes into the written</p> <p>2 protocol.</p> <p>3 The reviews are primarily done by the</p> <p>4 junior attorneys; although, my senior team does as</p> <p>5 well. But for the most part, the heavy lifting is</p> <p>6 done by the junior attorneys. They're following</p> <p>7 very specific protocols for what they need to look</p> <p>8 for in each of the applications to see whether the</p> <p>9 borrower's case should be approved.</p> <p>10 So that's kind of how the process</p> <p>11 breaks down.</p> <p>12 Q Okay. How many of those protocols that</p> <p>13 you just described currently exist?</p> <p>14 A How many -- well, we have probably 500</p> <p>15 schools or more that we've done a preliminary</p> <p>16 assessment of the evidence to determine the scope</p> <p>17 of what we're reviewing. Because we didn't have</p> <p>18 staffing for such a long period of time, there's</p> <p>19 still a lot of work to be done on any -- well, on</p> <p>20 most of the schools that have a lot of common</p> <p>21 evidence.</p> <p>22 So in order to move forward with</p> <p>23 adjudicating, you know, whatever cases that we</p> <p>24 can, we try to determine upfront what it -- what</p> <p>25 we're continuing to look at and what we need more</p>
<p style="text-align: right;">Page 39</p> <p>1 A Oh, I see. Okay. They have access to</p> <p>2 them, but our process is -- there's kind of a --</p> <p>3 an order to it. We start with determining what</p> <p>4 the evidence -- if there's common evidence related</p> <p>5 to the school. We start with an analysis of the</p> <p>6 evidence.</p> <p>7 Then based on what the -- our</p> <p>8 determinations are with respect to the facts, then</p> <p>9 there's a legal memo that discusses how the law is</p> <p>10 applied to those specific sets of facts.</p> <p>11 Then once we've reached a legal</p> <p>12 conclusion that, you know, we have evidence to</p> <p>13 support claims under, you know, X state law</p> <p>14 because these elements are met, or we don't have</p> <p>15 sufficient evidence on a certain element for</p> <p>16 another state law, then that identifies what the</p> <p>17 borrower would have to provide evidence to support</p> <p>18 in order to have an approved case.</p> <p>19 That document then, in terms of the</p> <p>20 legal analysis, turns into a written protocol, so</p> <p>21 generally speaking, for any school where there's</p> <p>22 common evidence, there will be kind of the</p> <p>23 precursor documents to the protocol in terms of</p> <p>24 the facts and the law, and then from those facts</p> <p>25 and law, we determine what elements the borrower</p>	<p style="text-align: right;">Page 41</p> <p>1 time to develop and what we don't have evidence</p> <p>2 relating to and, therefore, would have to look to</p> <p>3 what the borrowers provide.</p> <p>4 So we have about, I'd say, 500 or so</p> <p>5 schools where at least some of the cases can be</p> <p>6 adjudicated, and so there's a memo describing what</p> <p>7 it is that we've done to reach the conclusion as</p> <p>8 to who can be what we call cleared for</p> <p>9 adjudication and move into an adjudication</p> <p>10 process. And those protocols, because there's not</p> <p>11 common evidence to support the applications at</p> <p>12 issue, are going to be dependent on what the</p> <p>13 borrower provides.</p> <p>14 In addition to that, we have -- I don't</p> <p>15 know how many total protocols relate to the --</p> <p>16 we've got job-placement-rate claims for</p> <p>17 Corinthian, the employment-prospects claims for</p> <p>18 Corinthian, transfer ability of credit for</p> <p>19 Corinthian, and then ITT California</p> <p>20 employment-prospects protocol, and we just</p> <p>21 finished the protocols for all employment --</p> <p>22 employment prospects for ITT.</p> <p>23 So to the extent that those are --</p> <p>24 those will be in addition to the 500 that I was</p> <p>25 referencing.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q Okay. Let me try to walk through that 2 more specifically. So the Corinthian 3 job-placement-rates protocol, that was already in 4 place when you joined the borrower defense unit; 5 is that correct?</p> <p>6 A We've made improvements to it, I think, 7 over time, so it's not going to be in the exact 8 same form, but, yes, the criteria for all intents 9 and purposes go back to 2016.</p> <p>10 Q Okay. And then the Corinthian 11 employment-prospect protocol, that was -- or at 12 least in its initial form developed -- that was in 13 place as of January 2017; correct?</p> <p>14 A That's correct.</p> <p>15 Q And the Corinthian transfer of credit 16 claim protocol in place as of January 2017?</p> <p>17 A Correct.</p> <p>18 Q The ITT California employment-prospect 19 protocol, also January 2017?</p> <p>20 A By January 20th, yeah, it was probably 21 the second week in January, somewhere in there.</p> <p>22 Q Okay. And you just said you have 23 recently completed a protocol for all ITT 24 employment prospect claims?</p> <p>25 A Right. The initial one was related</p>	<p style="text-align: right;">Page 44</p> <p>1 schools that you referred to as having preliminary 2 evidence. Can you explain a little more what 3 preliminary evidence means?</p> <p>4 A I don't think I said preliminary 5 evidence. I think I said preliminary assessment 6 or preliminary review or something.</p> <p>7 But if we have common evidence -- and 8 that can come in many forms. But if we have 9 common evidence, we first look at it to see -- you 10 know, before we have time to do a comprehensive 11 review of it, we look at what the scope is.</p> <p>12 So, for example, if we got a package of 13 materials from an attorney general's office and it 14 related to an investigation they did regarding 15 the, you know, employment prospects at a school 16 between 2010 and 2012, we would try to get a sense 17 of whether the evidence really is limited to the 18 2010 to 2012 period of time, whether it's specific 19 to a certain program or group of programs, whether 20 it's related to certain campuses, whether it's 21 more broadly applicable to places outside of that 22 state because AGs generally are focused on 23 their -- you know, the claims of their own 24 constituents.</p> <p>25 And then we write up a summary of, you</p>
<p style="text-align: right;">Page 43</p> <p>1 only to California.</p> <p>2 Q Uh-huh.</p> <p>3 A And, so, we now have one that applies 4 to all ITT employment-prospect claims.</p> <p>5 Q When was that completed?</p> <p>6 A Well, there are two -- one protocol, 7 there are multiple documents because we had the 8 2016 legal analysis and also the '95 legal 9 analysis. So the protocol was updated when we 10 completed the -- we completed 2016 first. That 11 was probably a few weeks ago. I don't remember 12 exactly what the timing was. And, you know, so we 13 made updates to it when we were able to move 14 forward on the '95 ones, and that was really just 15 in the last several days.</p> <p>16 Q Okay. Have those protocols been 17 provided to the DOJ attorneys for production in 18 this case?</p> <p>19 A We're still pulling records together, 20 but we're going to be producing a lot of the 21 protocols to our Office of General Counsel.</p> <p>22 Q Okay. Well, we would specifically 23 request that these new ITT protocols be included 24 in the production.</p> <p>25 So, now, I want to back up to the 500</p>	<p style="text-align: right;">Page 45</p> <p>1 know, what our understanding is of the evidence, 2 and then we make an assessment of what it doesn't 3 apply to.</p> <p>4 So, for example, if that package is 5 specific to the criminal justice program for a 6 certain school, you know, we review to make sure 7 that it doesn't, you know, go into anything beyond 8 that and we determine at that point now there's 9 nothing related to the nursing program or medical 10 assistant or things like that, and then those get 11 cleared for adjudication.</p> <p>12 And then continue to work on the 13 criminal justice piece, and ultimately that will 14 end up with a summary of what we conclude that 15 that evidence supports in terms of findings or 16 facts that may satisfy an element or multiple 17 elements of a borrower's claim whether it's under 18 the 2016 reg or the '95 reg.</p> <p>19 So the cases that have been adjudicated 20 so far in terms of schools where we have common 21 evidence are the ones that we don't think the 22 common evidence is going to help the borrower get 23 to an approval essentially because of their 24 circumstances because they are not in the program 25 that's at issue or they attended ten years before</p>

12/09/2020

46 to 49

<p style="text-align: right;">Page 46</p> <p>1 the evidence is relevant or they're in a state 2 outside of, you know, the one that we have 3 evidence for that doesn't seem more broadly 4 applicable.</p> <p>5 Q So when you say "cleared for 6 adjudication," what does that mean procedurally?</p> <p>7 A That means we write up a protocol, and 8 the protocol says -- you know, just kind of going 9 back to my example of if it's for a certain 10 program for a certain state, open the application. 11 You know, there's a bunch of things that they do 12 upfront.</p> <p>13 And then one of the first things, 14 though, is -- you know, is the borrower in state 15 X, and if so, did the borrower attend a criminal 16 justice program. If so, set that case aside. And 17 then it gets moved into kind of a holding status 18 until we can continue to review and complete the 19 assessment of the evidence that would be related.</p> <p>20 If the borrower is not in the 21 categories that are relevant to the common 22 evidence, then they would complete the 23 adjudication just like they would for what we call 24 our one-off claims where you have, you know, an 25 individual borrower who brings a claim. And, so,</p>	<p style="text-align: right;">Page 48</p> <p>1 Q Okay. And, so, for each of those 500 2 schools, are there instructions that are given to 3 reviewers of how to assess whether an individual 4 claim fits within that common evidence?</p> <p>5 A Whether -- whether the claim fits 6 within the common evidence?</p> <p>7 Q Yeah.</p> <p>8 A I think it's the opposite of what 9 you're describing. So it -- it tells them what 10 they should not move forward on because there may 11 be common evidence that's relevant.</p> <p>12 Q Okay. So the -- let's try to take a -- 13 try to make it a little more concrete. So say -- 14 say you receive a package of evidence from a state 15 attorney general about school X and it's about 16 school X making employment-prospect 17 misrepresentations in 2010 to 2012.</p> <p>18 And does BDU provide instructions to 19 the reviewers essentially saying if you come 20 across an application from school X criminal 21 justice 2010 to 2012, then you set that aside?</p> <p>22 A Yes.</p> <p>23 Q Okay. Are those instructions written 24 up? Are there --</p> <p>25 A That's part --</p>
<p style="text-align: right;">Page 47</p> <p>1 it will depend on, you know, what evidence the 2 borrower support -- provides to support the claim.</p> <p>3 Q Okay. So for -- for about 500 -- I 4 just want to make sure I'm understanding this.</p> <p>5 For about 500 schools, there's been an 6 assessment of common evidence that would allow 7 reviewers to direct certain claims that fit the 8 common evidence into this bucket of cleared for 9 adjudication where those claims are on hold 10 waiting for a final protocol?</p> <p>11 A I'm not sure about that exactly. Can 12 you say that one more time?</p> <p>13 Q So I'm just trying to understand -- so 14 there are 500 schools for which the department has 15 what it considers to be common evidence.</p> <p>16 Is that correct at the first step?</p> <p>17 A I'm approximating, so I probably 18 shouldn't have given an exact number. I didn't 19 intend to give an exact number. I think it's 20 somewhere in the ballpark of 500. And that 21 would -- you know, there are school groups, so 22 that could be individual schools within school 23 groups as well, but, yeah, there are somewhere in 24 the neighborhood of about 500 schools where we've 25 reached that preliminary step.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q -- instructions that the reviewers 2 receive?</p> <p>3 A Yes, that's part of the written 4 protocol.</p> <p>5 Q Okay. And those are among the 6 documents that you've been gathering to be 7 produced in this action?</p> <p>8 A That is correct.</p> <p>9 Q Okay. So then for each of those 10 buckets of applications that are set aside as 11 potentially fitting within the common evidence 12 that you have, for how many schools has BDU 13 proceeded to the next step to actually having a 14 system for granting those applications?</p> <p>15 A We're working on -- how many? -- but a 16 lot of schools along those lines. But we haven't 17 created that for any other than ITT at this point, 18 and that's just limited to the employment 19 prospects.</p> <p>20 Q Which other schools are you working on?</p> <p>21 A Beckwood (phonetic), the EDMC schools, 22 the American ALO (phonetic), the Court Reporting 23 institutes -- I mean, there are dozens, but those 24 are the ones that come to mind right now.</p> <p>25 We also have a whole lot of open</p>

12/09/2020

50 to 53

<p style="text-align: right;">Page 50</p> <p>1 schools where we have claims, but there are some 2 additional processes that need to happen on those, 3 so the ones we've made the most headway on are 4 primarily the closed schools.</p> <p>5 Q Since you started your position at BDU, 6 the only claims that have been granted, the only 7 borrower defense claims that have been granted are 8 from Corinthian and ITT?</p> <p>9 A With the exception with the American 10 Career Institute cases in January --</p> <p>11 Q Right.</p> <p>12 A -- of 2017. Right.</p> <p>13 Q ACI was a group application; is that 14 correct?</p> <p>15 A That's right.</p> <p>16 Q Has BDU developed any group discharge 17 process?</p> <p>18 A We wouldn't develop the process, and my 19 understanding is that the department has not 20 developed a process.</p> <p>21 Q Who in the department would be 22 responsible for developing a group discharge 23 process?</p> <p>24 A I can't answer that hypothetically. I 25 really don't know if they would -- I don't know if</p>	<p style="text-align: right;">Page 52</p> <p>1 Q Do you know about what percentage of 2 pending applications fall under the '95 regs?</p> <p>3 A I really don't. A good number, but 4 I -- I don't know percentage-wise what the 5 breakdown is between '95 and 2016, and it's not as 6 simple as you'd think probably because it -- it 7 involves whether or not they have FFEL loans that 8 would result in the case being consolidated, so 9 there's just a variety of factors that go into it.</p> <p>10 There also are a lot of borrowers who 11 are covered by both because it's dependent on the 12 date of the loan, so they may have loans that -- 13 some of them are subject to the '95 reg and others 14 are 2016.</p> <p>15 Q Okay. For claims that are subject to 16 the '95 reg, who decides ultimately what state law 17 should apply?</p> <p>18 A Well, currently? Is that what --</p> <p>19 Q Currently.</p> <p>20 A -- what time period?</p> <p>21 Currently, we have -- basically, we 22 have concluded with respect to ITT in particular 23 for the employment prospects that we would apply 24 the state where the borrower resided at the time 25 of separation from the school as a rebuttable</p>
<p style="text-align: right;">Page 51</p> <p>1 they decided to do it. But, yeah, I don't have an 2 answer to that.</p> <p>3 Q Well, aside from an individual, do you 4 have an understanding of what unit or what 5 division of the department would be responsible or 6 would have the authority to create a group 7 discharge process?</p> <p>8 A Well, obviously, the secretary would. 9 I don't know who she -- OUS is involved in higher 10 Ed, so that's a possibility, but I really can't 11 answer. Like I said, it's a hypothetical because 12 my understanding is that there is no such process.</p> <p>13 Q Okay.</p> <p>14 A There's no such -- yeah, there's no 15 such process.</p> <p>16 Q Okay. For these protocols for other 17 schools that are -- that have some common evidence 18 and are in development, those -- do those analyses 19 involve a determination of what state law will 20 apply to those claims?</p> <p>21 A For the '95 applications, before we can 22 adjudicate any application, we would need to -- 23 yeah, we would need to determine what the -- what 24 state law will be that will be used to determine 25 the case.</p>	<p style="text-align: right;">Page 53</p> <p>1 presumption. And that's because we're dealing 2 with hundreds of thousands of applications overall 3 and something like 30-something thousand ITT 4 cases.</p> <p>5 And you can't really do an individual 6 choice of law assessment on each individual case. 7 I mean, as you know, those can get litigated for 8 months on one single case in a lawsuit. So for 9 the purpose of doing it in a way that's 10 administratively possible, we have a default to 11 the -- I believe it's the state where the borrower 12 lived at the time of separation from the school, 13 and we have different data points that we use to 14 try to determine that.</p> <p>15 But if the borrower thinks that a 16 different law -- thinks that we got it wrong on 17 determining that based on the data or thinks that 18 a different law should have been applied, then 19 that's something that they can seek 20 reconsideration on, and we would certainly look to 21 that unless the borrower had specifically asked 22 that a certain law be applied. That would be the 23 exception. It's very rare, but there are 24 borrowers that say my case should be adjudicated 25 under X law because that's where my campus was</p>

12/09/2020

54 to 57

<p style="text-align: right;">Page 54</p> <p>1 located or something along those lines.</p> <p>2 Q Who made the decision that that was the</p> <p>3 standard that will be applied to the ITT claims?</p> <p>4 A We worked with general counsel in it.</p> <p>5 You know, there are some challenges with the data</p> <p>6 in terms of, you know, borrowers around where they</p> <p>7 live at the time they applied is often different</p> <p>8 than where they lived when they went to school or</p> <p>9 where they would have lived when they were, you</p> <p>10 know, on the receiving end of the alleged</p> <p>11 misrepresentation.</p> <p>12 There are a lot of different factors</p> <p>13 and our, you know, data limitations that we have</p> <p>14 on that mean that we have to, you know, basically</p> <p>15 piece it together.</p> <p>16 So that -- that, we thought, was the</p> <p>17 most administratively possible and also supported</p> <p>18 by choice of law principles, so, you know, we</p> <p>19 looked at the various choice of law principles in,</p> <p>20 you know, all the different states to try to get a</p> <p>21 sense of where they would land generally, and that</p> <p>22 seemed to be the most consistent.</p> <p>23 Q Did you make the final decision that</p> <p>24 that would be the policy you follow or that that</p> <p>25 would be the choice of law analysis you follow?</p>	<p style="text-align: right;">Page 56</p> <p>1 director of BDU?</p> <p>2 A Well, I did, but I -- it has been a</p> <p>3 discussion. There was a -- there were discussions</p> <p>4 about whether it's a policy-related issue and</p> <p>5 whether LBJ could determine what the appropriate</p> <p>6 choice of law was. I pushed back and submitted</p> <p>7 what I thought was the appropriate framework, and</p> <p>8 as, I said, we worked closely with OGC on it, and</p> <p>9 they reviewed it and concluded that it was</p> <p>10 appropriate.</p> <p>11 Q Who did you -- who did you have</p> <p>12 discussions with about this question of whether</p> <p>13 OUS could decide the choice of law standard?</p> <p>14 A I didn't directly have discussions, but</p> <p>15 I know that there were some communications in</p> <p>16 LBJ -- in LBJ with their Office of General</p> <p>17 Counsel, I believe.</p> <p>18 Q LBJ's Office of General Counsel which</p> <p>19 is separate from FSA's Office of General Counsel?</p> <p>20 A FSA doesn't have an Office of General</p> <p>21 Counsel. When I refer to Office of General</p> <p>22 Counsel, that's actually the Department of</p> <p>23 Education's Office of General Counsel.</p> <p>24 Q Okay. I'm just trying to understand</p> <p>25 the --</p>
<p style="text-align: right;">Page 55</p> <p>1 A Yeah, I wouldn't consider that a policy</p> <p>2 decision. Yeah, that was a recommendation from my</p> <p>3 senior team and -- or some of the members of my</p> <p>4 senior team, and I reviewed their -- their</p> <p>5 analysis and agreed with it.</p> <p>6 Q So, ultimately, for these other schools</p> <p>7 that have protocols under process, you also would</p> <p>8 be the final decision maker on what state law</p> <p>9 applies to them under the '95 regs?</p> <p>10 A Well, I wouldn't state it as such a</p> <p>11 general proposition because if it were related</p> <p>12 to -- for example, if an AG submitted something</p> <p>13 and, you know, had indicated that the attorney</p> <p>14 general of a particular state had made findings</p> <p>15 related to state law that would be applicable,</p> <p>16 there may be circumstances where we would, you</p> <p>17 know, rely on something along those lines.</p> <p>18 So I wouldn't say that there's an</p> <p>19 absolute rule there, but that -- we thought that</p> <p>20 that was a good framework generally for -- for</p> <p>21 schools where we have to make that determination.</p> <p>22 Q I guess what I'm asking is does the</p> <p>23 chief enforcement officer or anyone else have to</p> <p>24 approve these decisions of what state law applies,</p> <p>25 or is that a decision that you can make as the</p>	<p style="text-align: right;">Page 57</p> <p>1 A Sorry. We have alphabet --</p> <p>2 Q -- relationships.</p> <p>3 A -- soup. I apologize for that.</p> <p>4 Yeah. No, the Department of Education,</p> <p>5 which OUS is, you know, obviously directly under</p> <p>6 the secretary, has an Office of General Counsel,</p> <p>7 and they provide legal advice throughout the</p> <p>8 entirety of the department including Federal</p> <p>9 Student Aid. So to the extent that there are</p> <p>10 legal issues, they would go through the Office of</p> <p>11 General Counsel over the department.</p> <p>12 Q Okay. So you didn't directly</p> <p>13 participate in, but you were aware of a question</p> <p>14 whether OUS would weigh in on what's the</p> <p>15 appropriate state law standard to use?</p> <p>16 A For ITT in particular.</p> <p>17 Q For ITT?</p> <p>18 A Yeah.</p> <p>19 Q And you don't -- do you know who was</p> <p>20 involved in those discussions on the side of OUS?</p> <p>21 A Diane Jones. And he's not in OUS, but</p> <p>22 I think Robert Eitel might have been involved as</p> <p>23 well.</p> <p>24 Q Okay.</p> <p>25 MS. ELLIS: We've been going for about</p>

12/09/2020

58 to 61

<p style="text-align: right;">Page 58</p> <p>1 an hour. Why don't we take just a quick 2 two-minute break here.</p> <p>3 THE WITNESS: That sounds great. Thank 4 you.</p> <p>5 THE VIDEOGRAPHER: All parties agree to 6 go off the record?</p> <p>7 MS. ELLIS: Yes.</p> <p>8 MR. MERRITT: Yes.</p> <p>9 THE VIDEOGRAPHER: We are now off the 10 record. The time is 15:19 UTC.</p> <p>11 (Recess -- 10:19 a.m.) 12 (After recess -- 10:25 a.m.)</p> <p>13 THE VIDEOGRAPHER: We are now on the 14 record. The time is 15:25 UTC.</p> <p>15 BY MS. ELLIS: 16 Q Okay. So I want to turn back to -- we 17 had been talking about schools for which the 18 department has identified what we've been calling 19 common evidence. So I wanted to ask more 20 specifically what is considered common evidence? 21 What rises to the level of common evidence?</p> <p>22 A Well, it can come in a lot of different 23 forms. The department, in its oversight -- FSA, 24 in its oversight function, often will look into 25 various issues and may have records relating to</p>	<p style="text-align: right;">Page 60</p> <p>1 something. Anything that's available, you know, 2 to the public online, so we look at whether there 3 are things we're not aware of. We do Internet 4 searches to see if there's something we might not 5 be aware of.</p> <p>6 So lot of different ways that we get 7 materials.</p> <p>8 Q So if you have a group of borrowers who 9 are all submitting applications about the same 10 school and submitting the same kinds of evidence, 11 that would be sort of collated into common 12 evidence?</p> <p>13 A We -- that's not as common as you would 14 think, so -- but as we assess the common evidence, 15 we look to see if there are any borrowers who have 16 anything that would be more broadly applicable. 17 You know, sometimes a borrower will have something 18 very specific. It could be like an email from an 19 admissions rep that is just related to something 20 that particular borrower encountered.</p> <p>21 But, you know, I remember at least one 22 school where we didn't think that we had anything 23 at all, and in kind of doing a sampling of the 24 cases -- that's one of the things that we do 25 before we adjudicate anything is do some sampling</p>
<p style="text-align: right;">Page 59</p> <p>1 the school so, you know, that would be our -- 2 formerly known as program compliance team or the 3 administrative actions and appeals group.</p> <p>4 Particularly, if there was a fine 5 against the school or if there was some action 6 taken to either exclude a program or a campus from 7 continuing participation in Title IV funding, all 8 those things -- there may be related documents 9 with respect to the school.</p> <p>10 We also have evidence from a number of 11 different law enforcement agencies, so CFPB, FTC, 12 the attorneys general. There are a whole bunch of 13 different schools that have been investigated and 14 been involved in law enforcement actions, and some 15 of those documents have been provided to the 16 department.</p> <p>17 You know, we could get -- we have 18 applications where borrowers or groups of 19 borrowers submitted a fair amount of evidence 20 themselves. Your -- or Harvard's program has 21 actually submitted evidence with respect to at 22 least one of the schools I can think of.</p> <p>23 So it comes from a variety of different 24 sources, and, yeah, those -- those are the ones 25 that come to mind. I might even be forgetting</p>	<p style="text-align: right;">Page 61</p> <p>1 and, you know, go through some of the applications 2 to see what kind of materials are being 3 provided -- and found a judgment that one of the 4 borrowers had obtained that would potentially be 5 more broadly applicable to not just that borrower.</p> <p>6 So -- so that's a possibility, too, but 7 generally speaking, there are -- you know, the 8 vast majority of the borrowers do not have much by 9 way of evidence to support their claims 10 individually, so it's more often the case that we 11 would have to rely on, typically, like I said, our 12 oversight documentation and materials that 13 provided by AGs or legal aid or somebody else.</p> <p>14 Q Could you describe that sampling 15 process you that just mentioned? How does that 16 work?</p> <p>17 A Well, you know, depending on how many 18 applications there are from a school because if 19 there are only, you know, 50 to a 100 and -- you 20 know, it would probably be a somewhat smaller 21 size. I think on ITT, we did a sampling on 22 probably a 100. I'm guessing, actually. I 23 shouldn't give an exact number.</p> <p>24 We did a sampling -- a fairly good size 25 sample of BD applicants relating to</p>

<p style="text-align: right;">Page 62</p> <p>1 employment-prospects claims to see what, if any, 2 materials they attached to their applications and 3 what their -- what their allegations looked like 4 and whether there were any specifics to them 5 because that can be a pretty broad range of what's 6 in the allegations themselves.</p> <p>7 Q So if you have a school with a smaller 8 number of applicants, you mentioned, say, 50 to 9 100, would you look at all of those applications 10 rather than doing a sample to look for 11 commonalities?</p> <p>12 A I don't remember what our number is for 13 that range. But we wouldn't look at all of them, 14 but we would look at a good distribution of them.</p> <p>15 And we also allow for the possibility 16 that if we -- in that scenario, if you had 50 or 17 100, you know, those would all be -- if they were 18 all cleared for adjudication based on, you know, 19 not having common evidence or not having 20 identified anything in the sampling, if in the 21 course of reviewing the applications, we find 22 that, you know, the last application we looked at 23 has a judgment that we weren't aware of, then we 24 would probably pull those back before they got 25 processed so that they would be set aside for --</p>	<p style="text-align: right;">Page 64</p> <p>1 A At what period of time are you talking 2 about?</p> <p>3 Q Currently.</p> <p>4 A So for current applications, you know, 5 the -- the reviewing attorney would -- 6 particularly assigned cases, the attorney would 7 open up the case, look at the -- by the way, case 8 is the same thing as an application. It's just a 9 naming convention from the Salesforce platform, so 10 those are terms that we use interchangeably, but a 11 case is an application.</p> <p>12 But they would open up the Salesforce 13 case that contains the actual document that's 14 submitted by the borrower, and then there are a 15 series of steps. I think, actually, there are a 16 couple of protocols in the record, but, you know, 17 they open it up first to see if it's complete, 18 and, you know, there are certain things that -- 19 sometimes we get applications in that are 20 incomplete, and, then, they get sent back to our 21 in-state team to follow up with the borrower to 22 get, you know, whatever information was missing 23 from the document.</p> <p>24 But assuming that it's not something 25 that needs to be sent back to intake, you know,</p>
<p style="text-align: right;">Page 63</p> <p>1 for further analysis.</p> <p>2 And, so, the junior attorney would, you 3 know, flag that issue for one of my senior team, 4 and then there would probably be a hold on those 5 until we assess, you know, whether any results 6 would be different.</p> <p>7 But that would be a decision that 8 wouldn't be made on the first pass.</p> <p>9 Q When you say we would do sampling or 10 a -- you know, who -- who is "we" in that scenario 11 who is reviewing the samples?</p> <p>12 A Memos are generally done by a 13 combination of somebody on the senior team, 14 sometimes multiple people on the senior team 15 working with junior attorneys to -- it really 16 depends on how much common evidence there is, but 17 usually there would be a member of the senior team 18 either leading the effort or maybe even just 19 handling it him or herself. It sort of depends on 20 the scope and availability of resources we have.</p> <p>21 Q Maybe it would be useful to sort of 22 walk through the process for how an application is 23 adjudicated, so, you know, from -- from the time 24 that somebody opens up an application, what 25 happens to it?</p>	<p style="text-align: right;">Page 65</p> <p>1 they would basically follow the protocols, and the 2 steps in the protocol will depend on what the 3 nature of the claim is.</p> <p>4 So I don't know that I can give you 5 exact steps because it would depend.</p> <p>6 Q Okay. You mentioned judgments -- 7 judgments from private lawsuits as one kind of 8 evidence that's considered.</p> <p>9 A Right.</p> <p>10 Q What about if a lawsuit has been 11 filed -- if you receive evidence that a lawsuit 12 has been filed but has not yet come to final 13 judgment?</p> <p>14 A We would try to get the evidence 15 related to the lawsuit.</p> <p>16 Q You would request it from who?</p> <p>17 A Well, it depends. The instance that I 18 was referring to is an individual borrower. We 19 have a separate investigations unit, so we have a 20 process where if something like that were to 21 surface the investigations unit would reach out to 22 the borrower.</p> <p>23 If the borrower has an attorney, which 24 is often the case if they have a lawsuit and 25 judgment or would be the case, I guess, then we</p>

12/09/2020

66 to 69

<p style="text-align: right;">Page 66</p> <p>1 would ask permission from the borrower to speak to 2 his or her attorney, and then -- when I say "we" 3 really I meant investigations. 4 And then they might ask the borrower's 5 attorney if they have any additional supporting 6 materials because maybe, you know, there might be 7 some discovery that they had that they didn't 8 provide or maybe they didn't realize that that 9 would be useful or helpful to them. 10 You know, it depends on whether the 11 judgment is for the borrower, him or herself, or 12 whether they're attaching a copy of a judgment 13 that somebody else brought. But that's just one 14 scenario. 15 Q What are some other situations where 16 you might refer a case to the investigations unit 17 to find out more information about the 18 allegations? 19 A Well, investigations has had major 20 attrition and doesn't have much by way of 21 staffing. So there's not too much that we've been 22 able to work with them on so far in terms of 23 enlisting their assistance. 24 But on those particular kinds of issues 25 where we think that borrowers maybe just weren't</p>	<p style="text-align: right;">Page 68</p> <p>1 anything that came out of those investigations 2 that was referred to BD. 3 Q Do you know if anyone in the 4 investigations unit has asked for more staffing? 5 A Yes. 6 Q And do you know what happened to those 7 requests? 8 MR. MERRITT: Objection to the scope of 9 these questions. 10 BY MS. ELLIS: 11 Q You can answer. 12 A I think similar to borrower defense, 13 they've had attrition early on in 2017 going into 14 2018. And, you know, they would have been subject 15 to the same hiring freeze that everybody else was. 16 I was acting director of investigations 17 for a period of time and Julian Schmoke was the 18 chief enforcement officer, and I had raised that 19 we needed to step up investigations during our 20 meetings during that period of time, but it was 21 kind of the same scenario as borrower defense. 22 Q During what period were you the acting 23 director of investigations? 24 A I knew you were going to ask me that, 25 and now I don't remember. I believe it was around</p>
<p style="text-align: right;">Page 67</p> <p>1 aware that, you know, something that they 2 referenced is -- would be potentially helpful to 3 their case, those are some of the scenarios where 4 we've asked investigations to reach out. 5 But I can't think of anything else that 6 they're working on with us right now. 7 Q Was there a time during your tenure 8 when the investigations unit had more staffing 9 than it does now? 10 A Yes. 11 Q When was that? 12 A Well, I think in 2016, 2017, they had 13 about -- they had a lot more people then. They've 14 had some pretty major attrition. 15 Q During 2016 to 2017, did the borrower 16 defense unit work more often or on more issues 17 with the investigations unit when they were better 18 staffed? 19 A At that point, we were building both 20 units. They were both new in 2016. They had a 21 number of investigations that, I think, it was 22 anticipated that potentially would lead to 23 documents that would be relevant to borrower 24 defense, but due to attrition and, I think, policy 25 decisions, I don't think that there was much of</p>	<p style="text-align: right;">Page 69</p> <p>1 spring of 2018 to towards the end of 2018, but I'm 2 not -- I'm not sure about the dates, but somewhere 3 in that general vicinity. 4 Q Going back to common evidence, what 5 about settlements of lawsuits? 6 A What about them? 7 Q Would -- would they -- would that be 8 considered common evidence? 9 A The settlement would not. The fact of 10 the lawsuit would be something that we'd want to 11 explore. So if there was a lawsuit and whoever 12 brought the lawsuit had evidence, then that would 13 be evidence that we would like to consider. 14 Q So, for instance, if a state attorney 15 general settled a lawsuit with a school, you might 16 ask the attorney general to share the evidence 17 that they had in the course of their investigation 18 that led to the lawsuit? 19 A At what period of time are you talking 20 about. 21 Q Any period of time. 22 A So that's been the case probably -- 23 yeah. Well, this year, that's the case. Probably 24 for about a year or so. We have had 25 communications with AGs where we know that they</p>

<p style="text-align: right;">Page 70</p> <p>1 participated in and brought -- maybe even not just 2 a lawsuit. Sometimes we're aware that there was 3 an investigation that didn't result in a filing of 4 a complaint.</p> <p>5 We would reach out to them to ask them, 6 you know, what the scope of their investigation 7 was, and if, you know, some of them are in the 8 process of submitting materials, so we would want 9 to know before we adjudicate the cases if they are 10 in the process of putting any materials together 11 to send to us if that's their intention.</p> <p>12 So we try to do that upfront before we 13 adjudicate anything.</p> <p>14 Q What about before this year?</p> <p>15 A We really didn't have communications 16 with the AGs until probably last fall, I'd say.</p> <p>17 Q Does BDU ever initiate or request 18 another group in the department to initiate a 19 further investigation of a school based on common 20 evidence that you have?</p> <p>21 So, for instance, if you have -- if you 22 have information that a school was misrepresenting 23 its job placement rates for criminal justice in 24 2010 to 2012, would you ever investigate or ask 25 someone to investigate whether they also were</p>	<p style="text-align: right;">Page 72</p> <p>1 A I don't know that I would opine on what 2 a proper staffing is for them because it's not my 3 unit, but I think it would allow for maybe some 4 further exploration on their part. I'm just 5 working with what we have at this point, so, you 6 know, to the extent that we're already taking up a 7 fair amount of their time in terms of the things 8 that I had already mentioned.</p> <p>9 Given their very limited resources, we 10 haven't had conversations about expanding that.</p> <p>11 Q Again, in terms of what's considered 12 among the common evidence, does BDU consider 13 evidence that's provided by the schools 14 themselves?</p> <p>15 A Yes.</p> <p>16 Q Under what circumstances does BDU 17 communicate with a school to get evidence 18 regarding borrower defense?</p> <p>19 A Well, currently there are some open 20 policy issues or discussions relating to that, but 21 in the spring we -- I'm sorry. Can you restate 22 your question?</p> <p>23 Q Under -- under what circumstances does 24 BDU reach out to a school to ask for evidence 25 regarding a borrower defense issue?</p>
<p style="text-align: right;">Page 71</p> <p>1 making similar misrepresentations for other 2 programs during that period of time or for that 3 same program during other periods of time?</p> <p>4 A Investigations isn't -- investigations 5 isn't really staffed to handle that much right 6 now, but we, I think, have been -- they're focused 7 generally, we know, for the last few years for 8 something that is currently ongoing and, you know, 9 therefore, potentially going forward.</p> <p>10 So what we're keeping an eye open for 11 by way of referring to them is if we see something 12 that has happened recently at an open school, you 13 know, whether that's something that they would 14 look at and I think that that would kind of fall 15 within their -- their purview right now.</p> <p>16 In terms of if we know of, like, the 17 criminal justice program and whether we would 18 refer it for something -- you know, for a school 19 that's been closed or, you know, for something 20 that happened a long time ago, we probably would 21 not.</p> <p>22 Q If investigations were properly 23 staffed, is -- would you be able to make those 24 kind of requests for investigations into conduct 25 that happened in the past?</p>	<p style="text-align: right;">Page 73</p> <p>1 A Yeah. Well, obviously, if the school 2 is closed and no longer doing business, there's 3 nothing we can do about that.</p> <p>4 If the school is still open, then 5 starting this past spring, there were four school 6 groups that we had reached out to for two reasons. 7 One is to let them know that they were about to 8 receive individual applications as part of the 9 notification process under the 2016 regulations, 10 so really more of just a heads up that their email 11 box was about to get flooded with a whole lot of 12 applications. But also to request documents that 13 we thought would be helpful in our assessment of 14 the -- the borrower applications.</p> <p>15 So we had done kind of a preliminary 16 review of what the nature of the claims were with 17 respect to those schools and had come up with a 18 list of documents that we thought would be 19 relevant to that -- that fact-finding process.</p> <p>20 Q And what were those four school groups 21 that you reached out to in the spring?</p> <p>22 A DeVry, Phoenix, Ashford, I guess, 23 depends on how you define "school group." 24 Technically speaking, DeVry is a school group and 25 a school. Phoenix, I think, really is just a</p>

12/09/2020

74 to 77

<p style="text-align: right;">Page 74</p> <p>1 school. Within a school group, Charlotte School 2 of Law, and Ashford which is part of Bridgepoint, 3 I believe. 4 Q So from each of those schools, you 5 requested a list of documents that you thought 6 would be helpful to your assessment? 7 A We wrote them a letter, and that letter 8 included a number of requests, yes. 9 Q Did you also invite them to submit any 10 other evidence that they wanted you to see? 11 A The -- that's related to what I was 12 saying in terms of flooding their in-box. So when 13 they receive an individual borrower's application, 14 they can respond to that application individually 15 with evidence, or they could submit something to 16 us more globally in terms of responses to the 17 overall applications. 18 Q Okay. You referred to an ongoing 19 policy debate. Could you describe what you mean 20 by that? 21 A I don't know if I would call it a 22 debate, but there's an open question on what that 23 process will look like going forward in terms of 24 what the communications to the school will look 25 like.</p>	<p style="text-align: right;">Page 76</p> <p>1 did BDU ever contact schools to ask for relevant 2 evidence? 3 A Before the regs went into effect -- 4 that was late 2018 -- we were just treading water 5 trying to keep up with Corinthian applications, so 6 we really weren't even at that point. 7 Q Have -- have any of the four schools 8 who you reached out to in spring 2020 provided the 9 documents that you asked for? 10 A All have responded, and some have sent 11 most or all of what we requested, and I think one 12 of them may have said that they were sending 13 something, but I don't know if we ever got it. 14 Q And how is that information used by 15 BDU? 16 A The documents that they provide? 17 Q Uh-huh. Yes. 18 A We review the evidence regardless of 19 the source. You know, we might request from them 20 a program manual that we might otherwise have 21 gotten in the course of our oversight at FSA or 22 that might have been provided from an AG's office. 23 So I would look at the nature of the 24 evidence based -- I don't think it's used 25 differently in that sense. It's -- you know, it's</p>
<p style="text-align: right;">Page 75</p> <p>1 Q And who's involved in those 2 discussions? 3 A OUS and with the assistance of the 4 Office of General Counsel. 5 Q Does OGC make policy decisions 6 regarding borrower defense? 7 A I think you'd have to ask them. I 8 don't really understand exactly what the 9 relationship is, or it has some folks that kind of 10 have moved in and out of lane. So I don't know, 11 as a general proposition, what the answer to that 12 would be. 13 Q Okay. Whose idea was it or whose 14 decision was it to reach out to these four schools 15 in spring 2020? 16 A I don't think it was an idea. I think 17 it -- my and my senior team's reading of the 2016 18 regulations is that it requires a fact-finding 19 process, and in order to do that fact-finding 20 process for, you know, the circumstances in these 21 schools, we felt like we needed records from the 22 school. 23 So -- so I made the decision to -- to 24 have my team draft those letters and send them. 25 Q Before the 2016 regs went into effect,</p>	<p style="text-align: right;">Page 77</p> <p>1 what the document purports to be. Obviously, the 2 source is important to know for the purpose of 3 kind of veracity of the document, but beyond that 4 we don't necessarily treat a program manual or, 5 you know, different kind of advertising material 6 differently depending on the source. 7 Q So the information you received from 8 schools is incorporated into the general pool of 9 evidence that you're considering regarding that 10 school? 11 A Yes. 12 Q In -- you said that the school has the 13 option to respond to an application individually. 14 Is there a mechanism for the borrower to see the 15 evidence that the school submits in response to 16 their application? 17 A Not under the 2016 regulations. There 18 will be for the 2020 regulation. 19 Q Okay. What about the -- does the 2019 20 regulation have any rule there? 21 A Sorry. So when I say 2020, the 2019 22 regulation went into effect July 1, 2020. 23 Q Oh, I see. 24 A I refer to that as the 2020 regulation. 25 So that's the new one.</p>

12/09/2020

78 to 81

<p style="text-align: right;">Page 78</p> <p>1 And just to clarify, the '95 regulation 2 is the old regulation. 2016, we refer to as the 3 2016 regulation because that's when it was 4 published, but it actually went into effect by 5 court order in 2018. We still refer to it as the 6 2016 regulation.</p> <p>7 Q Okay. Understood.</p> <p>8 Let's switch back for a second to the 9 law applicable to -- to claims under the '95 regs. 10 So you said that you've just recently developed 11 protocols for ITT claims, non-California 12 employment-prospect-ITT claims under both the '95 13 and 2016 regs; is that correct?</p> <p>14 A That's correct.</p> <p>15 Q Okay. So how would a borrower know 16 what law applies to their claim?</p> <p>17 A I'm not sure. Are you asking about the 18 letters? I'm not sure I understand.</p> <p>19 Q Yes, in communications to the borrower. 20 Do communications to the borrower state 21 what law has been applied to their claim?</p> <p>22 A I think the CCI ones reference 23 California law. I don't think the non-CCI ones 24 state an applicable state law. With respect to 25 those applications, though, because either the</p>	<p style="text-align: right;">Page 80</p> <p>1 Order.</p> <p>2 And that was marked as Exhibit 13 in 3 the Jones deposition. 4 (Exhibit 13 referred to.)</p> <p>5 THE WITNESS: Just to make sure I have 6 the right document, it's Defendants' Response to 7 August 31, 2020 Order.</p> <p>8 BY MS. ELLIS:</p> <p>9 Q Yes, that's correct.</p> <p>10 A Okay.</p> <p>11 Q So this document, I'll represent to 12 you, is a filing in this case where -- where the 13 government attached the four types of form denial 14 letters, which we've been referring to as forms A, 15 B, C and D according to their attachment letters 16 here in this document.</p> <p>17 So if you flip to the bottom of page 2 18 of the motion which is page 3 of the document, 19 there's a heading near the bottom of the page, 20 Form of denial letters utilized by the department 21 since December 2019.</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Okay. And then at the bottom of the 25 page going onto the next page, it lists -- it</p>
<p style="text-align: right;">Page 79</p> <p>1 borrower failed to make an allegation that's 2 potentially the kind that could be approved or the 3 evidence to support it, so regardless of what law 4 you would apply, it's our position that the 5 application would be denied.</p> <p>6 So those aren't being denied based on, 7 you know, not being able to fulfill a specific 8 element of a particular state law or a specific 9 element of the 2016 regulation. They're either 10 just kind of something that wouldn't get through a 11 12(b)(6) analysis or they're just lacking in 12 evidence.</p> <p>13 Q Are you talking specifically about ITT 14 claims?</p> <p>15 A No. I thought you were referring to 16 the letters, so the ones that have gone out so 17 far, we haven't issued any denials that were based 18 on kind of an application of specific elements of, 19 you know, state law where there could be a 20 different answer in California versus Nebraska.</p> <p>21 Q Okay. Let's look at the denial 22 letters. That is tab -- give me a second. That's 23 tab 13 in the hard copies. On the Dropbox, that's 24 the bracket number 13 ECF 116, Defendants' 25 Response to 8/31. I think that should say 2020</p>	<p style="text-align: right;">Page 81</p> <p>1 describes the purposes of the four different 2 letters that are attached as exhibits A, B, C and 3 D to the motion.</p> <p>4 So for applications from ITT that have 5 been so far denied, which of these four form 6 denial letters would they have received?</p> <p>7 A I think it's D. Yes, I think D is the 8 one that's non-Corinthian but where there is 9 common evidence related to the school.</p> <p>10 Q Okay. So let's flip to form D. That's 11 the page 22 of the PDF for those looking at it 12 electronically. And then the actual text of it 13 starts on page 23 of the PDF. It's document 116-4 14 on the ECF stamps at the top of the page.</p> <p>15 A Thank you.</p> <p>16 Q So this is an example of form D, and 17 then you can see at the bottom of this first page 18 it shows where someone would fill in blanks for 19 allegation type, primary school and review 20 recommendation reason.</p> <p>21 A Correct.</p> <p>22 Q Okay. Is it the case that review 23 recommendation reason is sometimes filled in with 24 the phrase failure to state a claim?</p> <p>25 A It's a -- it's a drop-down in our</p>

<p style="text-align: right;">Page 82</p> <p>1 platform, but it's filled in by my team, and then 2 that's used to populate these letters by our 3 contractor. 4 Q Uh-huh. 5 And one of the options in the drop-down 6 is failure to state a claim? 7 A Correct. 8 Q So what -- what does that mean? 9 A It's like a 12(b)(6) analysis, does the 10 borrower make an allegation that could potentially 11 lead to, you know, an illegal case filed in court. 12 Is it something that a court would not dismiss on 13 a 12(b)(6) motion kind of thing. So an example 14 will be does the borrower allege that the school 15 made a misrepresentation to the borrower on which 16 they relied to, you know, enroll in the school or 17 whatever, based -- something along those lines. 18 Q How is it determined that an 19 application fails to state a claim if it hasn't 20 yet been determined what law applies? 21 A It's -- the bar is just -- you know, is 22 an alleged misrepresentation, generally, would be 23 the most common. So, you know, we get 24 applications on folks who say my loans were too 25 expensive; my school is terrible; my teacher was</p>	<p style="text-align: right;">Page 84</p> <p>1 failure to state a claim and another might be 2 denied for insufficient evidence. It depends on 3 the nature of the claim and what the borrower 4 states for that particular claim. 5 Q So you're saying that you -- you can't 6 estimate the number of applications that have been 7 denied -- that have received a form denial letter 8 solely because they failed to state any sort of 9 claim? 10 A I -- I don't know the number off the 11 top of my head, no. 12 Q Are there department records that would 13 show how many applicants who received form D 14 denial letters -- it was based solely on failure 15 to state a claim? 16 A It's data in our system, so I'm sure 17 there's some way to pull that. Yeah, I'm sure 18 there's some way to pull it out of our system, but 19 I don't know that there's a record existing 20 somewhere. I think somebody would have to do some 21 kind of a data pull. 22 Q So if -- if an allegation was this 23 school made job-placement-rate-misrepresentation 24 claims, that would not be rejected for failure to 25 state a claim?</p>
<p style="text-align: right;">Page 83</p> <p>1 abusive; things that are not borrower 2 defense-related issues; sexual harassment by a 3 staff member; didn't get the classes I wanted. 4 You know, just a whole variety of 5 different things that borrowers may include in 6 their application, but are not something that are 7 of the type that would, you know, provide 8 eligibility for borrower defense relief 9 potentially. 10 Q Do you know how many form D notices 11 have been mailed out since this form was -- 12 started being used? 13 A I don't. 14 Q Do you have a sense of what percentage 15 of claims denied under form D fit the description 16 you're giving of someone who doesn't provide any 17 allegation that could potentially state a borrower 18 defense claim? 19 A As to one of the allegations? So, in 20 other words, if you see in this letter, there 21 are -- I don't know how many are here -- there's 22 two on this example, but there could be five 23 different allegations in one claim or one 24 application, so those would be five separate 25 claims, and one of the claims might be denied for</p>	<p style="text-align: right;">Page 85</p> <p>1 A It should not be. I can't say that we 2 have never made a mistake, but the protocol would 3 be that that would then go to, you know, whether 4 there's evidence. So that would not -- the -- the 5 claim itself, if it were rejected or if the -- if 6 that particular claim was denied, would not be 7 denied based on that. 8 Q If someone alleged that the school made 9 a job-placement-rate-misrepresentation claim, but 10 the applicant did not specifically state that they 11 relied on that misrepresentation, would that be 12 denied for failure to state a claim? 13 A I believe so. I'm trying to remember 14 the drop-downs and what the available drop-down -- 15 what the protocol calls for. The -- I believe the 16 protocol references lack of reliance, so it 17 actually -- that might be an option -- I don't 18 recall, though. I'd have to look at the protocols 19 to see what -- what the particular entry would be 20 that would show up there. 21 Q Other than a new protocol that's been 22 developed for ITT non-California 23 employment-prospects claims, has BDU also 24 developed a new form of denial letter to go with 25 that protocol, or would claims denied under that</p>

<p style="text-align: right;">Page 86</p> <p>1 protocol continue to receive form D letters?</p> <p>2 A Well, your question assumes that BDU</p> <p>3 develops the letters, and we -- these are not our</p> <p>4 letters.</p> <p>5 Q Okay. Let me -- let me back up, then,</p> <p>6 to ask more generally about the -- about the</p> <p>7 denial letters.</p> <p>8 So who did develop forms A through D</p> <p>9 denial letters?</p> <p>10 A I think there were a lot of folks</p> <p>11 involved in it. At the time, the crew at Mark</p> <p>12 Brown had wanted my team, the borrower defense</p> <p>13 unit, to focus on adjudications. So there was an</p> <p>14 FSA communications team and our borrower defense</p> <p>15 program management team, which was a new -- new</p> <p>16 group, that were kind of tasked with sharing the</p> <p>17 process for having the letters done.</p> <p>18 And that was approval letters and</p> <p>19 denial letters because that -- there were several</p> <p>20 approval letters, I believe, that were originally</p> <p>21 developed. So it's all kind of done at the same</p> <p>22 time.</p> <p>23 And then they worked with our senior</p> <p>24 leadership at the department and the Office of</p> <p>25 General Counsel on the letters.</p>	<p style="text-align: right;">Page 88</p> <p>1 they finalized the relief methodology or were</p> <p>2 close to finalizing the relief methodology for the</p> <p>3 approvals.</p> <p>4 Q And who did you -- who did you consult</p> <p>5 with about this information that BDU was able to</p> <p>6 provide for the denial letters?</p> <p>7 A Like who asked for input on them?</p> <p>8 Q Yeah.</p> <p>9 A The head of the communications team</p> <p>10 that was working on this was a woman named Nicki</p> <p>11 Meoli. M-E-O-L-I. And we worked closely with</p> <p>12 Chad Schrecengost. I'm going to get the spelling</p> <p>13 wrong on this, I think. S-C-H-R-E-C-E-N-G-O-S-T.</p> <p>14 I'm pretty sure that's wrong, but that's close.</p> <p>15 Q Good effort.</p> <p>16 A And I think those were the two folks at</p> <p>17 FSA who would have asked me or my team for, you</p> <p>18 know, what is this field; how do you we -- what do</p> <p>19 we have to fill out, that kind of thing.</p> <p>20 And then I -- I was also on some calls</p> <p>21 to that effect with GC.</p> <p>22 Q With who?</p> <p>23 A Our Office of General Counsel. I'm</p> <p>24 sorry.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 87</p> <p>1 Q Who ultimately was responsible for</p> <p>2 approving the form denial letters?</p> <p>3 A I can't answer that. I don't know that</p> <p>4 there was one person, but I think Mark Brown would</p> <p>5 probably be a better person to ask because he</p> <p>6 would have interacted with the folks at LBJ on</p> <p>7 whether they were given the green light to</p> <p>8 proceed.</p> <p>9 Q How did you find out about the form</p> <p>10 denial letters?</p> <p>11 A About their existence?</p> <p>12 Q Yes.</p> <p>13 A I was always kind of kept in the loop</p> <p>14 because my team -- the data that shows up -- so</p> <p>15 all of these kind of highlighted areas -- it's</p> <p>16 gray on mine, but I think the original versions</p> <p>17 are yellow highlights. Those are fields that are</p> <p>18 in our platform. So, you know, we were kind of in</p> <p>19 a consulting role for what available fields could</p> <p>20 be pulled into the letter.</p> <p>21 So I was -- I was on a number of the</p> <p>22 calls and emails and things along those lines to</p> <p>23 get the letters finalized, so I don't know when I</p> <p>24 first became aware -- I mean, I became aware that</p> <p>25 they were drafting them around the time of when</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. MERRITT: I'll note for the record</p> <p>2 that Chad Schrecengost is listed in defendants'</p> <p>3 response, interrogatory number 2, for spelling and</p> <p>4 whatever else.</p> <p>5 BY MS. ELLIS:</p> <p>6 Q Okay. But then beyond Meoli,</p> <p>7 Schrecengost and some people from OGC, you don't</p> <p>8 know who was actually involved in the drafting or</p> <p>9 approval of these letters?</p> <p>10 A You broke up a little bit there. I'm</p> <p>11 sorry, Rebecca. Could you repeat that again?</p> <p>12 Q No problem.</p> <p>13 So besides Meoli, Schrecengost and</p> <p>14 certain people from OGC, you don't know who else</p> <p>15 was involved in drafting or approving the letters?</p> <p>16 A Well, I think those are two different</p> <p>17 things, the drafting and the approving. And I</p> <p>18 don't know all of the people who had a hand in</p> <p>19 drafting the letter. I know it was a weeks' long</p> <p>20 process, so I'm sure there were a lot of people</p> <p>21 who worked on them.</p> <p>22 And then I was not involved in, you</p> <p>23 know, kind of the final sign-off on it, so as I</p> <p>24 said, I think Mark Brown would probably be the</p> <p>25 best person to ask that.</p>

12/09/2020

90 to 93

<p style="text-align: right;">Page 90</p> <p>1 Q Do you think he would know who was</p> <p>2 involved in the final sign-off process?</p> <p>3 A I would think so. That would be the</p> <p>4 typical process, yeah.</p> <p>5 Q Okay. You said you believe it took a</p> <p>6 matter of weeks to develop these form letters.</p> <p>7 A That's my recollection, yes.</p> <p>8 Q Do you know what -- what made it</p> <p>9 complicated or time-consuming to put these</p> <p>10 together?</p> <p>11 A I don't know.</p> <p>12 Q Is there anywhere in -- in this form D</p> <p>13 letter where the applicable law would be filled</p> <p>14 in?</p> <p>15 A I mean, there's an applicable law</p> <p>16 section. It doesn't -- I think this letter is for</p> <p>17 both. I'm sorry. I'm just reading. It's been a</p> <p>18 while.</p> <p>19 Q Go ahead.</p> <p>20 A (Witness reviews document.)</p> <p>21 Yeah, it looks like this is for both</p> <p>22 regulations. The applicable state law is not in</p> <p>23 here for the 2016 regulation. Obviously, it's a</p> <p>24 federal standard, so there wouldn't be anything</p> <p>25 along this line.</p>	<p style="text-align: right;">Page 92</p> <p>1 that that wasn't necessary because it was argued</p> <p>2 that regardless of what state law might have</p> <p>3 applied that the application would be denied.</p> <p>4 Q So I'd like to look at an example of a</p> <p>5 completed form D denial letter.</p> <p>6 MS. ELLIS: So this will be behind tab</p> <p>7 15 in your hard copies. On the Dropbox, the</p> <p>8 bracket 15 ECF 129-1, Connor declaration. This</p> <p>9 was marked as Exhibit 15 in the deposition of</p> <p>10 Diane Jones.</p> <p>11 (Exhibit 15 referred to.)</p> <p>12 BY MS. ELLIS:</p> <p>13 Q And there's a number of attachments</p> <p>14 here. I'm looking at the affidavit of Theresa</p> <p>15 Sweet that begins at page 24 of the PDF, page 24</p> <p>16 of the ECF filing.</p> <p>17 A Okay.</p> <p>18 Q And then attached to -- further</p> <p>19 attached to the affidavit of Theresa Sweet all the</p> <p>20 way down at page 51 of the document is a -- an</p> <p>21 example of form D. This is the form D that</p> <p>22 Theresa Sweet, the named plaintiff in this case,</p> <p>23 received.</p> <p>24 A That's exhibit B to her affidavit?</p> <p>25 Q Exhibit B to her declaration.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q Were you ever involved in any</p> <p>2 discussions about whether the applicable state law</p> <p>3 under the '95 regs would be listed in a denial</p> <p>4 letter?</p> <p>5 A There was a conversation about that,</p> <p>6 and the -- that was not necessarily populated in</p> <p>7 all of the cases for the reason I mentioned</p> <p>8 before, which is that the cases that were going</p> <p>9 out with this letter -- this letter was drafted</p> <p>10 after a bunch of cases were already adjudicated</p> <p>11 and not the other way around.</p> <p>12 And, so, the intent was to send out --</p> <p>13 actually, I don't know if it was this letter or C</p> <p>14 because they're pretty similar. I think it might</p> <p>15 have been C actually that I'm thinking of.</p> <p>16 But I -- my recollection is that there</p> <p>17 was discussion of whether or not to include state</p> <p>18 law as a field but that would have required more</p> <p>19 time for my team to go back and, you know, fill in</p> <p>20 any data that needed to -- with respect to state</p> <p>21 law where it really wasn't being denied because of</p> <p>22 state law; it was being denied for the reasons</p> <p>23 that I mentioned before.</p> <p>24 Q Uh-huh.</p> <p>25 A And, so, I think the conclusion was</p>	<p style="text-align: right;">Page 93</p> <p>1 A Yeah. Got it.</p> <p>2 Q Okay. So if you -- if you go down to</p> <p>3 the second page of this attachment, there's that</p> <p>4 section as we were just looking at in the form</p> <p>5 denial where it lists the allegations and then the</p> <p>6 reasons for denial.</p> <p>7 Allegation 1: Employment Prospects.</p> <p>8 You allege that Brooks Institute engaged in</p> <p>9 misconduct related to employment prospects. This</p> <p>10 allegation fails for the following reason(s):</p> <p>11 Failure to state a legal claim.</p> <p>12 Is there any way that we could tell</p> <p>13 from reading this letter what was wrong with</p> <p>14 Theresa Sweet's employment-prospects allegations?</p> <p>15 A Well, clearly, all we can tell from</p> <p>16 this is my team concluded that their -- the</p> <p>17 specific claim with respect to the employment</p> <p>18 prospects did not state a legal claim. That's</p> <p>19 what's in here.</p> <p>20 Q And is that also the case with regard</p> <p>21 to allegations 2 and 3?</p> <p>22 A That is the -- the reason that's</p> <p>23 included, right.</p> <p>24 Q We discussed earlier that it should be</p> <p>25 unlikely that an allegation of employment</p>

12/09/2020

94 to 97

<p style="text-align: right;">Page 94</p> <p>1 prospects would be denied for failure to state a 2 legal claim.</p> <p>3 Is there any way to tell from this 4 letter why --</p> <p>5 A Sorry. I --</p> <p>6 Q Wait.</p> <p>7 A You broke up again. And I don't know 8 if it's a problem on my end or if it's other folks 9 or -- I missed the first half of the question, 10 though. Would you please repeat it?</p> <p>11 Q Okay. We talked earlier that an 12 allegation of misrepresentation of employment 13 prospects should probably be unlikely to be denied 14 for the reason of failure to state a legal claim.</p> <p>15 Is there any way to tell from this 16 letter why her particular allegations were 17 insufficient?</p> <p>18 MR. MERRITT: Objection to the 19 characterization of the prior testimony.</p> <p>20 BY MS. ELLIS:</p> <p>21 Q You can answer.</p> <p>22 A I'm not sure I can. Can you rephrase?</p> <p>23 Q It's all right. I'll move on.</p> <p>24 Let's move down to allegations 4 and 5. 25 The letter states that these allegations were</p>	<p style="text-align: right;">Page 96</p> <p>1 A That's always been a policy in borrower 2 defense going back to 2016; that one borrower's 3 statement without corroboration would not be 4 sufficient to -- to approve an application.</p> <p>5 Q What sort of documentation does BDU 6 expect borrowers to provide in order to rise to 7 the level of sufficient evidence?</p> <p>8 A I would take issue with the way you 9 framed that. We don't have any particular 10 expectation one way or another. We're just 11 adjudicating based on the evidence in front of us, 12 so, you know, whether that comes from the borrower 13 or from some other source, we make an assessment 14 of the evidence. But I don't have a particular 15 expectation one way or the other.</p> <p>16 Q Does the borrower defense application 17 state that the applicant must submit corroborating 18 materials in order for their claim to be 19 considered?</p> <p>20 A Which application are you referring to?</p> <p>21 Q I'm referring to the standard form 22 application that's available on the department's 23 Web site.</p> <p>24 A I don't recall exactly what the wording 25 is. I know it requires the borrower to provide</p>
<p style="text-align: right;">Page 95</p> <p>1 rejected for insufficient evidence; is that 2 correct?</p> <p>3 A That's what it says, yes.</p> <p>4 Q Is there any way to tell from this 5 letter what about Theresa Sweet's evidence was 6 insufficient?</p> <p>7 A Well, your -- I think you're assuming 8 that there was evidence, which I don't know from 9 this, necessarily, but, you know, it could be that 10 there was no evidence, but the drop-down -- the 11 available drop-down is insufficient evidence. So 12 the conclusion was that whatever it was that was 13 included was insufficient to support the claim.</p> <p>14 Q Are borrowers' own statements on their 15 applications considered evidence?</p> <p>16 A They're -- they're evidence. The 17 statement in and of itself without any 18 corroborating evidence would not be sufficient to 19 approve an application, though.</p> <p>20 Q The statements on -- of our defense 21 application are made under the penalties of 22 perjury; is that correct?</p> <p>23 A Yes.</p> <p>24 Q So why wouldn't the borrower's sworn 25 statement be considered sufficient evidence?</p>	<p style="text-align: right;">Page 97</p> <p>1 detailed information, encourages the borrower to 2 provide supporting evidence, but I don't remember 3 exactly what the language is.</p> <p>4 Q Do you know who originally set the 5 policy that the borrower's statement alone would 6 be insufficient to make out a borrower defense 7 claim?</p> <p>8 A I don't, but that was the policy when I 9 joined in October of 2016.</p> <p>10 Q Is that a written policy?</p> <p>11 A It's in -- I remember seeing documents 12 somewhere along the way back at that point, so I 13 guess it depends on what you mean by a written 14 policy, but it's -- it's recorded in -- I can 15 remember PowerPoints or something. I'm sure 16 there's other documentation going back that far.</p> <p>17 Q Do you know if that PowerPoint has been 18 provided for production in this case?</p> <p>19 A I don't know.</p> <p>20 Q Would that be considered a policy 21 decision?</p> <p>22 A Yes.</p> <p>23 Q So that's a decision that would not be 24 made by someone at FSA?</p> <p>25 A That's correct.</p>

12/09/2020

98 to 101

<p style="text-align: right;">Page 98</p> <p>1 Q Looking back at tab 15, Exhibit 15, the</p> <p>2 first page of Theresa Sweet's denial letter states</p> <p>3 that she was enrolled at Brooks Institute; is that</p> <p>4 correct?</p> <p>5 A I'm sorry. You're on her affidavit</p> <p>6 now?</p> <p>7 Q Yeah. I'm sorry. It's the first page</p> <p>8 of the denial letter which is page 51 of the ECF</p> <p>9 filing.</p> <p>10 A Yes, it says she was enrolled at Brooks</p> <p>11 Institute.</p> <p>12 Q Yes.</p> <p>13 Is Brooks Institute a school for which</p> <p>14 BDU has common evidence?</p> <p>15 A If memory serves, Brooks Institute is</p> <p>16 part of the CEC school group, if I am remembering</p> <p>17 correctly. I could be wrong on that, but I think</p> <p>18 it is. And we do have common evidence relating to</p> <p>19 CEC. Whether or not it specifically relates to</p> <p>20 Brooks, I don't recall.</p> <p>21 Q Let's look back at your declaration,</p> <p>22 tab 21, marked as Exhibit 21. And I'm looking at</p> <p>23 paragraph 68 which is on page 16.</p> <p>24 A Okay.</p> <p>25 Q Could you read the second sentence of</p>	<p style="text-align: right;">Page 100</p> <p>1 Q So the review and analysis of evidence</p> <p>2 relating to Brooks Institute is now complete?</p> <p>3 A No, but we've done the preliminary</p> <p>4 analysis that I referred to earlier more generally</p> <p>5 in terms of the scope of the evidence. So we must</p> <p>6 have included that whatever time period that she</p> <p>7 attended or her program or whatever it is that we</p> <p>8 concluded the scope of Brooks is, that she falls</p> <p>9 outside that scope.</p> <p>10 Q Whose decision was it to take an</p> <p>11 approach to borrower defense adjudication where</p> <p>12 applications would be ruled out by common evidence</p> <p>13 rather than ruled in by common evidence?</p> <p>14 A Well, in 2019, we were directed to move</p> <p>15 forward at a very accelerated pace, and so, you</p> <p>16 know, there were a lot of discussions about how to</p> <p>17 do that and how to get through the backlog in</p> <p>18 2020. They wanted all of the cases adjudicated in</p> <p>19 2020.</p> <p>20 And the only way to hit the metrics</p> <p>21 that were required of us were to focus on cases</p> <p>22 that had established protocols, so the same ones</p> <p>23 that we were talking about earlier, and cases</p> <p>24 where either there was no common evidence, which</p> <p>25 we did those first, or where we could assess what</p>
<p style="text-align: right;">Page 99</p> <p>1 that paragraph, please?</p> <p>2 A Sure. The second sentence?</p> <p>3 Q Of paragraph 68, beginning with,</p> <p>4 Additionally?</p> <p>5 A Additionally, BDU has initiated its</p> <p>6 review and analysis of the evidence relating to</p> <p>7 ITT (including campuses outside of California),</p> <p>8 DeVry University and Brooks Institute but has not</p> <p>9 had available staff to complete that work and</p> <p>10 proceed to adjudicate applications from borrowers</p> <p>11 who attended those schools.</p> <p>12 Q So does that refresh your recollection</p> <p>13 on whether there's common evidence on Brooks</p> <p>14 Institute?</p> <p>15 A Yes.</p> <p>16 Q If the review and analysis of common</p> <p>17 evidence for Brooks Institute was not yet</p> <p>18 complete, how could Theresa Sweet's application be</p> <p>19 denied for insufficient evidence?</p> <p>20 A Well, your question, I think, is</p> <p>21 premised on a timing -- you know, if it's not</p> <p>22 true, it's not true. This was in November of</p> <p>23 2019, and I don't know what the date of her letter</p> <p>24 is. July of 2020. So we were in a different</p> <p>25 stage when we issued her letter.</p>	<p style="text-align: right;">Page 101</p> <p>1 the scope of the common evidence was and then move</p> <p>2 forward on adjudicating other cases.</p> <p>3 So it was kind of a sequencing issue so</p> <p>4 that we could continue to meet the -- the weekly</p> <p>5 numbers that we needed to meet in order to</p> <p>6 adjudicate the cases.</p> <p>7 In a perfect world, we would review all</p> <p>8 of the evidence relating to the school before</p> <p>9 adjudicating a single case, but if that were the</p> <p>10 case, then we probably would not be issuing</p> <p>11 decisions for most of 2020 because, you know, to</p> <p>12 the extent that, you know, most of the cases that</p> <p>13 are left right now, at least potentially, are</p> <p>14 related to some common evidence or the borrower</p> <p>15 provided substantial evidence of their own or at</p> <p>16 least some evidence that could potentially support</p> <p>17 the claim.</p> <p>18 So it's a -- it was just a sequencing</p> <p>19 issue that been ordered to the numbers. That's</p> <p>20 the way we moved forward.</p> <p>21 Q Who set the target numbers?</p> <p>22 A The secretary set the elimination of</p> <p>23 the backlog, and my understanding is that, based</p> <p>24 on the numbers that were pending at the time, that</p> <p>25 Mark Brown just did the math essentially and set a</p>

12/09/2020

102 to 105

<p style="text-align: right;">Page 102</p> <p>1 target of us for 5,000 adjudications per week.</p> <p>2 Q But it was the secretary who said this</p> <p>3 number of cases in the backlog must be eliminated</p> <p>4 in 2020?</p> <p>5 A I don't know that she said anything</p> <p>6 about the number. I think she just said -- it was</p> <p>7 actually eliminate the backlog and adjudicate any</p> <p>8 new case that comes in within 90 days.</p> <p>9 Q And when did that directive come down?</p> <p>10 A That specific directive, I believe, was</p> <p>11 the fall of 2019, but there were already</p> <p>12 conversations to that effect earlier in 2019.</p> <p>13 Q I'm sorry. It glitched a little.</p> <p>14 What was earlier in 2019?</p> <p>15 A There were already conversations about</p> <p>16 elimination of the backlog in early 2019. The</p> <p>17 specific directive of elimination of the backlog</p> <p>18 and adjudicating cases within 90 days of receipt,</p> <p>19 I believe, was in the fall of 2019.</p> <p>20 Q And who are the conversations among</p> <p>21 that were earlier in 2019 about elimination of the</p> <p>22 backlog?</p> <p>23 A Well, I don't know who over in LBJ,</p> <p>24 but, certainly, Mark Brown made all of us within</p> <p>25 FSA that are related to BD aware, so that included</p>	<p style="text-align: right;">Page 104</p> <p>1 documents in there that would support other claims</p> <p>2 that we just didn't know what they were or where</p> <p>3 they were.</p> <p>4 So I pushed back on that and there were</p> <p>5 a lot of conversations about what else could be</p> <p>6 done, and, you know, one of the things that could</p> <p>7 be done was first the cases that didn't have</p> <p>8 common evidence and then the cases where the</p> <p>9 common evidence didn't seem to be related to those</p> <p>10 cases, so that's kind of how it evolved.</p> <p>11 Q For the cases that didn't have common</p> <p>12 evidence, what would a borrower need to provide in</p> <p>13 order to be eligible for relief?</p> <p>14 A I can't answer that hypothetically. It</p> <p>15 really depends on the claim.</p> <p>16 Q Are -- are the people who are reviewing</p> <p>17 individual applications given any instructions on</p> <p>18 how to assess whether a borrower has provided</p> <p>19 enough to support their claim?</p> <p>20 A They're not really making an assessment</p> <p>21 of -- they're not weighing evidence. They're, you</p> <p>22 know, issue spotting and flagging cases that have</p> <p>23 something that could potentially warrant approval.</p> <p>24 So it's a very low bar at that review stage.</p> <p>25 And, so, the junior attorney, if they</p>
<p style="text-align: right;">Page 103</p> <p>1 Robin Minor, the then chief enforcement officer</p> <p>2 Jeffrey Appel, the -- I'm trying to think. There</p> <p>3 were other policy folks that were involved because</p> <p>4 they were working on the relief methodology, so,</p> <p>5 particularly, it was communicated to FSA to just</p> <p>6 get it done, essentially.</p> <p>7 Q So once that directive came down, whose</p> <p>8 decision was it about how to approach the</p> <p>9 sequencing of which claims would get adjudicated</p> <p>10 first?</p> <p>11 A Well, it wasn't really a point in time.</p> <p>12 I know initially there was a lot of interest in --</p> <p>13 there's always been a lot of interest in getting</p> <p>14 through the Corinthian cases, so that was one of</p> <p>15 the big priorities.</p> <p>16 But, then, I know some of the folks</p> <p>17 over in LBJ wanted us to do ITT next, and I -- at</p> <p>18 the time, we had five full-time and one part-time</p> <p>19 attorney, so we just didn't have the bandwidth to</p> <p>20 hit any kind of numbers and review the volume of</p> <p>21 evidence that we had on ITT because I think we</p> <p>22 have not quite a million pages of records, but</p> <p>23 there was a lot of documents that we had, that we</p> <p>24 weren't in a position to adjudicate the cases</p> <p>25 because we were pretty confident that there were</p>	<p style="text-align: right;">Page 105</p> <p>1 think there's anything that could lead at all to a</p> <p>2 possibility of approval, they're supposed to</p> <p>3 escalate it to one of the senior attorneys.</p> <p>4 So those cases are all supposed to be</p> <p>5 set aside.</p> <p>6 Q Are they given written instructions on</p> <p>7 what to look for in order to set aside an</p> <p>8 application?</p> <p>9 A They're trained on that. The protocols</p> <p>10 to some extent include that, but there's also --</p> <p>11 you know, when new attorneys come on, we do a full</p> <p>12 week of training, and then they go through kind of</p> <p>13 a probationary period where every case that they</p> <p>14 adjudicate gets adjudicated by somebody more</p> <p>15 senior who, you know, walks them through what is</p> <p>16 or isn't something that states a claim or what is</p> <p>17 or isn't something that would potentially support</p> <p>18 approval that they should be setting aside.</p> <p>19 So they get fairly extensive training</p> <p>20 on that.</p> <p>21 MS. ELLIS: Okay. Let's take a</p> <p>22 five-minute break.</p> <p>23 THE VIDEOGRAPHER: All parties agree to</p> <p>24 go off the record?</p> <p>25 MR. MERRITT: Agree.</p>

12/09/2020

106 to 109

<p style="text-align: right;">Page 106</p> <p>1 THE VIDEOGRAPHER: We're going off the</p> <p>2 record. The time is 16:35 UTC.</p> <p>3 (Recess -- 11:35 a.m.)</p> <p>4 (After recess -- 11:45 a.m.)</p> <p>5 THE VIDEOGRAPHER: We are now on the</p> <p>6 record. The time is 16:45 UTC.</p> <p>7 BY MS. ELLIS:</p> <p>8 Q Okay. I wanted to just briefly circle</p> <p>9 back to a phrase you used earlier which is</p> <p>10 "cleared for adjudication."</p> <p>11 Could you specify what you mean when</p> <p>12 you say that an application has been cleared for</p> <p>13 adjudication?</p> <p>14 A Yeah. It's just a shorthand term that</p> <p>15 we use within BDU that we have concluded that</p> <p>16 we've done what we needed to do to develop a</p> <p>17 protocol for review, essentially. So that's the</p> <p>18 first prerequisite, essentially. There has to be</p> <p>19 a protocol that would allow you to review that</p> <p>20 specific application, and sometimes that's a</p> <p>21 school-specific protocol because of the things</p> <p>22 that we've talked about before in terms of setting</p> <p>23 aside cases related to common evidence.</p> <p>24 So cleared for adjudication means that</p> <p>25 there's an available protocol.</p>	<p style="text-align: right;">Page 108</p> <p>1 makes no predecision at all as to whether or not</p> <p>2 the borrower, him or herself, provides sufficient</p> <p>3 information to state a claim or whether or not</p> <p>4 they provide evidence. It could go either way.</p> <p>5 But, you know, in our experience, there</p> <p>6 are just a whole lot of applications that don't</p> <p>7 have a lot of supporting evidence and often no</p> <p>8 supporting evidence. So, you know, a lot of those</p> <p>9 do end up getting denied, but they're cleared for</p> <p>10 adjudication in the sense they can be reviewed one</p> <p>11 way or the other.</p> <p>12 Q So cleared for adjudication means a</p> <p>13 determination that this application will be judged</p> <p>14 either under the standard protocol or under some</p> <p>15 other school-specific protocol?</p> <p>16 A Correct.</p> <p>17 Q Okay. Have any -- any claims cleared</p> <p>18 for adjudication, other than for CCI or ITT, ever</p> <p>19 been granted?</p> <p>20 A We don't have the protocols -- we don't</p> <p>21 have the approval categories in the protocols yet</p> <p>22 because we're still reviewing the common evidence</p> <p>23 for the schools that have potential protocols.</p> <p>24 So, no, because we're not looking for</p> <p>25 whether or not they meet (audio distortion) for</p>
<p style="text-align: right;">Page 107</p> <p>1 Q Does that include both the</p> <p>2 school-specific protocols and a general protocol</p> <p>3 such as here's what you do for a claim with no</p> <p>4 common evidence, or are you talking about just the</p> <p>5 school-specific protocols?</p> <p>6 A Well, we have, you know, kind of like a</p> <p>7 one-off claim. There's a standard protocol. So</p> <p>8 there's a default protocol that is used when, you</p> <p>9 know, there isn't common evidence kind of thing.</p> <p>10 And, so, all of the cases, it just walks through</p> <p>11 what you look for in terms of the borrower's</p> <p>12 allegations and the evidence that the borrower</p> <p>13 provides. But we do specific protocols if there</p> <p>14 are things that we know need to be set aside so</p> <p>15 that cases don't get adjudicated before we've been</p> <p>16 able to complete the review of the evidence.</p> <p>17 Q Okay. I guess what I'm trying to</p> <p>18 understand is, does cleared for adjudication mean</p> <p>19 this is a case that could potentially be granted?</p> <p>20 A No. It's just cleared to be reviewed.</p> <p>21 Q So it's a complete, a complete</p> <p>22 application?</p> <p>23 A No, that's actually a different</p> <p>24 question. It's just that we've determined what</p> <p>25 the review protocol for that case would be. It</p>	<p style="text-align: right;">Page 109</p> <p>1 specific elements under state law or under the</p> <p>2 2016 regs. We haven't got to that point yet.</p> <p>3 So as I said, the cases that are being</p> <p>4 reviewed, it's to look at the borrower's</p> <p>5 allegations because there's been a determination</p> <p>6 that there's not common evidence, and if the</p> <p>7 borrower has, his or her cases aren't adjudicated</p> <p>8 either because they're set aside for review by a</p> <p>9 senior team member.</p> <p>10 Q Okay. So Corinthian and ITT have been</p> <p>11 the only schools with claims granted so far?</p> <p>12 A That's right, and they're the two</p> <p>13 biggest schools by far, and they account</p> <p>14 collectively for, I think, over half the</p> <p>15 applications.</p> <p>16 Q Before the form denial notices A</p> <p>17 through D that we talked about earlier started</p> <p>18 being used, did BDU have a different format for</p> <p>19 denial letters?</p> <p>20 A You broke up again there a little bit.</p> <p>21 Did you just ask me if we had a different denial</p> <p>22 letter before forms A through D?</p> <p>23 Q Yes.</p> <p>24 A There was a denial letter that was</p> <p>25 conceptually similar to letter A, I believe.</p>

12/09/2020

110 to 113

<p style="text-align: right;">Page 110</p> <p>1 Letter A is the letter that was used for people 2 who only alleged a job-placement-rate claim. 3 There were job-placement-rate claims that were 4 adjudicated late 2017 to 2018, and there was a 5 letter that met that same criteria, essentially, 6 in terms of who it would go out to that was a 7 different letter. 8 Q Who drafted that letter, that form 9 letter? 10 A I believe we did. I think it was 11 edited by OGC, but I know my team did the initial 12 draft, I believe. 13 Q And it contained basically the same 14 information that's now in form denial A? 15 A I don't remember to be honest with you. 16 I mean, it was intended to address the same 17 claims, but I don't remember exactly what the 18 contents were in that one versus this one. 19 Q Before form denials B, C and D started 20 being used, had any claims other than Corinthian 21 job-placement claims been denied? 22 A In terms of denied, meaning just not 23 sent out? 24 Q Meaning had any borrowers been notified 25 of the denial of their claims other than CCI JPR</p>	<p style="text-align: right;">Page 112</p> <p>1 in 2017 to 2018, no denials went out. 2 Q All right. Thank you. 3 I'm going to back up in time a little 4 bit back to 2017. When the new administration 5 came in in January '17, did you have any 6 discussions with the transition team about 7 borrower defense? 8 MR. MERRITT: Objection as beyond the 9 scope. 10 MS. ELLIS: Are you instructing the 11 witness not to answer? 12 MR. MERRITT: You can answer that 13 question. I just do want to note that that is not 14 related to one of the topics the court has 15 authorized discovery on, so . . . 16 MS. ELLIS: Well, I disagree, and if 17 you'd like to move to strike after today, you can 18 feel free to. 19 MR. MERRITT: Okay. You can answer 20 that question, but . . . 21 THE WITNESS: Yes. 22 BY MS. ELLIS: 23 Q So did you have any discussions about 24 borrower defense with the Trump transition team in 25 January, February of 2017?</p>
<p style="text-align: right;">Page 111</p> <p>1 applicants? 2 A There were two denials issued in 2017, 3 summer of 2017, I think. 4 Q Two denials total, not two schools? 5 A Two -- two individuals, yeah. 6 Q Did they receive individual denial 7 letters, or was there a form in place? 8 A They were individual letters. 9 Q Okay. 10 A You froze again there for half a 11 second. Did you ask me if it was a form? 12 Q Yeah. You -- you froze as well. 13 Did you say that they got individual 14 denial letters? 15 A They received individual denial 16 letters, yes. 17 Q Okay. And other than those two 18 individuals, no other borrowers were notified of 19 the denial of their claims until forms B, C and D 20 started going out? 21 A Other than -- 22 Q Other than Corinthian JPR? 23 A Yes, making sure I understand your 24 question. Other than two individual denials in 25 summer of 2017 and the job-placement-rate denials</p>	<p style="text-align: right;">Page 113</p> <p>1 A Yes. 2 Q Who did you discuss that with? 3 A Oh. Well, there was the -- a beachhead 4 team and a landing team. I can't remember which 5 was which. But there was, you know, the team that 6 came in prior to the inauguration, and we had 7 meetings with them, and then there was a team that 8 came in after that, and we had meetings with them. 9 Q So what did you talk about with members 10 either of the beachhead team or the landing team 11 with regard to borrower defense? 12 MR. MERRITT: Objection: beyond the 13 scope. I'm going to instruct not to answer to 14 enforce the limitation order by the court. 15 MS. ELLIS: I don't believe that's 16 consistent with the judge's standing order on 17 depositions. 18 MR. MERRITT: It's consistent with 19 Federal Rule of Civil Procedure 30(c)(2). 20 MS. ELLIS: Can we talk about this off 21 the record? 22 MR. MERRITT: Okay. 23 THE VIDEOGRAPHER: We are now off the 24 record. The time is 16:56 UTC. 25 (Recess -- 11:57 a.m.)</p>

12/09/2020

114 to 117

<p style="text-align: right;">Page 114</p> <p>1 (After recess -- 12:13 p.m.)</p> <p>2 THE VIDEOGRAPHER: We are now on the</p> <p>3 record. The time is 17:13 UTC.</p> <p>4 BY MS. ELLIS:</p> <p>5 Q In January and February of 2017, did</p> <p>6 you have any conversations with members of the</p> <p>7 transition team about the process of BDU's</p> <p>8 adjudication of borrower defense applications?</p> <p>9 A Yes, yes.</p> <p>10 Q Who did you have those conversations</p> <p>11 with?</p> <p>12 A I'm trying to remember who was on the</p> <p>13 transition team. The main point person was Justin</p> <p>14 Riemer, R-I-E-M-E-R, but there were several</p> <p>15 members of the transition team, and I can't</p> <p>16 remember who all of them were.</p> <p>17 Q Okay. And what did you discuss with</p> <p>18 respect to borrower defense adjudications?</p> <p>19 A It wasn't one conversation. It was a</p> <p>20 continuing conversation over weeks, and, you know,</p> <p>21 as with all transitions, as I understand it, when</p> <p>22 they come in, they ask for data and documents and</p> <p>23 things like that, so a lot of it was just getting</p> <p>24 them information to get up to speed.</p> <p>25 Q Okay. I want to turn back to your</p>	<p style="text-align: right;">Page 116</p> <p>1 Q So you responded to requests for data</p> <p>2 and documents from the review panel?</p> <p>3 A Yes.</p> <p>4 Q Did you ever provide any other</p> <p>5 information to them?</p> <p>6 A Well, the "them" included Justin</p> <p>7 Riemer, and I don't really, in my mind, delineate</p> <p>8 between what is requested by him for the review</p> <p>9 panel as opposed to just in the ordinary course of</p> <p>10 his responsibilities getting up to speed, so I'm</p> <p>11 sure there was some overlap there.</p> <p>12 Q Understood.</p> <p>13 Did you ever meet with the review</p> <p>14 panel?</p> <p>15 A Yeah.</p> <p>16 Q Were you consulted on the decision to</p> <p>17 request an OIG review of the borrower defense</p> <p>18 process?</p> <p>19 A No.</p> <p>20 Q Did you provide information to OIG</p> <p>21 during the course of their work?</p> <p>22 A Yeah, over a (audio distortion), that</p> <p>23 was a very labor-intensive process.</p> <p>24 Q Did you have an understanding of why</p> <p>25 the IG review was recommended?</p>
<p style="text-align: right;">Page 115</p> <p>1 declaration. That's tab 21, Exhibit 21, starting</p> <p>2 at paragraph 55 which is at the bottom of page 13.</p> <p>3 A Okay.</p> <p>4 Q Could you read paragraph 55, please?</p> <p>5 A The whole paragraph or just the first</p> <p>6 sentence?</p> <p>7 Q The whole paragraph. I think it's only</p> <p>8 two sentences, so the whole paragraph.</p> <p>9 A Okay. In March 2017, the department</p> <p>10 leadership convened a borrower defense review</p> <p>11 panel (the review panel) to make recommendations</p> <p>12 on a borrower defense process. It is my</p> <p>13 understanding that the review panel recommended</p> <p>14 and the secretary subsequently requested a</p> <p>15 comprehensive review of the borrower defense work</p> <p>16 and processes by the department's Office of the</p> <p>17 Inspector General.</p> <p>18 Q In March 2017, what was your knowledge</p> <p>19 about the review panel?</p> <p>20 A Not much other than that it was being</p> <p>21 created, and I think I became aware of a few of</p> <p>22 the people who were on it, but that's probably the</p> <p>23 extent of my knowledge at that point except for to</p> <p>24 the extent that we were getting requests for data</p> <p>25 and documents and things along those lines.</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. MERRITT: Objection: beyond the</p> <p>2 scope.</p> <p>3 BY MS. ELLIS:</p> <p>4 Q Okay. I'll move on.</p> <p>5 Did you ever receive any written</p> <p>6 decisions or directives or any other written</p> <p>7 materials from the borrower defense review panel?</p> <p>8 A I don't know if it was immediately at</p> <p>9 the time, but you said "did you ever." At some</p> <p>10 point I received the memo recommending to the</p> <p>11 secretary that she ask the IG to do a review, and</p> <p>12 I think that there were other things in the memo</p> <p>13 about -- I don't know if there were conclusions</p> <p>14 that they reached, but that was the only document</p> <p>15 to my knowledge.</p> <p>16 Q Okay. Do you know whether that</p> <p>17 document has been provided for production in this</p> <p>18 case?</p> <p>19 A I don't know.</p> <p>20 MR. MERRITT: I'll just note generally</p> <p>21 that discovery is ongoing as are the document</p> <p>22 productions, so it's an ongoing process.</p> <p>23 BY MS. ELLIS:</p> <p>24 Q Let's look at the next paragraph of</p> <p>25 your declaration, paragraph 56. Could you read</p>

<p style="text-align: right;">Page 118</p> <p>1 that for the record, please?</p> <p>2 A Enforcement was advised in the spring</p> <p>3 of 2017 that the department might make significant</p> <p>4 changes to the BDU processes and that no</p> <p>5 additional approvals would be processed until the</p> <p>6 completion of the work of the review panel and,</p> <p>7 subsequently, by the IG.</p> <p>8 Q Who advised enforcement that no</p> <p>9 approvals would be processed?</p> <p>10 A I don't know that it was just one</p> <p>11 time -- well, I guess when we first were advised I</p> <p>12 think it was communicated to me by the then deputy</p> <p>13 chief enforcement officer Laura Kim, but I don't</p> <p>14 know who exactly communicated that to her.</p> <p>15 Q So do you know who, ultimately, was</p> <p>16 responsible for making the decision that no</p> <p>17 approvals would be processed?</p> <p>18 A No, I don't know.</p> <p>19 Q But you -- you were told that no</p> <p>20 approvals would be processed by deputy chief</p> <p>21 enforcement officer Kim?</p> <p>22 A Yes. She wasn't making that decision.</p> <p>23 She was communicating that decision, and I just</p> <p>24 don't know who at LBJ she had those conversations</p> <p>25 with or even if she had those directly herself.</p> <p style="text-align: right;">Page 119</p> <p>1 Q Was that -- was that fact that no</p> <p>2 approvals would be processed ever memorialized in</p> <p>3 writing to your knowledge?</p> <p>4 A Well, we don't process approvals, so</p> <p>5 there very well may have been something in writing</p> <p>6 that, at the time, the issuance of decisions and</p> <p>7 the handling of the loans was managed by our</p> <p>8 business operations team. I don't remember</p> <p>9 whether there was a document sent to me that I was</p> <p>10 copied on or something advising them to -- to not</p> <p>11 send decisions out, but it would have gone to</p> <p>12 them, not to me.</p> <p>13 Q What does it mean -- in this context,</p> <p>14 what does it mean to process an approval?</p> <p>15 A Once the decision is made, whether it's</p> <p>16 an approval or a denial, that's just the first</p> <p>17 step. Then that has to be translated into a</p> <p>18 communication to the borrower, a communication to</p> <p>19 the servicer, and all of the loans need to be</p> <p>20 handled in accordance with the decision.</p> <p>21 So we call it post adjudication</p> <p>22 processing in some, you know, of our kind of</p> <p>23 parlance, but it's -- those are the two main</p> <p>24 pieces, essentially -- is the decision is part of</p> <p>25 the processing, the decision to the borrower, and</p>	<p style="text-align: right;">Page 120</p> <p>1 then handling the loans, which is work that's</p> <p>2 handled by somebody either within FSA or a</p> <p>3 contractor.</p> <p>4 Previously, it was our business</p> <p>5 operations unit -- working with the servicers</p> <p>6 to -- to handle the loans. So processing for an</p> <p>7 approval would require a discharge of or whatever</p> <p>8 the amount of the -- or the percentage of the</p> <p>9 discharge depending on the circumstances, and then</p> <p>10 putting loans back in repayment and taking the</p> <p>11 borrower out of forbearance, typically. Although</p> <p>12 in the current climate because of COVID, I think</p> <p>13 all loans are remaining in forbearance, but our</p> <p>14 usual process, that would be it.</p> <p>15 Q Okay. When deputy CEO Kim told you no</p> <p>16 additional approvals would be processed, did she</p> <p>17 say anything to you about the reason or the</p> <p>18 purpose for this policy going into effect?</p> <p>19 MR. MERRITT: Objection: scope; and</p> <p>20 potentially calling for privileged information --</p> <p>21 deliberative information.</p> <p>22 MS. ELLIS: It's not a predecisional</p> <p>23 question. The decision had been made.</p> <p>24 MR. MERRITT: What was the question?</p> <p>25 Sorry.</p> <p style="text-align: right;">Page 121</p> <p>1 MS. ELLIS: The question was whether</p> <p>2 deputy CEO Kim communicated a reason behind the</p> <p>3 decision to stop processing approvals.</p> <p>4 MR. MERRITT: Okay. I'll note the</p> <p>5 objection to scope, but the witness can answer.</p> <p>6 THE WITNESS: What she communicated to</p> <p>7 me was that -- well, two things, really. One,</p> <p>8 that the department was taking a close look at the</p> <p>9 borrower defense adjudication processes, and, two,</p> <p>10 that -- that we probably should cut back on</p> <p>11 staffing at that point because any work that we</p> <p>12 had been doing may have to be redone.</p> <p>13 So, you know, in the interest of budget</p> <p>14 constraints and whatnot, those were the parts of</p> <p>15 the equation that FSA has responsibility in terms</p> <p>16 of addressing budget issues and that kind of</p> <p>17 thing, so those were the two things that I</p> <p>18 remember her communicating to me.</p> <p>19 BY MS. ELLIS:</p> <p>20 Q Okay. You stated in your declaration</p> <p>21 that no additional approvals would be processed</p> <p>22 until the completion of the work of the review</p> <p>23 panel.</p> <p>24 Did you have any understanding at the</p> <p>25 time of how long the work of the review panel</p>
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12/09/2020

122 to 125

<p style="text-align: right;">Page 122</p> <p>1 might take?</p> <p>2 A No idea.</p> <p>3 Q Flipping back to paragraph 54 of your</p> <p>4 declaration -- that's on the previous page --</p> <p>5 could you read that for the record, please?</p> <p>6 A On January 20, 2017 through March 2017,</p> <p>7 the BDU continued to adjudicate CCI transfer of</p> <p>8 credits and guaranteed employment borrower defense</p> <p>9 claims and from January 20, 2017 through May 4,</p> <p>10 2017, BDU continued to adjudicate CCI JPR claims.</p> <p>11 Q Why did you stop adjudicating CCI JPR</p> <p>12 claims on May 4th, 2017?</p> <p>13 A Yeah, I had forgotten about that piece.</p> <p>14 I believe when Laura Kim advised me that, you</p> <p>15 know, things were on hold, the -- the JPR review</p> <p>16 process is very different and has a specific</p> <p>17 application form, and we also had contractors that</p> <p>18 were specifically trained on that, and that it</p> <p>19 seemed like they were taking less of an interest</p> <p>20 in making changes to that, at least at that early</p> <p>21 stage.</p> <p>22 So I think -- I'm trying to remember</p> <p>23 the timing now. I believe we continued to work on</p> <p>24 those for a little bit longer and ask whether we</p> <p>25 should hold off, and it may have taken some time</p>	<p style="text-align: right;">Page 124</p> <p>1 me -- that's too strong a statement. I think we</p> <p>2 were asked some questions about relief</p> <p>3 determinations that had previously been made with</p> <p>4 respect to the protocols, but I don't recall a</p> <p>5 discussion about a new relief approach at that</p> <p>6 time.</p> <p>7 BY MS. ELLIS:</p> <p>8 Q Would you agree that in the disposition</p> <p>9 of borrower defense applications there is a</p> <p>10 question of whether the borrower is entitled to</p> <p>11 borrower defense relief and a separate question of</p> <p>12 how much relief they are entitled to?</p> <p>13 A If any, yes, I think that's -- that's</p> <p>14 two parts. So whether or not the application</p> <p>15 should be approved or denied, and if it's</p> <p>16 approved, so there's only a second part if it's</p> <p>17 approved, but if it's approved, what, if any,</p> <p>18 relief is to be given to the borrower, yes.</p> <p>19 Q Okay. So in the spring of 2017, was</p> <p>20 there a discussion that department policy around</p> <p>21 that step one, whether the borrower is entitled to</p> <p>22 relief, was there discussion that policy around</p> <p>23 that was going to change?</p> <p>24 A Yeah, that's the piece -- that's what</p> <p>25 my team does. So what I was referring to before</p>
<p style="text-align: right;">Page 123</p> <p>1 to -- to get that decision, so I think that --</p> <p>2 that accounts for the time difference, and then,</p> <p>3 ultimately, we did stop working on those as well.</p> <p>4 Q At the time you were told that</p> <p>5 approvals would no longer be processed, were you</p> <p>6 also told to stop adjudicating applications?</p> <p>7 A Yes.</p> <p>8 Q Were you given reason why you should</p> <p>9 stop adjudicating applications?</p> <p>10 A Well, again, it was that the department</p> <p>11 was making an assessment of whether they wanted to</p> <p>12 make some -- you know, the way it was put to me,</p> <p>13 it was they were taking a hard look at what we</p> <p>14 were doing and what changes they want to make to</p> <p>15 it, and, secondarily, that any work that we were</p> <p>16 doing was probably going to have to be reworked</p> <p>17 because it wasn't going to comply with whatever</p> <p>18 new processes or policies they might come up with.</p> <p>19 Q Was there discussion at that time that</p> <p>20 the legal basis for relief under the 1995 regs</p> <p>21 would change?</p> <p>22 MR. MERRITT: Objection to the extent</p> <p>23 it calls for privileged information.</p> <p>24 THE WITNESS: I don't think there was</p> <p>25 any discussion about relief at that time. Let</p>	<p style="text-align: right;">Page 125</p> <p>1 is there, you know, may have been -- it didn't</p> <p>2 turn out that there were a lot of them, but there</p> <p>3 may have been imminent policy changes that would</p> <p>4 in some minor or major fashion affect how we</p> <p>5 adjudicated the cases.</p> <p>6 Q And, then, did you have any knowledge</p> <p>7 or discussions around step 2, the level of relief?</p> <p>8 A In -- in the spring of 2017?</p> <p>9 Q (Indicated affirmative.)</p> <p>10 A No, I don't believe.</p> <p>11 Q Okay. When -- as of the spring of</p> <p>12 2017, when BDU adjudicated that a claim should be</p> <p>13 granted, did someone have to sign off on that</p> <p>14 decision?</p> <p>15 A Well, I guess there's always someone</p> <p>16 who has to sign off. You mean someone above me?</p> <p>17 Q Yes.</p> <p>18 A During that time period and before,</p> <p>19 there was a process that had been set up in 2016</p> <p>20 that an approval package or a denial package would</p> <p>21 be sent out to OUS. In 2016, early 2017, it</p> <p>22 actually went through the chief enforcement</p> <p>23 officer to -- to the Office of the Under Secretary</p> <p>24 and copied to the Office of General Counsel.</p> <p>25 Q Did there come a point when that</p>

<p style="text-align: right;">Page 126</p> <p>1 process changed?</p> <p>2 A Yes, it was a pretty similar process in</p> <p>3 2017 when we resumed issuing approvals into 2018,</p> <p>4 but then following the -- the power decision when</p> <p>5 the 2016 reg went into effect in 2018, there was a</p> <p>6 process in the 2016 regulation that laid out what</p> <p>7 should be done to adjudicate cases.</p> <p>8 So from that point forward, we haven't</p> <p>9 gone that route of submitting things up through</p> <p>10 FSA to the Office of the Under Secretary or to the</p> <p>11 Office of General Counsel.</p> <p>12 Q What was the new process that was laid</p> <p>13 out in the 2016 regs?</p> <p>14 A It calls for a department official to</p> <p>15 adjudicate the cases, do the fact-finding process</p> <p>16 and adjudicate the cases, and that's -- the</p> <p>17 consensus is that's me and my team.</p> <p>18 Q So after Bauer, since the 2016</p> <p>19 regulation went into effect, you have the final</p> <p>20 sign-off on approvals.</p> <p>21 A Yes. That's the way it currently is.</p> <p>22 Now, it could change with the new administration</p> <p>23 coming in, but that's the current way.</p> <p>24 Q All right. And are we talking about</p> <p>25 approval just of step 1, the entitlement to</p>	<p style="text-align: right;">Page 128</p> <p>1 Q I see. And who actually inputs those</p> <p>2 relief numbers?</p> <p>3 A We're working to implement an update to</p> <p>4 the platform so that it actually doesn't even go</p> <p>5 through my team at all because, like I said, we're</p> <p>6 just kind of doing data entry on that. So what it</p> <p>7 will look like will be that the data will be fed</p> <p>8 into the system and then, you know, when it's</p> <p>9 adjudicated, you just press a button and it will</p> <p>10 get populated.</p> <p>11 Right now for the most part, we -- the</p> <p>12 policy team comes up with a chart, so they crunch</p> <p>13 the numbers that relate to the specific school and</p> <p>14 apply the methodology and convert that into</p> <p>15 percentages. And then they put it on a chart that</p> <p>16 they put on -- to hand off to my team, and, then,</p> <p>17 you know, if we approve a case for, like I said,</p> <p>18 medical assisting certificate program for CCI,</p> <p>19 then here's the percentage.</p> <p>20 Q How many schools have these charts</p> <p>21 prepared for them right now?</p> <p>22 A Under the 2019 methodology?</p> <p>23 Q Yes.</p> <p>24 A I don't know. I mean, I know there's</p> <p>25 Corinthian and ITT, and I know that we have kept</p>
<p style="text-align: right;">Page 127</p> <p>1 relief, or also approval of step 2, the amount of</p> <p>2 relief?</p> <p>3 A Item used to -- as an approval. It's</p> <p>4 basically -- the department's position is that</p> <p>5 relief is a policy decision, so the Office of the</p> <p>6 Under Secretary twice has issued policy directives</p> <p>7 that were then implemented by FSA on what the</p> <p>8 appropriate relief is for -- for the claims that</p> <p>9 are subject to those particular methodologies.</p> <p>10 And our policy implementation team</p> <p>11 worked in both instances with the Office of the</p> <p>12 Under Secretary -- I believe more so on the second</p> <p>13 one in 2019 -- and, eventually, that turns into</p> <p>14 percentages that were handed to us, essentially.</p> <p>15 So our role with respect to relief</p> <p>16 under both the 2017 and 2019 methodologies (audio</p> <p>17 distortion) administerial, essentially.</p> <p>18 Q So you have, essentially, a formula</p> <p>19 that -- once an application is approved, you have</p> <p>20 a formula that you plug in that determines the</p> <p>21 amount of relief?</p> <p>22 A It's even less involved than that. We</p> <p>23 get a chart, and it says, Medical assisting</p> <p>24 certificate, 25 percent. And it's just a data</p> <p>25 entry.</p>	<p style="text-align: right;">Page 129</p> <p>1 in touch with the policy team in terms of schools</p> <p>2 that we think will have at least some approvals,</p> <p>3 but I don't know where they are in the process on</p> <p>4 that, and I think that there are some ongoing</p> <p>5 policy discussions on how they're applied to</p> <p>6 particular schools, but we're not really</p> <p>7 participants in those conversations.</p> <p>8 Q In 2016 when you joined BDU, was it</p> <p>9 also the case then that relief was considered to</p> <p>10 be a policy decision?</p> <p>11 A I don't know. I don't know. It was a</p> <p>12 recommendation from my team to the chief</p> <p>13 enforcement officer, and then it was recommended</p> <p>14 to the -- yeah, I guess it would be a policy</p> <p>15 decision based on a recommendation.</p> <p>16 Q A recommendation from who?</p> <p>17 A From us, from -- from the enforcement</p> <p>18 office by way of, you know, borrower defense</p> <p>19 providing a recommendation to enforcement and then</p> <p>20 enforcement conveying it to the under secretary.</p> <p>21 Q I'd like to look for a minute at</p> <p>22 Exhibit -- tab 7, which is also Exhibit 7 from the</p> <p>23 Jones deposition, on the Dropbox that's bracket 7</p> <p>24 Manning memo 5/4/2017.</p> <p>25 (Exhibit 7 referred to.)</p>

<p style="text-align: right;">Page 130</p> <p>1 BY MS. ELLIS:</p> <p>2 Q Is this a document that you've seen</p> <p>3 before?</p> <p>4 A Yes.</p> <p>5 Q And this is a memorandum recommending</p> <p>6 the -- the discharge of approximately 16,000 loans</p> <p>7 that have been adjudicated before January 20th,</p> <p>8 2017; is that correct?</p> <p>9 A That's correct.</p> <p>10 Q If you look at the last page, please,</p> <p>11 this document is signed by Secretary DeVos and</p> <p>12 under the other/comment section she wrote, With</p> <p>13 extreme displeasure.</p> <p>14 Is that accurate?</p> <p>15 A That's what she wrote.</p> <p>16 Q When did you first see this document?</p> <p>17 A It was later. It was quite a bit</p> <p>18 later. I don't remember exactly. It might have</p> <p>19 been in even 2018 or later.</p> <p>20 Q What did you take the Secretary's</p> <p>21 comment to mean?</p> <p>22 A That she was not happy to be signing</p> <p>23 off on discharges for the previously</p> <p>24 (indiscernible) cases or the loans related to the</p> <p>25 previously (indiscernible) cases.</p>	<p style="text-align: right;">Page 132</p> <p>1 So if a case were denied in total, then</p> <p>2 the servicers have to have instructions for how to</p> <p>3 take the borrower out of forbearance. There were</p> <p>4 discussions going on -- I don't know if it was</p> <p>5 this early, but in 2017 about, you know, whether</p> <p>6 there would be some kind of an interest credit</p> <p>7 because some of these borrowers' claims had been</p> <p>8 pending for a while, so there was some</p> <p>9 conversation about that.</p> <p>10 So long story short, we weren't -- we</p> <p>11 weren't holding off on issuing a whole lot of</p> <p>12 denials in early 2017 because there weren't that</p> <p>13 many that we had ready to send out at that point.</p> <p>14 Q At that time, were you told to stop</p> <p>15 developing memoranda or protocols for additional</p> <p>16 categories of claims other than the Corinthian and</p> <p>17 ITT protocols that were already in place?</p> <p>18 A We were told to stop seeking approval</p> <p>19 for such things, but we weren't told to stop</p> <p>20 reviewing evidence, that kind of thing.</p> <p>21 So that work continued, but we weren't</p> <p>22 staffed at the level that would have allowed us to</p> <p>23 develop a whole lot of new review protocols at</p> <p>24 that point anyway.</p> <p>25 Q So you weren't -- you weren't</p>
<p style="text-align: right;">Page 131</p> <p>1 Q Were you aware of the secretary</p> <p>2 expressing displeasure about BDU's adjudication of</p> <p>3 borrower defense applications, otherwise?</p> <p>4 MR. MERRITT: Objection: beyond the</p> <p>5 scope.</p> <p>6 MS. ELLIS: Can the witness answer?</p> <p>7 MR. MERRITT: Can you explain how it's</p> <p>8 relevant for one of the topics?</p> <p>9 MS. ELLIS: It's relevant to the</p> <p>10 reasons for the delay.</p> <p>11 MR. MERRITT: That's not one of the</p> <p>12 topics.</p> <p>13 MS. ELLIS: I'll move on.</p> <p>14 BY MS. ELLIS:</p> <p>15 Q In the spring of 2017 when -- when you</p> <p>16 were told that no more approvals would be</p> <p>17 processed, was it also your understanding that no</p> <p>18 denials would be processed?</p> <p>19 A Yes, but we weren't really positioned</p> <p>20 to issue denials at that point. As I mentioned,</p> <p>21 there's kind of a -- it's not just sending out a</p> <p>22 notice which, you know, it's not just drafting a</p> <p>23 letter. We also have to have requirements with</p> <p>24 the servicers set up so that they know how to</p> <p>25 handle it.</p>	<p style="text-align: right;">Page 133</p> <p>1 developing protocols during that period, but you</p> <p>2 were reviewing evidence?</p> <p>3 A Yes.</p> <p>4 Q And what -- what was the result of --</p> <p>5 of that review? Was it -- was it memorialized in</p> <p>6 any way other than in a application-review</p> <p>7 protocol?</p> <p>8 A We didn't even get to the review</p> <p>9 protocols at that point. A lot of 2017 we spent,</p> <p>10 you know, a fair amount of time working on both</p> <p>11 the IG review, the development of a system because</p> <p>12 we've been working off of, you know, I don't know</p> <p>13 how many -- I think over a thousand Excel</p> <p>14 spreadsheets. There was no system.</p> <p>15 So that was my biggest priority when I</p> <p>16 came in, in terms of operations, was to -- to</p> <p>17 develop some kind of a system that we could use so</p> <p>18 that we could track the cases and pull data and do</p> <p>19 reports and things like that.</p> <p>20 So there was a lot of work going on</p> <p>21 with that in 2017, and there were just a number of</p> <p>22 different kind of moving parts operationally that</p> <p>23 we were working on so that we were better</p> <p>24 positioned to move out once we got the green light</p> <p>25 to move forward, whatever that looked like.</p>

12/09/2020

134 to 137

<p style="text-align: right;">Page 134</p> <p>1 Q Okay. So could you estimate about how 2 much time you and your staff spent in 2017 3 reviewing evidence regarding potential school 4 misconduct?</p> <p>5 A I don't know. I -- I don't think I 6 could give an accurate estimate at this point, but 7 it wasn't -- it wasn't a high percentage because 8 we were very short staffed, and we basically were, 9 like I said, working on the IG review, the systems 10 and a whole bunch of various issues that pulled a 11 lot of our attention at that point.</p> <p>12 Q You said you were told to stop seeking 13 approval for any kind of new protocol. 14 Who was in charge of approving a new 15 protocol?</p> <p>16 A We didn't have any to send up at that 17 point, so presumably it would have gone up through 18 Laura Kim to the Office of the Under Secretary 19 like we had done before, not the protocols, but 20 the underlying documents like the legal 21 memorandum.</p> <p>22 Q If you had developed any legal 23 memoranda, then you would have sent it to Laura 24 Kim?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 136</p> <p>1 weeds on making sure that it clearly spelled out, 2 you know, what happens to a Michigan claim as 3 opposed to a California claim and that kind of 4 thing.</p> <p>5 Q Did you have to get approval from 6 anyone above you in the chain of command to 7 proceed with adjudicating applications under these 8 new protocols?</p> <p>9 A No.</p> <p>10 MS. ELLIS: Okay. It's 12:45 now. I 11 think this is a fine time to break for lunch, so 12 let's plan to get back on the record at 1:15. 13 Does that work?</p> <p>14 MR. MERRITT: Yeah, that works. 15 Work for you, Colleen? Just making 16 sure that works for you, Colleen?</p> <p>17 THE WITNESS: Yep, that's fine. Thank 18 you.</p> <p>19 THE VIDEOGRAPHER: We are now off the 20 record. Time is 17:47 UTC.</p> <p>21 (Recess -- 12:48 p.m.) 22 (After recess -- 1:18 p.m.)</p> <p>23 THE VIDEOGRAPHER: We are now on the 24 record. The time is 18:18 UTC.</p> <p>25 BY MS. ELLIS:</p>
<p style="text-align: right;">Page 135</p> <p>1 Q Would she be the one who would approve 2 you to move forward with that if -- if the --</p> <p>3 A No, that would -- go ahead.</p> <p>4 Q -- if it had occurred, right?</p> <p>5 A Sorry.</p> <p>6 Q I understand.</p> <p>7 A Yeah, I mean, hypothetically, it would 8 have gone through her to the Office of the Under 9 Secretary just like we had done for the previous 10 memos.</p> <p>11 Q For the ITT protocols that you 12 developed this year, the non-California 13 employment-prospects claims, who approved those?</p> <p>14 A The protocols?</p> <p>15 Q Yes, yes, sorry. 16 Who approved the protocols -- the new 17 protocols?</p> <p>18 A Yeah, I did. I -- you know, I relied 19 heavily on my supervisors. I reviewed very 20 closely the -- the facts and the legal memoranda, 21 so the 2016 and the '95 memos. And those 22 basically delineate what's going into the 23 protocol. And then I also looked at the protocol, 24 but, you know, a couple of my supervisors that 25 were working on it, you know, were very in the</p>	<p style="text-align: right;">Page 137</p> <p>1 Q I'd like to turn to page -- page 14, 2 paragraph 59 of your declaration. That's tab and 3 Exhibit 21.</p> <p>4 So paragraph 59 states, BDU received 5 permission to resume adjudication of CCI JPR 6 claims (only) on or about October 30th, 2017. 7 Is that accurate?</p> <p>8 A I'm sure it is if I included that date. 9 I don't remember off the top of my head what the 10 date was, but I'm sure I checked records to do 11 that.</p> <p>12 Q Okay. Who gave the permission to 13 resume adjudication?</p> <p>14 A My recollection is that it was Jim 15 Manning. I think it was Jim Manning.</p> <p>16 Q And do you know why the -- he made the 17 decision to resume adjudication of CCI JPR claims 18 at this time?</p> <p>19 A I -- I don't know.</p> <p>20 Q Do you know why he made the decision 21 that only CCI JPR claims would resume at this 22 time?</p> <p>23 A That might have been the "ask" at that 24 time. I believe Julian Schmoke had spoken with 25 him about the fact that we -- you know, the review</p>

<p style="text-align: right;">Page 138</p> <p>1 panel had completed their work. The IG 2 investigation was wrapping up. There wasn't a 3 report yet. I don't know if there was preliminary 4 information given, but they weren't going to make 5 any changes to JPR. 6 So I don't know exactly what it was, 7 but I think that the ask might have been specific 8 to JPR claims. 9 Q When you say that was an ask, that was 10 a request you believe Julian Schmoke made to Jim 11 Manning? 12 A I believe so, yes. 13 Q Okay. And in this time in October, 14 November 2017, was BDU making progress towards 15 adjudication of any other claims besides CCI JPR? 16 A We were focused on JPR at that point. 17 I don't know what the numbers were at that point, 18 but it was probably in the range of 100,000 19 Corinthian cases or more. It might have been a 20 lot more than that, actually. 21 And the priority -- which was true 22 under the previous administration as well, but was 23 true under this one, is they wanted us to work 24 through the Corinthian claims that the department 25 had represented would be handled in an expedited</p>	<p style="text-align: right;">Page 140</p> <p>1 Q I see. 2 Was there a point where BDU began 3 adjudicating other claims again in addition to CCI 4 JPR? 5 A Yes. 6 Q And when was that? 7 A Well, the results of the IG 8 investigation were that they didn't recommend any 9 changes to our review protocols, and, similarly, 10 nothing came out of the BDU review panel in 11 connection with that. 12 So once the IG report was done, which I 13 believe was around the end of November, beginning 14 of December, basically there was nothing else to, 15 you know, hold us back at that point, I think. 16 So we had already started moving 17 forward to J- -- on JPR claims at that point, and 18 I'm sure it was probably soon after that Julian 19 would have had a conversation with Manning about, 20 you know, we should get started on these other 21 ones again, too, but I don't remember the exact 22 timing. 23 Q And, so, sometime in 2018, you got 24 authority to increase your contractor staff to 25 work on this resumed process of adjudication?</p>
<p style="text-align: right;">Page 139</p> <p>1 fashion, so that was what our focus was for when 2 we were -- you know, as soon as we were allowed to 3 proceed, yeah, in that period of time. 4 Q Okay. Flipping back to paragraph 23 of 5 your declaration, which is on page 7. In the 6 second sentence, you write, Starting in 2018 after 7 processing of adjudications were resumed, we were 8 given authority to increase our contractor staff. 9 Do you see that? 10 A I do. 11 Q So, excuse me, when in 2018 did the 12 processing resume? 13 A Again, we don't do the processing, so I 14 don't know exactly when that piece started, but 15 the approval that happened prior to processing, so 16 when we would send the package to OUS and they 17 would sign off, started, I believe, in 2017. It 18 coincided with the relief methodology -- when that 19 relief methodology was finalized. 20 And we started submitting -- they 21 wanted us then to move quickly on submitting 22 approval packages. So I think it was actually 23 2017 when we started sending them up. It may be 24 that they didn't actually get processed until 25 early 2018.</p>	<p style="text-align: right;">Page 141</p> <p>1 A Correct. 2 Q Who gave the authority to increase the 3 contractor staff? 4 A Well, it was conveyed to me by Julian 5 Schmoke, but, you know, there are budget 6 implications to that, so it would have gone up 7 through FSA, and at that point, I think, Jim 8 Manning was both acting chief operating officer 9 and also the acting under secretary. So I don't 10 know in which capacity he approved it, but I'm 11 pretty sure he's the one who signed off on the 12 additional money needed to hire the contractors. 13 Q And then after the IG report came out, 14 did the development of new protocols for other 15 schools also resume? 16 A We were just trying to catch up. 17 The -- the cases that were coming in for 18 Corinthian were exceeding what we were able to 19 adjudicate, so the week over week because of the 20 limited staff we had up to and including when we 21 had these additional contractors, I think, we 22 weren't even keeping pace. So we were just trying 23 to keep up with the Corinthian cases at that 24 point. There really was no time to work on other 25 protocols.</p>

<p style="text-align: right;">Page 142</p> <p>1 Q And you had requested additional staff 2 by this point?</p> <p>3 A I'm sure multiple times, yes.</p> <p>4 Q The contractors who you hired in 2018, 5 what was their role?</p> <p>6 A 2018. We've had three different 7 contracting companies, so I'm just thinking which 8 one. But -- I mean, first and foremost the 9 contractors were to focus on job-placement-rate 10 claim because there is zero discretion, 11 essentially, on those. It's a matter of what 12 program was the person in, what campus did they 13 attend, what time period did they attend and then 14 how does that line up with the findings.</p> <p>15 So those we typically pushed to -- to 16 the contracting staff.</p> <p>17 In 2018, we also were starting to look 18 at the one-off claims and how those could be 19 handled, and there was a lot of trial and error 20 about that and fits and starts or however you want 21 to put it. We did some kind of pilot testing to 22 see how the contractors did in terms of kind of 23 summarizing the borrower claim or, you know, 24 looking at if we had a school that had fewer than 25 ten claims but, you know, at least seven or eight</p>	<p style="text-align: right;">Page 144</p> <p>1 divided people up into teams and kind of different 2 work flows so that we're moving forward on a whole 3 bunch of schools at the same time while also 4 trying to meet the metrics that are required of us 5 in terms of hitting our adjudication numbers.</p> <p>6 So, you know, it takes a while to get 7 people up to speed, though, once they join BDU, 8 and there's a pretty robust training period and 9 learning curve, so it's a few months at least 10 before people are making, you know, pretty 11 significant contributions, so it wasn't really 12 until this spring, I think, when we were in a 13 position to -- to make really appreciable progress 14 on -- on other schools.</p> <p>15 So there are a bunch of things that are 16 kind of moving along at a parallel track right 17 now, so it could be that -- it's not going to be 18 that we'll hit one school and then not another one 19 for a long time. I think there will be several of 20 them that will kind of reach of point of having a 21 review protocol pretty close in time.</p> <p>22 Q So it was about three years, from 23 spring 2017 to spring 2020, that, in your opinion, 24 BDU was not really in a position to make any 25 significant progress on protocols for</p>
<p style="text-align: right;">Page 143</p> <p>1 kind of summarizing what the claims were to see if 2 there was any, you know, common theme or anything 3 that included evidence that would support it.</p> <p>4 So that was all kind of going on in 5 2018 with the contractors, but a lot of it was not 6 very successful, unfortunately, so most of it 7 didn't end up advancing the ball too much.</p> <p>8 Q What was the point at which or was 9 there a point at which BDU had sufficient staff to 10 resume working on creating new protocols for other 11 schools other than Corinthian?</p> <p>12 A Well, we've been working towards that 13 since we started staffing up a year ago. One of 14 the things that I did that I think has helped is 15 we phased out of using contractors and brought on 16 term-appointed attorneys that are actually 17 full-time attorneys, and I had control over who we 18 hired and we got really good people, and I think 19 it was just a much higher caliber of people that 20 were working on the claims at that point than some 21 of our contractor staff, unfortunately.</p> <p>22 So that definitely helped us both in 23 terms of numbers and capabilities.</p> <p>24 And, so, really since we started 25 staffing up towards the end of last year, I've</p>	<p style="text-align: right;">Page 145</p> <p>1 non-Corinthian schools?</p> <p>2 A Yes.</p> <p>3 Q I think I might have asked this before, 4 but just to be clear, do you have any 5 understanding of the reasons why your requests for 6 additional staff were denied after the 7 department-wide hiring freeze ended?</p> <p>8 A That's above my pay grade. I don't 9 know.</p> <p>10 Q Okay. So I'm going to flip over to 11 paragraph 64 of your declaration. That's on 12 page 15. That paragraph says, Additionally, 13 between December 2017 and May 2018, OUS authorized 14 the denial of over 10,000 applications.</p> <p>15 Is that right?</p> <p>16 A That's what it says, yes.</p> <p>17 Q Do you remember what the basis was for 18 the denial of these applications?</p> <p>19 A I believe the ones that were done at 20 that time were Corinthian denials where the 21 borrowers had only asserted a job-placement-rate 22 claim.</p> <p>23 Q And they didn't fit into the 24 job-placement-rate evidence, and so they had no 25 other basis for relief?</p>

12/09/2020

146 to 149

<p style="text-align: right;">Page 146</p> <p>1 A Correct.</p> <p>2 Q So this was during the period when OUS</p> <p>3 had to authorize the denial of borrower defense</p> <p>4 applications?</p> <p>5 A That was the system that was set up at</p> <p>6 the time. Yeah, we just followed the same thing</p> <p>7 that we were doing for the approvals at that</p> <p>8 point, so similar thing. It was a package with a</p> <p>9 cover memo, a letter and a list of applications</p> <p>10 that are -- claims that would be getting that</p> <p>11 letter, so it was similar for both approvals and</p> <p>12 denials.</p> <p>13 Q And, so, at this time today, since the</p> <p>14 2016 regulations went into effect after the Bauer</p> <p>15 decision, does OUS have to sign off on denials</p> <p>16 before they become final?</p> <p>17 A No.</p> <p>18 Q Are you the final decision maker on</p> <p>19 denials?</p> <p>20 A Myself and the supervisors on my team,</p> <p>21 yes.</p> <p>22 Q So then in the next paragraph,</p> <p>23 paragraph 65 of your declaration, it states that,</p> <p>24 No additional decisions have been issued to</p> <p>25 borrowers since in or about June 2018.</p>	<p style="text-align: right;">Page 148</p> <p>1 not issue any denials until approvals started</p> <p>2 issuing?</p> <p>3 A I don't.</p> <p>4 Q Who did you find out about these</p> <p>5 decisions from?</p> <p>6 A I believe it was Justin Riemer who</p> <p>7 communicated that to me.</p> <p>8 Q So Justin Riemer might know who the</p> <p>9 ultimate decision maker was?</p> <p>10 A Presumably, yeah.</p> <p>11 Q So have you seen the injunction order</p> <p>12 in the Calvillo Manriquez case?</p> <p>13 A A while ago. But, yeah, I read it,</p> <p>14 yeah.</p> <p>15 Q Do you have an understanding of who is</p> <p>16 in the class in that case?</p> <p>17 A Yes.</p> <p>18 Q What's your understanding of that?</p> <p>19 A Borrowers with approved</p> <p>20 job-placement-rate claims that attended Corinthian</p> <p>21 colleges.</p> <p>22 Q And is it your understanding that the</p> <p>23 injunction prevents the department from using the</p> <p>24 December 2017 partial relief methodology for that</p> <p>25 class of borrowers?</p>
<p style="text-align: right;">Page 147</p> <p>1 And this declaration, you signed it in</p> <p>2 November 2019; correct?</p> <p>3 A Yes, correct.</p> <p>4 Q So between June 2018 and November 2019,</p> <p>5 no decisions -- no borrower defense decisions had</p> <p>6 been issued to borrowers?</p> <p>7 A That's my understanding, yes.</p> <p>8 Q Why -- why did BDU stop issuing</p> <p>9 decisions at that time in June 2018?</p> <p>10 A BDU doesn't issue decisions, period,</p> <p>11 but FSA stopped issuing decisions.</p> <p>12 Q Why did FSA stop issuing decisions in</p> <p>13 June 2018?</p> <p>14 A Well, my understanding is that</p> <p>15 following the Manriquez injunction, there was a</p> <p>16 hold put on approvals and the department made the</p> <p>17 decision to not issue denials until they could</p> <p>18 send out approvals as well, and so that coincided</p> <p>19 with the June 2018 -- I think that's -- that's</p> <p>20 when they put the brakes on, essentially.</p> <p>21 Q Do you know who made the decision to</p> <p>22 not issue anymore approvals at that time?</p> <p>23 A I don't.</p> <p>24 Q Do you know who -- excuse me.</p> <p>25 Do you know who made the decision to</p>	<p style="text-align: right;">Page 149</p> <p>1 A Yes.</p> <p>2 Q So is it your understanding that FSA</p> <p>3 could have, consistent with the Calvillo</p> <p>4 injunction, issued approvals of borrower defense</p> <p>5 claims for 100 percent relief?</p> <p>6 A I don't believe the injunction</p> <p>7 precludes that. I think it specifically says that</p> <p>8 the department could, if I'm remembering</p> <p>9 correctly.</p> <p>10 Q Was there a policy in place so the</p> <p>11 department would not grant 100 percent relief to</p> <p>12 Calvillo class members?</p> <p>13 A Policy was the relief methodology. I</p> <p>14 believe the 2017 methodology did actually have as</p> <p>15 one of the potential outcomes 100 percent relief.</p> <p>16 It was fairly narrow, I believe, but that's my</p> <p>17 recollection is that there was some percentage</p> <p>18 that -- or some -- some subset depending on the</p> <p>19 program that they attended that they could have</p> <p>20 gotten 100 percent. And then under the</p> <p>21 methodology, all of the other borrowers would get</p> <p>22 a different percentage.</p> <p>23 Q Do you know whether any grants of</p> <p>24 100 percent relief were actually issued following</p> <p>25 the Calvillo Manriquez injunction?</p>

12/09/2020

150 to 153

<p style="text-align: right;">Page 150</p> <p>1 A Not that I recall, but it's possible.</p> <p>2 Q So consistent with the Calvillo</p> <p>3 Manriquez injunction, FSA could have processed</p> <p>4 borrower defense application grants for people who</p> <p>5 were not making Corinthian JPR claims; is that</p> <p>6 correct?</p> <p>7 A The -- are you asking whether it</p> <p>8 applied to -- it didn't apply to people who had</p> <p>9 other -- if their approval was based on something</p> <p>10 other than job placement rates, the injunction did</p> <p>11 not apply, yes.</p> <p>12 Q Here in paragraph 65 of your</p> <p>13 declaration, which we were looking at a minute</p> <p>14 ago, you write in the middle of the paragraph</p> <p>15 that, Approximately 1,000 applications from CCI</p> <p>16 and ITT borrowers have been adjudicated as</p> <p>17 approvals and are not subject to the Manriquez</p> <p>18 injunction.</p> <p>19 Was that correct?</p> <p>20 A I'm sure it is. I'm sure I looked at</p> <p>21 the data at the time.</p> <p>22 Q So do you know why those approvals were</p> <p>23 not processed?</p> <p>24 A I don't know what the rationale for the</p> <p>25 policy was, but my understanding that was -- there</p>	<p style="text-align: right;">Page 152</p> <p>1 a sort of step 1 and step 2 of the disposition of</p> <p>2 borrower defense applications where step 1 is</p> <p>3 entitlement to relief and step 2 was the amount of</p> <p>4 relief.</p> <p>5 So BDU was continuing with step 1 at</p> <p>6 this time between June 2018 and November 2019?</p> <p>7 A That's correct.</p> <p>8 Q Were you -- did you at any time become</p> <p>9 aware of a decision that the partial relief</p> <p>10 methodology originally developed for the CCI JPR</p> <p>11 claims would be applied to other types of claims?</p> <p>12 A Yes. It involved getting data from</p> <p>13 Social Security, and the department had worked</p> <p>14 with Social Security to get the data for ITT.</p> <p>15 I don't know if there were any other</p> <p>16 schools. That's the only one that I can recall.</p> <p>17 Q Do you know who made the decision to</p> <p>18 expand that methodology to ITT?</p> <p>19 A I don't know. No, I don't know. I'm</p> <p>20 sorry.</p> <p>21 Q Do you remember when you became aware</p> <p>22 that the department had gathered this Social</p> <p>23 Security information for the purpose of using it</p> <p>24 for ITT relief?</p> <p>25 A Well, I was aware pretty early on</p>
<p style="text-align: right;">Page 151</p> <p>1 was a policy that we were not issuing any</p> <p>2 decisions on borrower defense at that point.</p> <p>3 Q Do you know why -- well, let me back</p> <p>4 up.</p> <p>5 Do you know who made the decision that</p> <p>6 no decisions would issue on borrower defense even</p> <p>7 for borrowers who are not part of the Calvillo</p> <p>8 Manriquez class?</p> <p>9 A I don't know.</p> <p>10 Q Did you discuss that decision with</p> <p>11 anyone?</p> <p>12 A I'm sure I did. I would have told</p> <p>13 my -- I don't have a specific recollection of it,</p> <p>14 but I would have told my team. And I'm sure I</p> <p>15 became aware somehow, but I don't remember who</p> <p>16 told me.</p> <p>17 Again, we don't process the decision,</p> <p>18 so it was just kind of an FYI sort of thing for me</p> <p>19 and my team, but impact what -- you know, whether</p> <p>20 or not we would move forward on the adjudications.</p> <p>21 Q During this period when no approvals or</p> <p>22 denials were issuing, was BDU continuing to</p> <p>23 adjudicate applications?</p> <p>24 A Yes.</p> <p>25 Q And we talked earlier about there being</p>	<p style="text-align: right;">Page 153</p> <p>1 because to get the data from Social Security they</p> <p>2 needed data from the platform that my team uses to</p> <p>3 come up with a list of borrowers that were being</p> <p>4 submitted, so we were kind of a subject-matter</p> <p>5 expert on how you would do that, I think.</p> <p>6 And we had a fairly new system that had</p> <p>7 sort of -- we had actually really two new systems.</p> <p>8 We had an Access platform that became live in late</p> <p>9 2017, and then around that time would have been</p> <p>10 when we were migrating the data to our new</p> <p>11 Salesforce platform.</p> <p>12 So I'm sure I knew very early on. I</p> <p>13 don't remember exactly what the timing was.</p> <p>14 Q Would that have been in 2017?</p> <p>15 A I think it was probably early 2018, or</p> <p>16 more like spring of 2018, maybe.</p> <p>17 Q So it would have been after the partial</p> <p>18 relief methodology was announced but before the</p> <p>19 Calvillo Manriquez injunction?</p> <p>20 A Yes, we received the data from Social</p> <p>21 Security just prior to the injunction, I believe.</p> <p>22 So I don't remember how long it took for Social</p> <p>23 Security to do that, but whatever that time frame</p> <p>24 is.</p> <p>25 Q Okay. So was it your understanding</p>

12/09/2020

154 to 157

<p style="text-align: right;">Page 154</p> <p>1 that the delay -- or that the policy of not 2 issuing any grants following the Calvillo 3 injunction was related to a desire by the 4 department to formulate a new partial relief 5 methodology? 6 A At what point in time? 7 Q I guess this would be beginning in the 8 summer of 2018 and if it -- if it changed at any 9 point along the way? 10 A I don't think there was any discussion 11 of a new relief methodology that early. The 12 injunction was issued in May. I -- I don't 13 remember any conversation about a new relief 14 methodology until at least 2019, and I don't 15 remember exactly when that was. Probably not even 16 very early in 2019. 17 Q Okay. Do you know if work continued on 18 the -- on the old methodology with the ITT data 19 after the Calvillo injunction? 20 A It did not, so two things I remember 21 happening right after the injunction. I told my 22 team to stop entering any of those percentages 23 into our platform right after I saw the order, and 24 then, you know, pending discussions with OGC, but 25 that didn't change. And separately, I believe --</p>	<p style="text-align: right;">Page 156</p> <p>1 Q Do you know who in the department made 2 the determination that the amount of relief was a 3 policy question that was not necessarily governed 4 by state law? 5 A I might need counsel's advice on 6 whether I can answer that question because it 7 was -- the information was given to me by the 8 Office of General Counsel. 9 MR. MERRITT: Yeah, I mean, to the 10 extent that question is calling for privileged 11 information, we would object to it. And it's 12 questionable whether that's within the scope of 13 the discovery the court ordered. 14 MS. ELLIS: Okay. Well, I accept that 15 the witness is not answering on the basis of 16 privilege. 17 BY MS. ELLIS: 18 Q Do you believe there's anything in 19 the -- I believe it's California state law that 20 applies to the CCI JPR claims; is that correct? 21 A That's what -- yes, that's what we've 22 plied to the JPR claims. 23 Q Is it your understanding there's 24 anything in California law that would preclude 25 100 percent relief?</p>
<p style="text-align: right;">Page 155</p> <p>1 I don't know who made the call on it, but somebody 2 made the call that the folks who worked on kind of 3 converting the Social Security data into a relief 4 percentage were told to stand down. 5 That's my recollection. 6 Q For the -- for the CCI JPR claims 7 that -- at the time of the Calvillo injunction, 8 they had been approved as eligible for relief, but 9 not processed, in your -- in your declaration you 10 say there were about 31,000 of those in -- in the 11 Manriquez class that were approved, but not 12 processed. 13 Was it your understanding that -- that 14 there was any rationale under state law for 15 awarding 100 percent relief to those borrowers? 16 A I don't think the department saw it as 17 solely a question of state law, but certainly -- 18 you know, for that, I believe that's why they came 19 up with the relief methodology. They saw it as a 20 policy decision, but I think when the special 21 master, which predates the existence of the 22 borrower defense unit, first recommended approval 23 of job placement rates, they were relying on 24 California law when they concluded that 25 100 percent relief would be appropriate.</p>	<p style="text-align: right;">Page 157</p> <p>1 MR. MERRITT: Objection. It goes 2 beyond the scope. 3 MS. ELLIS: Can the witness answer? 4 THE WITNESS: You want me to answer? 5 I'm not aware of anything that would 6 preclude 100 percent. 7 MS. ELLIS: I'd like to look for a 8 minute at Exhibit 12. That's tab 12 in the hard 9 copies. On the Dropbox, it's bracketed number 10 12ED PowerPoint 8/21/2019. This was marked as 11 Exhibit 12 in the Jones deposition. 12 (Exhibit 12 referred to.) 13 BY MS. ELLIS: 14 Q Does this document look familiar to 15 you? 16 A Vaguely. I'm sure I probably worked on 17 it myself, but it's been a while. 18 Q Do you remember what purpose this was 19 prepared for? 20 A One minute. 21 (Witness reviews document.) 22 I think -- I believe this was to 23 prepare somebody new to the department in 24 leadership. It might have been -- or somebody who 25 was newly working on BD in leadership. I don't</p>

<p style="text-align: right;">Page 158</p> <p>1 remember who, though. We've done similar decks 2 for each time we had a new chief operating 3 officer, which doesn't match up with this 4 timeline. So it might have been the deputy 5 secretary or someone else, but I think it was a 6 briefing to prepare somebody or to kind of give a 7 general status to someone new in leadership or 8 someone newly involved in BD.</p> <p>9 Q Okay. On page 5 of the document. It's 10 numbered as slide 5, and, also, it has a Bates at 11 the bottom AR-A-0227. So this slide appears to be 12 giving an update on applications adjudicated, but 13 not processed, as of August 2019. It states, 14 there are over 1,400 schools with denied 15 applications that are pending processing.</p> <p>16 That's the second major bullet down. 17 And it specifically mentions denied 18 applications for Wright Career College and 19 Marinello School of Beauty.</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q Do you recall the reasons why those two 23 schools had a significant number of claims denied?</p> <p>24 A I don't. We have thousands of schools, 25 so I apologize. I don't remember the specifics on</p>	<p style="text-align: right;">Page 160</p> <p>1 team. They don't make policy. They -- they 2 implement the policy that we get from LBJ.</p> <p>3 Q Who's -- who makes up the policy 4 implementation team?</p> <p>5 A Currently, the acting director of 6 policy implementation is Ian Foss, and he was also 7 one of the leads with respect to -- and is with 8 respect to FSA applying the 2019 methodology to 9 school-specific data. He's got people on his team 10 that work on that.</p> <p>11 Q When was the policy implementation team 12 created?</p> <p>13 A Oh, that's a long-standing -- I mean, 14 that -- the name, I think, also changed during the 15 restructuring last fall, but they're not related 16 in particular to BD. That's part of FSA.</p> <p>17 Any time there's a new regulation or, 18 you know, kind of global policy on anything, in 19 fact -- that affects student loans, they work very 20 closely. They're also involved in, like, 21 negotiated-rulemaking process and all that.</p> <p>22 Q Okay. Thank you.</p> <p>23 Was there ever any discussion of giving 24 100 percent relief to any claims as of 25 approximately August 2019?</p>
<p style="text-align: right;">Page 159</p> <p>1 these.</p> <p>2 Q Okay. On the next slide, the slide is 3 titled Why Are BD Applications on Hold.</p> <p>4 The first topic listed is approvals, 5 and on the second bullet it says, No relief 6 methodology developed for non-CCI claims.</p> <p>7 Can you explain what that meant as of 8 August 2019 when this slide was written?</p> <p>9 A I don't know. As I'm looking at this 10 deck, this is not exactly what I was thinking it 11 was because the first -- slide 2 is something that 12 I'm very familiar with. Slide 3 is one that I've 13 worked on, but these other slides, I'm not sure 14 who put them together.</p> <p>15 As with the second bullet, that's true. 16 And maybe it was in reference to ITT. That's all 17 I can think of.</p> <p>18 Q For -- for non-CCI claims, was there -- 19 were you involved in any discussions about 20 development of a new relief methodology?</p> <p>21 A Yes. Mostly as a subject-matter expert 22 for our policy team who was involved in 23 conversations with LBJ on it.</p> <p>24 Q Who was --</p> <p>25 A I should say policy implementation</p>	<p style="text-align: right;">Page 161</p> <p>1 A The -- not in FSA. The kind of 2 direction that we've been given and, I mean the 3 royal "we," but that the policy team had been 4 given was focused on developing a new methodology 5 since Manriquez was still pending.</p> <p>6 Q Who did that direction come from?</p> <p>7 A The Office of the Under Secretary, 8 Diane Jones.</p> <p>9 Q Moving down to the next section of this 10 slide under Denials, the first bullet says, Policy 11 decisions (spring 2018) to not issue denials until 12 approvals also could be issued.</p> <p>13 And I think we may have mentioned this 14 earlier, but do you know who made that policy 15 decision?</p> <p>16 A I do not, not -- no.</p> <p>17 Q Do you know why that policy decision 18 was put into place?</p> <p>19 A I don't.</p> <p>20 Q Then looking down at the third bullet 21 up here in the section Denials, it says, Issuance 22 of denial decisions scheduled to resume by 23 mid-September.</p> <p>24 Do you recall that expectation in 25 August 2019?</p>

<p style="text-align: right;">Page 162</p> <p>1 A Yes. The -- that didn't happen, 2 obviously. I believe the -- that was to coincide 3 with -- no, I'm sorry. I'm trying to remember the 4 timeline here. It was a decision to hold off, and 5 I don't know if it was this particular time, 6 but -- I'm not sure. I'm sorry.</p> <p>7 Q As of August 2019, had the form A 8 through D denial letters been finalized?</p> <p>9 A No, they had not. In fact, I don't -- 10 I don't know if they even started.</p> <p>11 Q Was the -- was the ongoing development 12 of those letters one of the reasons why denial 13 decisions did not resume by mid-September?</p> <p>14 A No, they were held until we had the 15 approval -- the (audio distortion) approvals which 16 was tied to the relief methodology.</p> <p>17 Q So does it follow then that issuance of 18 approvals were scheduled to resume by 19 mid-September 2019?</p> <p>20 A Well, like I said, I didn't draft this 21 and I don't know who did, but it may have been in 22 connection with whether or not to hold them. I'm 23 guessing, so I really -- I don't know.</p> <p>24 Q Okay. So going -- going back to your 25 declaration, looking at paragraph 66, could you</p>	<p style="text-align: right;">Page 164</p> <p>1 as the chief operating officer, he was very 2 focused on the backlog, the issues that were kind 3 of keeping us from getting through the backlog, 4 and how do we -- how do we eliminate the backlog. 5 So almost from the get-go I would say --</p> <p>6 THE COURT REPORTER: I'm sorry. I'm 7 sorry. You cut out.</p> <p>8 THE WITNESS: I think --</p> <p>9 THE COURT REPORTER: Excuse me. You 10 cut out on me. Right after you said, Really, as 11 soon as Mark Brown started as the chief operating 12 officer, he was very focused on the backlog, the 13 issues that were kind of keeping us from getting 14 through the backlog, and how do we -- how do we 15 eliminate the backlog, and then you distorted on 16 me. Sorry.</p> <p>17 THE WITNESS: Okay. I don't think I 18 said anything helpful after that so -- and I don't 19 remember exactly what I said.</p> <p>20 But, yeah, that was his focus so I 21 guess it was -- you know, when he started at that 22 period of time in February, March 2019, that he 23 started asking about it, and probably very soon 24 thereafter, you know, started pushing us to hit 25 numbers and, you know, have to report on it very</p>
<p style="text-align: right;">Page 163</p> <p>1 read the first sentence of paragraph --</p> <p>2 A Sorry. Sixty-six?</p> <p>3 Q Yes, 66 at the top of page 16. 4 Could you read the first sentence, 5 please?</p> <p>6 A Because BDU has been instructed to 7 maximize the number of applications adjudicated 8 per week, the streamlined JPR claims have been 9 prioritized. For the same reason, BDU also has 10 focused on application from borrowers who did not 11 provide any evidence and who attended schools for 12 which BDU is not aware of evidence that would 13 support the approval of the applications.</p> <p>14 Q Okay. So this is circling back to 15 something we talked about early on, but who made 16 the decision to maximize the number of 17 applications adjudicated per week?</p> <p>18 A That was the direction that we were 19 given from the department leadership, and it was 20 carried out by the chief operating officer and his 21 very clear mandate to me.</p> <p>22 Q When did you receive this instruction 23 to maximize the number of applications adjudicated 24 per week?</p> <p>25 A Really, as soon as Mark Brown started</p>	<p style="text-align: right;">Page 165</p> <p>1 regularly.</p> <p>2 I'd say no later than the fall of 2019, 3 but it might have been a little earlier than that, 4 too.</p> <p>5 BY MS. ELLIS:</p> <p>6 Q Did the -- did the number of -- 7 A (Inaudible.) 8 Q I'm sorry. What? 9 A Sorry. Everybody just froze on me 10 there, so -- I don't know if it's my connection 11 or --</p> <p>12 MR. MERRITT: It might be yours, I 13 think, from my perspective at least you're --</p> <p>14 THE WITNESS: Can you hear me? 15 MR. MERRITT: Now, yes.</p> <p>16 BY MS. ELLIS:</p> <p>17 Q Okay. Can you hear me? 18 A I can hear you, yep. 19 Q Okay. We'll keep going and see what 20 happens. 21 A Yep. 22 Q So did -- did the number of 23 applications adjudicated become part of FSA's 24 annual performance metrics this year? 25 A I believe so, but, yes.</p>

12/09/2020

166 to 169

<p style="text-align: right;">Page 166</p> <p>1 Q Had the number of applications 2 adjudicated been a performance metric before 2020?</p> <p>3 A I'm so sorry. I'm having trouble. Can 4 you say that one more time?</p> <p>5 Q It's okay. I understand. 6 Had the number of borrower defense 7 applications adjudicated been part of FSA's annual 8 performance goals before 2020?</p> <p>9 A Not -- not formally. I think in 2019 10 we were reporting on them very regularly, but, you 11 know, FSA has very defined -- a strategic plan 12 with very defined goals, and borrower defense is 13 now part of those goals, but I don't think it was 14 in 2019 part of the formal goals for the --</p> <p>15 Q What about --</p> <p>16 A -- organization generally.</p> <p>17 Q What about in 2018?</p> <p>18 A Like I said, I don't think it was 19 anything formal. It was a new unit, so it 20 sometimes takes a while for all of the -- for 21 everything to catch up with new -- new parts of 22 the organization, so I think it was really 2020 23 before it became a formal part of the goals.</p> <p>24 Q Does meeting that goal affect your 25 compensation?</p>	<p style="text-align: right;">Page 168</p> <p>1 MS. ELLIS: And I'll just say for the 2 record that we fixed or tried to fix our technical 3 issues here by having Ms. Nevin connect via her 4 phone audio, and for that purpose, we have no 5 issue with her phone being in the room even though 6 we had talked earlier about putting it aside, so I 7 just wanted to make sure that was clear for the 8 record.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 BY MS. ELLIS:</p> <p>11 Q So, let's see, I think let's pick back 12 up in November of 2019. Around that time, did you 13 become aware of a memorandum describing a new 14 partial relief methodology for borrower defense 15 claims?</p> <p>16 A Yes.</p> <p>17 Q Do you know who wrote that memorandum?</p> <p>18 A I believe it was Jeffrey Appel and Ian 19 Foss in consultation with Diane Jones and 20 potentially other folks on her end.</p> <p>21 Q Okay. Do you know whether that 22 memorandum has been provided for production in 23 this case?</p> <p>24 A I don't know.</p> <p>25 Q Okay. Do you have a copy of it in your</p>
<p style="text-align: right;">Page 167</p> <p>1 A Not per se, but it, I suppose, is part 2 of my job, so if we, you know, completely fall 3 down on the job, I would imagine my reviews 4 wouldn't be very good, but there's not a 5 specific -- I don't have a quota or anything along 6 those lines in -- in my performance plan, if 7 that's what you're asking.</p> <p>8 Q Who -- who reviews the data showing 9 progress toward the goal of maximizing 10 adjudications per week?</p> <p>11 A I'm really struggling here with the 12 phrasing. Should I maybe log out and log back in. 13 And the tech folks can tell me what I can do to 14 make it better.</p> <p>15 MR. MERRITT: I suggest we take a 16 break -- a short break and try and troubleshoot 17 it.</p> <p>18 MS. ELLIS: Yeah, let's take a 19 five-minute break off the record.</p> <p>20 THE VIDEOGRAPHER: We're now going off 21 the record. The time is 19:08 UTC. 22 (Recess -- 2:08 p.m.) 23 (After recess -- 2:14 p.m.) 24 THE VIDEOGRAPHER: We're now on the 25 record. The time is 19:14 UTC.</p>	<p style="text-align: right;">Page 169</p> <p>1 possession in your computer files?</p> <p>2 A I'm sure I do.</p> <p>3 Q Okay. What was your involvement in 4 developing the 2019 partial relief methodology?</p> <p>5 A In -- sometime in the fall of 2019, I 6 remember Mark Brown instructing Jeff -- Jeffrey 7 Appel and Ian Foss to follow up with OUS on what 8 she was looking for or what they were looking for 9 as senior leadership at LBJ.</p> <p>10 And I was, kind of same thing as 11 before, in a consulting role on what data points 12 we had available in terms of borrower applications 13 and -- and it's OUS data and things that would be 14 in our system that could potentially be relevant.</p> <p>15 And, then, Jeff and Ian came up with 16 options -- a series of options, I guess, and, you 17 know, to the extent they needed input on data, 18 that was -- that was my role there.</p> <p>19 And then there was a meeting that I 20 participated in or attended with -- with the under 21 secretary, with Diane Jones, and Jeff and Ian, and 22 some other folks where the options were discussed.</p> <p>23 Q Was it your understanding in the fall 24 of 2019 that no borrower defense decisions were 25 being processed because this relief methodology</p>

12/09/2020

170 to 173

<p style="text-align: right;">Page 170</p> <p>1 had not been finalized yet?</p> <p>2 A I don't know that it was ever framed</p> <p>3 that way, but they weren't being issued until we</p> <p>4 could issue approvals, and we couldn't issue</p> <p>5 approvals until there was a release methodology,</p> <p>6 so that's how it was framed.</p> <p>7 Q What's your understanding of what the</p> <p>8 2019 partial relief methodology prescribes?</p> <p>9 A I won't even begin to try to opine on</p> <p>10 standard deviations, so, you know, lawyers and</p> <p>11 math, I'm definitely one of those folks.</p> <p>12 It's, I believe, an effort to compare</p> <p>13 ascribed average earning, something along those</p> <p>14 lines, to other data sets.</p> <p>15 Q But it's based on -- it is not based on</p> <p>16 in any way on the borrower's actual earnings; is</p> <p>17 that correct?</p> <p>18 MR. MERRITT: Objection. What is</p> <p>19 the -- this is not in the scope of the court's</p> <p>20 order, the actual merits of the methodology.</p> <p>21 BY MS. ELLIS:</p> <p>22 Q So was -- was it after the 2019 partial</p> <p>23 relief methodology was announced that the pace of</p> <p>24 adjudications of borrower defense applications</p> <p>25 increased?</p>	<p style="text-align: right;">Page 172</p> <p>1 currently working on developing protocols for</p> <p>2 non-Corinthian schools?</p> <p>3 A Well, again the protocols follows the</p> <p>4 development of the summary of the facts, and then</p> <p>5 a legal analysis on 2016, and then a legal</p> <p>6 analysis on 50 different states, if it's a school</p> <p>7 that's that expansive, and if it's not, then</p> <p>8 whatever states are relevant to that analysis. So</p> <p>9 if they're was only one state, then you would only</p> <p>10 need the legal memo for '95 on that particular</p> <p>11 state.</p> <p>12 But, I guess, your question assumes</p> <p>13 that they're only working on one thing. I have a</p> <p>14 lot of people who are kind of working on multiple</p> <p>15 work streams, so I would say probably half are</p> <p>16 working at least part of their time on reviewing</p> <p>17 the evidence, summarizing the evidence, developing</p> <p>18 the facts, developing the legal memoranda and</p> <p>19 then, ultimately, the protocol to adjudicate</p> <p>20 cases.</p> <p>21 Q And while all of that research and</p> <p>22 analysis is underway, are applicants from the</p> <p>23 schools under review held up, or are they in the</p> <p>24 work stream for adjudication.</p> <p>25 A I'm not sure I understand the question.</p>
<p style="text-align: right;">Page 171</p> <p>1 A Well, that affected the pace of issuing</p> <p>2 decisions. The pace of adjudications was more</p> <p>3 closely related to the hiring of additional staff.</p> <p>4 Q Was the hiring of additional staff in</p> <p>5 the fall of 2019 made in anticipation of a new</p> <p>6 relief methodology being announced?</p> <p>7 A Not directly. It was related to the</p> <p>8 desire to -- to complete review of all the cases</p> <p>9 in the backlog, so I don't think it was</p> <p>10 specifically intended to be tied to the release</p> <p>11 methodology.</p> <p>12 Q As of right now, how many full-time,</p> <p>13 nonterm attorneys are working in BDU?</p> <p>14 A Oh, there are a couple I'm trying to</p> <p>15 remember whether they're term or permanent, but I</p> <p>16 believe it's 11 plus myself.</p> <p>17 Q And you -- you mentioned hiring a</p> <p>18 number of term attorneys as well. About how many</p> <p>19 of those are there?</p> <p>20 A I want to say it's 40 -- it's either 47</p> <p>21 or 52. It might be 52. Actually, we just had one</p> <p>22 person leave for another position. It might be</p> <p>23 51. Somewhere in that range, though.</p> <p>24 Q Okay. And of the full-time and term</p> <p>25 attorneys working at BDU, how many of them are</p>	<p style="text-align: right;">Page 173</p> <p>1 Can you say that again?</p> <p>2 Q Okay. So if the school is in this</p> <p>3 process of having evidence reviewed, having the</p> <p>4 law analyzed, are actual borrower defense</p> <p>5 applications related to that school -- are they</p> <p>6 put aside waiting for the completion of the</p> <p>7 protocol or are they put into a general pool for</p> <p>8 adjudication?</p> <p>9 A No, they would be -- they're not --</p> <p>10 they're not adjudicated right now. They would</p> <p>11 be -- remain pending. Our platform is set up so</p> <p>12 that we have sort of different statuses and ways</p> <p>13 to track where people are in the process. They</p> <p>14 would not end up in a pool for adjudication unless</p> <p>15 somebody makes a mistake, but, generally speaking,</p> <p>16 the -- the people who have applications related to</p> <p>17 the common evidence remain pending.</p> <p>18 Q Okay. I'd like to look at tab 19 of</p> <p>19 the materials on the Dropbox. This is bracket 19</p> <p>20 ECF 145 Defendants' Response re frog list. This</p> <p>21 was introduced as -- as Exhibit 19 at Diane Jones'</p> <p>22 deposition.</p> <p>23 (Exhibit 19 referred to.)</p> <p>24 BY MS. ELLIS:</p> <p>25 Q So this is a filing in this case. The</p>

12/09/2020

174 to 177

<p style="text-align: right;">Page 174</p> <p>1 title of the filing is Defendants' Response</p> <p>2 Regarding the Court's Request at the October 1st,</p> <p>3 2020 Class Hearing.</p> <p>4 Do you see that?</p> <p>5 A I do.</p> <p>6 Q Okay. And appended to this document --</p> <p>7 appended to the main filing is the declaration of</p> <p>8 Mark Brown, and then appended to the declaration</p> <p>9 of Mark Brown, a document called Attachment 1 is a</p> <p>10 chart.</p> <p>11 Do you see -- it starts -- the 13th</p> <p>12 page of the PDF, the 13th page of the document.</p> <p>13 A Yes.</p> <p>14 Q Have you seen this document before?</p> <p>15 A Yes. My team put this together at my</p> <p>16 direction.</p> <p>17 Q Sorry. I didn't catch that. Who put</p> <p>18 it together at your direction?</p> <p>19 A I'm sorry. My team.</p> <p>20 Q Which is --</p> <p>21 A Some of the senior members of my team,</p> <p>22 yeah.</p> <p>23 Q Okay. And did you ask them to do so</p> <p>24 for the purposes of this filing, or was it a</p> <p>25 document that existed before?</p>	<p style="text-align: right;">Page 176</p> <p>1 CEC, New York AG's office, Pennsylvania AG's</p> <p>2 office, and accessing the scope of these materials</p> <p>3 that were provided, they summarized that in a memo</p> <p>4 and then determined what kinds of cases</p> <p>5 potentially may have supporting evidence in -- in</p> <p>6 here, and then from there what cases could be</p> <p>7 cleared for adjudication because we didn't have</p> <p>8 common evidence.</p> <p>9 So that's where you get to column 2.</p> <p>10 Column 2 is basically a summary of what got</p> <p>11 cleared for adjudication, I believe, if I'm</p> <p>12 remembering correctly.</p> <p>13 Q Okay. So an application that fits a</p> <p>14 description in column 2, the borrower could</p> <p>15 theoretically provide sufficient evidence</p> <p>16 themselves to have their application granted, but</p> <p>17 they're not going to be within -- considered to be</p> <p>18 within the scope of common evidence.</p> <p>19 Is that accurate?</p> <p>20 A Well, this is worded that it's</p> <p>21 applications that do not fit the criteria below,</p> <p>22 so I think there was some variation on how it</p> <p>23 was -- you know, for different schools, how it was</p> <p>24 framed.</p> <p>25 But for this one, it looks like for</p>
<p style="text-align: right;">Page 175</p> <p>1 A It was created for this filing.</p> <p>2 Q Okay. So in column 3, if I'm reading</p> <p>3 this correctly, column 3 describes the common --</p> <p>4 the sources of common evidence for each school</p> <p>5 that's listed in column 1.</p> <p>6 A That's correct.</p> <p>7 Q Okay. If we could look at page 3 of</p> <p>8 this chart, the school ownership group listed in</p> <p>9 column 1 is Career Education Corp.?</p> <p>10 A Yes, I see that.</p> <p>11 Q And this includes Brooks Institute,</p> <p>12 which we were discussing earlier?</p> <p>13 A Right.</p> <p>14 Q So, I guess, could you explain a little</p> <p>15 bit how -- how you get from the common evidence</p> <p>16 listed in column 3 to the exclusions listed in</p> <p>17 common 2 -- in column 2?</p> <p>18 A The exclusions listed in -- so common</p> <p>19 evidence is in 3.</p> <p>20 Q Yes.</p> <p>21 A That -- that's the documents and, you</p> <p>22 know, the evidence that my team is aware of and is</p> <p>23 in the course of reviewing to develop or to hold</p> <p>24 for potential approvals. And in assessing the</p> <p>25 scope of these various -- so for -- you know, for</p>	<p style="text-align: right;">Page 177</p> <p>1 CEC, this is identifying having categories of</p> <p>2 applications determined not to be within the scope</p> <p>3 of common evidence.</p> <p>4 So it's kind of a double negative,</p> <p>5 which makes it confusing, so I'm going to read</p> <p>6 this again.</p> <p>7 (Witness reviews document.)</p> <p>8 Q So -- so does this will say that for</p> <p>9 CEC, the way it's phrased, does this mean that</p> <p>10 the -- the bullets here in column 2 for CEC are</p> <p>11 the types of claims that do fit the common</p> <p>12 evidence?</p> <p>13 A That may, may.</p> <p>14 Q May --</p> <p>15 A You know, there are not going to be any</p> <p>16 kind of final conclusions at this point because</p> <p>17 there's still more work to be done on this, but</p> <p>18 these are the categories of applications that</p> <p>19 would be satisfied under the protocol or not</p> <p>20 assigned at all. To the extent from the data that</p> <p>21 we can determine that someone attended during this</p> <p>22 period of time, they wouldn't even get assigned.</p> <p>23 But if they did get through to a</p> <p>24 reviewer, the reviewer would see that, for</p> <p>25 example, if the borrower enrolled between May 1st,</p>

<p style="text-align: right;">Page 178</p> <p>1 '99 and May 22nd, 2004, at Western School of, 2 whatever, Health and Business, that claim would be 3 set aside. 4 Q I see. 5 Do the claims set aside pending further 6 analysis of common evidence count in any way 7 toward the goal of clearing the backlog? 8 A No, they're just still pending. 9 Q So if more claims were set aside, it 10 would affect BDU's ability to meet the 11 adjudication targets? 12 A If more claims were set aside, it just 13 would mean that we'd probably would be 14 prioritizing other claims. We've got a lot of 15 cases to get through, so -- so, yeah, I mean, 16 we're not setting aside claims just to meet our 17 metrics. I get yelled at. It's okay. I move on. 18 But, you know, we're trying to get through them as 19 efficiently as possible under the mandate, but 20 we're not, you know, shortchanging reviews in 21 order to do that. 22 Q So the column 3 evidence listed here 23 for CEC, it doesn't appear to include evidence 24 that is culled from -- from borrower defense 25 applications themselves; is that correct?</p>	<p style="text-align: right;">Page 180</p> <p>1 if it's, you know, specific, it certainly could be 2 corroborating evidence. 3 Q Are you aware of that kind of 4 corroborating evidence for any school other than 5 ITT? 6 A Well, that's the only one that we've 7 completed recently, so I know there are others. I 8 couldn't tell you what their names are. You know, 9 some of them are smaller schools that wouldn't 10 necessarily be, you know, the kind of schools that 11 you would know off the top of your head, but there 12 certainly are others. 13 Q So looking again at CEC, so for -- just 14 to make sure I understand, so someone who enrolled 15 at Western School of Health and Business between 16 May 1st, '99 and May 22nd, '04, they would 17 potentially meet the common evidence and be set 18 aside? 19 A They would be set aside. The common 20 evidence may provide support for some -- one or 21 more elements of their application, so, you know, 22 if somebody alleges a misrepresentation claim, 23 there's the -- was the representation-made piece 24 and then the is-it-false piece or misleading or 25 deceptive or whatever the standard is.</p>
<p style="text-align: right;">Page 179</p> <p>1 A Well, if there is such evidence that's 2 broadly applicable and it shows up in the 3 sampling, then it potentially would be described 4 here, but I'm not aware of us having seen anything 5 from CEC borrowers that was kind of -- of the 6 scope that would be that broadly applicable. I'd 7 have to check with my team to see if they're aware 8 of anything, but I'm not. 9 Q What about if many borrowers describe 10 the same type of misconduct? Is there any sort of 11 critical mass that -- that warrants those 12 allegations being treated as evidence or at least 13 further looked into? 14 A It's -- it's not necessarily a critical 15 mass, but, certainly, if there are a lot of 16 borrowers who are making the same specific 17 allegations, then that would be something that -- 18 that we would consider. 19 And, I believe, that's actually 20 reflected in the ITT facts; that it's 21 corroborating evidence, essentially. It's not the 22 only evidence. We have other evidence, too. But 23 that borrowers are making the same kinds of claims 24 or referring to the same documents that they think 25 was misrepresenting something to them. If it's --</p>	<p style="text-align: right;">Page 181</p> <p>1 The common evidence may support part of 2 that and not the other part, so it's very specific 3 to the regulation and the lot at the end of the 4 day. But these cases are set aside because there 5 may be some common evidence that will get them 6 over the hurdle on one or more of the elements 7 potentially depending on what the law is that 8 applied to their case. 9 Q Okay. So if someone applied -- if 10 someone enrolled at Western School of Health and 11 Business other than during that date range, they 12 would still have the opportunity to make out their 13 claim by evidence they submit themselves; they 14 just wouldn't be assisted by the common evidence? 15 A That's right. 16 Q Would that be treated under what you've 17 called the one-off claim protocol? 18 A Well, yes, because basically it will 19 tell the reviewer to set that case aside for 20 further review by a senior attorney who will then 21 look at whether or not there's sufficient evidence 22 on all of these different issues. 23 So if -- if the borrower is not during 24 that time period, so we're looking at what their 25 own evidence is to satisfy each of the elements.</p>

12/09/2020

182 to 185

<p style="text-align: right;">Page 182</p> <p>1 If the reviewer sees any borrower evidence to</p> <p>2 support even some of it, then that's it. They</p> <p>3 stop and it gets set aside, you know, escalated,</p> <p>4 essentially, for consideration by one of the</p> <p>5 senior team.</p> <p>6 Q So if an applicant provides any</p> <p>7 documentation to support their claim, it gets set</p> <p>8 aside?</p> <p>9 A Not any documentation because a lot of</p> <p>10 what we get is -- you know, we have borrowers who</p> <p>11 allege, you know, an employment prospect, kind of</p> <p>12 they guaranteed me a job type of thing. And then</p> <p>13 the evidence that they attached may be relevant to</p> <p>14 something but not to that, so like a transcript or</p> <p>15 a program manual that doesn't have any</p> <p>16 representations regarding employment prospects,</p> <p>17 things like that. There would have to be evidence</p> <p>18 relevant to the claim that would potentially</p> <p>19 support the claim.</p> <p>20 If they make multiple claims and the</p> <p>21 evidence is relevant to any of that, then it would</p> <p>22 be set aside.</p> <p>23 Q Does the department make available any</p> <p>24 guidance to borrowers about the types of documents</p> <p>25 they should submit to support their claims?</p>	<p style="text-align: right;">Page 184</p> <p>1 A That's probably fair.</p> <p>2 Q I'd like to look at tab 25 in the</p> <p>3 printed materials on the -- on the Dropbox. This</p> <p>4 is bracket 25 Nevin Declaration Exhibit 18</p> <p>5 standard protocol.</p> <p>6 MS. ELLIS: And this has not previously</p> <p>7 been marked. I'd like to -- I'd like to mark</p> <p>8 this -- I believe we're on Exhibit 23 now.</p> <p>9 (Deposition Exhibit 23 was marked for</p> <p>10 identification and attached to the transcript.)</p> <p>11 BY MS. ELLIS:</p> <p>12 Q Do you recognize this document?</p> <p>13 A Yes.</p> <p>14 Q Can you describe what this document is?</p> <p>15 A It's a standard protocol, so this is</p> <p>16 what would be used for -- like we were referring</p> <p>17 to before, the cases that, you know, are a one-off</p> <p>18 kind of scenario or, you know, where there's not</p> <p>19 common evidence that would result in a separate</p> <p>20 protocol being developed for that particular</p> <p>21 school.</p> <p>22 Q And when -- when you say "one-off,"</p> <p>23 that doesn't necessarily mean that there was only</p> <p>24 one claim from that school; right?</p> <p>25 A That's right, because one turns into</p>
<p style="text-align: right;">Page 183</p> <p>1 A We -- the new application form, we</p> <p>2 tried to build that into it to, you know, give</p> <p>3 borrowers an indication of the kinds of things</p> <p>4 that would be helpful. So to some extent, I think</p> <p>5 that's in the newer application. I'm not aware of</p> <p>6 anything that was out there, though, previously.</p> <p>7 Q Did the department make publicly</p> <p>8 available any sort of list or other reference</p> <p>9 of -- of schools, programs, time periods for which</p> <p>10 common evidence exists?</p> <p>11 A Well, I think this is public now, so --</p> <p>12 Q Right.</p> <p>13 A -- I guess, yes.</p> <p>14 Q But before -- let's say before</p> <p>15 October 14th, 2020, when this was filed, was any</p> <p>16 sort of list like that publicly available?</p> <p>17 A No.</p> <p>18 Q So a borrower, at the time they apply,</p> <p>19 wouldn't have a way of knowing whether their claim</p> <p>20 could potentially fit into existing common</p> <p>21 evidence?</p> <p>22 A That's correct.</p> <p>23 Q And they wouldn't necessarily know what</p> <p>24 kind of documentation they would have to submit in</p> <p>25 order to have their claim considered?</p>	<p style="text-align: right;">Page 185</p> <p>1 two as soon as somebody else files one. So, yeah,</p> <p>2 we use that loosely to mean generally, you know,</p> <p>3 very small number of claims. I think, typically,</p> <p>4 we've viewed the threshold that, you know, under</p> <p>5 ten historically, but there are cases where we</p> <p>6 have probably somewhere in the 10 to 20 range that</p> <p>7 might still get this.</p> <p>8 Q Would this be a protocol that's applied</p> <p>9 to claims where there might actually be many from</p> <p>10 a particular school, but they've been determined</p> <p>11 to fall outside the common evidence?</p> <p>12 A What do you mean by "many"?</p> <p>13 Q Well, for instance, let's say Art</p> <p>14 Institutes, potentially thousands of claims.</p> <p>15 A No, this would never be for anything</p> <p>16 like that.</p> <p>17 If you look at the 2A -- 2A, you move</p> <p>18 on to part II. 2B, 6 to 20, there's a memo</p> <p>19 template that's completed as soon as the school</p> <p>20 hits six claims to determine whether the</p> <p>21 department, you know, has got any records</p> <p>22 regarding the school.</p> <p>23 We do that for -- for part A, that's</p> <p>24 kind of done on the back end in the clearance</p> <p>25 process, but, you know, the schools that are in --</p>

12/09/2020

186 to 189

<p style="text-align: right;">Page 186</p> <p>1 that fall into that 2A are typically, you know, 2 state school, you know, kind of -- could be 3 anything. We've got Ivy league schools that fit 4 into that category.</p> <p>5 But 2B, as soon as you hit that 6 threshold, there's an Internet search. We look to 7 see if there's, you know, AG actions, things like 8 that. So there's kind of a short memo where we 9 summarize whether there's anything out there that 10 we know about. And, then, once it hits 20, then 11 it gets kind of a longer memo with sampling.</p> <p>12 Q So what -- what would be the protocol 13 applicable to a school that has more than a 14 hundred cases?</p> <p>15 A So we'll be producing those, but they 16 would each have their own individual protocol, so 17 it wouldn't be the standard protocol that would be 18 used, and it will define the categories that would 19 match up with that spreadsheet that we -- or the 20 chart that we were just looking at. So, you know, 21 depending on what the parameters are of the 22 evidence -- the scope of the evidence generally, 23 then we would determine what's going to get set 24 aside, essentially.</p> <p>25 So it may be that it's all campuses,</p>	<p style="text-align: right;">Page 188</p> <p>1 borrower enrolled between 2010 and 2012, advise 2 your supervisor, move on, or move the case to 3 status X and move on.</p> <p>4 If it doesn't do that, then next look 5 for this because maybe we have common evidence 6 related to a specific campus somewhere during a 7 different period of time. If so, advise your 8 supervisor and move on, or move it to status, 9 whatever, and move on.</p> <p>10 If you jump through those hurdles and 11 it's not matching up with anything that's in that 12 chart, then you kind of get to what mirrors the 13 standard protocol, and, then, it's based on what 14 the borrower has, him or herself.</p> <p>15 Q Okay. So once -- once you've 16 determined that it should not be set aside based 17 on the common evidence protocol, you would go to 18 something that looks like what's called part II 19 here in the standard protocol?</p> <p>20 A Correct.</p> <p>21 Q Okay. So here for these schools where 22 there's less than 100 cases, there might be this 23 small-batch or medium-batch memo created depending 24 on the number of claims.</p> <p>25 And, then, what happens to those memos</p>
<p style="text-align: right;">Page 187</p> <p>1 all, you know, programs for some period of time, 2 and then anything that's inside that window gets 3 set aside. It might be that it's limited to a 4 certain program like, you know, the criminal 5 justice one that I was referring to before, so a 6 nursing program, we would go ahead and adjudicate 7 it.</p> <p>8 And in that instance, it will probably 9 mirror the standard protocol to a large extent for 10 things that fall outside, but it has very specific 11 instructions on things that are related to or 12 potentially related to the common evidence.</p> <p>13 Q So for one of those schools that has 14 its own school specific protocol, the reviewer 15 first would compare the application to the scope 16 of the common evidence as it's been determined so 17 far; is that correct?</p> <p>18 A Not the reviewer. The reviewer opens 19 the application, looks at the school. There's a 20 spreadsheet that identifies what the appropriate 21 protocol is for that school. They pull up the 22 protocol. That protocol has already kind of 23 delineated what's related to the common evidence 24 and what's not by telling them what cannot 25 adjudicate, so, you know, if you find that your</p>	<p style="text-align: right;">Page 189</p> <p>1 once they're created?</p> <p>2 A What do you mean what happens to them?</p> <p>3 Q The instruction number -- part I, 4 instruction 3 here says, Once you complete the 5 appropriate memo, email the appropriate borrower 6 defense attorney to tell them you've completed the 7 memo, then what does the borrower defense attorney 8 do with the memo?</p> <p>9 A So, then, it's in somebody else's 10 court, so if your question is what would happen 11 with respect to the reviewer, it tells them to go 12 on to the cases where -- you know, that's not the 13 case.</p> <p>14 But the memo itself then would be 15 reviewed and edited and probably follow-up 16 questions and discussions and maybe further work 17 with respect to the memo before it's finalized. 18 So that kind of gets handed off to one of the more 19 senior team members at that point.</p> <p>20 Q What's the usual turnaround time for 21 the senior team member reviewing the memo and 22 getting back to the person who wrote it you?</p> <p>23 A I don't know, but I'm sure it varies 24 pretty considerably based on workloads. Nearly 25 all of my senior attorneys and a good number of</p>

12/09/2020

190 to 193

<p style="text-align: right;">Page 190</p> <p>1 junior attorneys work on multiple things, so it 2 probably varies quite a bit.</p> <p>3 Q Do you know how many small- and 4 medium-batched memos have been written?</p> <p>5 A I don't know what the breakdown is. 6 Like I said, we have about 500 memos altogether, I 7 think, somewhere in that neighborhood. So it's 8 some subset of that, but I couldn't give you 9 ballpark on that.</p> <p>10 Q These are included -- when you say, 11 generally, you have about 500 school-specific 12 memos, that includes these ones for the smaller 13 schools?</p> <p>14 A Yes.</p> <p>15 Q Okay. This document is watermarked as 16 a draft. Is it actually a draft?</p> <p>17 A I don't -- I'd have to do kind of a 18 line-by-line comparison. It may be just that -- 19 when was this produced? Last November?</p> <p>20 Q Yes, this was attached to your book 21 number 2019 declaration.</p> <p>22 A Yeah, I can't say for sure, but if it 23 was -- what was it attached to?</p> <p>24 Q It was exhibit 18 to your declaration 25 from November 2019.</p>	<p style="text-align: right;">Page 192</p> <p>1 looks like in the original it hyperlinked to a 2 document called Types of Claims 10/23/2018.</p> <p>3 Can you describe what that document is?</p> <p>4 A Yeah, so it -- it kind of breaks down 5 examples of, you know, what states a claim and 6 what doesn't state a claim just to make it kind of 7 more concrete for training purposes and to refresh 8 people's memories when they're doing these if they 9 haven't done that particular claim for a while.</p> <p>10 So an example would be -- I think one 11 of the things in there would say something -- it 12 says something like, doesn't state a claim would 13 be my credits didn't transfer, but the borrower 14 doesn't make any allegation that the school ever 15 told them that their credits would transfer.</p> <p>16 And then the corollary of what does 17 state a claim is the school told me that my 18 credits would transfer, but they didn't.</p> <p>19 So it kind of gives different kinds of 20 examples.</p> <p>21 Similarly, I couldn't get a job would 22 be, you know, not something that includes the 23 representation or some kind of conduct on the part 24 of the school, but the school promised me that I 25 would get a job when I graduated, that --</p>
<p style="text-align: right;">Page 191</p> <p>1 A Oh, we might have just enclosed the 2 wrong document, then.</p> <p>3 We certainly had a final version of 4 this, and this looks, if not exactly like that -- 5 or it very well may be the final version and just 6 the watermark wasn't removed.</p> <p>7 Or, you know, we've had so many 8 platform updates, so if you see in here in a 9 couple of places it has, like, status numbers and 10 things like that, so we've tweaked the protocol 11 any time there's a change in the platform that 12 requires something to be adjusted to make sure 13 that the data is appropriately corrected. I'm 14 wondering if it was in connection with something 15 along those lines that maybe there was an update 16 and they added a draft stamp and we just didn't 17 take it off.</p> <p>18 Q But this is at least very close to the 19 final form of this document that reviewers 20 actually use?</p> <p>21 A Yeah, it definitely looks to be, if not 22 the document, to be very close to it.</p> <p>23 Q Great.</p> <p>24 Moving down to part II, entitled Case 25 Review, part II instruction 2, refers to -- and it</p>	<p style="text-align: right;">Page 193</p> <p>1 that's -- so it's things like that, and it's based 2 on kind of the type of common allegations that we 3 have.</p> <p>4 Q Do you know if that document has been 5 updated since 10/23/2018?</p> <p>6 A I don't think so because that kind of 7 thing doesn't change. I would have to check, but 8 I believe it's still actually the same document in 9 our current protocols and that would be produced 10 to you with our other protocols.</p> <p>11 Q Okay. What if there's an allegation 12 that doesn't sort of comfortably fit within the 13 types of claims that are described in that 14 document? What would a reviewer do with that?</p> <p>15 A Yeah, we have an "other" bucket on the 16 application, so, you know, they're kind of our 17 common kinds of allegations, and then there's an 18 "other" at the end. So we do typically get that 19 phrase, but if they see anything that's not 20 clearly covered by something that they have a 21 protocol for, that they should contact their 22 supervisor and get further instruction. So that 23 would be set aside until they had clear 24 parameters.</p> <p>25 If it was something novel, that could</p>

12/09/2020

194 to 197

<p style="text-align: right;">Page 194</p> <p>1 potentially end up in all the cases for that 2 school being put on hold until we figure out 3 whether there's any common evidence related to it, 4 be, but it doesn't happen that often believe it or 5 not. We tend to see a lot of the same kinds of 6 things over and over again.</p> <p>7 Q Okay. On instruction 4, If the 8 borrower attaches any evidence that supports that 9 borrower's particular allegation, but does not 10 indicate any larger action against the school, 11 email your assigned QC attorney, et cetera, and 12 stop work on the case.</p> <p>13 So that's the situation we were talking 14 about earlier, right, where, if the reviewer 15 thinks that there's sufficient evidence to support 16 the claim, they're to elevate it?</p> <p>17 A Not even sufficient. Any evidence that 18 supports the claim.</p> <p>19 Q How -- how do you draw the distinction 20 between evidence that supports a borrower's claim, 21 but not a more general claim -- or not a larger 22 action against the school as it's put here?</p> <p>23 A You know, the latter -- the sort of 24 borrower-specific scenario. It could be an email 25 that a recruiter sent to an individual borrower,</p>	<p style="text-align: right;">Page 196</p> <p>1 say, you know, let's see if other students also 2 were alleging guaranteed employment, 3 misrepresentations around that time?</p> <p>4 A Well, a couple of different things 5 could happen there. You know, once you have the 6 name of a specific -- you know, if it was an email 7 from a recruiter, and now we know that the 8 recruiter is John Smith, we can search our -- you 9 know, our claims. We have the ability to search 10 somewhat in our system to see if John Smith shows 11 up in other borrower applications, so we would 12 probably do that to see if other borrowers has had 13 an allegation regarding him.</p> <p>14 Any time that we discovered new 15 evidence, we also would potentially consider 16 reopening other cases. So it could be that 17 something like that would give rise to 18 (indiscernible) what we have, and if it's an open 19 school, maybe requesting documents from the 20 school.</p> <p>21 But we haven't had that happen very 22 often to be honest with you. So I think that 23 there's a pretty small number where the borrowers 24 have that level of information, usually 25 (inaudible) --</p>
<p style="text-align: right;">Page 195</p> <p>1 so, you know, making a promise in that email, 2 that's not something that was publicly 3 disseminated to a whole bunch of other people 4 unless there's evidence that that recruiter, you 5 know, was making similar allegations to other 6 people and, you know, this would suggest that 7 we're not aware of any common evidence to that 8 effect. Then that would be borrower specific, so 9 it wouldn't give enough to get somebody else over 10 that hurdle.</p> <p>11 So that would be a borrower-specific 12 scenario.</p> <p>13 More often, though, if we see common 14 evidence, if in doubt, it kind of gets thrown into 15 the pool of common evidence and is considered 16 broadly if it's not clearly borrower specific.</p> <p>17 Q So in -- in that sort of scenario, if a 18 borrower attached an email from a recruiter where 19 the recruiter, you know, clearly was 20 misrepresenting guaranteed employment or something 21 like that, and the reviewer then elevated that 22 application and said, you know, here's this email 23 that I think supports the claim, would that 24 trigger any sort of investigation or claim 25 sampling from other students at that school to</p>	<p style="text-align: right;">Page 197</p> <p>1 THE COURT REPORTER: Guys, I'm not 2 hearing her at all.</p> <p>3 MR. MERRITT: Yeah, she just cut out.</p> <p>4 MS. ELLIS: Colleen, your audio just 5 went out.</p> <p>6 MR. MERRITT: Now, it says you're on 7 mute, Colleen, for whatever that's worth, 8 but . . .</p> <p>9 THE WITNESS: Can you hear me?</p> <p>10 MS. ELLIS: Now, we can.</p> <p>11 MR. MERRITT: Yes.</p> <p>12 THE WITNESS: I'm going to dial back 13 in. My call just dropped for whatever reason. 14 I'm so sorry.</p> <p>15 THE VIDEOGRAPHER: Okay.</p> <p>16 THE WITNESS: I've got to go through 17 this process again. Joe, can you walk me through 18 this again? It doesn't look like I'm getting the 19 same options.</p> <p>20 THE VIDEOGRAPHER: Yes.</p> <p>21 Would you like to go off the record, 22 Counsel?</p> <p>23 MS. ELLIS: Yes, could we go off the 24 record a minute to fix this?</p> <p>25 THE VIDEOGRAPHER: Sure.</p>

12/09/2020

198 to 201

<p style="text-align: right;">Page 198</p> <p>1 MR. MERRITT: Yes.</p> <p>2 THE VIDEOGRAPHER: We are now off the</p> <p>3 record. The time is 19:58 -- excuse me,</p> <p>4 19:59 UTC.</p> <p>5 (Recess -- 2:59 p.m.)</p> <p>6 (After recess -- 3:00 p.m.)</p> <p>7 THE VIDEOGRAPHER: We are now on the</p> <p>8 record. The time is 20:00 UTC.</p> <p>9 MS. ELLIS: Could the reporter please</p> <p>10 read the last couple lines that you were able to</p> <p>11 get before the audio cut out? Dana, can you hear</p> <p>12 me?</p> <p>13 THE COURT REPORTER: I'm sorry. Were</p> <p>14 you not hearing me? I'm sorry.</p> <p>15 MS. ELLIS: Yeah, I think you were on</p> <p>16 mute.</p> <p>17 THE COURT REPORTER: Okay.</p> <p>18 MS. ELLIS: Would you mind --</p> <p>19 THE COURT REPORTER: Sure.</p> <p>20 MS. ELLIS: -- just back those last few</p> <p>21 lines? Thank you.</p> <p>22 THE COURT REPORTER: Sure.</p> <p>23 (The Record was read as requested.)</p> <p>24 THE WITNESS: Okay.</p> <p>25 BY MS. ELLIS:</p>	<p style="text-align: right;">Page 200</p> <p>1 would not support the employment-prospect claim.</p> <p>2 But if the borrower alleged a</p> <p>3 programmatic accreditation misrepresentation and</p> <p>4 attached a manual that had any reference at all to</p> <p>5 accreditation, that would be set aside.</p> <p>6 So I don't know that it -- it may</p> <p>7 actually be covered (indiscernible) done on type</p> <p>8 of claim documents -- well, I can't remember. But</p> <p>9 that's the kind of thing we go over in the</p> <p>10 training.</p> <p>11 Q Is that written down in training</p> <p>12 materials, PowerPoints or handouts, anything like</p> <p>13 that?</p> <p>14 A I don't recall.</p> <p>15 Q Do you know if anyone has searched for</p> <p>16 materials like that for discovery in this case?</p> <p>17 A If we had searched for it?</p> <p>18 Q Yes.</p> <p>19 A I think -- I think we're pulling the</p> <p>20 training materials in connection with one of the</p> <p>21 requests. I can't remember which one.</p> <p>22 Q Okay. So I just want to understand.</p> <p>23 The applications that are elevated either because</p> <p>24 they might fit within common evidence or because</p> <p>25 they provide some of their own evidence, those are</p>
<p style="text-align: right;">Page 199</p> <p>1 Q Do you have anything you'd want to add</p> <p>2 to what you were saying?</p> <p>3 A No, I think that covers it.</p> <p>4 Q Okay. So are reviewers given</p> <p>5 anything -- any guidance that's sort of similar to</p> <p>6 that types of claims 10/23/18 document for</p> <p>7 evidence, something that would tell -- tell them,</p> <p>8 here's the sort of evidence that supports a claim,</p> <p>9 and here's the sort of evidence that does not</p> <p>10 support a claim?</p> <p>11 A I don't recall. There may be something</p> <p>12 in the training materials, but, like I said, the</p> <p>13 threshold is very low. If they see anything that</p> <p>14 could potentially support approval, they're</p> <p>15 supposed to escalate it.</p> <p>16 Q I guess I'm just trying to understand</p> <p>17 how they would identify a thing that could</p> <p>18 potentially support approval?</p> <p>19 A I mean, I think we cover in the</p> <p>20 training the kinds of things that we see in cases</p> <p>21 and what borrowers typically include and whether</p> <p>22 that does or doesn't support it, so going back to</p> <p>23 my example, the most often scenario is we get a</p> <p>24 borrower who alleges employment prospect kind of</p> <p>25 claim and then attaches a transcript, so that</p>	<p style="text-align: right;">Page 201</p> <p>1 elevated to the senior borrower defense attorneys;</p> <p>2 is that correct?</p> <p>3 A You said -- you say this a couple of</p> <p>4 times, "fit within the common evidence," and I</p> <p>5 think I would say it's not that the application</p> <p>6 fits within the common evidence. It's that we've</p> <p>7 concluded that the common evidence potentially</p> <p>8 supports some part of the element of the</p> <p>9 borrower's application.</p> <p>10 And that said, in terms of elevated,</p> <p>11 this is specific to kind of the scenarios of, you</p> <p>12 know, one-offs and, you know, where it's outside</p> <p>13 of the common evidence is the conclusion already.</p> <p>14 So these are getting escalated to a</p> <p>15 senior attorney to have a more meaningful</p> <p>16 discussion about what the specific allegations or</p> <p>17 evidence is, et cetera, and determine what the</p> <p>18 next steps are.</p> <p>19 So kind of different tasks.</p> <p>20 Q Okay. So I'll take them one at a time.</p> <p>21 If we're talking about the one-off or</p> <p>22 no common evidence types of claims that have some</p> <p>23 supporting documentation on their own, those are</p> <p>24 elevated, you just said, to a more senior attorney</p> <p>25 for a discussion of next steps.</p>

12/09/2020

202 to 205

<p style="text-align: right;">Page 202</p> <p>1 When -- how long does it generally take</p> <p>2 between when an application is elevated and when a</p> <p>3 final decision is reached?</p> <p>4 A That assumes that that's getting worked</p> <p>5 on right away, and it's not. So those are pretty</p> <p>6 much set aside because they're more complex and</p> <p>7 they're going to take more time to address.</p> <p>8 So it's not that, you know, the</p> <p>9 reviewer identifies it this morning, and then in</p> <p>10 the afternoon they get feedback on it and the case</p> <p>11 gets adjudicated. If it's set aside, it's</p> <p>12 probably set aside for some period of time until</p> <p>13 someone has the bandwidth to, you know, dive into</p> <p>14 the school a little more deeply and see if there</p> <p>15 are additional steps that need to be taken.</p> <p>16 Q Okay. Any -- can you make a</p> <p>17 generalization about what that "some period of</p> <p>18 time" might be?</p> <p>19 A No, there's no set time period.</p> <p>20 Q Okay. So is it the case that many</p> <p>21 applications that get elevated may be set aside</p> <p>22 for weeks?</p> <p>23 A Sure.</p> <p>24 Q Yeah.</p> <p>25 A Yep.</p>	<p style="text-align: right;">Page 204</p> <p>1 with priorities and trying to make sure that we</p> <p>2 can adjudicate as many cases as possible. Those</p> <p>3 are much more time-consuming. We probably would</p> <p>4 want to document either way whether there was</p> <p>5 sufficient evidence to approve it or that we</p> <p>6 determined that it wasn't sufficient evidence. So</p> <p>7 those are still on hold while we work on the cases</p> <p>8 that have protocols.</p> <p>9 Q Okay. Is there -- is this generally a</p> <p>10 written feedback process or a verbal one where the</p> <p>11 senior attorney would tell the reviewing attorney</p> <p>12 this is not really enough evidence; go ahead and</p> <p>13 deny the claim?</p> <p>14 A I think it's often email or we use</p> <p>15 Teams Chat or I think at one point we used Skype.</p> <p>16 We also have very frequent training, so it could</p> <p>17 take different forms depending on whether it's the</p> <p>18 kind of thing that would -- you know, that more</p> <p>19 than one reviewer might see. Then it might be</p> <p>20 something that would be addressed in a</p> <p>21 supplemental training so that not just that</p> <p>22 reviewer, but all of the reviewers, could get the</p> <p>23 benefit of that information.</p> <p>24 Q So, then, as we continue looking down</p> <p>25 the standard protocol, number 5 says, If the</p>
<p style="text-align: right;">Page 203</p> <p>1 Q Then -- but some -- have -- have any</p> <p>2 applications that have been elevated under that</p> <p>3 kind of protocol been finally adjudicated?</p> <p>4 A You know, if the reviewer is fairly new</p> <p>5 and they're -- you know, they're following our</p> <p>6 instructions, that the bar is very low, so if they</p> <p>7 have any question at all, to kind of escalate it,</p> <p>8 they may be escalating way too much and actually,</p> <p>9 you know, escalating things that aren't evidence</p> <p>10 that's actually related to the claim.</p> <p>11 So I'm sure there have been some where</p> <p>12 the supervising attorney works with the junior</p> <p>13 attorney to explain why that actually wasn't</p> <p>14 evidence that was related to the claim and,</p> <p>15 therefore, it could be -- could move forward with</p> <p>16 adjudication.</p> <p>17 But there haven't been cases</p> <p>18 adjudicated where there was a weighing of the</p> <p>19 evidence. So if the supervising attorney agreed</p> <p>20 that it was evidence that was relevant to the</p> <p>21 claim, then that would still be pending at this</p> <p>22 point.</p> <p>23 Q Why haven't any of those been</p> <p>24 adjudicated?</p> <p>25 A We're just -- it's a sequencing issue</p>	<p style="text-align: right;">Page 205</p> <p>1 allegation does not state a claim, does not state</p> <p>2 a BD claim or does not have sufficient evidence to</p> <p>3 support a claim, set the allegation review</p> <p>4 recommendation as denied.</p> <p>5 So does this mean that -- that a</p> <p>6 first-level reviewing attorney can deny a claim</p> <p>7 based on their review of the evidence, but cannot</p> <p>8 approve a claim based on their review of the</p> <p>9 evidence?</p> <p>10 A Well, no, I would disagree with the</p> <p>11 premise because they're not -- they're not denying</p> <p>12 it based on a review of the evidence. They're</p> <p>13 denying it based on a lack of evidence, or they're</p> <p>14 basing it on failure to state a claim or failure</p> <p>15 to state a claim as actionable under BD.</p> <p>16 But if your question is they deny it,</p> <p>17 yes, the protocol clearly sets out what they're</p> <p>18 allowed to do.</p> <p>19 Q When I said "review of the evidence,"</p> <p>20 what I meant, essentially, was opening up the</p> <p>21 application, looking at the application itself and</p> <p>22 anything attached to it, and on the basis of</p> <p>23 looking at those documents, they can deny the</p> <p>24 claim.</p> <p>25 Is that accurate?</p>

<p style="text-align: right;">Page 206</p> <p>1 A That's accurate.</p> <p>2 Q But they cannot approve the claim?</p> <p>3 A Well, once there's a protocol, they</p> <p>4 will be able to. So for Corinthian job prospects,</p> <p>5 for Corinthian transfer of the credits, for</p> <p>6 Corinthian JPR claims, all of those, ITT, they can</p> <p>7 approve the claim. It's just that it has to be</p> <p>8 reduced to a very clear protocol with very</p> <p>9 specific parameters.</p> <p>10 Q Understood.</p> <p>11 But a line reviewer can't approve a</p> <p>12 claim based on individual evidence submitted by</p> <p>13 the borrower?</p> <p>14 A That's right. We don't have them do an</p> <p>15 assessment of, you know, kind of a weighing of the</p> <p>16 evidence or determining the sufficiency. It's too</p> <p>17 complicated at that level to try to just open a</p> <p>18 claim. You'd have to understand what the elements</p> <p>19 of the claim are, and that's dependent on the</p> <p>20 regulation and the state law and, you know,</p> <p>21 whether there's common evidence that supports some</p> <p>22 element.</p> <p>23 So the only way to make sure that we're</p> <p>24 giving consistent and fair results is to give them</p> <p>25 very clear criteria.</p>	<p style="text-align: right;">Page 208</p> <p>1 either by somebody on the quality control team or</p> <p>2 their supervisor or potentially both. And then,</p> <p>3 you know, throughout their, you know, review</p> <p>4 process, depending on whether they're off of the</p> <p>5 probationary period, then, you know, there's a</p> <p>6 certain percentage of claims that are reviewed as</p> <p>7 well.</p> <p>8 So it kind of depends on how long</p> <p>9 they've been with us and where they are in the</p> <p>10 process, but we have a pretty robust training</p> <p>11 process.</p> <p>12 Q I'd like to look at the responses to</p> <p>13 interrogatories. This is Exhibit 22. I'm looking</p> <p>14 at page 16 which if you flip back to page 15</p> <p>15 you'll see this is the response to interrogatory</p> <p>16 number 12 which asks about training for people who</p> <p>17 adjudicate borrower defense claims.</p> <p>18 At the bottom of page 16, this</p> <p>19 interrogatory response refers to follow up</p> <p>20 trainings to improve the quality of draft denial</p> <p>21 letters around the end of 2018.</p> <p>22 I was -- I want to ask about what --</p> <p>23 what form of denial letter was being used at the</p> <p>24 end of 2018?</p> <p>25 A These were -- people were trained on</p>
<p style="text-align: right;">Page 207</p> <p>1 Q Why is it important to have consistent</p> <p>2 and clear criteria for approvals, but not denials?</p> <p>3 A I disagree with your premise. I think</p> <p>4 that they're both consistent.</p> <p>5 Q Is there a protocol like the protocol</p> <p>6 for approvals that lays things out consistently</p> <p>7 and clearly to determine whether a claim should be</p> <p>8 denied?</p> <p>9 A I think our protocols do lay that out</p> <p>10 consistently and allow for a consistent and fair</p> <p>11 adjudication either way.</p> <p>12 Q Are you referring to this standard</p> <p>13 protocol as one example that allows a consistent</p> <p>14 and clear result either way?</p> <p>15 A I said consistent and fair.</p> <p>16 Q I'm -- I'm sorry. Yes.</p> <p>17 A Yes.</p> <p>18 Q The borrower defense senior attorneys</p> <p>19 perform quality control review of the line</p> <p>20 attorneys; is that correct?</p> <p>21 A We have a quality control team, and</p> <p>22 then we also -- we have sort of different stages.</p> <p>23 When somebody new joins BD, they go through a full</p> <p>24 week of training and probationary period, so all</p> <p>25 of their claims are reviewed at that point by</p>	<p style="text-align: right;">Page 209</p> <p>1 but they never went out. These draft letters</p> <p>2 were --</p> <p>3 Let me read the paragraph for a second.</p> <p>4 (Witness reviews document.)</p> <p>5 Yeah. So the earliest iteration of the</p> <p>6 letters for one-off claims were not one of the</p> <p>7 automated templates. They were draft letters that</p> <p>8 I mentioned before (indiscernible) trying to</p> <p>9 figure out how to handle the one-off.</p> <p>10 And, so, we had contract attorneys take</p> <p>11 a crack at drafting the letters, and then they</p> <p>12 were reviewed -- each letter would be reviewed by,</p> <p>13 you know, a permanent member of the BD team and</p> <p>14 work with the contract attorney to both review the</p> <p>15 substance and the -- the form of the letter.</p> <p>16 It was a very time-consuming and,</p> <p>17 ultimately, not very successful effort to use the</p> <p>18 contract attorneys in that capacity, so none of</p> <p>19 those cases actually resulted in the receipt of</p> <p>20 these letters. They, ultimately, became, I think,</p> <p>21 some of the letters -- the letters that went out</p> <p>22 in 2019.</p> <p>23 Q In 2018 in -- around the end of 2018,</p> <p>24 that was during the period when no decisions were</p> <p>25 being processed; is that right?</p>

<p style="text-align: right;">Page 210</p> <p>1 A Yes.</p> <p>2 Q So this was a project you were working</p> <p>3 on in anticipation of when processing began again?</p> <p>4 A Yeah. Yeah.</p> <p>5 Q So for all of the borrowers who have</p> <p>6 received form C or D denial letters since the end</p> <p>7 of 2019, and those are the ones for non-Corinthian</p> <p>8 claims, is it fair to say that none of -- none of</p> <p>9 those applications had any evidence weighed in</p> <p>10 relation to their claim?</p> <p>11 A Unless it was an ITT case for which we</p> <p>12 had a protocol, so that would have been -- the</p> <p>13 reviewer didn't do the weighing, but the weighing</p> <p>14 was done before the approval protocol, but I think</p> <p>15 with that exception your statement is correct.</p> <p>16 Q Okay.</p> <p>17 A One thing I just wanted to clarify</p> <p>18 because I'm not sure I was clear on before. When</p> <p>19 we were talking about -- I think it was</p> <p>20 Ms. Sweet's letter, you were also asking about</p> <p>21 reliance kind of in a related thread. I just</p> <p>22 wanted to make clear that the letters C and D that</p> <p>23 have gone out were not -- those were not based on</p> <p>24 a denial related to reliance.</p> <p>25 Those were based on the reasons that we</p>	<p style="text-align: right;">Page 212</p> <p>1 were looking at earlier that was tab 15,</p> <p>2 Exhibit 15 from the Jones deposition and the</p> <p>3 denial letter starts at page 51 of that document.</p> <p>4 A Sorry. Is this the declaration of</p> <p>5 Eileen Connor document?</p> <p>6 Q Yes, that's right. And attached to the</p> <p>7 declaration of Eileen Connor is the affidavit of</p> <p>8 Theresa Sweet and attached to that is the denial</p> <p>9 letter near the end of the document.</p> <p>10 A Got it. Okay.</p> <p>11 Q Okay. So looking down on the third</p> <p>12 page of the denial letter, which is page 53 of</p> <p>13 this document overall, there's a heading, What if</p> <p>14 I do not agree with this decision.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And it continues on the next page, In</p> <p>18 your request for reconsideration, please provide</p> <p>19 the following information, and there's a list of</p> <p>20 three things to include in the reconsideration</p> <p>21 application.</p> <p>22 Do you see that?</p> <p>23 A I do.</p> <p>24 Q Okay. Can you read item 2 on that</p> <p>25 list, please?</p>
<p style="text-align: right;">Page 211</p> <p>1 just talked about. Either a failure to state a</p> <p>2 claim in the sense that they said, you know, I</p> <p>3 couldn't transfer my credits, but they didn't say</p> <p>4 that they -- you know, that there was a</p> <p>5 misrepresentation.</p> <p>6 That kind of thing is the failure to</p> <p>7 state a claim that would be reflected in what went</p> <p>8 out for the C and D category.</p> <p>9 MS. ELLIS: Okay. I think we've been</p> <p>10 going for a while with the exception for our tech</p> <p>11 breaks, so let's take a real five-minute break</p> <p>12 here if that's all right.</p> <p>13 THE WITNESS: Great.</p> <p>14 MR. MERRITT: Yes.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 MS. ELLIS: All right. Thank you.</p> <p>17 THE VIDEOGRAPHER: We are now off the</p> <p>18 record. The time is 20:21 UTC.</p> <p>19 (Recess -- 3:21 p.m.)</p> <p>20 (After recess -- 3:37 p.m.)</p> <p>21 THE VIDEOGRAPHER: We're now on the</p> <p>22 record. The time is 20:37 UTC.</p> <p>23 BY MS. ELLIS:</p> <p>24 Q Okay. So I'd like to go back to the</p> <p>25 denial letter that Theresa Sweet received that we</p>	<p style="text-align: right;">Page 213</p> <p>1 A Item 2 is, Why you believe that ED</p> <p>2 incorrectly decided your borrower defense</p> <p>3 repayment application.</p> <p>4 Q Okay. Based on reading this form D</p> <p>5 denial letter, what basis would a borrower have to</p> <p>6 assert that ED incorrectly decided her borrower</p> <p>7 defense application?</p> <p>8 A Which claim, I guess, is she requesting</p> <p>9 reconsideration on?</p> <p>10 Q Well, let's start theoretically with</p> <p>11 Allegation 1, Employment Prospects.</p> <p>12 A So failure to state a legal claim. I'm</p> <p>13 sorry. Can you repeat your question?</p> <p>14 Q I guess I'll -- I can rephrase. How</p> <p>15 would the borrower know what failure to state a</p> <p>16 legal claim means in this context?</p> <p>17 A I don't really have an answer to that.</p> <p>18 I don't know.</p> <p>19 Q Is there a standard reconsideration</p> <p>20 form that a borrower can fill out?</p> <p>21 A Not currently. There's a whole process</p> <p>22 that has to happen for forms that collect data</p> <p>23 from borrowers, so that was something that was</p> <p>24 discussed a while back. We've actually expanded</p> <p>25 the reconsideration process beyond what the</p>

<p style="text-align: right;">Page 214</p> <p>1 regulation requires because under the 2016 2 regulation, you can only -- well, you can seek 3 reconsideration if you have new evidence that 4 wasn't considered in connection with your 5 application. 6 I had already advocated for having a 7 reconsideration process, period, going back to the 8 beginning of time, but in particular I think with 9 respect to the pace that we're working on these 10 adjudications now, we wanted to make sure that we 11 had a mechanism for correcting any mistakes that 12 we made. 13 So -- so we've actually got a more 14 expansive reconsideration. You know, it's more 15 expansive in terms of who can -- who can seek it. 16 You know, to the extent that these 17 letters maybe aren't perfect and could provide 18 better information, I don't know what the borrower 19 would look to in particular, but, you know, 20 certainly if they -- on that one if she, you know, 21 articulated her claim more fully -- sometimes we 22 get very short statements in the allegations, and 23 if she gave more information that perhaps could 24 lead to a different result. 25 We do have a lot of applications that</p>	<p style="text-align: right;">Page 216</p> <p>1 had. I don't know. 2 But, you know, certainly, if they have 3 evidence that they didn't provide that wasn't with 4 their application, then that would be something 5 that would be helpful to do. But it could just 6 be, you know, identifying evidence that may be 7 available elsewhere, too, because we may not know 8 about it. 9 Q Okay. But if a -- if a borrower were 10 to resubmit the same evidence they submitted the 11 first time but with a more fulsome explanation, 12 that would receive review as a -- as a complete 13 reconsideration application? 14 A Under current policy, yes. 15 Q Right above this section here above, 16 What if I do not agree with this decision, there's 17 another section that's titled, What evidence was 18 considered in determining my application's 19 ineligibility. 20 Is there any way for the borrower to 21 find out more about what was considered under this 22 heading beyond the description provided here? 23 A Currently, no. 24 Q How many people have applied for 25 reconsideration in 2020?</p>
<p style="text-align: right;">Page 215</p> <p>1 came in before there was even an application, so 2 they were on emails, there was a template or an 3 entity called the Debt Collective. I think 4 there's still an entity called the Debt Collective 5 that had their own form. Sometimes it's just a 6 factor of how it came in, and there could be a 7 scenario where a borrower could provide more 8 detail in the request for reconsideration that 9 would result in a different result. 10 Q Okay. But there's nothing in the 11 denial letter that explains that to the borrower; 12 is that correct? 13 A I think that's fair. 14 Q And then looking at -- back at the list 15 of what to provide in the reconsideration 16 application, item 3 says, Identify and provide any 17 evidence that demonstrates why ED should approve 18 your borrower defense to repayment under the 19 applicable law set forth above. 20 So do I understand from what you've 21 just said that this isn't meant to require new 22 evidence; it's any evidence? 23 A It could be new evidence. It could be 24 that the borrower referenced evidence and then 25 didn't actually include it. Maybe they thought we</p>	<p style="text-align: right;">Page 217</p> <p>1 A I don't know if I've seen data on that 2 lately. I believe it was at least a few thousand 3 as of a couple of months ago, but I can't be sure 4 of exact numbers. 5 Q And what's the process for handling 6 reconsideration applications when they come in? 7 A Well, we're -- we're adding some 8 enhancements to our -- our platform to kind of 9 provide a -- a better mechanism to do it, but 10 right now the -- the request comes in -- it can 11 come in -- sometimes it's immediately in response 12 to the email, so these notifications go out to the 13 borrower by email, and this tells them how to 14 respond. So sometimes shortly after they get 15 their decision, they submit a request. Other 16 times, they gather additional evidence and then 17 submit it later. 18 But it goes through our intake process 19 kind of -- sort of along the lines of the way the 20 application comes in, and then it's associated 21 with their application on the review platform. 22 Q And then how long does it take between 23 when the application gets entered into the review 24 platform and someone actually reviews it? 25 A We haven't actually started the reviews</p>

<p style="text-align: right;">Page 218</p> <p>1 for reconsideration yet. We just started building 2 up the reconsideration process for the 3 job-placement-rate claims in particular because 4 those have been the ones that have probably been 5 decided the longest, but we've been focusing on 6 trying to get through -- getting original 7 decisions to the entirety of the 340,000 people 8 that applied first and then reconsideration. Once 9 I have a little bit more bandwidth, we'll start 10 moving forward on getting responses to those.</p> <p>11 Q Okay. On -- I'm going down to the next 12 page again with the items 1 through 3. And 13 looking at the paragraph following those numbers 1 14 through 3, the third sentence in that paragraph 15 says, Additionally, your loans will not be placed 16 into forbearance unless your request for 17 reconsideration is accepted and your case is 18 reopened.</p> <p>19 What does "accepted" mean in this 20 context?</p> <p>21 A Well, we haven't really had to deal 22 with that yet because of the CARES Act and the 23 fact that all loans are in forbearance currently, 24 but that's something that we're trying to figure 25 out between now and the end of the year; although,</p>	<p style="text-align: right;">Page 220</p> <p>1 figure that out before the CARES Act expires so 2 that we can address that.</p> <p>3 Q Is there a standard that's applied for 4 whether a reconsideration application will be 5 accepted?</p> <p>6 A There will be. Like I said, we haven't 7 really filled out that process because we've been 8 focusing on trying to get results to the folks who 9 still have pending original claims.</p> <p>10 Q But it sounds like the acceptance 11 process does involve some sort of preliminary 12 review of the reconsideration application?</p> <p>13 A Potentially, but I think we're kind of 14 getting into a deliberative area right now in 15 terms of what way we go on it.</p> <p>16 Q Okay. So you mentioned the 2016 17 regulations having a reconsideration process in 18 place.</p> <p>19 A It calls for a reconsideration process, 20 yes.</p> <p>21 Q Yes.</p> <p>22 Had -- had a reconsideration process 23 been set up under the 2016 regs before these form 24 denial letters started going out?</p> <p>25 A The -- the groundwork for it in the</p>
<p style="text-align: right;">Page 219</p> <p>1 I understand the secretary now just extended the 2 forbearance period into February because we want 3 to see if we can get that preliminary decision 4 issued before anybody's loans are affected.</p> <p>5 But, essentially, you know, the way 6 that the regulation is set up, the borrower can 7 request reconsideration, and the department can 8 decide not to agree to essentially reconsider the 9 case.</p> <p>10 So that's the framework that exists, 11 and so under that framework, it's not until the 12 department agrees to accept the request for 13 reconsideration and kind of do a rereview or 14 whatever that process looks like that the 15 borrower's loans are put into forbearance.</p> <p>16 But one of the tricky things about that 17 is that by the time you've made that decision, 18 then it might be a pretty short window between 19 when you open the case and then actually issue a 20 new decision, so the borrower may not be in 21 forbearance very long in connection with that.</p> <p>22 So we're trying to figure out how to 23 address that process. I think we'll have probably 24 a better understanding of what that looks like in 25 a month or so. Like I said, we're trying to</p>	<p style="text-align: right;">Page 221</p> <p>1 sense that we had the mechanisms to kind of 2 collect the requests and that kind of thing, but 3 we don't have all the pieces in the platform that 4 we'd like before we can kind of efficiently handle 5 them.</p> <p>6 So part of it, yes, enough for the 7 borrower to make the request to be associated with 8 a case and all that kind of thing, but not for an 9 efficient adjudication process yet.</p> <p>10 Q Okay. So are there -- did the 11 department receive reconsideration applications in 12 2019?</p> <p>13 A I don't think so. I think the earliest 14 ones came in in 2020.</p> <p>15 Q And that is likely because decisions 16 hadn't been issuing for most of 2018 and 2019; 17 correct?</p> <p>18 A Yeah.</p> <p>19 Q Okay.</p> <p>20 A Well, going back that to that time, I 21 was thinking because we had -- the first decisions 22 that went out in 2019 were at the end of 2019, and 23 there wasn't a reconsideration process before that 24 associated with the '95 reg.</p> <p>25 Q Okay. So if -- if someone whose</p>

12/09/2020

222 to 225

<p style="text-align: right;">Page 222</p> <p>1 borrower defense application was decided under the</p> <p>2 '95 reg had wanted to ask for reconsideration of a</p> <p>3 denial, would they have had the option to do that?</p> <p>4 A At what point in time?</p> <p>5 Q Before the Bauer decision put the 2016</p> <p>6 regs into effect.</p> <p>7 A No, there was no reconsideration</p> <p>8 process before that.</p> <p>9 Q So, as you know, this case primarily is</p> <p>10 about why there was such a long delay in issuing</p> <p>11 borrower defense decisions.</p> <p>12 In your view, what are the main reasons</p> <p>13 why so few borrower defense decisions were issued</p> <p>14 between January 2017 and January 2020?</p> <p>15 MR. MERRITT: Objection on the scope of</p> <p>16 that question and to the characterization of the</p> <p>17 case.</p> <p>18 MS. ELLIS: Can the witness answer?</p> <p>19 MR. MERRITT: Yes.</p> <p>20 THE WITNESS: I don't know that there's</p> <p>21 one answer for that entire time period. Can you</p> <p>22 maybe break it up for me?</p> <p>23 BY MS. ELLIS:</p> <p>24 Q Sure.</p> <p>25 Well, let's start in 2017.</p>	<p style="text-align: right;">Page 224</p> <p>1 Q Was the difficulty of reviewing</p> <p>2 borrower defense applications a primary reason for</p> <p>3 the delay in issuing decisions?</p> <p>4 A The difficulty affected the volume of</p> <p>5 the adjudication in the sense of -- you know, the</p> <p>6 cases got a lot more complicated when the 2016</p> <p>7 regulation went into effect in 2018 because now we</p> <p>8 have a lot of cases that are subject to both, and</p> <p>9 that determination needs to be made.</p> <p>10 So I think that the -- the pace of the</p> <p>11 adjudications was affected by various things that</p> <p>12 made it difficult, but that didn't mean that they</p> <p>13 couldn't be issued. That was related to a</p> <p>14 decision up the food chain.</p> <p>15 Q Was the staffing level of BDU a factor</p> <p>16 in why there was a delay in issuing decisions?</p> <p>17 A It was a factor in the number of</p> <p>18 decisions that were adjudicated. So to the extent</p> <p>19 that that was related, I guess it was a factor.</p> <p>20 But it wasn't -- it didn't prevent decisions from</p> <p>21 going out.</p> <p>22 Q Was the difficulty of discerning or</p> <p>23 applying state law under the '95 regs a major</p> <p>24 factor in why so few decisions were issued?</p> <p>25 A At what time?</p>
<p style="text-align: right;">Page 223</p> <p>1 A Well, there were no decisions issued</p> <p>2 for many months in 2017 associated with the</p> <p>3 decision not to do anything with respect to what</p> <p>4 we had already adjudicated and not to have more</p> <p>5 claims pending the review panel and the AG review</p> <p>6 and then the release methodology -- the</p> <p>7 development of the release methodology. So that</p> <p>8 was 2017.</p> <p>9 We did issue decisions between end of</p> <p>10 2017 and May of 2018 primarily on Corinthian</p> <p>11 cases.</p> <p>12 And then in 2018 to November 2019, I</p> <p>13 think it was tied to the relief methodology issue</p> <p>14 and the policy to not issue decisions on denials</p> <p>15 while they couldn't issue decisions on approvals</p> <p>16 or felt that they couldn't issue decisions on</p> <p>17 approvals.</p> <p>18 Q In your view, would it have been</p> <p>19 possible to issue decisions on approvals in</p> <p>20 between May 2018 and November 2019?</p> <p>21 A Not Corinthian job-placement-rate</p> <p>22 decisions because of the relief methodology at</p> <p>23 least under that methodology.</p> <p>24 On the others, like I said, I think it</p> <p>25 was a policy decision.</p>	<p style="text-align: right;">Page 225</p> <p>1 Q Did -- did -- is the answer different</p> <p>2 at different times?</p> <p>3 A Yeah, because the Corinthian cases were</p> <p>4 adjudicated under California law, so that once we</p> <p>5 had fully explored California law with respect to,</p> <p>6 you know, the first memo, that really wasn't a</p> <p>7 factor for Corinthian, which was our focus for a</p> <p>8 good percentage of the time period at issue.</p> <p>9 Q Of the claims that have been</p> <p>10 adjudicated since December 2019, why have there</p> <p>11 been so few approvals?</p> <p>12 A Well, the premise of your question, I</p> <p>13 think, is that, you know, it's not that the cases</p> <p>14 are -- how do I frame that? -- we have a lot of</p> <p>15 potential approvals, but they're not going out,</p> <p>16 and we have a lot of decided approvals that are</p> <p>17 not going out. So we have -- I don't know what</p> <p>18 the number is on Corinthian job-placement-rate</p> <p>19 claims now, but we've proved well over 30,000 of</p> <p>20 those over that time period that can't be issued.</p> <p>21 So we've certainly done a lot of approvals on that</p> <p>22 end.</p> <p>23 We -- for sequencing purposes, like I</p> <p>24 said, have focused on the cases that were the most</p> <p>25 quickly adjudicated which was the Corinthian</p>

<p style="text-align: right;">Page 226</p> <p>1 cases, the ITT California cases -- which is a 2 fairly small pool -- and then the cases that 3 didn't have common evidence or that didn't fall 4 within the parameters of, you know, the scope of 5 the evidence for schools where we do have common 6 evidence.</p> <p>7 So those are just going to be more 8 likely than not denials, but that doesn't mean 9 that there aren't cases from those schools that 10 will be approved. It's just that they're not done 11 yet. So a lot of what we have left has a, you 12 know, much better shot at getting an approval than 13 the cases that we did before.</p> <p>14 So we've kind of had a -- a weird cycle 15 of -- at the beginning of BD, it was all 16 approvals. Then there was a period of time where 17 it was primarily denials, not all because we were 18 still doing all those Corinthian cases. And now 19 we're probably moving into an area where we'll 20 have a lot more approvals again.</p> <p>21 So it's largely a factor of sequencing.</p> <p>22 Q So your -- your assumption going into 23 this project in 2020 to clear the backlog, was 24 that claims not falling within common evidence 25 would likely be denied?</p>	<p style="text-align: right;">Page 228</p> <p>1 a -- as significant amount of time spent analyzing 2 the evidence that an individual borrower provided 3 with their claim?</p> <p>4 A I expect that we would spend whatever 5 time is needed to be spent to look at the 6 borrower's evidence, but, you know, the time that 7 it takes to review an individual application 8 varies a lot depending on what they attached.</p> <p>9 If they've got a lot of materials, 10 though, there's a pretty good chance that the 11 reviewer just figured there's got to be something 12 in there that potentially supports it and sets it 13 aside.</p> <p>14 So, you know, for the most part that's 15 why these were much quicker adjudications, because 16 anything that looked like there's something there, 17 there -- there was, you know, a set aside for 18 those.</p> <p>19 Q You had mentioned earlier that a 20 mandate came from the under secretary to clean out 21 the backlog and also wanting BDU to adjudicate any 22 application within 90 days.</p> <p>23 When did you receive that mandate?</p> <p>24 A Fall of 2019, I believe.</p> <p>25 Q Was that communicated to you verbally</p>
<p style="text-align: right;">Page 227</p> <p>1 A No, just that they would likely have to 2 stand on their own merits, and so it would depend 3 on what the borrower had -- had provided, him or 4 herself. I didn't make any -- I didn't have any 5 expectation one way or the other as to what the 6 borrower would have, as I said. But we knew that 7 it wouldn't be supported by the common evidence to 8 satisfy the elements of the case, and so it would 9 depend on what individual borrowers came up with.</p> <p>10 Q And you expected that would be faster 11 to review than claims involving common evidence?</p> <p>12 A We knew it would be, yeah.</p> <p>13 Q How did you know?</p> <p>14 A Because all that time that you have to 15 spend to summarize the common evidence and develop 16 the legal memos and develop the protocols that are 17 specific to those memos, that all has to happen 18 first where there's common evidence. And for 19 cases where that's not true, they can just move 20 into adjudication.</p> <p>21 So like I said, very much an issue of 22 just sequencing to adjudicate what didn't require 23 all that front-end work that's so incredibly 24 time-consuming.</p> <p>25 Q So you expected that there would not be</p>	<p style="text-align: right;">Page 229</p> <p>1 or in writing?</p> <p>2 A I know it was verbally, but I don't -- 3 I don't know -- I mean, when you say was the 4 mandate communicated, it's kind of very commonly 5 known, I think, probably for FSA. Borrower 6 defense is a popular topic of the -- of the COO, 7 of the chief operating officer, that we're 8 expected to hit the 5,000 per week, and we do 9 weekly briefings, and our weekly performance 10 metrics are broadly circulated.</p> <p>11 So I don't know when I first knew about 12 it. It probably was first told to me and then 13 maybe I saw something in writing. But, certainly, 14 I was told verbally, so I guess that's all I can 15 say for sure.</p> <p>16 Q And who told you?</p> <p>17 A Robin Minor.</p> <p>18 Q And then did you discuss with her the 19 strategy for how BDU was going to accomplish that 20 mandate?</p> <p>21 A Yeah. After I said I need a whole lot 22 more attorneys, probably. I think we were already 23 having conversations about -- we were already 24 hiring and -- interviewing and hiring people at 25 that point when I was told that the backlog needed</p>

12/09/2020

230 to 233

<p style="text-align: right;">Page 230</p> <p>1 to be fully eliminated this year, but we'd already</p> <p>2 had conversations about how difficult that was</p> <p>3 going to be and that we needed more staff to do</p> <p>4 it.</p> <p>5 Q What's the status of the backlog as of</p> <p>6 now?</p> <p>7 A Well, it depends on whether you're</p> <p>8 talking about decisions issued or cases</p> <p>9 adjudicated. The decisions issued, that's kind of</p> <p>10 not my lane, so I'm not exactly sure what the data</p> <p>11 shows on that one.</p> <p>12 But on the cases adjudicated, we've</p> <p>13 probably got somewhere in the 50- to 55,000</p> <p>14 neighborhood that still need most or all of the</p> <p>15 work for review because they're probably waiting</p> <p>16 for these review protocols that we've been talking</p> <p>17 about. And then there are probably another 10- to</p> <p>18 15,000 that are in various stages of review.</p> <p>19 So, you know, like we talked about one</p> <p>20 application might have five claims, and there may</p> <p>21 be a review protocol for two of them, and, you</p> <p>22 know, not for the other three. But if we can --</p> <p>23 you know, if we had -- you know, this would mostly</p> <p>24 be for Corinthian for or ITT.</p> <p>25 But if we have an ITT review protocol,</p>	<p style="text-align: right;">Page 232</p> <p>1 borrowers' statements being insufficient alone to</p> <p>2 make out a claim?</p> <p>3 A You know, we probably will revisit a</p> <p>4 lot of things with the incoming administration. I</p> <p>5 have had conversations with my team on a regular</p> <p>6 basis about what we can do to, you know,</p> <p>7 constantly improve our processes and what -- what,</p> <p>8 if anything, we have found that would cause us to</p> <p>9 want to revisit something. But we haven't had any</p> <p>10 policy discussions on that.</p> <p>11 Q Have borrower defense cases ever been</p> <p>12 reopened based on later discovered evidence?</p> <p>13 A Not yet, but I'm pretty sure we will be</p> <p>14 soon. We had adjudicated some cases relating to a</p> <p>15 school and then subsequently received some</p> <p>16 evidence from an attorney general that could</p> <p>17 change the outcome. So I think that there were</p> <p>18 potentially decisions that were issued that might</p> <p>19 be covered. I believe a lot of them are set aside</p> <p>20 for a different reason relating to an internal</p> <p>21 document, like a whatever oversight issue.</p> <p>22 But that's something that we certainly</p> <p>23 expect. We're moving at a pretty fast pace, and</p> <p>24 we're very likely going to have to reopen cases if</p> <p>25 evidence comes in after the fact.</p>
<p style="text-align: right;">Page 231</p> <p>1 we can review that employment-prospects claim, and</p> <p>2 if it's been proved, then the borrower can get</p> <p>3 relief and we wouldn't have to wait for developing</p> <p>4 the review protocols on the other pieces.</p> <p>5 So sometimes we'll sequence it so that</p> <p>6 we can try to get those cases out. So that's why</p> <p>7 I said there are probably a lot of cases that are</p> <p>8 in process of being reviewed but not completed</p> <p>9 yet.</p> <p>10 Q On average, how many borrower defense</p> <p>11 applications are you getting each week nowadays?</p> <p>12 A Receiving?</p> <p>13 Q Yeah.</p> <p>14 A It's down a lot. I think the last week</p> <p>15 it was a very low number maybe related to the</p> <p>16 holiday. I think it was only in the hundreds --</p> <p>17 like 3- or 400, which is low.</p> <p>18 Prior to that, it was in a 500 to a</p> <p>19 1,000 range, but this year has sort of been weird.</p> <p>20 And it sort of depends also on, you know, whether</p> <p>21 there's an announcement on a settlement with</p> <p>22 respect to a school with these sites and things</p> <p>23 like that.</p> <p>24 Q At any point since you joined BDU, have</p> <p>25 you revisited the -- the policy regarding</p>	<p style="text-align: right;">Page 233</p> <p>1 Q You mentioned earlier that before this</p> <p>2 year you hadn't been in active communication with</p> <p>3 state AG's offices.</p> <p>4 Why was that?</p> <p>5 A There was a department policy about</p> <p>6 external communications -- that they were to go</p> <p>7 through -- I don't remember who. I think the</p> <p>8 office of policy and something or other over in</p> <p>9 LBJ.</p> <p>10 So we were not having any</p> <p>11 communications with AGs or federal agencies for an</p> <p>12 extended period.</p> <p>13 Q Do you remember when that policy went</p> <p>14 into effect that you had to go through this office</p> <p>15 in the main department?</p> <p>16 A Early 2017.</p> <p>17 Q And has that policy since been</p> <p>18 eliminated?</p> <p>19 A Well, I don't know exactly how the</p> <p>20 policy was documented, but we revisited it a few</p> <p>21 times, and when I revisited it in 2019, my</p> <p>22 understanding from Mark Brown and Robin Minor was</p> <p>23 that we were given the green light to start</p> <p>24 reaching out and having communications with --</p> <p>25 particularly with attorneys general who had</p>

12/09/2020

234 to 237

<p style="text-align: right;">Page 234</p> <p>1 provided us with materials because for some of</p> <p>2 them we got them, you know, the document in no</p> <p>3 particular order and no index, and so we kind of</p> <p>4 needed a road map for what did you send us, what</p> <p>5 is this, what does it show, what do you think that</p> <p>6 it establishes.</p> <p>7 So we started having those</p> <p>8 communications in late 2019.</p> <p>9 Q So during 2017 and 2018, if you -- if</p> <p>10 an attorney general's office, you know, mailed you</p> <p>11 a box of documents, it -- you wouldn't be able to</p> <p>12 reach out and talk to them about it without going</p> <p>13 through this other policy office?</p> <p>14 A That's correct.</p> <p>15 Q Okay. Are you aware of any political</p> <p>16 appointees in the department having recused them</p> <p>17 self -- themselves from -- from consideration of</p> <p>18 issues involving particular schools?</p> <p>19 MR. MERRITT: Objection. That's not</p> <p>20 within the scope of the discovery authorized.</p> <p>21 MS. ELLIS: Can we take a quick break?</p> <p>22 MR. MERRITT: Sure. Yeah.</p> <p>23 THE VIDEOGRAPHER: We are now off the</p> <p>24 record. The time is 21:12 UTC.</p> <p>25 (Recess -- 4:12 p.m.)</p>	<p style="text-align: right;">Page 236</p> <p>1 convention for the later version. I don't know</p> <p>2 about the former.</p> <p>3 Q They generally have the school's name</p> <p>4 in the file name?</p> <p>5 MR. MERRITT: Objection. What is the</p> <p>6 relevance of this line of questioning?</p> <p>7 MS. ELLIS: I'm trying to understand</p> <p>8 how we can easily identify these documents when we</p> <p>9 receive them.</p> <p>10 MR. MERRITT: Okay. You can answer the</p> <p>11 question.</p> <p>12 THE WITNESS: We can just produce them</p> <p>13 as a folder. Probably not that --</p> <p>14 BY MS. ELLIS:</p> <p>15 Q That would be great.</p> <p>16 A -- complicated. I'd to defer to DOJ on</p> <p>17 how to produce it, obviously, but, yeah, I don't</p> <p>18 think you'll have any trouble recognizing them.</p> <p>19 MR. MERRITT: As I said, you know, as</p> <p>20 we mentioned, the document -- the responses to</p> <p>21 written discovery are ongoing, and we are working</p> <p>22 on collecting documents and producing them to you,</p> <p>23 and we'll do that in the normal course.</p> <p>24 BY MS. ELLIS:</p> <p>25 Q I want to look for a minute in tab 5 in</p>
<p style="text-align: right;">Page 235</p> <p>1 (After recess -- 4:25 p.m.)</p> <p>2 THE VIDEOGRAPHER: We are now on the</p> <p>3 record. The time is 21:25 UTC.</p> <p>4 BY MS. ELLIS:</p> <p>5 Q So we've talked a few times today about</p> <p>6 these 500 or so memos regarding common evidence.</p> <p>7 Is there a single place on the BDU's computer</p> <p>8 system where those are stored?</p> <p>9 A Yeah, but I couldn't tell you off the</p> <p>10 top of my head where.</p> <p>11 Q Okay. And what -- are they named with</p> <p>12 any sort of consistent naming convention?</p> <p>13 A My hope is yes. They -- I mean, they</p> <p>14 kind of evolved over time, so when we first</p> <p>15 started doing these, we had a number of different</p> <p>16 attorneys working on them and they didn't look</p> <p>17 very uniform. We started a project this summer to</p> <p>18 make them more uniform, so there are a number of</p> <p>19 them that actually have two versions, whatever the</p> <p>20 original version was that wasn't uniform, and then</p> <p>21 when you get them, you'll see. I think it has a</p> <p>22 date and then in parens an updated date to try to</p> <p>23 make them kind of fit, not a template, but kind</p> <p>24 of -- same format.</p> <p>25 So I think they have a common naming</p>	<p style="text-align: right;">Page 237</p> <p>1 the hard copy. On the Dropbox, that's bracket 5</p> <p>2 Everest/WyoTech POC Memo, and that was marked as</p> <p>3 Exhibit 5 in the Jones deposition.</p> <p>4 (Exhibit 5 referred to.)</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MS. ELLIS:</p> <p>7 Q Do you recognize this document?</p> <p>8 A Yes.</p> <p>9 Q And what is it?</p> <p>10 A This is the memorandum that was drafted</p> <p>11 in 2016 by the borrower defense unit regarding the</p> <p>12 conclusions that we reached and the recommendation</p> <p>13 with respect to the transfer of credits claims for</p> <p>14 borrowers who attended Everest or Wyotech.</p> <p>15 Q And this is dated right around the time</p> <p>16 that you began working at BDU; correct?</p> <p>17 A Yes.</p> <p>18 Q Were you involved at all in the</p> <p>19 creation of this document?</p> <p>20 A No, I don't believe so. I'm pretty</p> <p>21 sure it was already over sitting on Ted Mitchell's</p> <p>22 desk by the time I even became aware of the</p> <p>23 document.</p> <p>24 Q Were you involved in working on any of</p> <p>25 the other Corinthian -- Corinthian protocols that</p>

<p style="text-align: right;">Page 238</p> <p>1 were similar to this?</p> <p>2 A Yeah, I believe the employment</p> <p>3 prospects followed this one, at least the approval</p> <p>4 of it. I think I worked on that one a little bit.</p> <p>5 And then ITT employment prospects came last of</p> <p>6 this batch, and I worked on that one with -- with</p> <p>7 my team.</p> <p>8 Q Okay. If you flip to the second page</p> <p>9 of this document, Roman numeral I says, Summary of</p> <p>10 evidence of representations of transferability.</p> <p>11 And then under heading A, Student accounts of</p> <p>12 in-person oral representations of transferability.</p> <p>13 And following that there's a series of</p> <p>14 bullet points taken from -- the memos, those were</p> <p>15 taken from a sample of claims relating to a</p> <p>16 certain Everest campus.</p> <p>17 Do you see where that is?</p> <p>18 A Yes.</p> <p>19 Q In its review of common evidence, is</p> <p>20 BDU currently undertaking any project similar to</p> <p>21 this of collating student testimony regarding</p> <p>22 misrepresentations that were made by a certain</p> <p>23 school program or campus?</p> <p>24 A Yes, that's part of the process for</p> <p>25 drafting the fact summary.</p>	<p style="text-align: right;">Page 240</p> <p>1 look at a specific campus, pull up all the</p> <p>2 employment-prospects allegations, and then, you</p> <p>3 know, that can be distilled to a spreadsheet, and</p> <p>4 kind of review each of the allegations and see</p> <p>5 where the themes are, see if there's any comments,</p> <p>6 reference to a document.</p> <p>7 You know, for one particular school I'm</p> <p>8 thinking of, there was repeated reference by the</p> <p>9 borrowers to a specific document, and so we were</p> <p>10 able to use the data to pick out individual</p> <p>11 borrower statements that aligned with that and</p> <p>12 corroborated that evidence.</p> <p>13 Q So let's say, for instance, you had a</p> <p>14 few hundred applications from Art Institute</p> <p>15 Chicago. You might line up all the allegations.</p> <p>16 You might see, okay, there's consistent testimony</p> <p>17 about employment prospects. Then what happens?</p> <p>18 A Well, it's -- that would probably be</p> <p>19 used, then, to support whatever the conclusions</p> <p>20 were related to the fact, so that would be</p> <p>21 corroborating evidence.</p> <p>22 Ideally, it would be supporting other</p> <p>23 evidence, but, you know, it depends on the school</p> <p>24 and what we have to work with and, you know, then</p> <p>25 we would make an assessment of the strength of the</p>
<p style="text-align: right;">Page 239</p> <p>1 Q And how many schools are currently part</p> <p>2 of a process of collecting student testimony like</p> <p>3 this?</p> <p>4 A Well, it's not -- it's not like that's</p> <p>5 a separate project. We look at all of the</p> <p>6 evidence. So regardless of what it is or where it</p> <p>7 came from, just like a courtroom drafts a</p> <p>8 findings-of-fact document regardless of whether</p> <p>9 the plaintiff or defendant submitted it, we</p> <p>10 summarize the evidence and cite to what the</p> <p>11 specific document or evidence is. Sometimes it's</p> <p>12 recordings. It could be anything.</p> <p>13 And part of that analysis would be if</p> <p>14 there are consistent allegations that -- you know,</p> <p>15 in this particular instance, it was a specific</p> <p>16 campus where we were seeing the same thing over</p> <p>17 and over again. That's the kind of thing that we</p> <p>18 would expect to see in the facts.</p> <p>19 Q How -- how are those patterns</p> <p>20 identified from the applications that BDU has</p> <p>21 received?</p> <p>22 A Well, the applications are in a</p> <p>23 database, Salesforce platform. One of the things</p> <p>24 that we typically would do is pull up all, you</p> <p>25 know, of the cases for -- let's say we wanted to</p>	<p style="text-align: right;">Page 241</p> <p>1 evidence.</p> <p>2 Q Would applications from -- let's call</p> <p>3 it Art Institute Chicago -- that make</p> <p>4 employment-prospects claims at that point be set</p> <p>5 aside instead of being kept in the pool for</p> <p>6 adjudication?</p> <p>7 A At what point?</p> <p>8 Q At the point where you've identified</p> <p>9 that there's consistent evidence of</p> <p>10 misrepresentations.</p> <p>11 A I'm not sure where you're thinking that</p> <p>12 fits in the process, but we -- you know, like I</p> <p>13 said, we'll do sampling for these larger schools</p> <p>14 to get a sense of what the kinds of things are, so</p> <p>15 that would be part of the whole fact-finding</p> <p>16 process.</p> <p>17 And then we view the evidence overall</p> <p>18 to figure out what -- what things are supported by</p> <p>19 the evidence. And then that -- that work related</p> <p>20 to individual borrower's statement would be cited</p> <p>21 in our document that outlines the evidence.</p> <p>22 So that doesn't mean that we'll catch</p> <p>23 every single borrower who said something similar.</p> <p>24 We're looking for whether there's corroborating</p> <p>25 evidence in the applications, but it very well may</p>

<p style="text-align: right;">Page 242</p> <p>1 be that we only get 10 percent of them and that's 2 enough, and then that's used to develop the legal 3 memos and the review protocols that ultimately 4 would lead to that person probably getting 5 approved assuming there wasn't some other element 6 that they failed to meet.</p> <p>7 Q While you're in the process of 8 developing that protocol, are other applicants 9 from Art Institute Chicago being adjudicated even 10 if they make employment-prospects claims that 11 might be consistent with the evidence that you've 12 collected?</p> <p>13 A I'm not sure I understand your 14 question. Can you rephrase?</p> <p>15 Q Yes.</p> <p>16 So say that you've -- you've seen a 17 pattern. You've taken a sample of students from 18 this school, this campus, and you've seen, okay, a 19 lot of students are saying that there were 20 employment-prospects misrepresentations. We're 21 going to include that in our analysis of this 22 school and this campus.</p> <p>23 What's the point at which applications 24 from that school, that campus are pulled aside 25 from the adjudication pool?</p>	<p style="text-align: right;">Page 244</p> <p>1 make similar allegations and make sure that they 2 don't get denied while you're in the process of 3 writing the protocol?</p> <p>4 A Well, first of all, it's not just that 5 they make the same kind of allegation either, so 6 it would have to be specific as I said. But, 7 also, it has to be within a time period that would 8 corroborate.</p> <p>9 So if somebody said something and their 10 application was related to their enrollment in 11 1975, and we have applications in the '70s, and 12 people are enrolled in the '70s, that doesn't 13 support somebody's application who attended school 14 in 2020 or 2010.</p> <p>15 So we look at whether it truly is 16 corroborative, and if we find that in the course 17 of reviewing the applications, that a pattern 18 unfolds that wasn't clear when we originally 19 cleared cases for adjudication, we would stop 20 adjudicating those cases, figure out if there's 21 something else that we should be looking at. If 22 it's an open school, figure out if we should be 23 reaching out to the school in connection with 24 something. And then there may be a reason to 25 reopen the cases.</p>
<p style="text-align: right;">Page 243</p> <p>1 A I think your question assumes something 2 that's not accurate. Just alleging an 3 employment-prospects-type of allegation is a very 4 broad statement, and there's a whole bunch of 5 different things that people could be including in 6 that claim. Some of them might be related to the 7 percentage of job-placement rates; some of them 8 might be talking about a specific document that 9 says everybody gets a job; another one might be 10 referring to some kind of advertisement that says 11 that they have connections with Fortune 100 12 schools.</p> <p>13 Those wouldn't be corroborative of each 14 other independently without something else that 15 ties that together. So we're looking for 16 allegations, not just by the overall type, but 17 what actually the borrower is alleging.</p> <p>18 So, you know, it can vary.</p> <p>19 Q Okay. At what point are claims 20 similar -- strike that.</p> <p>21 I guess what I'm asking is if you have 22 a sample of -- if you have a sample of claims from 23 one school, one campus that a certain kind of 24 misrepresentation is consistently being made, how, 25 if at all, do you identify other applications that</p>	<p style="text-align: right;">Page 245</p> <p>1 But there are a lot of variables in 2 what I just described, so it sort of depends on, 3 you know, if there are a lot of borrowers saying 4 this or, you know, if it's just two. You know, 5 there's a whole range of scenarios based on what 6 you just described.</p> <p>7 Q I can understand why a claim relating 8 to 1975 wouldn't relate to a claim in 2020, but 9 what about a claim relating to 2012 and a claim 10 relating to 2013, same school, same campus.</p> <p>11 Would those be considered corroborative 12 of each other?</p> <p>13 A Yeah, I mean, potentially. If it 14 turned out that it was about two different career 15 service officers and they were not both there at 16 the same time, then, no, but depending on what we 17 can find out about what the statements are. So in 18 the example that you described, that's quite 19 possibly corroborative evidence, yeah.</p> <p>20 Q Are applications ever removed from -- 21 are applications ever set aside for later review 22 and adjudication based on their similarities to 23 other corroborating allegations in other 24 applications?</p> <p>25 A Well, once we have decided that there</p>

<p style="text-align: right;">Page 246</p> <p>1 are corroborating allegations in our sampling, 2 then that could potentially be a reason to set 3 them aside there so -- if I'm understanding your 4 question correctly.</p> <p>5 Q I think what I'm getting at 6 generally -- and maybe I should ask it 7 generally -- is how do you make sure that claims 8 are not wrongly denied while protocols are still 9 in the process of being written?</p> <p>10 A I wouldn't say they're wrongly denied. 11 We adjudicate them based on the protocol as 12 written. If there's a reason to revisit the 13 protocol because we discover new evidence in a 14 later application, then we would potentially 15 reopen the case.</p> <p>16 But there's always going to be another 17 application, so if we decide today's the point in 18 time where we've reviewed all the evidence and 19 then tomorrow some new evidence comes in, that 20 could change everything that we did based on what 21 we saw today.</p> <p>22 So we always have to allow for the 23 possibility that we could get something new in 24 that would change the result, so I disagree with 25 the way you phrase the question.</p>	<p style="text-align: right;">Page 248</p> <p>1 corroborating evidence would show up to the 2 reviewers because they're doing a large number of 3 the Brooks cases at the same time and would be 4 able to issue -- spot something like that. And if 5 they saw that there were corroborating statements, 6 then they would flag that for the supervisor.</p> <p>7 Q Well, I'm actually asking about an 8 earlier stuff about the development of the 9 protocols.</p> <p>10 So as you're developing a protocol for 11 a school, maybe you have some attorney general 12 evidence, maybe you have some evidence from FSA 13 oversight, are students' statements part of that 14 pool of common evidence that you used to create 15 the protocol to begin with?</p> <p>16 A Yes, the sampling. That's part of that 17 first process.</p> <p>18 Q Right. And that's what I'm asking. 19 Is each school only sampled once, or is 20 there periodic monitoring for patterns that appear 21 in applications from different schools?</p> <p>22 A Well, we're still working on all those 23 cases, so your question kind of assumes that, 24 like, we sampled them a year ago and we're done 25 with that and now there's a whole bunch of other</p>
<p style="text-align: right;">Page 247</p> <p>1 I don't think that those applications 2 that were denied would be wrongly denied, but I 3 think that if they were denied and we subsequently 4 find out about new evidence, that we would reopen 5 the cases where the new evidence would change the 6 results or potentially change the results.</p> <p>7 Q How often do you pull samples from 8 these large volume schools to analyze the 9 similarity of student's allegations?</p> <p>10 A Are you -- I don't understand your 11 question. How often?</p> <p>12 Q Yes.</p> <p>13 So if -- if you have -- have you, you 14 know, only ever pulled one sample from Brooks, or 15 do you pull a sample, you know, every six months 16 as new claims come in?</p> <p>17 How often do you sample them?</p> <p>18 A Well, that, I think, assumes things 19 that are not true as well. Once we -- once we're 20 in a position to adjudicate the cases with the 21 protocol, then we typically -- unless it's a huge 22 volume of cases like in ITT, which Brooks is not, 23 we would get through most of the adjudication in a 24 pretty short period of time.</p> <p>25 So those -- you know, any kind of</p>	<p style="text-align: right;">Page 249</p> <p>1 cases. But we're still working on all of these 2 apps, so I'm not sure I follow what you're asking.</p> <p>3 Q So are you saying that the protocols 4 are still evolving?</p> <p>5 A The protocols will always be subject to 6 change based on the discovery of new evidence.</p> <p>7 Q Okay. And I'm asking how often you 8 review borrower testimony to develop new evidence?</p> <p>9 A We don't -- we -- we review 10 applications and, you know, again, if people are 11 spotting similarities, then they would flag it for 12 their supervisor, but we're not sampling every 13 day, if that's what you're asking.</p> <p>14 Q I -- I don't think I would expect you 15 to sample every day, but, you know, a sample that 16 would create something like what we see in this 17 Corinthian protocol, a collection of borrower 18 testimony of -- that shows a pattern of 19 misrepresentations.</p> <p>20 A Well, we did it, and it led to an 21 approval process for those claims, so we wouldn't 22 need to do it again.</p> <p>23 Q Right, right, not for Corinthian, 24 though. I'm saying a similar process for other 25 schools.</p>


12/09/2020

250 to 253

<p style="text-align: right;">Page 250</p> <p>1 A Again, since we're still working on</p> <p>2 them, I'm not sure I understand the question.</p> <p>3 Q I'm trying to think of -- if -- if</p> <p>4 there's a way I can explain this more clearly.</p> <p>5 So for -- for a number of schools now</p> <p>6 at this point, you have a collection of common</p> <p>7 evidence, and that evidence has been analyzed and</p> <p>8 put into memos.</p> <p>9 That part is correct?</p> <p>10 A They're in process.</p> <p>11 Q Okay.</p> <p>12 A They're generally not completed.</p> <p>13 Q Okay. So --</p> <p>14 A Let me -- let me -- let me reframe</p> <p>15 that, I'm sorry, because I don't want to get</p> <p>16 confused the memos that you're going to get with</p> <p>17 respect to the schools are the summary of the</p> <p>18 preliminary review for the scope of the evidence.</p> <p>19 The facts are -- you know, it's a statement of</p> <p>20 common facts, so that's different from the memos</p> <p>21 to the extent that -- I'm not sure which one</p> <p>22 you're asking about.</p> <p>23 Q I'm sorry. Can you -- can you explain</p> <p>24 the difference between the statement of facts and</p> <p>25 the memos because maybe I don't --</p>	<p style="text-align: right;">Page 252</p> <p>1 point in this process did BDU collect the -- a</p> <p>2 sample or would BDU collect a sample of borrower</p> <p>3 testimony to see if there are common threads?</p> <p>4 A Shortly before we complete the protocol</p> <p>5 to proceed with deciding those cases.</p> <p>6 Q Okay. And is that ever updated? Does</p> <p>7 the department ever -- does BDU ever go back and</p> <p>8 take another sample on a more recent set of</p> <p>9 applications to see if there were any new and</p> <p>10 emerging commonalities?</p> <p>11 A Most of these are fairly recently</p> <p>12 completed, so, no, we haven't done that yet.</p> <p>13 Maybe at some point we -- you know, once we get</p> <p>14 through all of the other schools, that might be</p> <p>15 something we would consider doing. But these are</p> <p>16 not -- it's not something that was done three</p> <p>17 years ago and stuck on a shelf. These are all</p> <p>18 fairly recent.</p> <p>19 Q Got it.</p> <p>20 So for -- for applicants from a school</p> <p>21 that has a protocol still in development, when, if</p> <p>22 ever, are those applications set aside to say</p> <p>23 these need to wait for the protocol?</p> <p>24 A I think we've talked about this a few</p> <p>25 times, so I'm not sure I'm following what your</p>
<p style="text-align: right;">Page 251</p> <p>1 A The --</p> <p>2 Q -- have --</p> <p>3 A -- memos --</p> <p>4 Q -- a clear understanding.</p> <p>5 A The preliminary review assesses what --</p> <p>6 you know, it's kind of an overview of what we</p> <p>7 have, what we know about department documents,</p> <p>8 things that we've received from outside agencies,</p> <p>9 things that we saw on the Internet, whatever it</p> <p>10 is, things we got from the school. It's just an</p> <p>11 overview.</p> <p>12 It's not, like, specific facts that</p> <p>13 we've identified as having been established by the</p> <p>14 evidence. That would be in a statement of common</p> <p>15 facts that cites to the evidence that supports it,</p> <p>16 and that's where you would see things like what</p> <p>17 we're seeing in those bullets.</p> <p>18 Q Okay. So -- but there's some -- for at</p> <p>19 least some of these schools, there are common</p> <p>20 evidence protocols or outlines that instruct</p> <p>21 reviewers on which applications to set aside and</p> <p>22 which ones to proceed to adjudication; is that</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 Q Okay. So I guess at what -- at what</p>	<p style="text-align: right;">Page 253</p> <p>1 question is asking me. Are you trying to</p> <p>2 basically rereview what we talked about before?</p> <p>3 Q I'm just not sure that I understood the</p> <p>4 answer before.</p> <p>5 If you're, you know, in the process of</p> <p>6 developing a protocol for Brooks, are any Brooks</p> <p>7 applications set aside awaiting the protocol, or</p> <p>8 might some Brooks applications stay in the queue,</p> <p>9 be denied even though it turns out they might have</p> <p>10 fallen within the protocol?</p> <p>11 A So I think we might be talking about</p> <p>12 two different things, but the initial task is the</p> <p>13 evidence, the initial summary of what the scope of</p> <p>14 the common evidence is results in a protocol that</p> <p>15 allows us to move forward with the cases that</p> <p>16 don't fall within the scope of what we think the</p> <p>17 common evidence potentially supports.</p> <p>18 Those cases are adjudicated. They</p> <p>19 don't get put in -- however you phrased it, but</p> <p>20 they're not on hold.</p> <p>21 The cases that fall within the scope of</p> <p>22 the protocol potentially or would potentially be</p> <p>23 supported by something -- not protocol, excuse</p> <p>24 me -- it's cases that potentially fall within the</p> <p>25 scope of the evidence, the common evidence that we</p>

<p style="text-align: right;">Page 254</p> <p>1 have are not adjudicated. If we come across them 2 in the course of trying to adjudicate cases that 3 are outside the parameters, they get set aside. 4 But otherwise, you know, they're usually not 5 assigned. 6 Once the facts are fully analyzed and 7 reduced to a statement of common facts where we 8 have such evidence, and then there's a legal memo 9 for 2016 if that's the regs that would apply to 10 the loans at issue, or for '95 where that's the 11 regs that apply to the loans at issue, then 12 there's a new -- it's probably an update to the 13 previous protocol that will change that so that 14 instead of saying if you see a claim between 2012 15 and 2014, move on to the next case -- set that one 16 aside and go on to the next. 17 Now, there's a framework for whether or 18 not that case would be adjudicated as an approval. 19 So it will replace that case once we have the 20 criteria that would allow for the yea or nay 21 decision on somebody who's potentially covered by 22 the common evidence. 23 Does that answer your question? 24 Q I think I understand that part of the 25 process.</p>	<p style="text-align: right;">Page 256</p> <p>1 A Correct. 2 Q And it's too early yet to say 3 whether -- whether that sampling will be done 4 again to update the protocols? 5 A I mean, if we're not getting in a whole 6 lot more applications from the school, then 7 probably not. I think it will depend on the 8 school, and chances are if there's a huge uptick 9 in cases from a school, it's probably related to 10 something happening outside of BD. That there was 11 a law enforcement action; that there was some kind 12 of fine by the department; something that might 13 cause us to revisit those cases anyway. 14 And then we would probably do an 15 entirely new or updated version of what originally 16 led to the, you know, clearing cases for 17 adjudication, and figure out if there are cases 18 that we need to revisit. 19 Q What size samples were you taking on a 20 percentage? 21 A I don't remember to be honest with you. 22 I know for -- for ITT, I remember seeing 500 23 because that has a large volume of applications, 24 and we were trying to get samples, you know, for 25 as many as we could.</p>
<p style="text-align: right;">Page 255</p> <p>1 During the period before the parameters 2 of the common evidence are fully known, what 3 happens to applications from those schools? 4 A They're not assigned. 5 Q They're just held until there's some 6 parameters of common evidence? 7 A I mean, "held" suggests that they're 8 picked up and put down or something. We can 9 assign based on schools. We can assign based on 10 different parameters with the Salesforce database. 11 So they're just not selected to be assigned to 12 adjudicators. 13 Q Yes, yes, held in the database is -- 14 A Yes. They -- 15 Q Yes. 16 A They're just still there, yes. 17 Q Yes. 18 And then once the parameters of the 19 common evidence are defined, those are released to 20 the reviewers to determine whether they should be 21 set aside or adjudicated right now? 22 A Correct. 23 Q And as part of the process of defining 24 the parameters of the common evidence, that's when 25 BDU would review a sampling of borrower testimony?</p>	<p style="text-align: right;">Page 257</p> <p>1 Obviously, we can't review every 2 application before we develop a protocol because 3 then we'll be reviewing every application at least 4 twice if not more than that, and we'd just -- you 5 know, we'd never get through any of the cases. 6 But I think if there's a range, though, 7 we have specific requirements depending on the 8 number of applications that we have from the 9 school. I just don't recall off the top of my 10 head what they are. 11 Q Are there written records of how the 12 sampling process was conducted? 13 A Well, the memo discusses, you know, 14 generally what they saw that -- I guess it depends 15 on what you mean by "written records." 16 Q What -- what about the sampling process 17 is memorialized in the memos? 18 A How many cases were looked at, that 19 kind of thing, if there were patterns. Generally, 20 the sampling results in fairly generic responses, 21 but where we see, you know, John Smith told me X 22 kind of thing or reference to a specific kind of 23 document or anything that's of any more specific 24 nature would -- would go into that discussion in 25 the sampling.</p>

<p style="text-align: right;">Page 258</p> <p>1 Q So if -- if a student said, someone in 2 admissions told me my credits would transfer and 3 then they didn't, that, in your view, would be too 4 generic?</p> <p>5 A I don't want to speak to hypotheticals. 6 It depends on what else we've seen and what the 7 other, you know, evidence is.</p> <p>8 Q If a couple of hundred students said, 9 someone in admissions told me that my credits 10 would transfer and then they didn't, would that 11 rise to the level of being considered for common 12 evidence?</p> <p>13 A A couple hundred out of how many? 14 Q How many were there for ITT? 15 A Well, again, ITT was 50 states. I 16 don't know how many campuses. So there are a lot 17 of variables that your question doesn't answer. 18 Is it a couple of hundred at the same campus at 19 roughly the same period of time. Or is it a 20 couple hundred over 30 years across 50 states. 21 Those are going to be very different 22 scenarios; right? So we would look at the 23 specific circumstances of the borrowers and the 24 sample size and see if it matches up and 25 corroborates, not just as a general proposition.</p>	<p style="text-align: right;">Page 260</p> <p>1 A No, not -- I think there were -- there 2 were some mistakes that we were aware of that 3 relate -- there were different kinds of mistakes 4 that can happen in terms of the adjudication or 5 the processing of the letters, and so if we become 6 aware of that, then, you know, it depends on 7 whether the -- the mistake or the issue would 8 change the outcome of the decision and what it is, 9 but, you know, I think there are certainly will be 10 instances where we find that we -- either my team 11 got it wrong or the processing team got it wrong 12 and that we would reopen the case.</p> <p>13 I don't remember saying that, but I 14 think that's probably true.</p> <p>15 Q Do you think the pace at which the team 16 has been working over the past year is a factor in 17 the likelihood of mistakes? 18 A I think it's not ideal, but we've done 19 everything that we can to mitigate against that. 20 Like I said, I -- we've put in place a really 21 robust training program, probationary periods for 22 the new attorneys. We have a pretty strong QC 23 process. Twenty percent of every case is 24 rereviewed, essentially, and, you know, it's kind 25 of a second-level review by the QC team.</p>
<p style="text-align: right;">Page 259</p> <p>1 With exceptions, if it -- a couple 2 hundred across various campuses but it's related 3 to something that was produced universally across 4 the enterprise, so job-placement rates, 5 advertising, some kind of document that's handed 6 out in the admissions process, that would be 7 corroborating, but it's -- I can't give you an 8 answer to the hypothetical because it's just 9 dependent on too many variables that are not built 10 into the question.</p> <p>11 Q If you had a couple hundred people 12 making that same allegation and it was around the 13 same period of time but spread out over campuses 14 in ten states, would that warrant looking into it 15 further?</p> <p>16 A I don't know. I'd have to see exactly 17 what the language is that the borrowers are 18 stating and how closely they mirror each other and 19 if there's anything else that corroborates that.</p> <p>20 Q Earlier you said that you thought it's 21 possible some cases will have to be reopened in 22 the coming months because of -- because of 23 mistakes that were made in the adjudication 24 process. 25 Do you remember saying that?</p>	<p style="text-align: right;">Page 261</p> <p>1 But, you know, when you're talking 2 about hundreds of thousands of cases and there are 3 humans that are doing it, and, you know, it can be 4 as simple as a click.</p> <p>5 So, for example, on the letter -- I 6 think a couple of the things that we've identified 7 as mistakes were things like it said failure to 8 state a claim instead of insufficient evidence 9 because those are right next to each other in the 10 drop-down menu, and if somebody just accidentally 11 clicks on one as opposed to the other, then, you 12 know, that's a mistake. That's an error.</p> <p>13 It wouldn't have changed the outcome of 14 the borrower's application in the scenario that I 15 just gave you, so we're still trying to figure out 16 what that looks like in terms of do we need to 17 issue a corrected decision just for the borrower's 18 record, but, you know, they still would not have 19 been an approved application in that scenario.</p> <p>20 So there's different things that we 21 need to figure out how to address, but if we did 22 it wrong, we want to -- we want to correct it and 23 get it right. We certainly don't want borrowers 24 getting the wrong decision. 25 Q Okay.</p>

<p style="text-align: right;">Page 262</p> <p>1 MS. ELLIS: Those are all the questions 2 that I have today. 3 Charlie, do you have any questions for 4 the witness. 5 MR. MERRITT: Yeah, just one or two 6 follow-up questions really briefly. 7 EXAMINATION BY COUNSEL FOR THE DEFENDANTS 8 BY MR. MERRITT: 9 Q Colleen, earlier you mentioned about -- 10 I think you made reference to 30,000 claims that 11 have been approved but were currently being held 12 with -- or the decisions were not issued on those 13 30,000 claims. 14 Do you remember mentioning that? 15 A Yes. 16 Q Can you explain a little bit about what 17 those 30,000 approvals are? 18 A Yeah. It's well over 30. They're -- 19 they're Corinthian claims that have been approved 20 for job-placement rates, and under the Manriquez 21 injunction, excuse me, the department can't apply 22 the 2017 methodology to those. I think that's 23 still the intent of the department, to the best of 24 my knowledge, so they're waiting to see how that 25 plays out in the court.</p>	<p style="text-align: right;">Page 264</p> <p>1 tell you? 2 MS. ELLIS: Sure. 3 THE VIDEOGRAPHER: We are now off the 4 record. The time is 22:04 UTC, and this concludes 5 today's testimony given by Colleen Nevin. 6 Thank you. 7 8 9 10 (Signature having not been waived, the 11 Remote Videotaped Deposition of COLLEEN M. NEVIN 12 ended at 5:04 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 263</p> <p>1 But until then, those cases are -- the 2 decisions on those cases are not being issued, but 3 the cases from my team's perspective are done. We 4 have adjudicated them. They're completed. 5 They're ready to go whenever there is an 6 appropriate relief methodology to apply to them 7 and issue the decision. 8 Q And are those cases that would receive 9 less than 100 percent relief? 10 A I believe so, yeah. I'm pretty sure we 11 continued to issue decisions on the 100 percent, 12 the cases that under the 2017 relief methodology 13 got 100 percent. But I don't know that for sure 14 because we don't issue the decisions, but I 15 believe that's the case. 16 MR. MERRITT: Okay. That's all I have. 17 MS. ELLIS: Okay. 18 MR. MERRITT: And I would just like to 19 request the opportunity for the witness to read 20 and sign the transcript. 21 MS. ELLIS: Fine by me. 22 Joe, could you please tell us how long 23 we've been on the record? 24 THE VIDEOGRAPHER: Sure. You want me 25 to go off the record first real quick and then</p>	<p style="text-align: right;">Page 265</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC 2 I, Dana C. Ryan, Registered Professional 3 Reporter, Certified Realtime Reporter, the officer 4 before whom the foregoing proceedings were taken 5 do hereby certify that the foregoing transcript is 6 a true and correct record to the best of my 7 ability of the proceedings; that said proceedings 8 were taken by me stenographically and thereafter 9 reduced to typewriting under my supervision; and 10 that I am neither counsel for, related to, nor 11 employed by any of the parties to this case and 12 have no interest, financial or otherwise, in its 13 outcome. 14 IN WITNESS WHEREOF, I have hereunto set 15 my hand and affixed my notarial seal this 14th day 16 of December 2020. 17 My Commission expires: 18 November 23, 2024 19 20 21 22  23 NOTARY PUBLIC IN AND FOR THE 24 STATE OF ALABAMA 25</p>

Page 266

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

20

21

22

23

24

25

Page 268

1 ACKNOWLEDGMENT OF DEPONENT

2 I, Colleen M. Nevin, do hereby

3 acknowledge that I have read and examined the

4 foregoing testimony, and the same is a true,

5 correct and complete transcription of the

6 testimony given by me and any corrections appear

7 on the attached Errata sheet signed by me.

8

9

10

11 _____

12 (DATE) (SIGNATURE)

13

14

15 CERTIFICATE OF NOTARY PUBLIC

16 Sworn and subscribed to before me this

17 _____ day of _____, _____

18

19

20 _____

21 NOTARY PUBLIC MY COMMISSION EXPIRES

22

23

24

25

Page 267

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

6 PAGE	7 LINE	8 CORRECTION AND REASON
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Exhibits		
EXH. 0021 COLLEEN NEVIN 120 92020 (1) 6:12 17:10,11 36:14 37:10 98:22 115:1 137:3	12:13 114:1 12:45 136:10 12:48 136:21 12ED 157:10 13 79:23,24 80:2,4 115:2 13th 174:11,12 14 137:1 145 173:20 14:11 8:13 14:13 10:9,13 14th 183:15 15 92:7,8,9,11 98:1 145:12 208:14 212:1,2 15,000 230:18 15:19 58:10 15:25 58:14 16 98:23 163:3 208:14,18 16,000 130:6 16:35 106:2 16:45 106:6 16:56 113:24 17 17:16 112:5 17:13 114:3 17:47 136:20 18 184:4 190:24 18:18 136:24 19 173:18,19,21,23 1975 244:11 245:8 1993 14:3 1995 37:21 38:11 123:20 19:08 167:21 19:14 167:25 19:58 198:3 19:59 198:4 1:15 136:12 1:18 136:22 1st 174:2 177:25 180:16	2012 44:16,18 48:17,21 70:24 188:1 245:9 254:14 2013 245:10 2014 254:15 2016 15:15,18 22:21 23:6 24:10 33:5 42:9 43:8,10 45:18 52:5,14 67:12,15,20 73:9 75:17,25 77:17 78:2,3, 6,13 79:9 90:23 96:2 97:9 109:2 125:19,21 126:5,6,13, 18 129:8 135:21 146:14 172:5 214:1 220:16,23 222:5 224:6 237:11 254:9 2017 19:21 25:7,8 31:17 33:7,13 42:13,16,19 50:12 67:12,15 68:13 110:4 111:2, 3,25 112:1,4,25 114:5 115:9,18 118:3 122:6,9,10, 12 124:19 125:8,12,21 126:3 127:16 130:8 131:15 132:5,12 133:9,21 134:2 137:6 138:14 139:17,23 144:23 145:13 148:24 149:14 153:9,14 222:14,25 223:2,8,10 233:16 234:9 262:22 263:12 2018 32:22 33:13 68:14 69:1 76:4 78:5 110:4 112:1 126:3,5 130:19 139:6,11,25 140:23 142:4,6,17 143:5 145:13 146:25 147:4,9,13, 19 152:6 153:15,16 154:8 161:11 166:17 208:21,24 209:23 221:16 223:10,12,20 224:7 234:9 2019 21:23 23:24 24:7,10,22 25:21,22,24 77:19,21 80:21 99:23 100:14 102:11,12,14, 16,19,21 127:13,16 128:22 147:2,4 152:6 154:14,16 158:13 159:8 160:8,25 161:25 162:7,19 164:22 165:2 166:9,14 168:12 169:4,5,24 170:8,22 171:5 190:21,25 209:22 210:7 221:12,16,22 223:12,20 225:10 228:24 233:21 234:8 2020 8:12 20:14,15,18 75:15 76:8 77:18,21,22,24 79:25 80:7 99:24 100:18,19 101:11 102:4 144:23 166:2, 8,22 174:3 183:15 216:25 221:14 222:14 226:23
0		
04 180:16		
1		
1 77:22 93:7 126:25 152:1,2, 5 174:9 175:5,9 213:11 218:12,13 1,000 150:15 231:19 1,400 158:14 10 185:6 242:1 10,000 145:14 10- 230:17 10/23/18 199:6 10/23/2018 192:2 193:5 100 61:19,22 62:9,17 149:5, 11,15,20,24 155:15,25 156:25 157:6 160:24 188:22 243:11 263:9,11,13 100,000 138:18 10:19 58:11 10:25 58:12 11 171:16 116 79:24 116-4 81:13 11:35 106:3 11:45 106:4 11:57 113:25 12 157:8,11,12 208:16 12(b)(6) 79:11 82:9,13 12/7/20 29:21 129-1 92:8	2 2 18:1 30:3 36:24 80:17 89:3 93:21 125:7 127:1 152:1,3 159:11 175:17 176:9,10,14 177:10 191:25 212:24 213:1 20 17:9 122:6,9 185:6,18 186:10 2004 178:1 2010 44:16,18 48:17,21 70:24 188:1 244:14	

12/09/2020

2

244:14 245:8 20:00 198:8 20:21 211:18 20:37 211:22 20th 42:20 130:7 21 17:10,11 36:14 37:10 98:22 115:1 137:3 21:12 234:24 21:25 235:3 22 16:25 17:2 29:22,23 37:9 81:11 208:13 22nd 178:1 180:16 23 81:13 139:4 184:8,9 24 92:15 25 127:24 184:2,4 2:08 167:22 2:14 167:23 2:59 198:5 2A 185:17 186:1 2B 185:18 186:5	4:25 235:1 4th 122:12	222:2 224:23 254:10 97 14:5 99 178:1 180:16 9th 8:12
3	5	A
3 30:1,2,13 80:18 93:21 159:12 175:2,3,7,16,19 178:22 189:4 215:16 218:12,14 3- 231:17 30 258:20 262:18 30(c)(2) 113:19 30,000 225:19 262:10,13,17 30-something 53:3 30th 137:6 31 80:7 31,000 155:10 340,000 218:7 3:00 198:6 3:21 211:19 3:37 211:20	5 94:24 158:9,10 204:25 236:25 237:1,3,4 5,000 102:1 229:8 5/4/2017 129:24 50 61:19 62:8,16 172:6 258:15,20 50- 230:13 500 40:14 41:4,24 43:25 47:3,5,14,20,24 48:1 190:6, 11 231:18 235:6 256:22 51 92:20 98:8 171:23 212:3 52 171:21 53 212:12 54 122:3 55 115:2,4 55,000 230:13 56 117:25 59 137:2,4	A-P-P-E-L 19:15 a.m. 58:11,12 106:3,4 113:25 AA 14:13 ability 41:18 178:10 196:9 absolute 55:19 abusive 83:1 accelerated 100:15 accept 156:14 219:12 acceptance 220:10 accepted 218:17,19 220:5 access 38:24 39:1 153:8 accessing 176:2 accidentally 261:10 accomplish 229:19 accordance 119:20 account 109:13 accounts 123:2 238:11 accreditation 38:6 200:3,5 accurate 18:6 30:18 31:8 130:14 134:6 137:7 176:19 205:25 206:1 243:2 ACI 50:13 acknowledge 9:1,4 act 37:24 218:22 220:1 acting 13:19 18:24 19:14,19, 20 21:15 23:1 31:16 33:8,18 34:6 68:16,22 141:8,9 160:5 action 8:19 30:9 37:25 49:7 59:5 194:10,22 256:11 actionable 205:15 actions 59:3,14 186:7 active 27:25 233:2 actual 64:13 81:12 170:16, 20 173:4 ad 20:5 22:5 add 199:1 added 191:16 adding 217:7 addition 20:21 21:5 41:14, 24 140:3
4	6	
4 30:14,15 36:23 94:24 122:9 194:7 40 171:20 400 231:17 47 171:20 4:12 234:25	6 185:18 60 24:14 64 145:11 65 146:23 150:12 66 162:25 163:3 68 98:23 99:3	
	7	
	7 129:22,23,25 139:5 70s 244:11,12	
	8	
	8/21/2019 157:10 8/31 79:25	
	9	
	90 8:18 102:8,18 228:22 95 38:7 43:8,14 45:18 51:21 52:2,5,13,16 55:9 78:1,9,12 91:3 135:21 172:10 221:24	

additional 22:25 23:23
25:14,23 26:4,6 50:2 66:5
118:5 120:16 121:21 132:15
141:12,21 142:1 145:6
146:24 171:3,4 202:15
217:16

Additionally 18:11 99:4,5
145:12 218:15

address 21:1 110:16 202:7
219:23 220:2 261:21

addressed 204:20

addressing 121:16

adjudicate 16:3 51:22 60:25
70:9,13 99:10 101:6 102:7
103:24 105:14 122:7,10
126:7,15,16 141:19 151:23
172:19 187:6,25 204:2
208:17 227:22 228:21
246:11 247:20 254:2

adjudicated 37:23 41:6
45:19 53:24 63:23 91:10
100:18 103:9 105:14 107:15
109:7 110:4 125:5,12 128:9
130:7 150:16 158:12 163:7,
17,23 165:23 166:2,7
173:10 202:11 203:3,18,24
223:4 224:18 225:4,10,25
230:9,12 232:14 242:9
253:18 254:1,18 255:21
263:4

adjudicating 20:19 40:23
96:11 101:2,9 102:18
122:11 123:6,9 136:7 140:3
244:20

adjudication 35:11,18 41:9
45:11 46:6,23 47:9 62:18
100:11 106:10,13,24 107:18
108:10,12,18 114:8 119:21
121:9 131:2 137:5,13,17
138:15 140:25 144:5 172:24
173:8,14 176:7,11 178:11
203:16 207:11 221:9 224:5
227:20 241:6 242:25 244:19
245:22 247:23 251:22
256:17 259:23 260:4

adjudications 86:13 102:1
114:18 139:7 151:20 167:10
170:24 171:2 214:10 224:11
228:15

adjudicators 255:12

adjusted 191:12

Adler 14:16

administered 9:5

administerial 127:17

administration 26:7 112:4
126:22 138:22 232:4

administrative 12:17 59:3

administratively 53:10
54:17

admissions 60:19 258:2,9
259:6

advancing 143:7

advertisement 243:10

advertising 77:5 259:5

advice 57:7 156:5

advise 36:4 188:1,7

advised 118:2,8,11 122:14

advising 119:10

advocated 214:6

affect 125:4 166:24 178:10

affected 171:1 219:4 224:4,
11

affects 160:19

affidavit 92:14,19,24 98:5
212:7

affirmative 125:9

afternoon 202:10

AG 55:12 186:7 223:5

AG's 14:24 76:22 176:1
233:3

agencies 59:11 233:11
251:8

agree 9:15,16 11:7 58:5
105:23,25 124:8 212:14
216:16 219:8

agreed 55:5 203:19

agreement 8:6 9:13

agrees 219:12

AGS 44:22 61:13 69:25
70:16 233:11

ahead 90:19 135:3 187:6
204:12

aid 18:4,9 28:6,10,23 57:9
61:13

aligned 240:11

allegation 79:1 81:19 82:10
83:17 84:22 93:7,10,25
94:12 192:14 193:11 194:9
196:13 205:1,3 213:11
243:3 244:5 259:12

allegations 62:3,6 66:18
83:19,23 93:5,14,21 94:16,

24,25 107:12 109:5 179:12,
17 193:2,17 195:5 201:16
214:22 239:14 240:2,4,15
243:16 244:1 245:23 246:1
247:9

allege 82:14 93:8 182:11

alleged 30:8 54:10 82:22
85:8 110:2 200:2

alleges 180:22 199:24

alleging 196:2 243:2,17

allowed 26:9 132:22 139:2
205:18

ALO 49:22

alphabet 57:1

altogether 190:6

American 15:8 49:22 50:9

amount 59:19 72:7 120:8
127:1,21 133:10 152:3
156:2 228:1

analyses 37:15,18 51:18

analysis 38:2,10,19 39:5,20
43:8,9 54:25 55:5 63:1
79:11 82:9 99:6,16 100:1,4
172:5,6,8,22 178:6 239:13
242:21

analyze 247:8

analyzed 173:4 250:7 254:6

analyzing 228:1

Andrew 23:15

announced 153:18 170:23
171:6

announcement 231:21

annual 165:24 166:7

answering 12:3 156:15

anticipated 67:22

anticipation 20:23 171:5
210:3

anybody's 219:4

anymore 147:22

apolitical 28:22 29:1

apologize 57:3 158:25

appeals 14:23 59:3

appears 158:11

Appel 19:15 103:2 168:18
169:7

appended 174:6,7,8

applicable 44:21 46:4 55:15
60:16 61:5 78:9,24 90:13,
15,22 91:2 179:2,6 186:13
215:19

applicant 85:10 96:17 182:6
applicants 61:25 62:8 84:13
 111:1 172:22 242:8 252:20
application 37:22,23 46:10
 48:20 50:13 51:22 62:22
 63:22,24 64:8,11 74:13,14
 77:13,16 79:5,18 82:19
 83:6,24 92:3 95:19,21 96:4,
 16,20,22 99:18 105:8
 106:12,20 107:22 108:13
 122:17 124:14 127:19 150:4
 163:10 176:13,16 180:21
 183:1,5 187:15,19 193:16
 195:22 201:5,9 202:2
 205:21 212:21 213:3,7
 214:5 215:1,16 216:4,13
 217:20,21,23 220:4,12
 222:1 228:7,22 230:20
 244:10,13 246:14,17 257:2,
 3 261:14,19
application's 216:18
application-review 133:6
applications 35:12,19 36:3
 38:15,24 40:8 41:11 49:10,
 14 51:21 52:2 53:2 59:18
 60:9 61:1,18 62:2,9,21 64:4,
 19 73:8,12,14 74:17 76:5
 78:25 81:4 82:24 84:6 95:15
 99:10 100:12 104:17 108:6
 109:15 114:8 123:6,9 124:9
 131:3 136:7 145:14,18
 146:4,9 150:15 151:23
 152:2 158:12,15,18 159:3
 163:7,13,17,23 165:23
 166:1,7 169:12 170:24
 173:5,16 176:21 177:2,18
 178:25 196:11 200:23
 202:21 203:2 210:9 214:25
 217:6 221:11 224:2 231:11
 239:20,22 240:14 241:2,25
 242:23 243:25 244:11,17
 245:20,21,24 247:1 248:21
 249:10 251:21 252:9,22
 253:7,8 255:3 256:6,23
 257:8
applied 39:10 53:18,22 54:3,
 7 78:21 92:3 129:5 150:8
 152:11 181:8,9 185:8
 216:24 218:8 220:3
applies 43:3 55:9,24 78:16
 82:20 156:20
apply 29:2 37:20 38:25 45:3
 51:20 52:17,23 79:4 128:14

150:8,11 183:18 254:9,11
 262:21 263:6
applying 160:8 224:23
appointee 20:1
appointees 29:3 234:16
appreciable 144:13
approach 100:11 103:8
 124:5
appropriately 191:13
approval 25:13 45:23 86:18,
 20 89:9 104:23 105:2,18
 108:21 119:14,16 120:7
 125:20 126:25 127:1,3
 132:18 134:13 136:5
 139:15,22 150:9 155:22
 162:15 163:13 199:14,18
 210:14 226:12 238:3 249:21
 254:18
approvals 88:3 118:5,9,17,
 20 119:2,4 120:16 121:3,21
 123:5 126:3,20 129:2
 131:16 146:7,11 147:16,18,
 22 148:1 149:4 150:17,22
 151:21 159:4 161:12
 162:15,18 170:4,5 175:24
 207:2,6 223:15,17,19
 225:11,15,16,21 226:16,20
 262:17
approve 27:8 55:24 95:19
 96:4 128:17 135:1 204:5
 205:8 206:2,7,11 215:17
approved 27:18 39:18 40:9
 79:2 124:15,16,17 127:19
 135:13,16 141:10 148:19
 155:8,11 226:10 242:5
 261:19 262:11,19
approving 87:2 89:15,17
 134:14
approximately 130:6 150:15
 160:25
approximating 47:17
apps 249:2
AR-A-0227 158:11
area 220:14 226:19
areas 36:8 87:15
argued 92:1
arrangement 9:10
Art 185:13 240:14 241:3
 242:9
articulated 214:21

ascribed 170:13
Ashford 73:22 74:2
asks 17:6 208:16
assert 213:6
asserted 145:21
assess 48:3 60:14 63:5
 100:25 104:18
assesses 251:5
assessing 175:24
assessment 40:16 44:5 45:2
 46:19 47:6 53:6 73:13 74:6
 96:13 104:20 123:11 206:15
 240:25
assign 255:9
assigned 64:6 177:20,22
 194:11 254:5 255:4,11
assistance 66:23 75:3
assistant 14:18 45:10
assisted 181:14
assisting 13:3 127:23
 128:18
assumes 86:2 172:12 202:4
 243:1 247:18 248:23
assuming 64:24 95:7 242:5
assumption 226:22
attached 17:12 29:24 62:2
 80:13 81:2 92:18,19 182:13
 184:10 190:20,23 195:18
 200:4 205:22 212:6,8 228:8
attaches 194:8 199:25
attaching 66:12
attachment 80:15 93:3
 174:9
attachments 12:16,18 92:13
attend 46:15 142:13
attended 45:25 99:11 100:7
 148:20 149:19 163:11
 169:20 177:21 237:14
 244:13
attention 134:11
attorney 11:20 14:19 23:16
 44:13 48:15 55:13 63:2
 64:5,6 65:23 66:2,5 69:14,
 16 103:19 104:25 181:20
 189:6,7 194:11 201:15,24
 203:12,13,19 204:11 205:6
 209:14 232:16 234:10
 248:11
Attorney's 14:14,21
attorney-client 8:8

attorneys 8:25 12:20 17:24
22:19,22 23:1,3,19,24
24:11,14,19,21 25:6,24 26:4
38:14 40:4,6 43:17 59:12
63:15 105:3,11 143:16,17
171:13,18,25 189:25 190:1
201:1 207:18,20 209:10,18
229:22 233:25 235:16
260:22
attrition 24:9 25:6 66:20
67:14,24 68:13
audio 13:15 108:25 116:22
127:16 162:15 168:4 197:4
198:11
Auer 22:3 36:10
August 80:7 158:13 159:8
160:25 161:25 162:7
authority 24:13 25:20 26:21
51:6 139:8 140:24 141:2
authorize 146:3
authorized 112:15 145:13
234:20
automated 209:7
availability 63:20
average 170:13 231:10
awaiting 253:7
awarding 155:15
aware 8:3 13:2,5,8 29:16
57:13 60:3,5 62:23 67:1
70:2 87:24 102:25 115:21
131:1 151:15 152:9,21,25
157:5 163:12 168:13 175:22
179:4,7 180:3 183:5 195:7
234:15 237:22 260:2,6
awareness 13:10

B

B-A-Y-N-E 23:13
B-R-O-N-S-T-E-I-N 23:16
back 22:15 25:19 27:16
36:13 42:9 43:25 46:9 56:6
58:16 62:24 64:20,25 69:4
78:8 86:5 91:19 96:2 97:12,
16 98:1,21 104:4 106:9
112:3,4 114:25 120:10
121:10 122:3 136:12 139:4
140:15 151:3 162:24 163:14
167:12 168:11 185:24
189:22 197:12 198:20
199:22 208:14 211:24
213:24 214:7 215:14 221:20

252:7
backfills 24:8
background 14:1
backlog 100:17 101:23
102:3,7,16,17,22 164:2,3,4,
12,14,15 171:9 178:7
226:23 228:21 229:25 230:5
backwards 19:7 20:15
Bailey 35:1
ball 143:7
ballpark 47:20 190:9
bandwidth 103:19 202:13
218:9
bar 82:21 104:24 203:6
based 37:21 39:7 53:17
62:18 70:19 76:24 79:6,17
82:17 84:14 85:7 96:11
101:23 129:15 150:9 170:15
188:13,16 189:24 193:1
205:7,8,12,13 206:12
210:23,25 213:4 232:12
245:5,22 246:11,20 249:6
255:9
bases 11:24
basically 52:21 54:14 65:1
110:13 127:4 134:8 135:22
140:14 176:10 181:18 253:2
basing 205:14
basis 26:19 123:20 145:17,
25 156:15 205:22 213:5
232:6
batch 238:6
Bates 158:10
Bauer 126:18 146:14 222:5
Bayne 23:13
BD 20:22 61:25 68:2 102:25
157:25 158:8 159:3 160:16
205:2,15 207:23 209:13
226:15 256:10
BDU 37:1,14 48:18 49:12
50:5,16 56:1 70:17 72:12,
16,24 76:1,15 85:23 86:2
88:5 96:5 98:14 99:5 106:15
109:18 118:4 122:7,10
125:12 129:8 137:4 138:14
140:2,10 143:9 144:7,24
147:8,10 151:22 152:5
163:6,9,12 171:13,25
224:15 228:21 229:19
231:24 237:16 238:20
239:20 252:1,2,7 255:25

BDU's 114:7 131:2 178:10
235:7
beachhead 113:3,10
Beauty 158:19
Beckwood 49:21
began 140:2 210:3 237:16
begin 170:9 248:15
beginning 99:3 140:13
154:7 214:8 226:15
begins 30:13 92:15
behalf 8:17,22
beneath 30:20
benefit 204:23
big 103:15
biggest 109:13 133:15
bit 33:14 34:11 89:10 109:20
112:4 122:24 130:17 175:15
190:2 218:9 238:4 262:16
blanks 81:18
book 190:20
borrower 15:20,25 16:3
18:2,10,11,17 20:6,16 21:8
23:5,24 24:9 25:21 27:23
28:2,5 30:16,22 31:2,5,23
33:2 34:3,20 35:8,11,18
37:16,20,24 38:9,14,23
39:17,25 41:13 42:4 45:22
46:14,15,20,25 47:2 50:7
52:24 53:11,15,21 60:17,20
61:5 64:14,21 65:18,22,23
66:1,11 67:15,23 68:12,21
72:18,25 73:14 75:6 77:14
78:15,19,20 79:1 82:10,14,
15 83:1,8,17 84:3 86:12,14
96:1,12,16,25 97:1,6 100:11
101:14 104:12,18 107:12
108:2 109:7 112:7,24
113:11 114:8,18 115:10,12,
15 116:17 117:7 119:18,25
120:11 121:9 122:8 124:9,
10,11,18,21 129:18 131:3
132:3 142:23 146:3 147:5
149:4 150:4 151:2,6 152:2
155:22 166:6,12 168:14
169:12,24 170:24 173:4
176:14 177:25 178:24
181:23 182:1 183:18 188:1,
14 189:5,7 192:13 194:8,25
195:8,16,18 196:11 199:24
200:2 201:1 206:13 207:18
208:17 213:2,5,6,15,20
214:18 215:7,11,18,24

216:9,20 217:13 219:6,20
221:7 222:1,11,13 224:2
227:3,6 228:2 229:5 231:2,
10 232:11 237:11 240:11
241:23 243:17 249:8,17
252:2 255:25
borrower's 37:23 40:9 45:17
66:4 74:13 95:24 96:2 97:5
107:11 109:4 170:16 194:9,
20 201:9 219:15 228:6
241:20 261:14,17
borrower-specific 194:24
195:11
borrowers 36:20 41:3 52:10
53:24 54:6 59:18,19 60:8,15
61:4,8 66:25 83:5 96:6
99:10 110:24 111:18 145:21
146:25 147:6 148:19,25
149:21 150:16 151:7 153:3
155:15 163:10 179:5,9,16,
23 182:10,24 183:3 196:12,
23 199:21 210:5 213:23
227:9 237:14 240:9 245:3
258:23 259:17 261:23
borrowers' 95:14 132:7
232:1
boss 13:5,12
bottom 30:13 80:17,19,24
81:17 115:2 158:11 208:18
box 73:11 234:11
bracket 79:24 92:8 129:23
173:19 184:4 237:1
bracketed 17:2 29:19 157:9
brakes 147:20
break 58:2 105:22 136:11
167:16,19 211:11 222:22
234:21
breakdown 52:5 190:5
breaks 11:14,16 40:11 192:4
211:11
Brian 23:13
Bridgepoint 74:2
briefing 158:6
briefings 229:9
briefly 106:8 262:6
bring 24:13
bringing 23:2 26:5
brings 46:25
broad 8:18 16:2 62:5 243:4
broader 21:6

broadly 44:21 46:3 60:16
61:5 179:2,6 195:16 229:10
broke 89:10 94:7 109:20
Bronstein 23:15
Brooks 93:8 98:3,10,13,15,
20 99:8,13,17 100:2,8
175:11 247:14,22 248:3
253:6,8
brought 24:16 33:22 66:13
69:12 70:1 143:15
Brown 12:16 13:7 21:18
27:20 34:11,22 35:6 86:12
87:4 89:24 101:25 102:24
163:25 164:11 169:6 174:8,
9 233:22
Brown's 34:17
bucket 47:8 193:15
buckets 49:10
budget 121:13,16 141:5
build 183:2
building 67:19 218:1
built 259:9
bullet 158:16 159:5,15
161:10,20 238:14
bullets 177:10 251:17
bunch 46:11 59:12 91:10
134:10 144:3,15 195:3
243:4 248:25
business 73:2 119:8 120:4
178:2 180:15 181:11
button 128:9

C

caliber 143:19
California 41:19 42:18 43:1
78:23 79:20 99:7 136:3
155:24 156:19,24 225:4,5
226:1
call 24:8 41:8 46:23 74:21
119:21 155:1,2 197:13
241:2
called 15:8 18:19 174:9
181:17 188:18 192:2 215:3,
4
calling 58:18 120:20 156:10
calls 25:18 85:15 87:22
88:20 123:23 126:14 220:19
Calvillo 148:12 149:3,12,25
150:2 151:7 153:19 154:2,
19 155:7

camera 10:11
campus 53:25 59:6 142:12
188:6 238:16,23 239:16
240:1 242:18,22,24 243:23
245:10 258:18
campuses 44:20 99:7
186:25 258:16 259:2,13
candidates 24:2
capabilities 143:23
capacity 19:14 21:16 141:10
209:18
career 15:8 50:10 158:18
175:9 245:14
CARES 218:22 220:1
carried 163:20
case 39:18 40:9 43:18 46:16
51:25 52:8 53:6,8,24 61:10
64:7,11,13 65:24,25 66:16
67:3 69:22,23 80:12 81:22
82:11 92:22 93:20 97:18
101:9,10 102:8 105:13
107:19,25 117:18 128:17
129:9 132:1 148:12,16
168:23 173:25 181:8,19
188:2 189:13 191:24 194:12
200:16 202:10,20 210:11
218:17 219:9,19 221:8
222:9,17 227:8 246:15
254:15,18,19 260:12,23
263:15
cases 20:20 40:23 41:5
45:19 50:10 53:4 60:24 64:6
70:9 91:7,8,10 100:18,21,23
101:2,6,12 102:3,18 103:14,
24 104:7,8,10,11,22 105:4
106:23 107:10,15 109:3,7
125:5 126:7,15,16 130:24,
25 133:18 138:19 141:17,23
171:8 172:20 176:4,6
178:15 181:4 184:17 185:5
186:14 188:22 189:12 194:1
196:16 199:20 203:17
204:2,7 209:19 223:11
224:6,8 225:3,13,24 226:1,
2,9,13,18 227:19 230:8,12
231:6,7 232:11,14,24
239:25 244:19,20,25 247:5,
20,22 248:3,23 249:1 252:5
253:15,18,21,24 254:2
256:9,13,16,17 257:5,18
259:21 261:2 263:1,2,3,8,12
catch 141:16 166:21 174:17
241:22

categories 46:21 108:21
132:16 177:1,18 186:18
category 186:4 211:8
CCI 78:22 108:18 110:25
122:7,10,11 128:18 137:5,
17,21 138:15 140:3 150:15
152:10 155:6 156:20
CEC 98:16,19 176:1 177:1,9,
10 178:23 179:5 180:13
CEO 120:15 121:2
certificate 127:24 128:18
cetera 194:11 201:17
CFPB 59:11
Chad 88:12 89:2
chain 34:10 136:6 224:14
chains 34:13
challenges 54:5
chance 228:10
chances 256:8
change 26:14 123:21 124:23
126:22 154:25 191:11 193:7
232:17 246:20,24 247:5,6
249:6 254:13 260:8
changed 14:13 16:17 18:14
19:4,12 21:21 33:4 34:11
126:1 154:8 160:14 261:13
characterization 94:19
222:16
charge 134:14
Charlie 262:3
Charlotte 74:1
chart 127:23 128:12,15
174:10 175:8 186:20 188:12
charts 128:20
chat 11:6 204:15
check 179:7 193:7
checked 137:10
Chicago 14:9 240:15 241:3
242:9
chief 13:19 18:24,25 19:11,
18,21,23,25 20:3,12 21:11,
12,13,14,16,18,22,25 22:1
26:15 27:13,17 28:24 31:19
32:18 33:1,3,5,8,11,18,21,
23 34:12 35:2 55:23 68:18
103:1 118:13,20 125:22
129:12 141:8 158:2 163:20
164:1,11 229:7
choice 53:6 54:18,19,25
56:6,13

circle 106:8
circling 163:14
circulated 229:10
circumstances 30:8 45:24
55:16 72:16,23 75:20 120:9
258:23
cite 239:10
cited 241:20
cites 251:15
Civil 113:19
claim 36:4 38:25 42:16
45:17 46:25 47:2 48:4,5
65:3 78:16,21 81:24 82:6,19
83:18,23 84:1,3,4,9,15,25
85:5,6,9,12 93:11,17,18
94:2,14 95:13 96:18 97:7
101:17 104:15,19 105:16
107:3,7 108:3 110:2 125:12
136:2,3 142:10,23 145:22
178:2 180:22 181:13,17
182:7,18,19 183:19,25
184:24 192:5,6,9,12,17
194:16,18,20,21 195:23,24
199:8,10,25 200:1,8 203:10,
14,21 204:13 205:1,2,3,6,8,
14,15,24 206:2,7,12,18,19
207:7 210:10 211:2,7 213:8,
12,16 214:21 228:3 231:1
232:2 243:6 245:7,8,9
254:14 261:8
claims 16:4 37:16,20 38:7
39:13 41:16,17 42:24 43:4
44:23 46:24 47:7,9 50:1,6,7
51:20 52:15 54:3 61:9 62:1
73:16 78:9,11,12 79:14
83:15,25 84:24 85:23,25
103:9 104:1 108:17 109:11
110:3,17,20,21,25 111:19
122:9,10,12 127:8 132:7,16
135:13 137:6,17,21 138:8,
15,24 140:3,17 142:18,25
143:1,20 146:10 148:20
149:5 150:5 152:11 155:6
156:20,22 158:23 159:6,18
160:24 163:8 168:15 177:11
178:5,9,12,14,16 179:23
182:20,25 185:3,9,14,20
188:24 192:2 193:13 196:9
199:6 201:22 206:6 207:25
208:6,17 209:6 210:8 218:3
220:9 223:5 225:9,19
226:24 227:11 230:20
237:13 238:15 241:4 242:10

243:19,22 246:7 247:16
249:21 262:10,13,19
clarify 78:1 210:17
class 148:16,25 149:12
151:8 155:11 174:3
classes 83:3
Clausen 14:9
clean 228:20
clear 145:4 163:21 168:7
193:23 206:8,25 207:2,14
210:18,22 226:23 244:18
251:4
clearance 185:24
cleared 41:8 45:11 46:5 47:8
62:18 106:10,12,24 107:18,
20 108:9,12,17 176:7,11
244:19
clearing 178:7 256:16
click 37:6 261:4
clicks 261:11
climate 120:12
close 88:2,14 121:8 144:21
191:18,22
closed 50:4 71:19 73:2
closely 56:8 88:11 135:20
160:20 171:3 259:18
code 8:13
coincide 162:2
coincided 139:18 147:18
collated 60:11
collating 238:21
collect 213:22 221:2 252:1,2
collected 242:12
collecting 236:22 239:2
collection 249:17 250:6
Collective 215:3,4
collectively 109:14
Colleen 8:11 10:15,22 17:3,
10 37:8 136:15,16 197:4,7
262:9
college 14:2 158:18
colleges 148:21
column 175:2,3,5,9,16,17
176:9,10,14 177:10 178:22
combination 63:13
comfortably 193:12
command 136:6
comment 130:21
comments 240:5

common 39:4,22 40:20
41:11 44:7,9 45:20,22 46:21
47:6,8,15 48:4,6,11 49:11
51:17 58:19,20,21 60:11,13,
14 62:19 63:16 69:4,8 70:19
72:12 81:9 82:23 98:14,18
99:13,16 100:12,13,24
101:1,14 104:8,9,11 106:23
107:4,9 108:22 109:6 143:2
173:17 175:3,4,15,17,18
176:8,18 177:3,11 178:6
180:17,19 181:1,5,14
183:10,20 184:19 185:11
187:12,16,23 188:5,17
193:2,17 194:3 195:7,13,15
200:24 201:4,6,7,13,22
206:21 226:3,5,24 227:7,11,
15,18 235:6,25 238:19
248:14 250:6,20 251:14,19
252:3 253:14,17,25 254:7,
22 255:2,6,19,24 258:11
commonalities 62:11
252:10
commonly 229:4
communicate 11:4 27:16
72:17
communicated 35:21 38:13
103:5 118:12,14 121:2,6
148:7 228:25 229:4
communicating 118:23
121:18
communication 34:10,13,14
119:18 233:2
communications 36:7,18,19
56:15 69:25 70:15 74:24
78:19,20 86:14 88:9 233:6,
11,24 234:8
companies 142:7
compare 170:12 187:15
comparison 190:18
compensation 166:25
complaint 30:9 70:4
complete 46:18,22 64:17
99:9,18 100:2 107:16,21
171:8 189:4 216:12 252:4
completed 42:23 43:5,10
92:5 138:1 180:7 185:19
189:6 231:8 250:12 252:12
263:4
completely 167:2
completion 118:6 121:22
173:6

complex 202:6
compliance 59:2
complicated 32:9 90:9
206:17 224:6 236:16
comply 123:17
components 16:19
comprehensive 44:10
115:15
computer 169:1 235:7
conceptually 109:25
concerns 26:11
conclude 45:14
concluded 52:22 56:9 93:16
100:8 106:15 155:24 201:7
conclusion 39:12 41:7
91:25 95:12 201:13
conclusions 117:13 177:16
237:12 240:19
concrete 48:13 192:7
conduct 71:24 192:23
conducted 257:12
Conducting 37:15
confident 103:25
confirm 10:24 11:3
confused 250:16
confusing 177:5
connect 168:3
connection 38:3 140:11
162:22 165:10 191:14
200:20 214:4 219:21 244:23
connections 243:11
Connor 92:8 212:5,7
consecutive 17:6
consensus 126:17
consent 9:9
considerably 189:24
consideration 182:4 234:17
considered 58:20 65:8 69:8
72:11 95:15,25 96:19 97:20
129:9 176:17 183:25 195:15
214:4 216:18,21 245:11
258:11
considers 47:15
consistent 54:22 113:16,18
149:3 150:2 206:24 207:1,4,
10,13,15 235:12 239:14
240:16 241:9 242:11
consistently 207:6,10
243:24

consolidated 52:8
constantly 232:7
constituents 44:24
constraints 121:14
consult 88:4
consultation 168:19
consulted 116:16
consulting 87:19 169:11
consumer 15:1,4 18:13
contact 76:1 193:21
contained 110:13
contents 110:18
context 119:13 213:16
218:20
continue 45:12 46:18 86:1
101:4 204:24
continued 122:7,10,23
132:21 154:17 263:11
continues 30:14 212:17
continuing 40:25 59:7
114:20 151:22 152:5
contract 209:10,14,18
contracting 142:7,16
contractor 82:3 120:3 139:8
140:24 141:3 143:21
contractors 122:17 141:12,
21 142:4,9,22 143:5,15
contributes 36:17
contributions 144:11
control 143:17 207:19,21
208:1
convened 115:10
convention 64:9 235:12
236:1
conventions 18:14
conversation 91:5 114:19,
20 132:9 140:19 154:13
conversations 8:5,7 72:10
102:12,15,20 104:5 114:6,
10 118:24 129:7 159:23
229:23 230:2 232:5
convert 128:14
converting 155:3
conveyed 141:4
conveying 129:20
COO 21:14,23 27:20 28:1,4
229:6
COO's 27:23
copied 119:10 125:24

copies 79:23 92:7 157:9
copy 29:12 66:12 168:25
 237:1
Corinthian 41:17,18,19
 42:2,10,15 50:8 76:5 103:14
 109:10 110:20 111:22
 128:25 132:16 138:19,24
 141:18,23 143:11 145:20
 148:20 150:5 206:4,5,6
 223:10,21 225:3,7,18,25
 226:18 230:24 237:25
 249:17,23 262:19
corollary 192:16
Corp 175:9
correct 12:4 15:21 23:7
 27:21 28:3 32:19 38:20
 42:5,13,14,17 47:16 49:8
 50:14 78:13,14 80:9 81:21
 82:7 95:2,22 97:25 98:4
 108:16 130:8,9 141:1 146:1
 147:2,3 150:6,19 152:7
 156:20 170:17 175:6 178:25
 183:22 187:17 188:20 201:2
 207:20 210:15 215:12
 221:17 234:14 237:16 250:9
 251:23,24 255:22 256:1
 261:22
corrected 191:13 261:17
correcting 214:11
correctly 98:17 149:9 175:3
 176:12 246:4
corroborate 244:8
corroborated 240:12
corroborates 258:25 259:19
corroborating 95:18 96:17
 179:21 180:2,4 240:21
 241:24 245:23 246:1 248:1,
 5 259:7
corroboration 96:3
corroborative 243:13
 244:16 245:11,19
counsel 8:11 9:9 10:18
 11:23 12:1,8 17:23 43:21
 54:4 56:17,18,19,21,22,23
 57:6,11 75:4 86:25 88:23
 125:24 126:11 156:8 197:22
 262:7
counsel's 156:5
count 178:6
counts 22:17
couple 31:4 64:16 135:24
 171:14 191:9 196:4 198:10

201:3 217:3 258:8,13,18,20
 259:1,11 261:6
court 8:25 9:17,23 10:4,7
 49:22 78:5 82:11,12 112:14
 113:14 156:13 164:6,9
 189:10 197:1 198:13,17,19,
 22 262:25
court's 170:19 174:2
courtroom 239:7
cover 146:9 199:19
covered 52:11 193:20 200:7
 232:19 254:21
covers 199:3
COVID 120:12
crack 209:11
create 38:9 51:6 248:14
 249:16
created 38:18 49:17 115:21
 160:12 175:1 188:23 189:1
creating 143:10
creation 237:19
credit 41:18 42:15 132:6
credits 122:8 192:13,15,18
 206:5 211:3 237:13 258:2,9
crew 86:11
criminal 14:23 45:5,13 46:15
 48:20 70:23 71:17 187:4
criteria 42:8 110:5 176:21
 206:25 207:2 254:20
critical 179:11,14
crunch 128:12
culled 178:24
current 15:13 34:8 64:4
 120:12 126:23 193:9 216:14
curve 144:9
cut 9:24 121:10 164:7,10
 197:3 198:11
cycle 226:14

D

Dana 8:21 198:11
data 53:13,17 54:5,13 84:16,
 21 87:14 91:20 114:22
 115:24 116:1 127:24 128:6,
 7 133:18 150:21 152:12,14
 153:1,2,10,20 154:18 155:3
 160:9 167:8 169:11,13,17
 170:14 177:20 191:13
 213:22 217:1 230:10 240:10

database 239:23 255:10,13
date 52:12 99:23 137:8,10
 181:11 235:22
dated 237:15
dates 31:18 32:20 69:2
day 11:16 22:15 181:4
 249:13,15
days 12:22 43:15 102:8,18
 228:22
deal 218:21
dealing 53:1
debate 74:19,22
Debt 215:3,4
December 8:12 80:21
 140:14 145:13 148:24
 225:10
deceptive 180:25
decide 56:13 219:8 246:17
decided 51:1 213:2,6 218:5
 222:1 225:16 245:25
decides 52:16
deciding 252:5
decision 27:7,10 54:2,23
 55:2,8,25 63:7 75:14,23
 97:21,23 100:10 103:8
 116:16 118:16,22,23
 119:15,20,24,25 120:23
 121:3 123:1 125:14 126:4
 127:5 129:10,15 137:17,20
 146:15,18 147:17,21,25
 148:9 151:5,10,17 152:9,17
 155:20 161:15,17 162:4
 163:16 202:3 212:14 216:16
 217:15 219:3,17,20 222:5
 223:3,25 224:14 254:21
 260:8 261:17,24 263:7
decisions 27:14 30:17 55:24
 67:25 75:5 101:11 117:6
 119:6,11 146:24 147:5,9,10,
 11,12 148:5 151:2,6 161:11,
 22 162:13 169:24 171:2
 209:24 218:7 221:15,21
 222:11,13 223:1,9,14,15,16,
 19,22 224:3,16,18,20,24
 230:8,9 232:18 262:12
 263:2,11,14
deck 159:10
decks 158:1
declaration 12:14 17:2,9
 36:14,24 37:8 92:8,25 98:21
 115:1 117:25 121:20 122:4
 137:2 139:5 145:11 146:23

147:1 150:13 155:9 162:25
174:7,8 184:4 190:21,24
212:4,7
declarations 12:14,15,18
declare 9:7
deeply 202:14
default 53:10 107:8
defendant 239:9
DEFENDANTS 262:7
defendants' 29:9,20 79:24
80:6 89:2 173:20 174:1
defense 15:20,25 16:4 18:2,
10,11,17 20:7,16 21:8 23:6,
24 24:9 25:21 27:24 28:2,5
30:16,22 31:2,5,23 33:2
34:4,21 35:8,11,19 37:16,20
38:9,14,23 42:4 50:7 67:16,
24 68:12,21 72:18,25 75:6
83:8,18 86:12,14 95:20
96:2,16 97:6 100:11 112:7,
24 113:11 114:8,18 115:10,
12,15 116:17 117:7 121:9
122:8 124:9,11 129:18
131:3 146:3 147:5 149:4
150:4 151:2,6 152:2 155:22
166:6,12 168:14 169:24
170:24 173:4 178:24 189:6,
7 201:1 207:18 208:17
213:2,7 215:18 222:1,11,13
224:2 229:6 231:10 232:11
237:11
defense-related 83:2
defer 236:16
define 73:23 186:18
defined 166:11,12 255:19
defining 255:23
delay 131:10 154:1 222:10
224:3,16
deliberative 120:21 220:14
delineate 116:7 135:22
delineated 187:23
demonstrates 215:17
denial 79:21 80:13,20 81:6
84:7,14 85:24 86:7,9,19
87:2,10 88:6 91:3 92:5 93:5,
6 98:2,8 109:16,19,21,24
110:14,25 111:6,14,15,19
119:16 125:20 145:14,18
146:3 161:22 162:8,12
208:20,23 210:6,24 211:25
212:3,8,12 213:5 215:11
220:24 222:3

denials 79:17 110:19 111:2,
4,24,25 112:1 131:18,20
132:12 145:20 146:12,15,19
147:17 148:1 151:22
161:10,11,21 207:2 223:14
226:8,17
denied 79:5,6 81:5 83:15,25
84:2,7 85:6,7,12,25 91:21,
22 92:3 94:1,13 99:19 108:9
110:21,22 124:15 132:1
145:6 158:14,17,23 205:4
207:8 226:25 244:2 246:8,
10 247:2,3 253:9
deny 204:13 205:6,16,23
denying 205:11,13
department 14:18 17:23
18:4 19:3 22:8 25:17 28:9,
11,19 29:3 32:10 38:8 47:14
50:19,21 51:5 56:22 57:4,8,
11 58:18,23 59:16 70:18
80:20 84:12 86:24 115:9
118:3 121:8 123:10 124:20
126:14 138:24 147:16
148:23 149:8,11 152:13,22
154:4 155:16 156:1 157:23
163:19 182:23 183:7 185:21
219:7,12 221:11 233:5,15
234:16 251:7 252:7 256:12
262:21,23
department's 96:22 115:16
127:4
department-wide 26:12 27:3
145:7
departments 25:11
depend 47:1 65:2,5 227:2,9
256:7
dependent 41:12 52:11
206:19 259:9
depending 61:17 77:6 120:9
149:18 181:7 186:21 188:23
204:17 208:4 228:8 245:16
257:7
depends 32:12 63:16,19
65:17 66:10 73:23 84:2
97:13 104:15 208:8 230:7
231:20 240:23 245:2 257:14
258:6 260:6
deposed 13:3,6,8,11,22
deposition 8:10 9:1,3 10:23
11:5,18 12:6,21 13:1 17:7,8,
11 22:10 29:23 36:11 80:3
92:9 129:23 157:11 173:22

184:9 212:2 237:3
depositions 113:17
deputy 18:25 19:18 21:14,23
33:23 118:12,20 120:15
121:2 158:4
describe 15:3 27:23 30:10
37:17 61:14 74:19 179:9
184:14 192:3
describes 30:15,21 81:1
175:3
describing 31:1 38:9,19
41:6 48:9 168:13
description 18:7 83:15
176:14 216:22
desire 154:3 171:8
desk 237:22
detail 215:8
detailed 97:1
determination 51:19 55:21
108:13 109:5 156:2 224:9
determinations 39:8 124:3
determine 37:24 39:25
40:16,24 45:8 51:23,24
53:14 56:5 177:21 185:20
186:23 201:17 207:7 255:20
determined 82:18,20 107:24
176:4 177:2 185:10 187:16
188:16 204:6
determines 127:20
determining 39:3 53:17
206:16 216:18
develop 41:1 50:18 86:8
90:6 106:16 132:23 133:17
175:23 227:15,16 242:2
249:8 257:2
developed 42:12 50:16,20
78:10 85:22,24 86:21
134:22 135:12 152:10 159:6
184:20
developing 50:22 132:15
133:1 161:4 169:4 172:1,17,
18 231:3 242:8 248:10
253:6
development 36:7 51:18
133:11 141:14 159:20
162:11 172:4 223:7 248:8
252:21
develops 86:3
deviations 170:10
Devos 8:15 22:13 130:11

Devry 73:22,24 99:8
dial 197:12
Diane 12:15 20:25 22:3 34:9
 36:10 57:21 92:10 161:8
 168:19 169:21 173:21
difference 123:2 250:24
differently 76:25 77:6
difficult 224:12 230:2
difficulty 224:1,4,22
direct 47:7
directed 100:14
direction 161:2,6 163:18
 174:16,18
directive 102:9,10,17 103:7
directives 35:18 117:6 127:6
directly 21:18 22:1 56:14
 57:5,12 118:25 171:7
director 15:19,24 18:2,24
 37:1,14 56:1 68:16,23 160:5
Directorate 18:13
disagree 112:16 205:10
 207:3 246:24
discerning 224:22
discharge 50:16,22 51:7
 120:7,9 130:6
discharges 130:23
discover 246:13
discovered 196:14 232:12
discovery 13:4 66:7 112:15
 117:21 156:13 200:16
 234:20 236:21 249:6
discretion 142:10
discuss 12:25 28:2 113:2
 114:17 151:10 229:18
discussed 93:24 169:22
 213:24
discusses 39:9 257:13
discussing 175:12
discussion 56:3 91:17
 123:19,25 124:5,20,22
 154:10 160:23 201:16,25
 257:24
discussions 27:11 56:3,12,
 14 57:20 72:20 75:2 91:2
 100:16 112:6,23 125:7
 129:5 132:4 154:24 159:19
 189:16 232:10
dismiss 82:12
displeasure 130:13 131:2

disposition 124:8 152:1
disseminated 195:3
distilled 240:3
distinction 28:18 194:19
distorted 164:15
distortion 108:25 116:22
 127:17 162:15
distribution 62:14
dive 202:13
divided 144:1
division 15:2 51:5
document 17:1,14,18,19
 29:19 30:5 37:3,7 39:19
 64:13,23 77:1,3 80:6,11,16,
 18 81:13 90:20 92:20
 117:14,17,21 119:9 130:2,
 11,16 157:14,21 158:9
 174:6,9,12,14,25 177:7
 184:12,14 190:15 191:2,19,
 22 192:2,3 193:4,8,14 199:6
 204:4 209:4 212:3,5,9,13
 232:21 234:2 236:20 237:7,
 19,23 238:9 239:8,11 240:6,
 9 241:21 243:8 257:23
 259:5
documentation 61:12 96:5
 97:16 182:7,9 183:24
 201:23
documented 233:20
documents 13:4 18:20
 39:23 43:7 49:6 59:8,15
 67:23 73:12,18 74:5 76:9,16
 97:11 103:23 104:1 114:22
 115:25 116:2 134:20 175:21
 179:24 182:24 196:19 200:8
 205:23 234:11 236:8,22
 251:7
DOJ 12:7 43:17 236:16
double 177:4
doubt 195:14
dozen 23:2
dozens 49:23
draft 75:24 110:12 162:20
 190:16 191:16 208:20
 209:1,7
drafted 91:9 110:8 237:10
drafting 87:25 89:8,15,17,19
 131:22 209:11 238:25
drafts 239:7
dramatically 22:20

draw 28:17 194:19
driver's 9:19
drop-down 81:25 82:5 85:14
 95:10,11 261:10
drop-downs 85:14
Dropbox 17:1 29:18 37:9
 79:23 92:7 129:23 157:9
 173:19 184:3 237:1
dropped 197:13
due 25:6 67:24
duly 10:16

E

earlier 93:24 94:11 100:4,23
 102:12,14,21 106:9 109:17
 151:25 161:14 165:3 168:6
 175:12 194:14 212:1 228:19
 233:1 248:8 259:20 262:9
earliest 209:5 221:13
early 25:8 33:7,13 68:13
 102:16 122:20 125:21
 132:5,12 139:25 152:25
 153:12,15 154:11,16 163:15
 233:16 256:2
earning 170:13
earnings 170:16
easily 236:8
ECF 79:24 81:14 92:8,16
 98:8 173:20
ECF56-4 17:2
Ed 51:10 213:1,6 215:17
edited 110:11 189:15
EDMC 49:21
Education 14:18 18:5 29:4
 57:4 175:9
Education's 56:23
effect 75:25 76:3 77:22 78:4
 88:21 102:12 120:18 126:5,
 19 146:14 195:8 222:6
 224:7 233:14
efficient 221:9
efficiently 178:19 221:4
effort 63:18 88:15 170:12
 209:17
Eileen 212:5,7
Eitel 34:25 57:22
electronic 11:6
electronically 81:12

element 39:15 45:16 79:8,9
201:8 206:22 242:5

elements 39:14,25 45:17
79:18 109:1 180:21 181:6,
25 206:18 227:8

elevate 194:16

elevated 195:21 200:23
201:1,10,24 202:2,21 203:2

eligibility 83:8

eligible 104:13 155:8

eliminate 102:7 164:4,15

eliminated 102:3 230:1
233:18

elimination 101:22 102:16,
17,21

Elisabeth 8:15

ELLIS 9:15 10:19 17:4,13
29:25 31:11 37:5,8,12 57:25
58:7,15 68:10 80:8 89:5
92:6,12 94:20 105:21 106:7
112:10,16,22 113:15,20
114:4 117:3,23 120:22
121:1,19 124:7 130:1 131:6,
9,13,14 136:10,25 156:14,
17 157:3,7,13 165:5,16
167:18 168:1,10 170:21
173:24 184:6,11 197:4,10,
23 198:9,15,18,20,25 211:9,
16,23 222:18,23 234:21
235:4 236:7,14,24 237:6
262:1 263:17,21

else's 189:9

email 11:5 60:18 73:10
189:5 194:11,24 195:1,18,
22 196:6 204:14 217:12,13

emails 87:22 215:2

emerging 252:10

employment 41:21,22 42:24
44:15 49:18 52:23 93:7,9,
17,25 94:12 122:8 182:11,
16 195:20 196:2 199:24
213:11 238:2,5 240:17

employment-prospect
48:16 200:1

employment-prospect-itt
78:12

employment-prospects
41:17,20 42:11,18 43:4 62:1
85:23 93:14 135:13 231:1
240:2 241:4 242:10,20

**employment-prospects-
type** 243:3

enclosed 191:1

encountered 60:20

encourages 97:1

end 26:8 45:14 54:10 69:1
94:8 108:9 140:13 143:7,25
168:20 173:14 181:3 185:24
193:18 194:1 208:21,24
209:23 210:6 212:9 218:25
221:22 223:9 225:22

ended 27:3 145:7

enforce 113:14

enforcement 13:19 18:3,12,
13,24 19:11,19,21,23,25
20:4 21:11,13,16,22,25
26:16 32:18 33:1 55:23
59:11,14 68:18 103:1 118:2,
8,13,21 125:22 129:13,17,
19,20 256:11

engaged 93:8

enhancements 217:8

enlisting 66:23

enroll 82:16

enrolled 98:3,10 177:25
180:14 181:10 188:1 244:12

enrollment 244:10

enter 8:23

entered 217:23

entering 154:22

enterprise 259:4

entire 222:21

entirety 57:8 218:7

entitled 124:10,12,21 191:24

entitlement 126:25 152:3

entity 215:3,4

entry 85:19 127:25 128:6

equation 121:15

Erin 23:17

error 142:19 261:12

escalate 105:3 199:15 203:7

escalated 182:3 201:14

escalating 203:8,9

essentially 45:23 48:19
101:25 103:6 106:17,18
110:5 119:24 127:14,17,18
142:11 147:20 179:21 182:4
186:24 205:20 219:5,8
260:24

established 100:22 251:13

establishes 234:6

estimate 84:6 134:1,6

eventually 127:13

Everest 237:14 238:16

Everest/wyotech 237:2

evidence 39:4,6,12,15,17,22
40:16,21 41:1,11 44:2,3,5,7,
9,17 45:1,15,21,22 46:1,3,
19,22 47:1,6,8,15 48:4,6,11,
14 49:11 51:17 58:19,20,21
59:10,19,21 60:10,12,14
61:9 62:19 63:16 65:8,11,14
69:4,8,12,13,16 70:20
72:12,13,17,24 74:10,15
76:2,18,24 77:9,15 79:3,12
81:9 84:2 85:4 95:1,5,8,10,
11,15,16,18,25 96:7,11,14
97:2 98:14,18 99:6,13,17,19
100:1,5,12,13,24 101:1,8,
14,15,16 103:21 104:8,9,12,
21 106:23 107:4,9,12,16
108:4,7,8,22 109:6 132:20
133:2 134:3 143:3 145:24
163:11,12 172:17 173:3,17
175:4,15,19,22 176:5,8,15,
18 177:3,12 178:6,22,23
179:1,12,21,22 180:2,4,17,
20 181:1,5,13,14,21,25
182:1,13,17,21 183:10,21
184:19 185:11 186:22
187:12,16,23 188:5,17
194:3,8,15,17,20 195:4,7,
14,15 196:15 199:7,8,9
200:24,25 201:4,6,7,13,17,
22 203:9,14,19,20 204:5,6,
12 205:2,7,9,12,13,19
206:12,16,21 210:9 214:3
215:17,22,23,24 216:3,6,10,
17 217:16 226:3,5,6,24
227:7,11,15,18 228:2,6
232:12,16,25 235:6 238:10,
19 239:6,10,11 240:12,21,
23 241:1,9,17,19,21,25
242:11 245:19 246:13,18,19
247:4,5 248:1,12,14 249:6,8
250:7,18 251:14,15,20
253:13,14,17,25 254:8,22
255:2,6,19,24 258:7,12
261:8

evidence-exchange 36:5

evolved 104:10 235:14

evolving 249:4
exact 42:7 47:18,19 61:23
 65:5 140:21 217:4
EXAMINATION 10:18 262:7
examples 192:5,20
exceeding 141:18
Excel 133:13
exception 50:9 53:23 210:15
 211:10
exceptions 259:1
exclude 59:6
exclusions 175:16,18
excuse 14:14 139:11 147:24
 164:9 198:3 253:23 262:21
exhibit 17:5,8,10,11 29:22,
 23 36:14 37:10 80:2,4 92:9,
 11,24,25 98:1,22 115:1
 129:22,25 137:3 157:8,11,
 12 173:21,23 184:4,8,9
 190:24 208:13 212:2 237:3,
 4
exhibits 81:2
exist 40:13
existed 174:25
existence 87:11 155:21
existing 84:19 183:20
exists 183:10 219:10
expand 152:18
expanded 213:24
expanding 72:10
expansive 172:7 214:14,15
expect 96:6 228:4 232:23
 239:18 249:14
expectation 96:10,15
 161:24 227:5
expected 227:10,25 229:8
expedited 138:25
expensive 82:25
experience 108:5
expert 153:5 159:21
expires 220:1
explain 28:20,25 44:2 131:7
 159:7 175:14 203:13 250:4,
 23 262:16
explains 215:11
explanation 216:11
exploration 72:4
explore 69:11
explored 225:5

expressing 131:2
extend 16:5
extended 25:10 219:1
 233:12
extending 25:2
extensive 105:19
extent 41:23 57:9 72:6
 101:12 105:10 115:23,24
 123:22 156:10 169:17
 177:20 183:4 187:9 214:16
 224:18 250:21
external 233:6
extreme 130:13
eye 71:10

F

fact 69:9 119:1 137:25
 160:19 162:9 218:23 232:25
 238:25 240:20
fact-finding 73:19 75:18,19
 126:15 241:15
factor 215:6 224:15,17,19,
 24 225:7 226:21 260:16
factors 52:9 54:12
facts 30:8 39:8,10,24 45:16
 135:20 172:4,18 179:20
 239:18 250:19,20,24
 251:12,15 254:6,7
failed 79:1 84:8 242:6
fails 82:19 93:10
failure 81:24 82:6 84:1,14,24
 85:12 93:11 94:1,14 205:14
 211:1,6 213:12,15 261:7
fair 59:19 72:7 133:10 184:1
 206:24 207:10,15 210:8
 215:13
fairly 20:23 25:9 27:25 61:24
 105:19 149:16 153:6 203:4
 226:2 252:11,18 257:20
fall 22:23 23:23 52:2 70:16
 71:14 102:11,19 160:15
 165:2 167:2 169:5,23 171:5
 185:11 186:1 187:10 226:3
 228:24 253:16,21,24
fallen 253:10
falling 226:24
falls 100:8
familiar 11:21 157:14 159:12
fashion 125:4 139:1

fast 232:23
faster 227:10
fault 15:17
February 112:25 114:5
 164:22 219:2
fed 128:7
federal 18:3,9 24:25 28:6,10,
 23 57:8 90:24 113:19
 233:11
feedback 202:10 204:10
feel 112:18
felt 75:21 223:16
fewer 142:24
FFEL 52:7
field 88:18 91:18
fields 87:17,19
figure 194:2 209:9 218:24
 219:22 220:1 241:18
 244:20,22 256:17 261:15,21
figured 228:11
file 29:20 236:4
filed 18:9 65:11,12 82:11
 183:15
files 169:1 185:1
filing 70:3 80:12 92:16 98:9
 173:25 174:1,7,24 175:1
fill 24:12 81:18 88:19 91:19
 213:20
filled 81:23 82:1 90:13 220:7
final 47:10 54:23 55:8 65:12
 89:23 90:2 126:19 146:16,
 18 177:16 191:3,5,19 202:3
finalized 87:23 88:1 139:19
 162:8 170:1 189:17
finalizing 88:2
finally 203:3
financially 8:20
find 21:3 62:21 66:17 87:9
 148:4 187:25 216:21 244:16
 245:17 247:4 260:10
findings 45:15 55:14 142:14
findings-of-fact 239:8
fine 18:21 59:4 136:11,17
 256:12 263:21
finished 41:21
firm 14:9,11
first-level 205:6
fit 47:7 83:15 145:23 176:21
 177:11 183:20 186:3 193:12
 200:24 201:4 235:23

fits 48:4,5 142:20 176:13
201:6 241:12
fitting 49:11
five-minute 105:22 167:19
211:11
fix 168:2 197:24
fixed 168:2
flag 63:3 248:6 249:11
flagging 104:22
flip 80:17 81:10 145:10
208:14 238:8
Flipping 122:3 139:4
flooded 73:11
flooding 74:12
flows 144:2
focus 86:13 100:21 139:1
142:9 164:20 225:7
focused 44:22 71:6 138:16
161:4 163:10 164:2,12
225:24
focuses 15:12
focusing 218:5 220:8
folder 236:13
folks 13:6 24:16 25:18 75:9
82:24 86:10 87:6 88:16 94:8
103:3,16 155:2 167:13
168:20 169:22 170:11 220:8
follow 36:16 54:24,25 64:21
65:1 162:17 169:7 208:19
249:2
follow-up 189:15 262:6
food 224:14
forbearance 120:11,13
132:3 218:16,23 219:2,15,
21
foremost 142:8
forgetting 59:25
forgotten 122:13
form 31:10 42:8,12 80:13,20
81:5,10,16 83:10,11,15
84:7,13 85:24 86:1 87:2,9
90:6,12 92:5,21 93:4 96:21
109:16 110:8,14,19 111:7,
11 122:17 162:7 183:1
191:19 208:23 209:15 210:6
213:4,20 215:5 220:23
formal 20:8 166:14,19,23
formally 166:9
format 109:18 235:24
forms 44:8 58:23 80:14 86:8
109:22 111:19 204:17

213:22
formula 127:18,20
formulate 154:4
Fortune 243:11
forward 40:22 43:14 48:10
71:9 74:23 100:15 101:2,20
126:8 133:25 135:2 140:17
144:2 151:20 203:15 218:10
253:15
Foss 160:6 168:19 169:7
found 61:3 232:8
frame 153:23 225:14
framed 96:9 170:2,6 176:24
framework 55:20 56:7
219:10,11 254:17
free 112:18
freeze 25:9 26:9,13,24 27:3
68:15 145:7
frequent 204:16
frequently 28:2
frog 173:20
front 96:11
front-end 227:23
froze 111:10,12 165:9
FSA 13:10 19:1 20:12 21:6
25:11,15,17 28:18,21 31:9,
15,19,23 32:18 34:22 35:22
56:20 58:23 76:21 86:14
88:17 97:24 102:25 103:5
120:2 121:15 126:10 127:7
141:7 147:11,12 149:2
150:3 160:8,16 161:1
166:11 229:5 248:12
FSA's 56:19 165:23 166:7
FTC 59:11
fulfill 79:7
full 105:11 207:23
full-time 23:10 103:18
143:17 171:12,24
fully 214:21 225:5 230:1
254:6 255:2
fulsome 216:11
Fun 13:24
function 58:24
funding 59:7
funny 13:16
FYI 151:18

G

G-A-R-R-Y 23:14
Garry 23:13
gather 217:16
gathered 152:22
gathering 49:6
gave 137:12 141:2 214:23
261:15
GC 88:21
general 12:8 14:19 16:9,12
17:23 28:13 43:21 48:15
54:4 55:11,14 56:16,18,19,
20,21,23 57:6,11 59:12
69:3,15,16 75:4,11 77:8
86:25 88:23 107:2 115:17
125:24 126:11 156:8 158:7
173:7 194:21 232:16 233:25
248:11 258:25
general's 44:13 234:10
generalization 202:17
generally 12:17 16:15 18:20
20:25 34:15 39:21 44:22
54:21 55:20 61:7 63:12 71:7
82:22 86:6 100:4 117:20
166:16 173:15 185:2 186:22
190:11 202:1 204:9 236:3
246:6,7 250:12 257:14,19
generic 257:20 258:4
get-go 164:5
give 47:19 61:23 65:4 79:22
134:6 158:6 183:2 190:8
195:9 196:17 206:24 259:7
giving 83:16 158:12 160:23
206:24
glitched 102:13
global 160:18
globally 74:16
goal 16:3,18,22 166:24
167:9 178:7
goals 16:1,8,13,17 166:8,12,
13,14,23
good 52:3 55:20 61:24 62:14
88:15 143:18 167:4 189:25
225:8 228:10
gosh 32:22
governed 156:3
government 11:23 12:20
24:25 80:13

government-issued 10:10
grade 145:8
grads 24:19
graduate 14:1
graduated 14:6 192:25
grant 149:11
granted 50:6,7 107:19
 108:19 109:11 125:13
 176:16
granting 49:14
grants 149:23 150:4 154:2
gray 87:16
great 11:12 13:21 58:3
 191:23 211:13 236:15
green 87:7 133:24 233:23
groundwork 220:25
group 18:11 24:21 44:19
 50:13,16,22 51:6 59:3 60:8
 70:18 73:23,24 74:1 86:16
 98:16 175:8
groups 47:21,23 59:18 73:6,
 20
guaranteed 122:8 182:12
 195:20 196:2
guess 9:23 32:24 55:22
 65:25 73:22 97:13 107:17
 118:11 125:15 129:14 154:7
 164:21 169:16 172:12
 175:14 183:13 199:16
 213:8,14 224:19 229:14
 243:21 251:25 257:14
guessing 61:22 162:23
guidance 182:24 199:5
Guys 197:1

H

half 94:9 109:14 111:10
 172:15
hand 89:18 128:16
handed 127:14 189:18 259:5
handle 71:5 120:6 131:25
 209:9 221:4
handled 119:20 120:2
 138:25 142:19
handling 14:23 63:19 119:7
 120:1 217:5
handouts 200:12
happen 50:2 162:1 189:10
 194:4 196:5,21 213:22

227:17 260:4
happened 26:19 68:6 71:12,
 20,25 139:15
happening 154:21 256:10
happy 130:22
harassment 83:2
hard 79:23 92:7 123:13
 157:8 237:1
Harvard's 59:20
hats 21:17 31:13,18 32:8
head 84:11 88:9 137:9
 180:11 235:10 257:10
heading 80:19 212:13
 216:22 238:11
heads 73:10
headway 50:3
Health 178:2 180:15 181:10
hear 165:14,17,18 197:9
 198:11
heard 27:16
hearing 174:3 197:2 198:14
heavily 135:19
heavy 40:5
held 8:5,8 32:20 162:14
 172:23 255:5,7,13 262:11
helped 143:14,22
helpful 66:9 67:2 73:13 74:6
 164:18 183:4 216:5
high 134:7
higher 51:9 143:19
highlighted 87:15
highlights 87:17
hire 24:13 25:13,19,20,23
 26:4,9 141:12
hired 19:23 22:25 25:3 33:10
 142:4 143:18
hiring 23:23,25 25:8 26:9,
 15,24 27:3,8 68:15 145:7
 171:3,4,17 229:24
historically 185:5
hit 100:20 103:20 144:18
 164:24 186:5 229:8
hits 185:20 186:10
hitting 144:5
hoc 20:5 22:5
hold 9:18 47:9 63:4 122:15,
 25 140:15 147:16 159:3
 162:4,22 175:23 194:2
 204:7 253:20

holding 46:17 132:11
holiday 231:16
honest 110:15 196:22
 256:21
hope 235:13
hour 58:1
hours 12:23
huge 247:21 256:8
humans 261:3
hundred 186:14 240:14
 258:8,13,18,20 259:2,11
hundreds 53:2 231:16 261:2
hurdle 181:6 195:10
hurdles 188:10
hyperlinked 192:1
hypothetical 51:11 259:8
hypothetically 50:24 104:14
 135:7
hypotheticals 258:5

I

Ian 160:6 168:18 169:7,15,
 21
ID 10:11
idea 28:15 75:13,16 122:2
ideal 260:18
Ideally 240:22
identification 17:12 29:24
 184:10
identified 30:10 58:18 62:20
 239:20 241:8 251:13 261:6
identifies 39:16 187:20
 202:9
identify 30:7 35:17 199:17
 215:16 236:8 243:25
identifying 177:1 216:6
identity 10:11
IG 116:25 117:11 118:7
 133:11 134:9 138:1 140:7,
 12 141:13
II 185:18 188:18 191:24,25
illegal 82:11
Illinois 14:14,20
imagine 13:8 167:3
immediately 117:8 217:11
imminent 125:3
impact 151:19
implement 128:3 160:2

<p>implementation 32:2 127:10 159:25 160:4,6,11</p> <p>implemented 127:7</p> <p>implements 28:10</p> <p>implications 141:6</p> <p>important 77:2 207:1</p> <p>improve 208:20 232:7</p> <p>improvements 42:6</p> <p>in-box 74:12</p> <p>in-person 238:12</p> <p>in-state 64:21</p> <p>inaudible 165:7 196:25</p> <p>inauguration 113:6</p> <p>include 83:5 91:17 105:10 107:1 178:23 199:21 212:20 215:25 242:21</p> <p>included 43:23 74:8 93:23 95:13 100:6 102:25 116:6 137:8 143:3 190:10</p> <p>includes 175:11 190:12 192:22</p> <p>including 57:8 99:7 141:20 243:5</p> <p>incoming 232:4</p> <p>incomplete 64:20</p> <p>incorporated 77:8</p> <p>incorrectly 213:2,6</p> <p>increase 26:18 139:8 140:24 141:2</p> <p>increased 170:25</p> <p>incredibly 227:23</p> <p>independently 243:14</p> <p>index 234:3</p> <p>indication 183:3</p> <p>indiscernible 130:24,25 196:18 200:7 209:8</p> <p>individual 38:3,23,25 46:25 47:22 48:3 51:3 53:5,6 65:18 73:8 74:13 104:17 111:6,8,13,15,24 186:16 194:25 206:12 227:9 228:2, 7 240:10 241:20</p> <p>individually 61:10 74:14 77:13</p> <p>individuals 28:12 38:22 111:5,18</p> <p>ineligibility 216:19</p> <p>inform 29:6</p> <p>information 9:22 64:22 66:17 70:22 76:14 77:7 88:5</p>	<p>97:1 108:3 110:14 114:24 116:5,20 120:20,21 123:23 138:4 152:23 156:7,11 196:24 204:23 212:19 214:18,23</p> <p>initial 11:21 25:3 42:12,25 110:11 253:12,13</p> <p>initially 103:12</p> <p>initiate 70:17,18</p> <p>initiated 99:5</p> <p>injunction 147:15 148:11,23 149:4,6,25 150:3,10,18 153:19,21 154:3,12,19,21 155:7 262:21</p> <p>input 36:2,9 88:7 169:17</p> <p>inputs 128:1</p> <p>inside 187:2</p> <p>Inspector 115:17</p> <p>instance 65:17 69:14 70:21 185:13 187:8 239:15 240:13</p> <p>instances 127:11 260:10</p> <p>Institute 15:9 50:10 93:8 98:3,11,13,15 99:8,14,17 100:2 175:11 240:14 241:3 242:9</p> <p>institutes 49:23 185:14</p> <p>instruct 113:13 251:20</p> <p>instructed 163:6</p> <p>instructing 32:10 33:2 112:10 169:6</p> <p>instruction 34:16 163:22 189:3,4 191:25 193:22 194:7</p> <p>instructions 32:4 34:3,21 48:2,18,23 49:1 104:17 105:6 132:2 187:11 203:6</p> <p>instructs 12:1</p> <p>insufficient 84:2 94:17 95:1, 6,11,13 97:6 99:19 232:1 261:8</p> <p>intake 64:25 217:18</p> <p>intend 47:19</p> <p>intended 110:16 171:10</p> <p>intending 16:20</p> <p>intent 91:12 262:23</p> <p>intention 70:11</p> <p>intents 42:8</p> <p>interacted 87:6</p> <p>interactions 8:8</p> <p>interchangeably 64:10</p>	<p>interest 103:12,13 121:13 122:19 132:6</p> <p>interested 8:20</p> <p>interface 8:9</p> <p>internal 232:20</p> <p>Internet 60:3 186:6 251:9</p> <p>interrogatories 29:11 208:13</p> <p>interrogatory 29:21 30:2 89:3 208:15,19</p> <p>interviewing 24:2 229:24</p> <p>introduced 173:21</p> <p>investigate 70:24,25</p> <p>investigated 59:13</p> <p>investigation 15:7 44:14 69:17 70:3,6,19 138:2 140:8 195:24</p> <p>investigations 65:19,21 66:3,16,19 67:4,8,17,21 68:1,4,16,19,23 71:4,22,24</p> <p>invite 74:9</p> <p>involve 51:19 220:11</p> <p>involved 15:10 28:16 31:20 35:3 51:9 57:20,22 59:14 75:1 86:11 89:8,15,22 90:2 91:1 103:3 127:22 152:12 158:8 159:19,22 160:20 237:18,24</p> <p>involvement 169:3</p> <p>involves 52:7</p> <p>involving 227:11 234:18</p> <p>is-it-false 180:24</p> <p>issuance 119:6 161:21 162:17</p> <p>issue 26:23 35:25 41:12 45:25 56:4 63:3 72:25 96:8 101:3,19 104:22 131:20 147:10,17,22 148:1 151:6 161:11 168:5 170:4 203:25 219:19 223:9,13,14,15,16, 19 225:8 227:21 232:21 248:4 254:10,11 260:7 261:17 263:7,11,14</p> <p>issued 79:17 99:25 111:2 127:6 146:24 147:6 149:4, 24 154:12 161:12 170:3 219:4 222:13 223:1 224:13, 24 225:20 230:8,9 232:18 262:12 263:2</p> <p>issues 14:22,25 15:11 21:3 28:2 29:7 38:4 57:10 58:25</p>
---	--	---

66:24 67:16 72:20 83:2
121:16 134:10 164:2,13
168:3 181:22 234:18
issuing 101:10 126:3 132:11
147:8,11,12 148:2 151:1,22
154:2 171:1 221:16 222:10
224:3,16
item 127:3 212:24 213:1
215:16
items 218:12
iteration 209:5
ITT 41:19,22 42:18,23 43:4,
23 49:17 50:8 52:22 53:3
54:3 57:16,17 61:21 78:11
79:13 81:4 85:22 99:7
103:17,21 108:18 109:10
128:25 132:17 135:11
150:16 152:14,18,24 154:18
159:16 179:20 180:5 206:6
210:11 226:1 230:24,25
238:5 247:22 256:22
258:14,15
IV 59:7
Ivy 186:3

J

J- 140:17
J-O-Y-C-E 23:17
James 33:6,18 34:5
January 42:13,16,19,20,21
50:10 112:5,25 114:5 122:6,
9 130:7 222:14
Jeff 169:6,15,21
Jeffrey 19:14 103:2 168:18
169:6
Jim 30:21 31:13,16 32:7
137:14,15 138:10 141:7
job 14:7 18:7 24:1 70:23
150:10 155:23 167:2,3
182:12 192:21,25 206:4
243:9
job-placement 110:21 243:7
259:4 262:20
job-placement-rate 41:16
110:2,3 111:25 142:9
145:21,24 148:20 218:3
223:21 225:18
job-placement-rate-
misrepresentation 84:23
85:9

job-placement-rates 42:3
jobs 14:13 24:5
Joe 8:16 10:7 197:17 263:22
John 23:14 196:8,10 257:21
Johnson 33:11,15,16
join 144:7
joined 14:15 42:4 97:9 129:8
231:24
joins 207:23
Jones 12:15 17:8 20:25 22:3
34:9 57:21 80:3 92:10
129:23 157:11 161:8 168:19
169:21 212:2 237:3
Jones' 22:10 36:10 173:21
Joyce 23:17
JPR 110:25 111:22 122:10,
11,15 137:5,17,21 138:5,8,
15,16 140:4,17 150:5
152:10 155:6 156:20,22
163:8 206:6
judge's 17:5 113:16
judged 108:13
judgment 61:3 62:23 65:13,
25 66:11,12
judgments 65:6,7
Julian 19:16,17 26:15 27:8
31:5,12,14 32:9,17,25 33:9,
14,19,24 68:17 137:24
138:10 140:18 141:4
July 77:22 99:24
jump 188:10
June 146:25 147:4,9,13,19
152:6
junior 23:3 24:19,21 40:4,6
63:2,15 104:25 190:1
203:12
justice 17:23 45:5,13 46:16
48:21 70:23 71:17 187:5
Justin 114:13 116:6 148:6,8

K

K-A-Y-E 19:24
Kathleen 33:24
Kaye 19:24
keeping 71:10 141:22 164:3,
13
Kim 19:17 118:13,21 120:15
121:2 122:14 134:18,24

kind 15:11 25:1 26:12,23
34:13 36:7 38:6 39:2,22
40:10 46:8,17 60:23 61:2
65:7 68:21 71:14,24 73:15
75:9 77:3,5 79:2,10,18
82:13 84:21 86:16,21 87:13,
15,18 88:19 89:23 101:3
103:20 104:10 105:12
107:6,9 119:22 121:16
128:6 131:21 132:6,20
133:17,22 134:13 136:3
142:21,22 143:1,4 144:1,16,
20 151:18 153:4 155:2
158:6 160:18 161:1 164:2,
13 169:10 172:14 177:4,16
179:5 180:3,10 182:11
183:24 184:18 185:24
186:2,8,11 187:22 188:12
189:18 190:17 192:4,6,19,
23 193:2,6,16 195:14
199:24 200:9 201:11,19
203:3,7 204:18 206:15
208:8 210:21 211:6 217:8,
19 219:13 220:13 221:1,2,4,
8 226:14 229:4 230:9 234:3
235:14,23 239:17 240:4
243:10,23 244:5 247:25
248:23 251:6 256:11
257:19,22 259:5 260:24
kinds 60:10 66:24 176:4
179:23 183:3 192:19 193:17
194:5 199:20 241:14 260:3
knew 68:24 153:12 227:6,12
229:11
knowing 183:19
knowledge 30:8,11,16,21
31:1,22 32:1,4 115:18,23
117:15 119:3 125:6 262:24

L

labeled 37:4
labor-intensive 116:23
lack 85:16 205:13
lacking 79:11
laid 126:6,12
land 54:21
landing 113:4,10
lane 75:10 230:10
language 97:3 259:17
large 187:9 247:8 248:2
256:23

largely 226:21
larger 194:10,21 241:13
lasted 25:9
late 33:13 76:4 110:4 153:8 234:8
Laura 19:17 118:13 122:14 134:18,23
law 14:4,6 24:18 37:22 38:1, 10,19,25 39:9,13,16,24,25 51:19,24 52:16 53:6,16,18, 22,25 54:18,19,25 55:8,15, 24 56:6,13 57:15 59:11,14 74:2 78:9,16,21,23,24 79:3, 8,19 82:20 90:13,15,22 91:2,18,21,22 92:2 109:1 155:14,17,24 156:4,19,24 173:4 181:7 206:20 215:19 224:23 225:4,5 256:11
laws 38:4
lawsuit 15:7 53:8 65:10,11, 15,24 69:10,11,12,15,18 70:2
lawsuits 65:7 69:5
lawyers 170:10
lay 207:9
lays 207:6
LBJ 25:16,18 33:23 35:5 56:5,16 87:6 102:23 103:17 118:24 159:23 160:2 169:9 233:9
LBJ's 56:18
lead 15:6 67:22 82:11 105:1 214:24 242:4
leadership 25:14,15,16 86:24 115:10 157:24,25 158:7 163:19 169:9
leading 63:18
leads 160:7
league 186:3
learning 144:9
leave 171:22
led 69:18 249:20 256:16
left 17:7 24:11 33:7 101:13 226:11
legal 8:17,22 37:15,17 38:2, 7 39:9,11,20 43:8 57:7,10 61:13 93:11,18 94:2,14 123:20 134:20,22 135:20 172:5,10,18 213:12,16 227:16 242:2 254:8

letter 74:7 83:20 84:7 85:24 87:20 89:19 90:13,16 91:4, 9,13 92:5 93:13 94:4,16,25 95:5 98:2,8 99:23,25 109:22,24,25 110:1,5,7,8,9 131:23 146:9,11 208:23 209:12,15 210:20 211:25 212:3,9,12 213:5 215:11 261:5
letters 75:24 78:18 79:16,22 80:14,15,20 81:2,6 82:2 84:14 86:1,3,4,7,9,17,18,19, 20,25 87:2,10,23 88:6 89:9, 15 90:6 109:19 111:7,8,14, 16 162:8,12 208:21 209:1,6, 7,11,20,21 210:6,22 214:17 220:24 260:5
level 58:21 96:7 125:7 132:22 196:24 206:17 224:15 258:11
levels 24:15
license 9:19
licensing 38:5
lieu 9:4
lifting 40:5
light 87:7 133:24 233:23
likelihood 260:17
limitation 113:14
limitations 54:13
limited 44:17 49:18 72:9 141:20 187:3
line-by-line 190:18
lines 13:5 31:4 36:6 49:16 54:1 55:17 82:17 87:22 115:25 167:6 170:14 191:15 198:10,21 217:19
list 30:25 33:11 35:1 37:13 73:18 74:5 146:9 153:3 173:20 183:8,16 212:19,25 215:14
listed 89:2 91:3 159:4 175:5, 8,16,18 178:22
lists 80:25 93:5
litigated 53:7
live 54:7 153:8
lived 53:12 54:8,9
loan 14:22 52:12
loans 14:25 15:5 52:7,12 82:24 119:7,19 120:1,6,10, 13 130:6,24 160:19 218:15, 23 219:4,15 254:10,11

located 8:18 54:1
log 167:12
long 12:19 40:18 71:20 89:19 121:25 132:10 144:19 153:22 202:1 208:8 217:22 219:21 222:10 263:22
long-standing 160:13
longer 73:2 122:24 123:5 186:11
longest 218:5
looked 54:19 62:3,22 133:25 135:23 150:20 179:13 228:16 257:18
loop 87:13
loosely 185:2
lost 25:6
lot 16:19,21 20:7 40:19,20 43:20 49:16,25 52:10 54:12 58:22 60:6 67:13 73:11 86:10 89:20 100:16 103:12, 13,23 104:5 108:6,7,8 114:23 125:2 132:11,23 133:9,20 134:11 138:20 142:19 143:5 172:14 178:14 179:15 181:3 182:9 194:5 214:25 224:6,8 225:14,16, 21 226:11,20 228:8,9 229:21 231:7,14 232:4,19 242:19 245:1,3 256:6 258:16
loud 11:19
low 104:24 199:13 203:6 231:15,17
lunch 136:11

M

M-E-O-L-I 88:11
M-I-N-O-R 13:17 18:23
made 27:14 29:2 42:6 43:13 50:3 54:2 55:14 63:8 75:23 82:15 84:23 85:2,8 90:8 95:21 97:24 102:24 119:15 120:23 124:3 137:16,20 138:10 147:16,21,25 151:5 152:17 155:1,2 156:1 161:14 163:15 171:5 214:12 219:17 224:9,12 238:22 243:24 259:23 262:10
mailed 83:11 234:10
main 15:12 16:3 36:21

114:13 119:23 174:7 222:12
233:15
major 66:19 67:14 125:4
158:16 224:23
majority 24:18 61:8
make 26:1 28:6,18 30:6
45:2,6 47:4 48:13 54:23
55:21,25 71:23 75:5 79:1
80:5 82:10 96:13 97:6
115:11 118:3 123:12,14
138:4 144:13,24 160:1
167:14 168:7 180:14 181:12
182:20,23 183:7 191:12
192:6,14 202:16 204:1
206:23 210:22 214:10 221:7
227:4 232:2 235:18,23
240:25 241:3 242:10 244:1,
5 246:7
maker 27:10 55:8 146:18
148:9
makes 28:9,19 108:1 160:3
173:15 177:5
making 25:18 48:16 71:1
104:20 111:23 118:16,22
122:20 123:11 136:1,15
138:14 144:10 150:5
179:16,23 195:1,5 259:12
managed 119:7
management 86:15
managers 21:6
mandate 163:21 178:19
228:20,23 229:4,20
manner 9:11
Manning 30:21 31:13,16
32:7 33:18,21 34:5 129:24
137:15 138:11 140:19 141:8
Manriquez 147:15 148:12
149:25 150:3,17 151:8
153:19 155:11 161:5 262:20
manual 76:20 77:4 182:15
200:4
map 234:4
March 115:9,18 122:6
164:22
Marinello 158:19
mark 12:15 13:7 17:4,9
21:18 27:20 29:22 34:11,17,
22 35:6 86:11 87:4 89:24
101:25 102:24 163:25
164:11 169:6 174:8,9 184:7
233:22

marked 17:11 29:23 36:14
37:10 80:2 92:9 98:22
157:10 184:7,9 237:2
mass 14:24 15:4 179:11,15
Massachusetts 14:15,19
master 155:21
match 158:3 186:19
matches 258:24
matching 188:11
material 77:5
materials 17:1 44:13 60:7
61:2,12 62:2 66:6 70:8,10
96:18 117:7 173:19 176:2
184:3 199:12 200:12,16,20
228:9 234:1
math 101:25 170:11
matter 8:14 9:7 11:21 16:12
90:6 142:11
Matthew 33:8
maximize 163:7,16,23
maximizing 167:9
meaning 110:22,24
meaningful 201:15
means 11:6 37:22 44:3 46:7
106:24 108:12 213:16
meant 66:3 159:7 205:20
215:21
mechanism 77:14 214:11
217:9
mechanisms 221:1
medical 45:9 127:23 128:18
medium-batch 188:23
medium-batched 190:4
meet 20:3,11 22:2 28:1 40:1
101:4,5 108:25 116:13
144:4 178:10,16 180:17
242:6
meeting 12:20 20:6 22:17
166:24 169:19
meetings 20:8,22,23,24 21:1
22:7 26:17 68:20 113:7,8
member 63:17 83:3 109:9
189:21 209:13
members 55:3 113:9 114:6,
15 149:12 174:21 189:19
memo 39:9 41:6 117:10,12
129:24 146:9 172:10 176:3
185:18 186:8,11 188:23
189:5,7,8,14,17,21 225:6
237:2 254:8 257:13

memoranda 38:9,13,18,24
132:15 134:23 135:20
172:18
memorandum 130:5 134:21
168:13,17,22 237:10
memorialized 119:2 133:5
257:17
memories 192:8
memory 98:15
memos 63:12 135:10,21
188:25 190:4,6,12 227:16,
17 235:6 238:14 242:3
250:8,16,20,25 251:3
257:17
mentioned 24:16 61:15 62:8
65:6 72:8 91:7,23 131:20
161:13 171:17 209:8 220:16
228:19 233:1 236:20 262:9
mentioning 262:14
mentions 158:17
menu 261:10
Meoli 88:11 89:6,13
merits 170:20 227:2
MERRITT 9:16 10:1 31:10
37:2,6,11 58:8 68:8 89:1
94:18 105:25 112:8,12,19
113:12,18,22 117:1,20
120:19,24 121:4 123:22
131:4,7,11 136:14 156:9
157:1 165:12,15 167:15
170:18 197:3,6,11 198:1
211:14 222:15,19 234:19,22
236:5,10,19 262:5,8 263:16,
18
met 12:7 22:12,14 33:24
39:14 110:5
methodologies 127:9,16
methodology 88:1,2 103:4
128:14,22 139:18,19 148:24
149:13,14,21 152:10,18
153:18 154:5,11,14,18
155:19 159:6,20 160:8
161:4 162:16 168:14 169:4,
25 170:5,8,20,23 171:6,11
223:6,7,13,22,23 262:22
263:6,12
metric 166:2
metrics 100:20 144:4 165:24
178:17 229:10
Michigan 136:2
mid-september 161:23
162:13,19

middle 150:14
migrating 153:10
Mike 23:13,14
Miller 14:9
million 103:22
mind 49:24 59:25 116:7
 198:18
mine 87:16
minimum 20:6
minor 13:14,17 18:23 19:13
 20:10 21:15 31:1,12,14 32:9
 103:1 125:4 229:17 233:22
minute 27:19 129:21 150:13
 157:8,20 197:24 236:25
mirror 187:9 259:18
mirrors 188:12
misconduct 93:9 134:4
 179:10
misleading 180:24
misrepresentation 54:11
 82:15,22 85:11 94:12
 180:22 200:3 211:5 243:24
misrepresentations 48:17
 71:1 196:3 238:22 241:10
 242:20 249:19
misrepresenting 70:22
 179:25 195:20
missed 94:9
missing 64:22
mistake 85:2 173:15 260:7
 261:12
mistakes 214:11 259:23
 260:2,3,17 261:7
Mitchell's 237:21
mitigate 260:19
money 141:12
monitoring 248:20
month 219:25
months 53:8 144:9 217:3
 223:2 247:15 259:22
morning 202:9
motion 80:18 81:3 82:13
move 40:22 41:9 43:13
 48:10 94:23,24 100:14
 101:1 112:17 117:4 131:13
 133:24,25 135:2 139:21
 151:20 178:17 185:17
 188:2,3,8,9 203:15 227:19
 253:15 254:15
moved 14:15 22:24 33:16

46:17 75:10 101:20
moving 133:22 140:16
 144:2,16 161:9 191:24
 218:10 226:19 232:23
multiple 31:13,20 32:8 43:7
 45:16 63:14 142:3 172:14
 182:20 190:1
mute 197:7 198:16

N

named 14:9,11 33:23 88:10
 92:22 235:11
names 23:11 180:8
naming 18:14 64:9 235:12,
 25
narrow 149:16
Nathan 35:1
nature 65:3 73:16 76:23
 84:3 257:24
nay 254:20
Nebraska 79:20
necessarily 77:4 91:6 95:9
 156:3 179:14 180:10 183:23
 184:23
needed 26:18 68:19 75:21
 91:20 101:5 106:16 141:12
 153:2 169:17 228:5 229:25
 230:3 234:4
negative 177:4
negotiated-rulemaking
 160:21
neighborhood 12:24 47:24
 190:7 230:14
Nevin 8:11 9:18 10:15,22
 17:3,10 37:9 168:3 184:4
newer 183:5
newly 157:25 158:8
Nicki 88:10
non-california 78:11 85:22
 135:12
non-cci 78:23 159:6,18
non-corinthian 81:8 145:1
 172:2 210:7
nonterm 171:13
normal 236:23
note 89:1 112:13 117:20
 121:4
notice 131:22

notices 83:10 109:16
notification 73:9
notifications 217:12
notified 110:24 111:18
November 99:22 138:14
 140:13 147:2,4 152:6
 168:12 190:19,25 223:12,20
nowadays 231:11
number 17:2 22:20 29:19
 30:2 34:12 47:18,19 52:3
 59:10 61:23 62:8,12 67:21
 74:8 79:24 84:6,10 87:21
 89:3 92:13 102:3,6 133:21
 157:9 158:23 163:7,16,23
 165:6,22 166:1,6 171:18
 185:3 188:24 189:3,25
 190:21 196:23 204:25
 208:16 224:17 225:18
 231:15 235:15,18 248:2
 250:5 257:8
numbered 158:10
numbering 17:6
numbers 101:5,19,21,24
 103:20 128:2,13 138:17
 143:23 144:5 164:25 191:9
 217:4 218:13
numeral 238:9
nursing 45:9 187:6

O

oath 9:5
object 11:23 31:10 156:11
objection 68:8 94:18 112:8
 113:12 117:1 120:19 121:5
 123:22 131:4 157:1 170:18
 222:15 234:19 236:5
objections 9:10 29:10
obtained 61:4
occurred 135:4
October 15:15,18 97:9 137:6
 138:13 174:2 183:15
office 12:7 13:6 14:15,21,24
 17:22 18:3,12 34:4,16,20,23
 35:7,14,19,22 36:1,2,8
 43:21 44:13 56:16,18,19,20,
 21,23 57:6,10 75:4 76:22
 86:24 88:23 115:16 125:23,
 24 126:10,11 127:5,11
 129:18 134:18 135:8 156:8
 161:7 176:1,2 233:8,14

<p>234:10,13 officer 13:20 18:25 19:1,11, 19,21,23,25 20:4,12 21:11, 12,13,14,16,19,22,25 22:1 26:16 28:24 31:19 32:18 33:1,3,6,8,12,19,22,23 34:12 55:23 68:18 103:1 118:13,21 125:23 129:13 141:8 158:3 163:20 164:1, 12 229:7 officers 245:15 offices 233:3 official 126:14 OGC 56:8 75:5 89:7,14 110:11 154:24 OIG 116:17,20 omission 37:25 onboarding 24:20 one-off 46:24 107:7 142:18 181:17 184:17,22 201:21 209:6,9 one-offs 201:12 ongoing 71:8 74:18 117:21, 22 129:4 162:11 236:21 online 60:2 open 21:2,3 46:10 49:25 64:7,12,17 71:10,12 72:19 73:4 74:22 196:18 206:17 219:19 244:22 opening 205:20 opens 63:24 187:18 operating 18:25 20:12 21:12,14,19 22:1 28:24 31:19 33:3,6,12,19,22,23 34:12 141:8 158:2 163:20 164:1,11 229:7 operationally 133:22 operations 119:8 120:5 133:16 opine 72:1 170:9 opinion 144:23 opportunity 181:12 263:19 opposed 25:17 116:9 136:3 261:11 opposite 48:8 option 77:13 85:17 222:3 options 82:5 169:16,22 197:19 oral 238:12 order 16:4 17:5 32:1 38:25 39:3,18 40:22 75:19 78:5</p>	<p>80:1,7 96:6,18 101:5 104:13 105:7 113:14,16 148:11 154:23 170:20 178:21 183:25 234:3 ordered 101:19 156:13 ordinary 116:9 organization 28:22,23 29:1 166:16,22 organizational 21:10 original 22:24 23:4,19 87:16 192:1 218:6 220:9 235:20 originally 19:18 86:20 97:4 152:10 244:18 256:15 other/comment 130:12 OUS 21:4 34:24 36:16 51:9 56:13 57:5,14,20,21 75:3 125:21 139:16 145:13 146:2,15 169:7,13 outcome 8:20 232:17 260:8 261:13 outcomes 149:15 outlines 241:21 251:20 overarching 16:18,21 overlap 116:11 oversee 32:1 37:18 oversight 58:23,24 61:12 76:21 232:21 248:13 overview 251:6,11 ownership 175:8</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P-A-G-E 23:14 p.m. 114:1 136:21,22 167:22,23 198:5,6 211:19, 20 234:25 235:1 pace 100:15 141:22 170:23 171:1,2 214:9 224:10 232:23 260:15 package 44:12 45:4 48:14 125:20 139:16 146:8 packages 139:22 pages 103:22 panel 115:11,13,19 116:2,9, 14 117:7 118:6 121:23,25 138:1 140:10 223:5 paragraph 18:1 36:23 98:23 99:1,3 115:2,4,5,7,8 117:24, 25 122:3 137:2,4 139:4 145:11,12 146:22,23 150:12,14 162:25 163:1</p>	<p>209:3 218:13,14 parallel 144:16 parameters 186:21 193:24 206:9 226:4 254:3 255:1,6, 10,18,24 parens 235:22 parlance 119:23 part 9:20,21 10:2 40:5 48:25 49:3 72:4 73:8 74:2 98:16 119:24 124:16 128:11 151:7 160:16 165:23 166:7,13,14, 23 167:1 172:16 181:1,2 185:18,23 188:18 189:3 191:24,25 192:23 201:8 221:6 228:14 238:24 239:1, 13 241:15 248:13,16 250:9 254:24 255:23 part-time 23:10,16 103:18 partial 148:24 152:9 153:17 154:4 168:14 169:4 170:8, 22 participants 8:3 129:7 participate 21:1,7 57:13 participated 70:1 169:20 participating 9:1 participation 59:7 parties 9:9,12 58:5 105:23 Partner 18:12 parts 29:6 121:14 124:14 133:22 166:21 party 8:19 pass 63:8 past 19:12 71:25 73:5 260:16 paths 34:14 pattern 242:17 244:17 249:18 patterns 239:19 248:20 257:19 pay 145:8 PDF 81:11,13 92:15 174:12 penalties 95:21 penalty 9:8 pending 11:15 52:2 101:24 132:8 154:24 158:15 161:5 173:11,17 178:5,8 203:21 220:9 223:5 Pennsylvania 176:1 people 13:9 19:8 23:5,8 28:15 31:9 34:1 63:14 67:13 89:7,14,18,20 104:16 110:1</p>
---	--	--

115:22 143:18,19 144:1,7,
10 150:4,8 160:9 172:14
173:13,16 195:3,6 208:16,
25 216:24 218:7 229:24
243:5 244:12 249:10 259:11
people's 192:8
percent 127:24 149:5,11,15,
20,24 155:15,25 156:25
157:6 160:24 242:1 260:23
263:9,11,13
percentage 52:1 83:14
120:8 128:19 134:7 149:17,
22 155:4 208:6 225:8 243:7
256:20
percentage-wise 52:4
percentages 127:14 128:15
154:22
perfect 101:7 214:17
perform 207:19
performance 165:24 166:2,8
167:6 229:9
performance-based 28:22,
25
period 19:20,21 20:13,18
25:2,10 26:11 32:12 33:20
34:5,8 40:18 44:18 52:20
64:1 68:17,20,22 69:19,21
71:2 100:6 105:13 125:18
133:1 139:3 142:13 144:8
146:2 147:10 151:21 164:22
177:22 181:24 187:1 188:7
202:12,17,19 207:24 208:5
209:24 214:7 219:2 222:21
225:8,20 226:16 233:12
244:7 247:24 255:1 258:19
259:13
periodic 248:20
periods 71:3 183:9 260:21
perjury 9:8 95:22
permanent 171:15 209:13
permission 66:1 137:5,12
person 9:5 19:3,11 30:7,10
33:10 35:1 87:4,5 89:25
114:13 142:12 171:22
189:22 242:4
person's 30:11
personal 9:22
perspective 165:13 263:3
phased 143:15
Phoenix 73:22,25

phone 168:4,5
phonetic 23:17 49:21,22
photo 10:11
phrase 81:24 106:9 193:19
246:25
phrased 177:9 253:19
phrasing 167:12
physically 9:2
pick 17:7 168:11 240:10
picked 255:8
piece 45:13 54:15 122:13
124:24 139:14 180:23,24
pieces 16:21 119:24 221:3
231:4
pilot 142:21
place 25:9 26:25 34:14 42:4,
13,16 111:7 132:17 149:10
161:18 220:18 235:7 260:20
placement 70:23 150:10
155:23
places 44:21 191:9
plaintiff 92:22 239:9
PLAINTIFFS 10:18
plaintiffs' 29:10
plan 136:12 166:11 167:6
platform 64:9 82:1 87:18
128:4 153:2,8,11 154:23
173:11 191:8,11 217:8,21,
24 221:3 239:23
plays 262:25
plied 156:22
plug 127:20
POC 237:2
point 21:21 45:8 49:17 67:19
72:5 76:6 97:12 103:11
109:2 114:13 115:23 117:10
121:11 125:25 126:8 131:20
132:13,24 133:9 134:6,11,
17 138:16,17 140:2,15,17
141:7,24 142:2 143:8,9,20
144:20 146:8 151:2 154:6,9
177:16 189:19 203:22
204:15 207:25 222:4 229:25
231:24 241:4,7,8 242:23
243:19 246:17 250:6 252:1,
13
points 53:13 169:11 238:14
policies 29:2 31:2,5 32:4
123:18
policy 28:5,7,9,19 29:6
30:22 31:23 32:1,11 33:2

34:4,21,24,25 35:5,8,10,13,
18,25 36:3,17 54:24 55:1
67:24 72:20 74:19 75:5 96:1
97:5,8,10,14,20 103:3
120:18 124:20,22 125:3
127:5,6,10 128:12 129:1,5,
10,14 149:10,13 150:25
151:1 154:1 155:20 156:3
159:22,25 160:1,2,3,6,11,18
161:3,10,14,17 216:14
223:14,25 231:25 232:10
233:5,8,13,17,20 234:13
policy-related 56:4
policymaker 31:24
political 20:1 29:3 234:15
Pollock 14:16
pool 77:8 173:7,14 195:15
226:2 241:5 242:25 248:14
popular 229:6
populate 82:2
populated 91:6 128:10
position 15:14,19,22 19:13
33:4,17 50:5 79:4 103:24
127:4 144:13,24 171:22
247:20
positioned 131:19 133:24
positions 24:12,18
possession 169:1
possibility 51:10 61:6 62:15
105:2 246:23
possibly 245:19
post 24:1,4,12 119:21
posting 24:7
potential 25:1 108:23 134:3
149:15 175:24 225:15
potentially 49:11 61:4 67:2,
22 71:9 79:2 82:10 83:9,17
101:13,16 104:23 105:17
107:19 120:20 168:20
169:14 176:5 179:3 180:17
181:7 182:18 183:20 185:14
187:12 194:1 196:15
199:14,18 201:7 208:2
220:13 228:12 232:18
245:13 246:2,14 247:6
253:17,22,24 254:21
power 126:4
Powerpoint 97:17 157:10
Powerpoints 97:15 200:12
practice 14:8

precede 33:9
preclude 156:24 157:6
precludes 149:7
precursor 39:23
predates 155:21
predecision 108:1
predecisional 120:22
preliminary 40:15 44:1,3,4,
5,6 47:25 73:15 100:3 138:3
219:3 220:11 250:18 251:5
premise 205:11 207:3
225:12
premised 99:21
prepare 12:5,20 157:23
158:6
prepared 128:21 157:19
prerequisite 106:18
prescribes 170:8
presence 8:9
present 9:2 22:21
presents 10:10
press 128:9
presumption 53:1
pretty 22:20 62:5 67:14
88:14 91:14 103:25 126:2
141:11 144:8,10,21 152:25
189:24 196:23 202:5 208:10
219:18 228:10 232:13,23
237:20 247:24 260:22
263:10
prevent 224:20
preventing 12:2
prevents 148:23
previous 122:4 135:9
138:22 254:13
previously 120:4 124:3
130:23,25 183:6 184:6
Price 14:11
primarily 15:6 40:3 50:4
222:9 223:10 226:17
primary 81:19 224:2
principles 54:18,19
printed 184:3
prior 14:17 19:14,15,17,22
21:24 94:19 113:6 139:15
153:21 231:18
priorities 16:1,8,14,17
103:15 204:1
prioritized 163:9

prioritizing 178:14
priority 133:15 138:21
private 8:7 14:8 65:7
privilege 11:24 156:16
privileged 120:20 123:23
156:10
probationary 105:13 207:24
208:5 260:21
problem 29:17 89:12 94:8
procedurally 46:6
Procedure 113:19
proceed 87:8 99:10 136:7
139:3 251:22 252:5
proceeded 49:13
proceeding 8:4
proceedings 8:23
process 16:5 25:13 26:14
27:15 36:6 39:2 40:10 41:10
50:17,18,20,23 51:7,12,15
55:7 61:15 63:22 65:20
70:8,10 73:9,19 74:23
75:19,20 86:17 89:20 90:2,4
114:7 115:12 116:18,23
117:22 119:4,14 120:14
122:16 125:19 126:1,2,6,12,
15 129:3 140:25 151:17
160:21 173:3,13 185:25
197:17 204:10 208:4,10,11
213:21,25 214:7 217:5,18
218:2 219:14,23 220:7,11,
17,19,22 221:9,23 222:8
231:8 238:24 239:2 241:12,
16 242:7 244:2 246:9
248:17 249:21,24 250:10
252:1 253:5 254:25 255:23
257:12,16 259:6,24 260:23
processed 62:25 118:5,9,
17,20 119:2 120:16 121:21
123:5 131:17,18 139:24
150:3,23 155:9,12 158:13
169:25 209:25
processes 30:16,22 31:2,6
34:13 50:2 115:16 118:4
121:9 123:18 232:7
processing 119:22,25 120:6
121:3 139:7,12,13,15
158:15 210:3 260:5,11
produce 236:12,17
produced 49:7 190:19 193:9
259:3
producing 43:20 186:15
236:22

production 43:17,24 97:18
117:17 168:22
productions 117:22
program 44:19 45:5,9,24
46:10,16 59:2,6,20 71:3,17
76:20 77:4 86:15 100:7
128:18 142:12 149:19
182:15 187:4,6 238:23
260:21
programmatic 200:3
programs 44:19 71:2 183:9
187:1
progress 20:19 138:14
144:13,25 167:9
project 210:2 226:23 235:17
238:20 239:5
promise 195:1
promised 192:24
proper 72:2
properly 71:22
proposition 16:9 28:14
55:11 75:11 258:25
proprietary 15:8
prospect 182:11 199:24
prospects 41:22 42:24
44:15 49:19 52:23 93:7,9,18
94:1,13 182:16 206:4
213:11 238:3,5 240:17
protection 15:2,4 18:13
protocol 39:20,23 40:2
41:20 42:3,11,16,19,23
43:6,9 46:7,8 47:10 49:4
65:2 85:2,15,16,21,25 86:1
106:17,19,21,25 107:2,7,8,
25 108:14,15 133:7 134:13,
15 135:23 144:21 172:19
173:7 177:19 181:17 184:5,
15,20 185:8 186:12,16,17
187:9,14,21,22 188:13,17,
19 191:10 193:21 203:3
204:25 205:17 206:3,8
207:5,13 210:12,14 230:21,
25 242:8 244:3 246:11,13
247:21 248:10,15 249:17
252:4,21,23 253:6,7,10,14,
22,23 254:13 257:2
protocols 40:7,12 41:10,15,
21 43:16,21,23 51:16 55:7
64:16 65:1 78:11 85:18
100:22 105:9 107:2,5,13
108:20,21,23 124:4 132:15,
17,23 133:1,9 134:19

135:11,14,16,17 136:8
140:9 141:14,25 143:10
144:25 172:1,3 193:9,10
204:8 207:9 227:16 230:16
231:4 237:25 242:3 246:8
248:9 249:3,5 251:20 256:4
proved 225:19 231:2
provide 20:18 36:9 37:25
39:17 41:3 48:18 57:7 66:8
76:16 83:7,16 88:6 96:6,25
97:2 104:12 108:4 116:4,20
163:11 176:15 180:20
200:25 212:18 214:17
215:7,15,16 216:3 217:9
provided 43:17 59:15 61:3,
13 72:13 76:8,22 97:18
101:15 104:18 117:17
168:22 176:3 216:22 227:3
228:2 234:1
providing 129:19
public 60:2 183:11
publicly 183:7,16 195:2
published 78:4
pull 62:24 84:17,18,21
133:18 187:21 239:24 240:1
247:7,15
pulled 87:20 134:10 242:24
247:14
pulling 13:3 43:19 200:19
purports 77:1
purpose 53:9 77:2 120:18
152:23 157:18 168:4
purposes 38:11 42:9 81:1
174:24 192:7 225:23
purview 71:15
pushed 56:6 104:4 142:15
pushing 164:24
put 11:11 25:9 26:25 29:14
34:12 90:9 123:12 128:15,
16 142:21 147:16,20 159:14
161:18 173:6,7 174:15,17
194:2,22 219:15 222:5
250:8 253:19 255:8 260:20
putting 70:10 120:10 168:6

Q

QC 194:11 260:22,25
quality 207:19,21 208:1,20
question 11:15 16:2 56:12
57:13 72:22 74:22 86:2 94:9

99:20 107:24 111:24
112:13,20 120:23,24 121:1
124:10,11 155:17 156:3,6,
10 172:12,25 189:10 203:7
205:16 213:13 222:16
225:12 236:11 242:14 243:1
246:4,25 247:11 248:23
250:2 253:1 254:23 258:17
259:10
questionable 156:12
questioning 236:6
questions 11:18,24,25 21:2
68:9 124:2 189:16 262:1,3,6
queue 253:8
quick 10:6 58:1 234:21
263:25
quicker 228:15
quickly 139:21 225:25
quota 167:5

R

R-I-E-M-E-R 114:14
Raguso 8:16
raised 26:10 68:18
range 62:5,13 138:18 171:23
181:11 185:6 231:19 245:5
257:6
rare 53:23
rates 70:23 150:10 155:23
243:7 259:4 262:20
rationale 150:24 155:14
reach 41:7 65:21 67:4 70:5
72:24 75:14 144:20 234:12
reached 39:11 47:25 73:6,21
76:8 117:14 202:3 237:12
reaching 233:24 244:23
read 30:4 98:25 115:4
117:25 122:5 148:13 163:1,
4 177:5 198:10,23 209:3
212:24 263:19
reading 75:17 90:17 93:13
175:2 213:4
ready 132:13 263:5
real 10:6 211:11 263:25
realize 66:8
reason 81:20,23 91:7 93:22
94:14 120:17 121:2 123:8
163:9 197:13 224:2 232:20
244:24 246:2,12
reason(s) 93:10
reasons 73:6 91:22 93:6
131:10 145:5 158:22 162:12
210:25 222:12
Rebecca 37:2 89:11
rebuttable 52:25
recall 26:3 27:4 85:18 96:24
98:20 124:4 150:1 152:16
158:22 161:24 199:11
200:14 257:9
receipt 102:18 209:19
receive 48:14 49:2 65:11
73:8 74:13 86:1 111:6 117:5
163:22 216:12 221:11
228:23 236:9 263:8
received 77:7 81:6 84:7,13
92:23 111:15 117:10 137:4
153:20 210:6 211:25 232:15
239:21 251:8
receiving 54:10 231:12
recent 24:18 252:8,18
recently 42:23 71:12 78:10
180:7 252:11
recess 58:11,12 106:3,4
113:25 114:1 136:21,22
167:22,23 198:5,6 211:19,
20 234:25 235:1
recognize 17:14 184:12
237:7
recognizing 236:18
recollection 12:11 90:7
91:16 99:12 137:14 149:17
151:13 155:5
recommend 140:8
recommendation 55:2
81:20,23 129:12,15,16,19
205:4 237:12
recommendations 115:11
recommended 115:13
116:25 129:13 155:22
recommending 117:10
130:5
reconsider 219:8
reconsideration 53:20
212:18,20 213:9,19,25
214:3,7,14 215:8,15 216:13,
25 217:6 218:1,2,8,17
219:7,13 220:4,12,17,19,22
221:11,23 222:2,7
record 8:3,6,24 9:14,21
10:2,3,6,9,13,21 11:5,19

12:17 58:6,10,14 64:16
84:19 89:1 105:24 106:2,6
113:21,24 114:3 118:1
122:5 136:12,20,24 167:19,
21,25 168:2,8 197:21,24
198:3,8,23 211:18,22
234:24 235:3 261:18
263:23,25
recorded 8:4,5,10 97:14
recording 11:17
recordings 239:12
records 12:9,10,13 43:19
58:25 75:21 84:12 103:22
137:10 185:21 257:11,15
recruiter 194:25 195:4,18,19
196:7,8
recurring 26:23
recused 234:16
redone 121:12
reduced 206:8 254:7
refer 18:16 56:21 66:16
71:18 77:24 78:2,5
reference 78:22 159:16
183:8 200:4 240:6,8 257:22
262:10
referenced 67:2 215:24
references 85:16
referencing 41:25
referred 13:12 18:10 23:22
44:1 68:2 74:18 80:4 92:11
100:4 129:25 157:12 173:23
237:4
referring 25:16 28:12 65:18
71:11 79:15 80:14 96:20,21
124:25 179:24 184:16 187:5
207:12 243:10
refers 191:25 208:19
reflected 179:20 211:7
reframe 16:11 250:14
refresh 12:11 99:12 192:7
reg 45:18 52:13,16 126:5
221:24 222:2
regard 93:20 113:11
regs 38:11 52:2 55:9 75:25
76:3 78:9,13 91:3 109:2
123:20 126:13 220:23 222:6
224:23 254:9,11
regular 20:18,21,23 26:19
232:5
regularly 20:10 26:22 33:24
165:1 166:10

regulation 37:21 77:18,20,
22,24 78:1,2,3,6 79:9 90:23
126:6,19 160:17 181:3
206:20 214:1,2 219:6 224:7
regulations 37:20 73:9
75:18 77:17 90:22 146:14
220:17
reiterate 26:17
rejected 84:24 85:5 95:1
relate 21:12 41:15 128:13
245:8 260:3
related 8:19 15:9 38:4,6,7
39:4 42:25 44:14,20 45:9
46:19 55:11,15 59:8 60:19
65:15 74:11 81:9 93:9
101:14 102:25 104:9 106:23
112:14 130:24 154:3 160:15
171:3,7 173:5,16 187:11,12,
23 188:6 194:3 203:10,14
210:21,24 224:13,19 231:15
240:20 241:19 243:6 244:10
256:9 259:2
relates 98:19
relating 15:7 41:2 58:25
61:25 72:20 98:18 99:6
100:2 101:8 232:14,20
238:15 245:7,9,10
relation 210:10
relationship 75:9
relationships 57:2
release 170:5 171:10 223:6,
7
released 255:19
relevance 236:6
relevant 46:1,21 48:11 67:23
73:19 76:1 131:8,9 169:14
172:8 182:13,18,21 203:20
reliance 85:16 210:21,24
relied 82:16 85:11 135:18
relief 83:8 88:1,2 103:4
104:13 123:20,25 124:2,5,
11,12,18,22 125:7 127:1,2,
5,8,15,21 128:2 129:9
139:18,19 145:25 148:24
149:5,11,13,15,24 152:3,4,
9,24 153:18 154:4,11,13
155:3,8,15,19,25 156:2,25
159:5,20 160:24 162:16
168:14 169:4,25 170:8,23
171:6 223:13,22 231:3
263:6,9,12

rely 55:17 61:11
relying 155:23
remain 173:11,17
remaining 120:13
remember 32:23 43:11
60:21 62:12 68:25 85:13
97:2,11,15 110:15,17 113:4
114:12,16 119:8 121:18
122:22 130:18 137:9 140:21
145:17 151:15 152:21
153:13,22 154:13,15,20
157:18 158:1,25 162:3
164:19 169:6 171:15 200:8,
21 233:7,13 256:21,22
259:25 260:13 262:14
remembering 13:9 98:16
149:8 176:12
remote 8:9,10,16,23 10:23
remotely 9:3,6
removed 191:6 245:20
reopen 232:24 244:25
246:15 247:4 260:12
reopened 218:18 232:12
259:21
reopening 196:16
reorganization 21:20
rep 60:19
repayment 120:10 213:3
215:18
repeat 38:16 89:11 94:10
213:13
repeated 240:8
rephrase 16:11 38:16 94:22
213:14 242:14
replace 24:11 25:5 254:19
report 18:22 19:3 20:22
22:19,22 138:3 140:12
141:13 164:25
reported 19:8,10 21:25
33:15,19 34:2
reporter 8:21,25 9:17,23
10:4,7 164:6,9 197:1 198:9,
13,17,19,22
reporting 9:3,11 21:22 49:22
166:10
reports 21:13,18 22:18
133:19
represent 80:11
representation 192:23
representation-made
180:23

representations 182:16
238:10,12
represented 138:25
request 8:6 26:1 27:8,9,12
43:23 65:16 70:17 73:12
76:19 116:17 138:10 174:2
212:18 215:8 217:10,15
218:16 219:7,12 221:7
263:19
requested 25:23 74:5 76:11
115:14 116:8 142:1 198:23
requesting 26:4 196:19
213:8
requests 26:20 68:7 71:24
74:8 115:24 116:1 145:5
200:21 221:2
require 120:7 215:21 227:22
required 91:18 100:21 144:4
requirements 38:5 131:23
257:7
requires 38:2 75:18 96:25
191:12 214:1
rereview 219:13 253:2
rereviewed 260:24
research 37:15,18 38:3,7,
10,19 172:21
resided 52:24
resources 63:20 72:9
respect 15:5 27:23 35:10
39:8 52:22 59:9,21 73:17
78:24 91:20 93:17 114:18
124:4 127:15 160:7,8
189:11,17 214:9 223:3
225:5 231:22 237:13 250:17
respond 74:14 77:13 217:14
responded 76:10 116:1
response 30:13 77:15 79:25
80:6 89:3 173:20 174:1
208:15,19 217:11
responses 13:4 29:9,21
74:16 208:12 218:10 236:20
257:20
responsibilities 36:25 37:14
116:10
responsibility 121:15
responsible 27:7 28:4 50:22
51:5 87:1 118:16
restate 72:21
restructuring 18:8 160:15
resubmit 216:10

result 52:8 70:3 133:4
184:19 207:14 214:24 215:9
246:24
resulted 209:19
results 63:5 140:7 206:24
220:8 247:6 253:14 257:20
resume 137:5,13,17,21
139:12 141:15 143:10
161:22 162:13,18
resumed 126:3 139:7
140:25
reupping 25:2
review 12:9,13 44:6,11 45:6
46:18 73:16 76:18 81:19,22
99:6,16 100:1 101:7 103:20
104:24 106:17,19 107:16,25
109:8 115:10,11,13,15,19
116:2,8,13,17,25 117:7,11
118:6 121:22,25 122:15
132:23 133:5,8,11 134:9
137:25 140:9,10 144:21
171:8 172:23 181:20 191:25
205:3,7,8,12,19 207:19
208:3 209:14 216:12
217:21,23 220:12 223:5
227:11 228:7 230:15,16,18,
21,25 231:1,4 238:19 240:4
242:3 245:21 249:8,9
250:18 251:5 255:25 257:1
260:25
reviewed 12:10 22:9 55:4
56:9 107:20 108:10 109:4
135:19 173:3 189:15 207:25
208:6 209:12 231:8 246:18
reviewer 177:24 181:19
182:1 187:14,18 189:11
193:14 194:14 195:21 202:9
203:4 204:19,22 206:11
210:13 228:11
reviewers 47:7 48:3,19 49:1
191:19 199:4 204:22 248:2
251:21 255:20
reviewing 38:14,23 40:17
62:21 63:11 64:5 104:16
108:22 132:20 133:2 134:3
172:16 175:23 189:21
204:11 205:6 224:1 244:17
257:3
reviews 17:18 30:5 40:3
90:20 157:21 167:3,8 177:7
178:20 209:4 217:24,25
revisit 232:3,9 246:12

256:13,18
revisited 231:25 233:20,21
reworked 123:16
Riemer 114:14 116:7 148:6,
8
rise 96:6 196:17 258:11
rises 58:21
road 234:4
Robert 19:23 34:25 57:22
Robin 13:14,17 18:23 19:13
20:10 21:15 31:1,12,14 32:9
103:1 229:17 233:22
robust 144:8 208:10 260:21
role 19:11,19 21:17 27:23
32:21 87:19 127:15 142:5
169:11,18
roles 19:9 22:25 23:2,20
24:17 31:20
Roman 238:9
room 9:2 10:25 11:1,9,11
168:5
roughly 258:19
route 126:9
royal 161:3
rule 55:19 77:20 113:19
ruled 100:12,13
Runcie 33:7
Ryan 8:22

S

S-C-H-M-O-K-E 19:16
S-C-H-R-E-C-E-N-G-O-S-T
88:13
S-T-E-P-H-E-N-S-O-N 23:15
Salesforce 64:9,12 153:11
239:23 255:10
sample 61:25 62:10 238:15
242:17 243:22 247:14,15,17
249:15 252:2,8 258:24
sampled 248:19,24
samples 63:11 247:7
256:19,24
sampling 60:23,25 61:14,21,
24 62:20 63:9 179:3 186:11
195:25 241:13 246:1 248:16
249:12 255:25 256:3
257:12,16,20,25
satisfied 177:19

<p>satisfy 45:16 181:25 227:8 scenario 62:16 63:10 66:14 68:21 184:18 194:24 195:12,17 199:23 215:7 261:14,19 scenarios 67:3 201:11 245:5 258:22 scheduled 22:5 161:22 162:18 Schmoke 19:16,17 26:15 27:8 31:5,12,14 32:10,17 33:1,10 68:17 137:24 138:10 141:5 school 14:4,7 15:8 39:5,21 44:15 45:6 47:21,22 48:15, 16,20 52:25 53:12 54:8 59:1,5,9 60:10,22 61:18 62:7 69:15 70:19,22 71:12, 18 72:17,24 73:1,4,5,20,23, 24,25 74:1,24 75:22 77:10, 12,15 81:9,19 82:14,16,25 84:23 85:8 98:13,16 101:8 128:13 134:3 142:24 144:18 158:19 172:6 173:2,5 175:4, 8 178:1 180:4,15 181:10 184:21,24 185:10,19,22 186:2,13 187:14,19,21 192:14,17,24 194:2,10,22 195:25 196:19,20 202:14 231:22 232:15 238:23 240:7,23 242:18,22,24 243:23 244:13,22,23 245:10 248:11,19 251:10 252:20 256:6,8,9 257:9 school's 236:3 school-specific 106:21 107:2,5 108:15 160:9 190:11 schools 36:4,20 40:15,20 41:5 44:1 45:20 47:5,14,22, 24 48:2 49:12,16,20,21 50:1,4 51:17 55:6,21 58:17 59:13,22 72:13 73:17 74:4 75:14,21 76:1,7 77:8 99:11 108:23 109:11,13 111:4 128:20 129:1,6 141:15 143:11 144:3,14 145:1 152:16 158:14,23,24 163:11 172:2,23 176:23 180:9,10 183:9 185:25 186:3 187:13 188:21 190:13 226:5,9 234:18 239:1 241:13 243:12 247:8 248:21 249:25 250:5,</p>	<p>17 251:19 252:14 255:3,9 Schrecengost 88:12 89:2,7, 13 scope 18:15 40:16 44:11 63:20 68:8 70:6 100:5,8,9 101:1 112:9 113:13 117:2 120:19 121:5 131:5 156:12 157:2 170:19 175:25 176:2, 18 177:2 179:6 186:22 187:15 222:15 226:4 234:20 250:18 253:13,16,21,25 screen 29:13 search 186:6 196:8,9 searched 200:15,17 searches 60:4 second-level 260:25 secondarily 123:15 secretary 20:25 21:4 22:3, 13 27:15 29:4 31:17 34:5,6, 9,17,20,24 35:7,14,20,22,25 36:9 51:8 57:6 101:22 102:2 115:14 117:11 125:23 126:10 127:6,12 129:20 130:11 131:1 134:18 135:9 141:9 158:5 161:7 169:21 219:1 228:20 secretary's 27:13 35:2 36:1, 2 130:20 section 90:16 93:4 130:12 161:9,21 216:15,17 Security 152:13,14,23 153:1,21,23 155:3 seek 53:19 214:2,15 seeking 132:18 134:12 sees 182:1 selected 255:11 send 70:11 75:24 91:12 119:11 132:13 134:16 139:16 147:18 234:4 sending 76:12 131:21 139:23 senior 23:1 24:17 25:15,16 40:4 55:3,4 63:3,13,14,17 75:17 86:23 105:3,15 109:9 169:9 174:21 181:20 182:5 189:19,21,25 201:1,15,24 204:11 207:18 sense 44:16 54:21 76:25 83:14 108:10 211:2 221:1 224:5 241:14 sentence 98:25 99:2 115:6</p>	<p>139:6 163:1,4 218:14 sentences 115:8 separate 56:19 65:19 83:24 124:11 184:19 239:5 separately 37:6 154:25 separation 52:25 53:12 September 24:22 sequence 231:5 sequencing 101:3,18 103:9 203:25 225:23 226:21 227:22 series 64:15 169:16 238:13 serves 98:15 service 25:2 245:15 servicer 119:19 servicers 15:10 120:5 131:24 132:2 Sessa 33:8 set 29:10 46:16 48:21 49:10 62:25 97:4 101:21,22,25 105:5,7 107:14 109:8 125:19 131:24 146:5 173:11 178:3,5,9,12 180:17,19 181:4,19 182:3,7,22 186:23 187:3 188:16 193:23 200:5 202:6,11,12,19,21 205:3 215:19 219:6 220:23 228:17 232:19 241:4 245:21 246:2 251:21 252:8,22 253:7 254:3,15 255:21 sets 34:20,24,25 36:17 39:10 170:14 205:17 228:12 setting 28:4 105:18 106:22 178:16 settled 69:15 settlement 69:9 231:21 settlements 69:5 sexual 83:2 share 69:16 sharing 86:16 Sheehan 14:16 shelf 252:17 short 11:15 132:10 134:8 167:16 186:8 214:22 219:18 247:24 shortchanging 178:20 shorthand 106:14 shortly 217:14 252:4 shot 226:12 show 84:13 85:20 234:5</p>
---	--	---

<p>248:1 showing 167:8 shows 81:18 87:14 179:2 196:10 230:11 249:18 side 57:20 sign 125:13,16 139:17 146:15 263:20 sign-off 89:23 90:2 126:20 signature 17:17 signed 130:11 141:11 147:1 significant 118:3 144:11,25 158:23 228:1 signing 130:22 similar 68:12 71:1 91:14 109:25 126:2 146:8,11 158:1 195:5 199:5 238:1,20 241:23 243:20 244:1 249:24 similarities 245:22 249:11 similarity 247:9 similarly 140:9 192:21 simple 52:6 261:4 single 53:8 101:9 235:7 241:23 site 96:23 sites 231:22 sitting 237:21 situation 194:13 situations 66:15 Sixty-six 163:2 size 61:21,24 256:19 258:24 Skype 204:15 slide 158:10,11 159:2,8,11, 12 161:10 slides 159:13 small 185:3 196:23 226:2 small- 190:3 small-batch 188:23 smaller 61:20 62:7 180:9 190:12 smartphone 11:9 Smith 33:24 196:8,10 257:21 Social 152:13,14,22 153:1, 20,22 155:3 solely 84:8,14 155:17 somebody's 244:13 sort 37:17 60:11 63:19,21 84:8 96:5 151:18 152:1 153:7 173:12 179:10 183:8, 16 193:12 194:23 195:17,24</p>	<p>199:5,8,9 207:22 217:19 220:11 231:19,20 235:12 245:2 sounds 28:1 58:3 220:10 soup 57:3 source 35:8 76:19 77:2,6 96:13 sources 59:24 175:4 speak 20:9 66:1 258:5 speaking 34:15 39:21 61:7 73:24 173:15 special 155:20 specific 16:15 20:16 21:8 27:2 28:12 32:15 39:10 40:7 44:18 45:5 60:18 79:7,8,18 93:17 102:10,17 106:20 107:13 109:1 122:16 128:13 138:7 151:13 167:5 179:16 180:1 181:2 187:10,14 188:6 195:8,16 196:6 201:11,16 206:9 227:17 239:11,15 240:1,9 243:8 244:6 251:12 257:7,22,23 258:23 specifically 16:10 32:6 35:17 42:2 43:22 53:21 58:20 79:13 85:10 98:19 122:18 149:7 158:17 171:10 specificity 30:11 specifics 16:24 62:4 158:25 speed 114:24 116:10 144:7 spelled 136:1 spelling 88:12 89:3 spend 12:19 227:15 228:4 spent 133:9 134:2 228:1,5 spoken 137:24 spot 248:4 spotting 104:22 249:11 spread 259:13 spreadsheet 186:19 187:20 240:3 spreadsheets 133:14 spring 69:1 72:21 73:5,21 75:15 76:8 118:2 124:19 125:8,11 131:15 144:12,23 153:16 161:11 staff 25:14 26:6 27:13,17 35:2 83:3 99:9 134:2 139:8 140:24 141:3,20 142:1,16 143:9,21 145:6 171:3,4 230:3</p>	<p>staffed 22:23 67:18 71:5,23 132:22 134:8 staffing 23:22 26:11,18 35:24 40:18 66:21 67:8 68:4 72:2 121:11 143:13,25 224:15 stage 99:25 104:24 122:21 stages 207:22 230:18 stamp 191:16 stamps 81:14 stand 155:4 227:2 standard 54:3 56:13 57:15 90:24 96:21 107:7 108:14 170:10 180:25 184:5,15 186:17 187:9 188:13,19 204:25 207:12 213:19 220:3 standing 17:5 113:16 start 13:25 15:13 20:15 23:23 24:1,3,4 39:3,5 213:10 218:9 222:25 233:23 started 11:14 15:18,24 22:15 23:6 24:7,19,21 32:22 33:5,12 50:5 83:12 109:17 110:19 111:20 139:14,17, 20,23 140:16,20 143:13,24 148:1 162:10 163:25 164:11,21,23,24 217:25 218:1 220:24 234:7 235:15, 17 starting 19:6 22:23 24:20 73:5 115:1 139:6 142:17 starts 81:13 142:20 174:11 212:3 state 9:13 10:21 16:20 37:3, 22 38:1,3,5,10,19,25 39:13, 16 44:22 46:1,10,14 48:14 51:19,24 52:16,24 53:11 55:8,10,14,15,24 57:15 69:14 78:20,24 79:8,19 81:24 82:6,19 83:17 84:1,8, 15,25 85:10,12 90:22 91:2, 17,20,22 92:2 93:11,18 94:1,14 96:17 108:3 109:1 155:14,17 156:4,19 172:9, 11 186:2 192:6,12,17 205:1, 14,15 206:20 211:1,7 213:12,15 224:23 233:3 261:8 State's 14:14,20 stated 28:14 121:20 statement 8:23 95:17,25 96:3 97:5 124:1 210:15</p>
--	--	--

241:20 243:4 250:19,24
251:14 254:7
statements 95:14,20 214:22
232:1 240:11 245:17 248:5,
13
states 18:4 37:24 54:20 84:4
94:25 98:2 105:16 137:4
146:23 158:13 172:6,8
192:5 258:15,20 259:14
stating 259:18
status 20:22 46:17 158:7
188:3,8 191:9 230:5
statuses 173:12
stay 253:8
step 47:16,25 49:13 68:19
119:17 124:21 125:7 126:25
127:1 152:1,2,3,5
Stephenson 23:14
steps 64:15 65:2,5 201:18,
25 202:15
stipulation 9:13
stop 121:3 122:11 123:3,6,9
132:14,18,19 134:12 147:8,
12 154:22 182:3 194:12
244:19
stopped 147:11
stored 235:8
story 132:10
strategic 166:11
strategy 229:19
stream 172:24
streamlined 163:8
streams 172:15
Street 8:18
strength 240:25
strike 112:17 243:20
strong 124:1 260:22
structure 21:11,19 29:5 35:4
struggling 167:11
stuck 252:17
student 14:21,25 15:5 18:4,
9 28:6,10,23 57:9 160:19
238:11,21 239:2 258:1
student's 247:9
student-loan-related 29:7
students 195:25 196:1
242:17,19 258:8
students' 248:13
stuff 248:8

subject 52:13,15 68:14
127:9 150:17 224:8 249:5
subject-matter 153:4 159:21
submit 26:20 74:9,15 96:17
181:13 182:25 183:24
217:15,17
submits 77:15
submitted 26:22 27:9 55:12
56:6 59:19,21 64:14 153:4
206:12 216:10 239:9
submitting 60:9,10 70:8
126:9 139:20,21
subsequently 33:16 115:14
118:7 232:15 247:3
subset 149:18 190:8
substance 209:15
substantial 101:15
successful 143:6 209:17
sufficiency 206:16
sufficient 39:15 95:18,25
96:4,7 108:2 143:9 176:15
181:21 194:15,17 204:5,6
205:2
suggest 167:15 195:6
suggests 255:7
summarize 36:10 186:9
227:15 239:10
summarized 176:3
summarizing 142:23 143:1
172:17
summary 44:25 45:14 172:4
176:10 238:9,25 250:17
253:13
summer 24:6 25:22 111:3,
25 154:8 235:17
supervising 203:12,19
supervisor 188:2,8 193:22
208:2 248:6 249:12
supervisors 21:7 135:19,24
146:20
supervisory 22:24 23:1,20
24:17
supplemental 204:21
support 8:17,22 39:13,17
41:11 47:2 61:9 79:3 95:13
101:16 104:1,19 105:17
143:3 163:13 180:20 181:1
182:2,7,19,25 194:15
199:10,14,18,22 200:1
205:3 240:19 244:13

supported 54:17 227:7
241:18 253:23
supporting 66:5 97:2 108:7,
8 176:5 201:23 240:22
supports 45:15 194:8,18,20
195:23 199:8 201:8 206:21
228:12 251:15 253:17
suppose 167:1
supposed 105:2,4 199:15
surface 65:21
Sweet 8:14 29:20 92:15,22
211:25 212:8
Sweet all 92:19
Sweet's 93:14 95:5 98:2
99:18 210:20
switch 78:8
sworn 9:6 10:16 95:24
system 49:14 84:16,18
128:8 133:11,14,17 146:5
153:6 169:14 196:10 235:8
systems 16:5 134:9 153:7

T

tab 16:25 37:9 79:22,23 92:6
98:1,22 115:1 129:22 137:2
157:8 173:18 184:2 212:1
236:25
takes 144:6 166:20 228:7
taking 72:6 120:10 121:8
122:19 123:13 256:19
talk 27:19 113:9,20 234:12
talked 11:13 94:11 106:22
109:17 151:25 163:15 168:6
211:1 230:19 235:5 252:24
253:2
talking 58:17 64:1 69:19
79:13 100:23 107:4 126:24
194:13 201:21 210:19
230:8,16 243:8 253:11
261:1
tallying 12:23
tangentially 15:10
target 101:21 102:1
targets 178:11
task 253:12
tasked 86:16
tasks 201:19
teacher 82:25
team 13:2 22:19,24 23:4

40:4 55:3,4 59:2 63:3,13,14, 17 64:21 75:24 82:1 86:12, 14,15 87:14 88:9,17 91:19 93:16 109:9 110:11 112:6, 24 113:4,5,7,10 114:7,13,15 119:8 124:25 126:17 127:10 128:5,12,16 129:1,12 146:20 151:14,19 153:2 154:22 159:22 160:1,4,9,11 161:3 174:15,19,21 175:22 179:7 182:5 189:19,21 207:21 208:1 209:13 232:5 238:7 260:10,11,15,25	theoretically 176:15 213:10 Theresa 8:14 92:14,19,22 93:14 95:5 98:2 99:18 211:25 212:8 thing 36:16 64:8 82:13 88:19 107:9 121:17 132:20 136:4 146:6,8 151:18 169:10 172:13 182:12 193:7 199:17 200:9 204:18 210:17 211:6 221:2,8 239:16,17 257:19, 22 things 13:4 16:16 20:7 21:6 36:6 38:6 45:10 46:11,13 59:8 60:3,24 64:18 72:7 83:1,5 87:22 89:17 104:6 106:21 107:14 114:23 115:25 117:12 121:7,17 122:15 126:9 132:19 133:19 143:14 144:15 154:20 169:13 182:17 183:3 186:7 187:10,11 190:1 191:10 192:11 193:1 194:6 196:4 199:20 203:9 207:6 212:20 219:16 224:11 231:22 232:4 239:23 241:14,18 243:5 247:18 251:8,9,10,16 253:12 261:6,7,20 thinking 13:7 91:15 142:7 159:10 221:21 240:8 241:11 thinks 53:15,16,17 194:15 thought 54:16 55:19 56:7 73:13,18 74:5 79:15 215:25 259:20 thousand 53:3 133:13 217:2 thousands 53:2 158:24 185:14 261:2 thread 210:21 threads 252:3 threshold 185:4 186:6 199:13 thrown 195:14 tied 162:16 171:10 223:13 ties 243:15 time 8:13,21 10:1,9,13 19:2, 20 20:13 25:10 26:3,6,12,16 27:2 32:13,16,17,25 33:20 40:18 41:1 42:7 44:10,18 47:12 52:20,24 53:12 54:7 58:10,14 63:23 64:1 67:7 68:17,20 69:19,21 71:2,3,20 72:7 86:11,22 87:25 91:19 100:6 101:24 103:11,18	106:2,6 112:3 113:24 114:3 117:9 118:11 119:6 121:25 122:25 123:2,4,19,25 124:6 125:18 132:14 133:10 134:2 136:11,20,24 137:18,22,24 138:13 139:3 141:24 142:13 144:3,19,21 145:20 146:6, 13 147:9,22 150:21 152:6,8 153:9,23 154:6 155:7 158:2 160:17 162:5 164:22 166:4 167:21,25 168:12 172:16 177:22 181:24 183:9,18 187:1 188:7 189:20 191:11 196:3,14 198:3,8 201:20 202:7,12,18,19 211:18,22 214:8 216:11 219:17 221:20 222:4,21 224:25 225:8,20 226:16 227:14 228:1,5,6 234:24 235:3,14 237:15,22 244:7 245:16 246:18 247:24 248:3 258:19 259:13 time-consuming 90:9 204:3 209:16 227:24 timeline 158:4 162:4 times 12:8 14:13 20:17 26:2 142:3 201:4 217:16 225:2 233:21 235:5 252:25 timing 21:24 43:12 99:21 122:23 140:22 153:13 title 18:7 59:7 174:1 titled 159:3 216:17 today 8:12 11:24 12:3 15:22 18:17 112:17 146:13 235:5 246:21 262:2 today's 246:17 told 118:19 120:15 123:4,6 131:16 132:14,18,19 134:12 151:12,14,16 154:21 155:4 192:15,17 229:12,14,16,25 257:21 258:2,9 tomorrow 246:19 top 28:23 30:2,14 81:14 84:11 137:9 163:3 180:11 235:10 257:9 topic 159:4 229:6 topics 112:14 131:8,12 total 12:22 22:6 41:15 111:4 132:1 touch 129:1 track 133:18 144:16 173:13 trained 105:9 122:18 208:25
team's 75:17 263:3 teams 144:1 204:15 tech 167:13 211:10 technical 168:2 Technically 18:8 73:24 technician 8:17 Ted 237:21 telling 187:24 tells 48:9 189:11 217:13 template 185:19 215:2 235:23 templates 209:7 ten 22:7 45:25 142:25 185:5 259:14 tend 194:5 tenure 34:17 67:7 term 24:20,24 25:3 106:14 171:15,18,24 term-appointed 24:14,23 143:16 terms 21:6,10 26:15 36:3 38:4 39:19,23 45:15,20 54:6 64:10 66:22 71:16 72:7,11 74:12,16,23 100:5 106:22 107:11 110:6,22 121:15 129:1 133:16 142:22 143:23 144:5 169:12 201:10 214:15 220:15 260:4 261:16 terrible 82:25 testified 10:16 testimony 9:7 36:11 94:19 238:21 239:2 240:16 249:8, 18 252:3 255:25 testing 142:21 text 11:6 81:12 theme 143:2 themes 240:5		

training 105:12,19 144:8
192:7 199:12,20 200:10,11,
20 204:16,21 207:24
208:10,16 260:21

trainings 208:20

transcript 11:20 17:12 22:9
29:24 182:14 184:10 199:25
263:20

transfer 41:18 42:15 122:7
192:13,15,18 206:5 211:3
237:13 258:2,10

transferability 238:10,12

transition 26:6 112:6,24
114:7,13,15

transitions 114:21

translated 119:17

treading 76:4

treat 77:4

treated 179:12 181:16

trial 142:19

tricky 219:16

trigger 195:24

trouble 166:3 236:18

troubleshoot 167:16

true 35:10 99:22 138:21,23
159:15 227:19 247:19
260:14

Trump 112:24

truthfully 12:3

turn 17:25 29:8 30:1 36:13,
23 58:16 114:25 125:2
137:1

turnaround 189:20

turned 245:14

turns 39:20 127:13 184:25
253:9

tweaked 191:10

Twelve 12:23

Twenty 260:23

two-minute 58:2

type 81:19 83:7 179:10
182:12 193:2 200:7 243:16

types 80:13 152:11 177:11
182:24 192:2 193:13 199:6
201:22

typical 90:4

typically 35:6 61:11 120:11
142:15 185:3 186:1 193:18
199:21 239:24 247:21

U

U.S. 8:17,22

Uh-huh 28:8 31:21 43:2
76:17 82:4 91:24

ultimate 148:9

ultimately 27:6,9 45:13
52:16 55:6 87:1 118:15
123:3 172:19 209:17,20
242:3

unable 25:5

underlying 134:20

understand 47:13 56:24
75:8 78:18 107:18 111:23
114:21 135:6 166:5 172:25
180:14 199:16 200:22
206:18 215:20 219:1 236:7
242:13 245:7 247:10 250:2
254:24

understanding 15:25 16:7,
13,16 27:11 34:19 45:1 47:4
50:19 51:4,12 101:23
115:13 116:24 121:24
131:17 145:5 147:7,14
148:15,18,22 149:2 150:25
153:25 155:13 156:23
169:23 170:7 219:24 233:22
246:3 251:4

understood 16:23 78:7
116:12 206:10 253:3

undertaking 238:20

underway 172:22

unfolds 244:18

uniform 235:17,18,20

unit 15:20,25 16:1 18:2,10,
17 23:6,20,24 24:9 38:9
42:4 51:4 65:19,21 66:16
67:8,16,17 68:4 72:3 86:13
120:5 155:22 166:19 237:11

United 18:4

units 67:20

universally 259:3

University 99:8

unrelated 15:11

unusual 20:14

update 128:3 158:12 191:15
254:12 256:4

updated 43:9 193:5 235:22
252:6 256:15

updates 20:18 43:13 191:8

upfront 40:24 46:12 70:12

uptick 256:8

usual 120:14 189:20

UTC 8:13 10:9,13 58:10,14
106:2,6 113:24 114:3
136:20,24 167:21,25 198:4,
8 211:18,22 234:24 235:3

utilized 80:20

V

Vaguely 157:16

variables 245:1 258:17
259:9

variation 176:22

varied 22:20

varies 189:23 190:2 228:8

variety 52:9 59:23 83:4

vary 243:18

varying 24:15

vast 24:18 61:8

Vedder 14:11

veracity 77:3

verbal 204:10

verbally 9:6 228:25 229:2,14

verified 10:11

version 191:3,5 235:20
236:1 256:15

versions 87:16 235:19

versus 8:14 79:20 110:18

vicinity 69:3

video 8:10,16 11:17

videotape 9:21

view 222:12 223:18 241:17
258:3

viewed 185:4

volume 103:20 224:4 247:8,
22 256:23

W

wait 94:6 231:3 252:23

waiting 47:10 173:6 230:15
262:24

waive 9:10

walk 22:15 36:25 42:1 63:22
197:17

walks 105:15 107:10
wanted 29:15 36:23 58:19
74:10 83:3 86:12 100:18
103:17 106:8 123:11 138:23
139:21 168:7 210:17,22
214:10 222:2 239:25
wanting 228:21
warrant 104:23 259:14
warrants 179:11
water 76:4
watermark 191:6
watermarked 190:15
Wayne 33:11,15
ways 60:6 173:12
wearing 21:16
Web 96:23
Wednesday 8:12
weeds 136:1
week 20:9,17 42:21 102:1
105:12 141:19 163:8,17,24
167:10 207:24 229:8
231:11,14
weekly 20:6,24 21:9 26:17
101:4 229:9
weeks 43:11 90:6 114:20
202:22
weeks' 89:19
weigh 57:14
weighed 210:9
weighing 104:21 203:18
206:15 210:13
weird 226:14 231:19
Western 178:1 180:15
181:10
whatnot 121:14
window 187:2 219:18
woman 88:10
wondering 191:14
worded 176:20
wording 96:24
words 83:20
wore 31:13,18 32:7
work 14:21,25 15:2,4,9
17:24 18:15 20:15 40:19
45:12 61:16 66:22 67:16
99:9 115:15 116:21 118:6
120:1 121:11,22,25 122:23
123:15 132:21 133:20
136:13,15 138:1,23 140:25
141:24 144:2 154:17

160:10,19 172:15,24 177:17
189:16 190:1 194:12 204:7
209:14 227:23 230:15
240:24 241:19
worked 14:8 17:22 54:4 56:8
86:23 88:11 89:21 127:11
152:13 155:2 157:16 159:13
202:4 238:4,6
working 19:7 49:15,20 63:15
67:6 72:5 88:10 103:4 120:5
123:3 128:3 133:10,12,23
134:9 135:25 143:10,12,20
157:25 171:13,25 172:1,13,
14,16 210:2 214:9 235:16
236:21 237:16,24 248:22
249:1 250:1 260:16
workloads 189:24
works 136:14,16 203:12
world 101:7
worth 197:7
wrapping 138:2
Wright 158:18
write 17:19,21 18:1 44:25
46:7 139:6 150:14
writing 119:3,5 229:1,13
244:3
written 11:19 36:7,17,19
39:20 40:1 48:23 49:3
97:10,13 105:6 117:5,6
159:8 190:4 200:11 204:10
236:21 246:9,12 257:11,15
wrong 53:16 88:13,14 93:13
98:17 191:2 260:11 261:22,
24
wrongly 246:8,10 247:2
wrote 74:7 130:12,15 168:17
189:22
Wyotech 237:14

yellow 87:17
York 8:18 176:1

Y

yea 254:20
year 19:13 69:23,24 70:14
135:12 143:13,25 165:24
218:25 230:1 231:19 233:2
248:24 260:16
years 14:10,17,19 24:25
25:4 45:25 71:7 144:22
252:17 258:20
yelled 178:17

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.

CORRECTION AND REASON

PAGE	LINE	
		"has" should be
7	<u> 19 </u> <u> 12 </u>	"hasn't" _____
		Beckwood should be
8	<u> 49 </u> <u> 21 </u>	Westwood _____
		American should be "Marinello"
		"in-state" should be
10	<u> 64 </u> <u> 21 </u>	"intake" _____
		"an illegal" should be "a
11	<u> 82 </u> <u> 11 </u>	legal" _____
		"crew at" should be
12	<u> 86 </u> <u> 11 </u>	"COO" _____
		"included" should be
13	<u> 100 </u> <u> 6 </u>	"concluded" _____
		"power" should be
14	<u> 126 </u> <u> 4 </u>	"Bauer" _____
		"plied" should be
15	<u> 156 </u> <u> 22 </u>	"applied" _____
		"release" should be
16	<u> 170 </u> <u> 5 </u>	"relief" _____
		"lot" should be
17	<u> 181 </u> <u> 3 </u>	"law" _____
		"AG" should be
18	<u> 223 </u> <u> 5 </u>	"IG" _____
		"release" should be
19	<u> 223 </u> <u> 6 </u> and <u> 7 </u>	"relief" _____
		"proved" should be "approved"
20	<u> 225 </u> <u> 19 </u>	
		"proved should be "approved" _____
21	<u> 231 </u> <u> 2 </u>	
		_____document should be
22	<u> 234 </u> <u> 2 </u>	"documents" _____
		"courtroom" should be "court"
23	<u> 239 </u> <u> 7 </u>	

24	<u> 1.12.21 </u>	
		<i>Colleen M. Newin</i>
25	(DATE)	(SIGNATURE)

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ACKNOWLEDGMENT OF DEPONENT

I, Colleen M. Nevin, 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.

1.12.21 _____

Colleen M. Nevin

(DATE)

(SIGNATURE)

CERTIFICATE OF NOTARY PUBLIC

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

NOTARY PUBLIC

MY COMMISSION EXPIRES

Supplemental Complaint

Exhibit Index

Interrogatory Responses & Related Documents

Document Order	Document
1	Supplemental Interrogatory Responses
2	Interrogatory 17-18: How to Review a Borrower Allegation in a One-off or Small Batch Application
3	Interrogatory 17-18: ITT Memo, April 2020
4	Interrogatory 17-18: ITT Program Cost Memo, May 2020
5	Interrogatory 17-18: ITT Educational Services Memo, May 2020
6	Interrogatory 17-18 Evidence Considered Memo

**Interrogatory Responses and Related Documents Cited in
Supplemental Complaint, March 19, 2021**

Document 1

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THERESA SWEET, *et al.*,

Plaintiffs,

v.

DR. MITCHELL ZAIS, in his official capacity
as Acting Secretary of Education, and the
UNITED STATES DEPARTMENT OF
EDUCATION

Defendants.

No. 3:19-cv-03674-WHA

**DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants hereby supplement their responses to Plaintiffs' First Set of Interrogatories (the "Interrogatories"), served on November 6, 2020.

BACKGROUND

On December 7, 2020, undersigned counsel for the Defendants timely submitted, via email, Defendants' written responses and objections to Plaintiffs' first set of interrogatories ("December 7 Responses"). In response to several of Plaintiffs' interrogatories, Defendants noted that they intended to supplement their narrative responses by producing particular documents. Defendants have now produced and/or identified each of the referenced documents, as set forth below:

- **Interrogatory No. 3:** In their December 7 Responses, Defendants stated that they would supplement their response with a "chart that includes case-level data from the borrower defense system" demonstrating various "relevant case characteristics." Defendants produced this supplemental document by email dated December 14, 2020.

- **Interrogatory No. 9:** In their December 7 Responses, Defendants stated that they would supplement their response with a “chart that shows the number of career staff and contractors working for FSA in the Borrower Defense Unit during each month of the relevant time period.” Defendants produced this supplemental document by email dated December 11, 2020.
- **Interrogatory No. 10:** In their December 7 Responses, Defendants stated that they would supplement their response with three categories of documents: “(1) the initial letters sent to schools thus far requesting information and advising schools that they would be receiving notice of individual borrower applications against them, (2) the template for the form letters sent to the school with the individual borrower application, and (3) documents describing the protocol and procedures for sending initial and form letters to schools that were in effect at the time that the notices were sent.” Defendants produced these supplemental documents by email dated December 11, 2020.
- **Interrogatory No. 11:** In their December 7 Responses, Defendants stated that they would supplement their response with documents reflecting the “criteria for approval” for claims submitted by borrowers who attended certain schools and the “policies and procedures regarding approvals.” Defendants produced these supplemental documents by email dated December 11, 2020.
- **Interrogatory No. 12:** In their December 7 Responses, Defendants stated that they would supplement their response with certain “written training materials.” Defendants produced these supplemental documents by email dated December 11, 2020.
- **Interrogatory Nos. 17 and 18:** In their December 7 Responses, Defendants stated that they would supplement their responses to these two interrogatories with “(1) school-specific memos regarding the scope of evidence considered and (2) related adjudication protocols.” By email dated January 14, 2021, Defendants produced and/or identified these supplemental documents (many of which were included in Defendants’ document productions) to Plaintiffs.
- **Interrogatory No. 19:** In their December 7 Responses, Defendants stated that they would supplement their response with a chart demonstrating “which class members received each form denial letter and relevant case characteristics, including the date of the letter and school name(s) associated with the borrower’s claim.” Defendants produced this supplemental document by email dated January 14, 2021.

In addition, Defendants hereby submit these supplemental responses to certain of Plaintiffs’ interrogatories. For any interrogatory not specifically addressed herein, Defendants refer Plaintiffs to Defendants’ December 7 Responses. Unless otherwise noted, these responses are subject to the objections set forth in the December 7 Responses.

SUPPLEMENTAL RESPONSES AND OBJECTIONS

Interrogatory No. 4

Identify the person or persons who “tabled” Enforcement’s request for approval to hire “several additional attorneys” for BDU. Nevin Dec. ¶ 21 (ECF No. 56-4).

Objections: Defendants incorporate by reference the objections set forth in the December 7 Responses, which made clear that this request seeks information that is plainly not relevant based on the limited discovery that has been authorized and is, thus, disproportionate to the needs of the case. Nevertheless, in furtherance of their meet-and-confer responsibilities, Defendants provide the following additional information in response.

Response: As discussed in the referenced Declaration of Colleen Nevin, in the Fall of 2016, the Enforcement Unit in FSA requested approval to hire additional attorneys for the Borrower Defense Unit. After the election in November 2016, the Borrower Defense Unit was informed orally by leaders in the Enforcement Unit that this request was tabled until the new Administration was in place. The individuals likely to have more specific knowledge left the Department prior to 2020.

Interrogatory No. 5

Identify how and by whom both the “request” for approval to hire “several additional attorneys” for BDU and its “tabl[ing]” were communicated, including by identifying documents reflecting both the “request” and its “tabl[ing].” Nevin Dec. ¶ 21 (ECF No. 56-4).

Objections: Defendants incorporate by reference the objections set forth in the December 7 Responses, which made clear that this request seeks information that is plainly not relevant based on the limited discovery that has been authorized and is, thus, disproportionate to the needs of the

case. Nevertheless, in furtherance of their meet-and-confer responsibilities, Defendants provide the following additional information in response.

Response: The leadership of the Enforcement Unit met with Department leadership in the Fall of 2016 to review a staffing proposal and discussed options for BDU staffing increases. After the election in November 2016, the Borrower Defense Unit was informed orally by leaders in the Enforcement Unit that the request for additional staffing was tabled until the new Administration was in place. The individuals likely to have more specific knowledge left the Department prior to 2020.

Interrogatory No. 14

Identify who in “Department leadership convened a Borrower Defense Review Panel,” and explain the reasoning behind the formation of the panel. Nevin Dec. ¶ 55 (ECF No. 56-4).

Objections: Defendants incorporate by reference the objections set forth in the December 7 Responses, which made clear that this request seeks information that is plainly not relevant based on the limited discovery that has been authorized and, thus, disproportionate to the needs of the case. Nevertheless, in furtherance of their meet-and-confer responsibilities, Defendants provide the following additional information in response.

Response: As reflected in the deposition testimony of Jim Manning, the Department leadership as a group decided that it would be helpful to review the Department’s process for handling and considering claims for borrower defense discharges. The group was convened by Joe Conaty.

Interrogatory No. 16

Identify the individuals who drafted and approved form Denials A, B, C, and D, and explain the process for review and approval of the letters. *See* ECF No. 116.

Objections: Defendants incorporate by reference the objections set forth in the December 7 Responses.

Response: Staff members within FSA prepared a set of draft decision letters; each letter was specific to a certain group of claims and circumstances. That set of draft letters was sent to other officials in the Department, including Jed Brinton (then Deputy General Counsel for Postsecondary Education with the Department's Office of General Counsel) and other attorneys in the Office of the General Counsel, as well as Diane Jones (the Principal Deputy Under Secretary) and Robert Eitel (then Counselor to the Secretary). Those attorneys and officials provided comments back to FSA. Based on those original drafts and the comments from those officials, FSA prepared what became form letters A and C. FSA staff then used form letters A and C to draft form letters B and D. Form letter B built on form letter A to address circumstances requiring a combination of the other letters, and form letter D built on form letter C to incorporate school-dependent evidence considered. The Department did not have an established process that mandated any further review or approval before the form letters could be used. Based on the Department's original and supplemental inquiries, there is no indication that former Secretary DeVos was involved in the review or approval of the template letters A, B, C or D.

SIGNATURES PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 33(b)(5)

For interrogatory responses: See the attached certification pages.

Dated: January 14, 2021

As to objections,

JENNIFER B. DICKEY
Acting Assistant Attorney General

MARCIA BERMAN
Assistant Branch Director

/s/ R. Charlie Merritt
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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THERESA SWEET, *et al.*,

Plaintiffs,

v.

DR. MITCHELL ZAIS, in his official capacity
as Secretary of Education, and the UNITED
STATES DEPARTMENT OF EDUCATION

Defendants.

No. 3:19-cv-03674-WHA

INTERROGATORY CERTIFICATION

I, Colleen M. Nevin, Director of the Borrower Defense Group, Federal Student Aid, United States Department of Education, certify under penalty of perjury, that the foregoing supplemental responses to Plaintiff's Interrogatory No. 4 and No. 5 are true and correct to the best of my belief, knowledge, information, understanding and recollection.

Dated: January 14, 2021

Respectfully submitted,

Colleen M. Nevin

Director

Borrower Defense Group

Federal Student Aid

United States Department of Education

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THERESA SWEET, *et al.*,

Plaintiffs,

v.

DR. MITCHELL ZAIS, in his official capacity
as Acting Secretary of Education, and the
UNITED STATES DEPARTMENT OF
EDUCATION

Defendants.

No. 3:19-cv-03674-WHA

INTERROGATORY CERTIFICATION

I, Brian P. Siegel, Assistant General Counsel, Division of Postsecondary Education, Office of the General Counsel, United States Department of Education, certify under penalty of perjury, that the foregoing supplemental responses to Plaintiff's Interrogatories No. 14 and No. 16 are true and correct to the best of my belief, knowledge, information, understanding and recollection.

Dated: January 14, 2021

Respectfully submitted,

Brian P. Siegel

Assistant General Counsel

Division of Postsecondary Education

Office of the General Counsel

United States Department of Education

**Interrogatory Responses and Related Documents Cited
in Supplemental Complaint, March 19, 2021**

Document 2

How to Review a Borrower Allegation in a One-off or Small Batch Application

Step One: Did the borrower allege an act or omission by their school

- In order to make a borrower defense claim the borrower must allege an act or omission by the school listed on their application.
 - If a borrower alleges an act or omission by someone or something other than the school on their application (for example another school, their loan servicer, or another student) then use the “borrower makes no allegations regarding the school” stock language from the protocol. Otherwise move to step two.

Step Two: Does the act or omission by their school violate state law

- The most common type of allegation we see allegations of misrepresentations. In order to allege a misrepresentation that states a claim under state law the borrower must allege both a representation and the falsity of that representation in their application. Further, the falsity alleged must match the representation.¹
 - If the borrower has not alleged an act or omission by their school that violates state law use the “Allegation does not state a claim” stock language. Otherwise move to step three.
 - **NOTE:** The representation and the falsity may appear in different parts of the application
 - **NOTE:** Checking the box on the universal form does not meet either the representation or falsity requirements, with the exception of Transfer claims. If a the borrower checks the transfer claim box this checked box can be used to either meet the representation element or the falsity element for a transfer claim, but not both.

Step Three: Is the act or omission by the school covered by the borrower defense regulation

- A borrower is not eligible for borrower defense relief based on claims that are not directly related to their loans or the educational services provided by the school. For example personal injury claims or claims based on allegations of harassment are not bases for a borrower defense claim.
 - If the borrower alleges one of these violations of state law then we use the “not a BD type claim” stock language or, if there is the potential that the borrower can receive a different type of discharge, the appropriate stock language for that type of discharge. Otherwise move to Step four.

Step Four: Does the borrower provide evidence to support his/her claim

- In order to be approved for a borrower defense claim the department must have evidence that proves all elements of the borrower’s allegation.
 - If you think the borrower’s allegation is proved by attached evidence or that the attached evidence would allow the department to discover additional material evidence through a limited targeted investigation then this allegation cannot be denied and you must contact your QCer for further direction.
 - If the borrower’s allegation is not supported by sufficient evidence then the claim should be denied using the “insufficient evidence” stock language.

¹ Example: “I was told that 85% of students have a job upon graduation, but in reality the percentage is much lower” states a claim. However, “I was told that 85% of students have a job upon graduation, but I don’t have a job” does not state a claim because the fact that the borrower doesn’t have a job does not mean that the statement that 85% of students have a job upon graduation is false.

Treatment of Common Allegations - DRAFT

Employment Prospects

Regardless of which narrative box someone uses, Employment Prospects claims are about representations regarding someone's employment outcomes as a result of going to that school/program – a guarantee of employment, the % of graduates working/working in the field, the salary they can expect to earn, the kinds of jobs for which they would be eligible with that degree, eligibility to sit for licensing examinations, etc.

Employment Prospects allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:

- Misrepresentations of guaranteed jobs
 - Ex. "My school promised me a job after I graduated, but I never got a job"
- Misrepresentations regarding salary/wages
 - Ex. "My school told me I would make \$60K a year upon graduation, but I only made minimum wage"
 - Ex. "My school told me dental assistants earn \$30 per hour; but actually they only earn \$12 per hour."
- Misrepresentations of Job Placement Rates
 - Ex. "My school told me 85% of graduates have jobs within 6 months of graduation, but that isn't true."
- Misrepresentations regarding a graduate's ability to work in field or sit for licensing exam
 - Ex. "My school said they were fully accredited, but when I graduated I was not eligible to get a job in my field of study."
 - "Ex. "My school told me that once I got this degree I could immediately get hired as a nurse; that's not true. I need to have one year of clinical work before I can be hired."
 - Ex. "My school told me that after I graduated I could sit for the licensing exam, however when I went to take the exam I was told that my school was not properly accredited so I can't sit for the exam."
- Misrepresentations regarding an externship resulting in job placement
 - Ex. "My school promised me they would place me in an externship that would hire me after it ended. My externship did not hire me."

Employment Prospects Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:

- Allegations that include only one element of a misrepresentation
 - Ex. "The school promised me a job"
 - Ex. "I never got a job"
 - Ex. "There were no jobs available in my program when I graduated"
 - Ex. "I thought that I would get a job, but I'm working fast food instead"
- Allegations of misrepresentations where the falsity doesn't match the representation
 - Ex. "My school told me 85% of graduates have a job upon graduation, but I didn't have a job upon graduation."
- Pure omissions without the student alleging that the school had a duty to inform the student of the pertinent information
 - Ex. "My school never told me it would be hard to get a job as an underwater basket weaver"
 - Ex. "My school never told me that underwater basket weavers don't get paid well"
- General Claims regarding the value of education in getting a job, even if framed as misrepresentations

- Ex. “My school told me that it is easier to get hired with a bachelors degree than with just a high school diploma”
- Ex. “My school told me that people with masters degrees often have higher salaries than people with bachelors degrees”

Program Cost and Nature of Loan

Regardless of which narrative box someone uses, Program Cost and Nature of Loan claims are about how much the program cost, how it was to be paid for, loans, repayment terms, etc.

Program Cost and Nature of Loan allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:

- Misrepresentations of program cost
 - Ex. “My school told me one price but then I was charged a higher price”
- Misrepresentation of the nature of the financial aid (grants vs. loans)
 - Ex. “My school made me think I was getting all grants, but instead it turned out to be loans”
- Misrepresentation of loan repayment terms
 - Ex. “My school told me that I wouldn’t have to start paying back my loans until six months after graduation, but after I graduated my loans became due immediately.”
- Misrepresentations regarding what equipment was provided with tuition/fees
 - Ex. “My school promised that haircutting supplies were part of the tuition, but I never got the supplies and instead had to pay for them separately.”

Program Cost and Nature of Loan Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:

- Omissions
 - Ex. “My school didn’t let me know that there were additional fees in addition to tuition”
- Misrep claims that leave out an element
 - Ex. “My school promised me that tuition would only be \$10K a year”
- Misrep claims where falsity doesn’t match the rep
 - “My school promised me that tuition would only be \$10K a year, but when I got to school my dorm room was in bad condition”
- Complaints about school cost
 - Ex “the school cost too much”
- Complaints regarding value of school, even if framed as misrepresentations
 - Ex. “the school shouldn’t have cost so much, I could have gotten the same education at as state school for half the tuition.
- Failure to inform borrower of other available forms of financial aid
 - Ex. “Nobody told me I could have gotten a grant from a private charity or from the state.”
- Complaints about having to take out loans
 - “I couldn’t afford this school so I had to take out massive loans”
- Failure to inform borrower of basic loan information
 - Ex. “The school never told me that my loans would accrue interest”
- Misrep re: loan counseling or failure to provide loan counseling
 - Ex. “The school did not provide me loan counseling.”
 - Ex. “The school promised me loan counseling, but it wasn’t useful”
 - Ex. “The school promised me loan counseling, but I never got it”

Transferring Credits

Regardless of which narrative box someone uses, Transferring Credits claims are typically about whether a borrower is able to transfer credits from, or into, that school.

Transfer of Credits allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:

- Misrepresentations of whether credits earned would be accepted by other schools
 - Ex. “[checked box] my credits didn’t transfer”
 - Ex. “[checked box] my school told me my credits would transfer”
 - Ex “[NO checked box] my school told me my credits would transfer to any other school, but when I tried to transfer nobody would accept my credits”
- Misrepresentations of whether degrees earned at that school would allow continuation into grad school
 - Ex. “My school told me that this degree would let me go on to any law school in the country”
- Misrepresentations that previously earned credits would transfer into this school
 - Ex. “My school told me that that they would accept all my community college credits, but when I enrolled only some credits were accepted.”
 - Ex. “My school told me that they would accept all my community college credits, but when I enrolled I had to retake classes.”
- Misrepresentations regarding institutional accreditation
 - Ex. “My school said they were fully accredited, but when I tried to transfer my credits not school would accept them.”

Transfer of Credits Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:

- Pure omission regarding transfer of credits
 - Ex. “My school never told me my credits wouldn’t be accepted by other schools”
- Withholding transcripts
 - Ex. “I couldn’t transfer because my school won’t release my transcript until I pay them the balance of the tuition cost.
- Misrepresentation missing an element about transferring into a school
 - Ex. “[checked box] my former credits did not transfer into this school”
- School failed to assisted with the transfer process
 - Ex. “I was confused about how to transfer credits, when I asked the school to help me with the process nobody would help me.”
- Transferability of some credits
 - Ex. “I tried to transfer my credits to [community college/state college], but they would only take 6 out of my 72 credits.”

Career Services

Regardless of which narrative box someone uses, Career Services claims are about what the school promised to do to *help* the borrower find a job – not through the education itself, but through Career Services representatives, job fair, resume workshops, industry connections, etc.

Career Services allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:

- Misrepresentations of the nature/type or availability of career services
 - Ex. “My school told me they would help me find a job, but when I went to the career services office nobody was ever there. When I called nobody ever picked up the phone.”
 - Ex. “My school told me they would provide resume help and have job fairs, but they never did either of those things. All they did was send me links to job postings”
- Misrepresentations of the relationships the school has with employers
 - Ex. “My school promised me that they had strong relationships with local business, but when I contacted them they said they never heard of my school.”

Career Services Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:

- Omission
 - Ex. “My school never told me that they did not have a career services office”
- Misrepresentation allegation with missing element
 - Ex. “My school promised me that career services would help me find a job”
- Misrepresentation allegation where falsity doesn’t match the representation
 - Ex. “My school promised to help me find a job, but I don’t have a job”
- Complaints about quality of career services, even if framed as misrepresentations
 - Ex. “My school promised me that they had great career services, but it wasn’t useful”

Educational Services

Regardless of which narrative box someone uses, Educational Services claims are about curriculum, methods, instruction and instructors, etc.

Educational Services allegations that potentially state a claim and therefore should be denied only if there is insufficient evidence to support the allegation:

- Specific misrepresentations regarding what will be taught/how classes will be taught
 - Ex. “the school promised to teach me programming language X, but instead they taught me programming language Y”
 - Ex. “the school promised hands on training, but we were never allowed to use any of the equipment. We only learned by reading a book.”
- Misrepresentations regarding to qualifications/certifications of the instructors
 - Ex. “My school told me that all of the instructors in the paralegal program were attorneys; that wasn’t true”
- Misrepresentations of the availability of services such as tutoring
 - Ex. “I was told there would be tutoring opportunities if I needed extra help with classes, but when I tried to get a tutor there weren’t any.”
- Allegations that teachers were not licensed to teach in state or otherwise does not meet state’s statutory or regulatory standards
 - “I found out that my teachers were not licensed to teach in the state of Massachusetts.”
- Allegations that a given class did not have a teacher
 - Ex. “Our class had no teacher, meaning there was no instruction. We would just show up to a class room and nobody was there. We just read our textbooks to ourselves. ”
 - Ex. “Our teacher was absent the second half of the semester and there was no substitute”
- Misrepresentations about program length/time to complete, number of credits necessary to complete, or number of hours of instruction that would be provided
 - Ex. “I told the school that I was being deployed in 9 months, and was told that the program only lasted 6 months. I enrolled, but a few months in learned that the program was actually 12 months long, which meant I couldn’t complete the course.
- Misrepresentations regarding internship/externship availability or nature
 - Ex. “My school promised to place me in an externship, but they never did
 - Ex. “My school promised to place me in a nursing externship, but they placed in a record keeping position”
- Misrepresentation regarding which program a student is enrolling in
 - Ex. “I signed up for a medical billing and coding program, but I later found out that they enrolled me in a Pharmacy tech program”
- Misrepresentations regarding medical or other accommodations
 - Ex. “My school told me that because of my medical condition I would get extra time on tests. However, once I enrolled nobody gave me extra time on tests.”
 - Ex. “My school told me I would be able to take a leave of absence for my pregnancy but instead they failed me and made me pay for the classes again”
 - Ex. “I was told that the school had flexible schedules and that it was not a problem that I worked during the day. After I enrolled I learned that most of their classes are only taught during the day making it impossible to take the classes I need to take.”

Educational Services Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim:

- Omission
 - Ex. “The school didn’t tell me how redundant the classes would be”
 - Ex. “The school didn’t tell me that the teachers had little experience in the field”
- Misrep that is missing an element
 - Ex. “The school promised that the my teachers would be ivy league educated”

- Misrep where falsity doesn't match the representation
 - Ex. "My school promised that my teachers would be ivy league educated, but they didn't seem to know anything"
- Complaints about how a class is taught
 - Ex. "The school taught me programing language X, but after graduation I realized it would have been more helpful if they taught me programing language Y"
 - Ex. "I would have learned more if I got more hands on experience"
 - Ex. "They promised me that this was the best program. That was a lie"
- Complaints about quality of instructors, even if framed as misrepresentations
 - Ex. "My teachers didn't seem to know very much and couldn't answer my questions"
 - Ex. "My school said they had the best teachers, but that is a lie"
- Complaints about instructors not being helpful or playing favorites, even if framed as misrepresentations
 - Ex. "The professor in my econ 101 course did not seem interested in teaching the class. All he did was read off a power point"
 - Ex. "My teacher didn't answer my questions and just told me to look up the answer in the book"
 - Ex. "My teacher liked certain students more than others and always gave them more attention"
- Complaints about normal instructor absences
 - Ex. "Our teacher was sick and had to cancel a day of class"
 - Ex. "Our teacher went on maternity leave and the sub wasn't as good"
 - Ex. "The school had high teacher turnover"
- Complaints that a specific instructor wasn't available, even if framed as misrepresentations
 - Ex. "I enrolled at the school to take classes with a certain professor but she retired before I could take a class with her"
- Deviations from the syllabus or student handbook, even if framed as misrepresentations
 - Ex. "we were supposed to learn about X in the third week, but we fell behind and didn't get to it until week 4. That meant the last week of class was rushed"
 - Ex. "According to the student handbook you are allowed three make up tests, but I never got one"
- Complaints about internship quality
 - Ex. "I didn't learn anything in my internship"
- Grading unfairness
 - Ex. "I think my work was great and I should have gotten an A. the only reason I didn't was because the teacher didn't like me."
- Difficulty or ease of the program
 - Ex. "The class was too easy, I already knew everything"
 - Ex. "The class was too hard for an intro class"

Other

Other Allegations that Do Not State a Claim and therefore should be denied for failure to state a claim

- Loss of accreditation
 - Ex. “My school lost its accreditation while I was there”
- Mere existence of lawsuits against the school
 - Ex. “My school is being sued by its former dining services provider”
- Borrower was expelled
 - Ex. “My school wrongfully expelled me for not following safety procedures in the lab”
- School didn’t mail diploma
 - Ex. “I never received my paper diploma”
- School or program closure
 - Ex. “My school had to cancel the program I was in due to lack of interest”
 - Ex. “My school closed”
- Urgency to enroll
 - Ex. “I was told that I should enroll in class today so that I could begin schooling as soon as possible.”

Other Allegations that are not covered by the Borrower Defense Regulation:

- Discrimination claims
 - Ex. “My teacher failed me because of my [race, gender, sexual orientation, etc]”
- False Certification claims
 - Ex. “I never signed up for loans, but later found out that my school took loans out in my name”
- Teacher harassment
 - Ex. “My teacher was verbally abusive to me”
 - Ex. “My teacher sexually harassed me”
- Violence by teachers or Students
 - Ex. “I got into a fist fight with my teacher”
- Drug use
 - Ex. “My teacher was high during class”
- School sanctioned cheating on tests
 - Ex. “The school had a policy of letting students cheat on tests so that we could graduate with good grades”

**Interrogatory Responses and Related Documents
Cited in Supplemental Complaint, March 19, 2021**

Document 3

Memorandum

To: Colleen Nevin

From: Andrew Bronstein, John Spurlock, John Stephenson, and Brian Gibbons

Date: April 2, 2020

Re: The Borrower Defense Unit's Ongoing Investigation of ITT Tech Before and After 2005

ITT Educational Services, Inc. was a proprietary higher education institution incorporated in Delaware with its principal executive offices located in Carmel, Indiana.¹ ITT Educational Services, Inc. operated ITT Technical Institute ("ITT Tech") from 1969,² until the commencement of bankruptcy proceedings on September 16, 2016.³ At its peak – between 2012 and 2013 – ITT Educational Services, Inc. operated 148 ITT Tech campuses (and one training facility) in 38 states and operated online programs in all 50 states (excluding Daniel Webster College).⁴ At the time of its closure in September 2016, there were 136 ITT Tech campuses located in 38 states.⁵

Since ITT Tech's closure, the Borrower Defense Unit ("BDU") has received tens of thousands of applications from borrowers that attended ITT Tech. These applications contain allegations of misconduct occurring at ITT Tech campuses nationwide. Of all ITT Tech applications received, the earliest enrollment periods date back to as early as 1981, and the latest enrollment periods date back to the beginning of ITT Tech's closure in 2016.⁶

As of the date of this memorandum, the BDU has discovered a substantial volume of evidence relevant to the borrower defense allegations at ITT Tech campuses nationwide and continues to review this evidence. In particular, the BDU has reviewed evidence in connection with the following sources, among others: (1) Department of Education records and letters submitted to ITT Tech;⁷ (2) materials shared by other governmental agencies;⁸ (3) information and evidence filed in connection with various other court actions, including federal actions, actions initiated by state attorneys general, as well as private litigation;⁹ (4) ITT Tech policies,

¹ ITT Educ. Servs., Inc., Annual Report (Form 10-K), at 2 (Feb. 24, 2006); ITT Educ. Servs., Inc., Annual Report (Form 10-K), at 2 (Mar. 15, 2016).

² ITT Educ. Servs., Inc., Annual Report (Form 10-K), at 2 (Feb. 24, 2006); ITT Educ. Servs., Inc., Annual Report (Form 10-K), at 2 (Mar. 15, 2016).

³ See *In re ITT Educational Services, Inc.*, No. 16-07207-JMC-7A (Bankr. S.D. Ind. Sep. 16, 2016). ITT Educational Services, Inc. also operated Daniel Webster College from 2009 until the commencement of bankruptcy proceedings on September 16, 2016. However, for the purposes of this memorandum, students that attended Daniel Webster College during ITT Tech's ownership are excluded. See ITT Educ. Servs., Inc., Annual Report (Form 10-K), at 2 (Mar. 15, 2016).

⁴ ITT Educational Services, Inc., Annual Report, (Form 10-K), at 2 (Oct. 16, 2014).

⁵ Press Release, Department of Education, Important Information Regarding ITT Educational Services, Inc., <https://studentaid.gov/announcements-events/itt> (last visited Mar. 18, 2020).

⁶ See CEMS Reports generated by BDU personnel (on file with department).

⁷ See, e.g., Letter from Department of Education Letter to Kevin M. Modany, Chief Executive Officer, ITT Tech, at 1 (Oct. 19, 2015) (on file with department) (Department letter finding ITT Tech noncompliant with Title IV requirements).

⁸ For example, records gathered by the CFPB in connection with its action *Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc.*, No. 1:14CV00292, 2014 WL 717457 (S.D. Ind. Feb. 26, 2014) (CFPB action alleging that ITT Tech made misrepresentations relating to employment prospects, transferring credits, and program costs, dating back to as early as 2006).

⁹ See, e.g., *Massachusetts v. ITT Educ. Servs., Inc.*, Civ. No. 16-0411 (Mass. Super. Ct. Mar. 31, 2016) (attorney general alleging that ITT Tech made misrepresentations relating to employment prospects and transferring credits claims, dating back to 2010); *New Mexico v. ITT Educ. Servs., Inc.*, No. D-202-CV-2014-01604 (N.M. Dist. Ct. Feb. 27, 2014) (attorney general action alleging that ITT Tech made misrepresentations relating to

practices, and controls; (5) ITT Tech marketing materials, contractual agreements, and similar documents that were distributed to all students; (6) internal ITT Tech reviews and audits, including its ‘mystery shopper’ program; (7) materials provided by legislative committees and other third-party organizations;¹⁰ (8) a statement made by a former employee of ITT Tech to the Department;¹¹ and (9) ITT Tech government financial filings.¹²

However, none of these investigations and sources extended to a period before January 1, 2005, and, on review, the documentary evidence that BDU has collected does not date prior to 2005. First, the BDU has not uncovered any material former employee testimony by employees hired prior to 2005. Second, the BDU has not found any material internal ITT documents created prior to 2006. Third, the Consumer Financial Protection Bureau’s own investigations trace alleged misconduct back to only 2009. Fourth, Department of Education investigations into ITT Tech did not occur until 2014. Fifth, litigation brought by the Massachusetts Attorney General dates alleged misconduct to 2010, while the New Mexico Attorney General alleges that misconduct occurred beginning in June 2009. Sixth, the BDU has been unable to uncover any private litigation alleging misconduct by ITT Tech actionable under the Borrower Defense regulation prior to 2005. Lastly, investigations of ITT Tech tend to trace alleged misconduct to Kevin M. Modany’s tenure, which began in April 2005 (Mr. Modany served as President from April 2005 through March 2009 and as Chief Executive Officer from April 2007 through ITT Tech’s closure in September 2016).

Accordingly, BDU has been unable to find evidence within the Department, or through other sources, to establish the allegations made by borrowers with enrollment dates beginning prior to January 1, 2005 (“pre-2005 claims”). The BDU’s investigation of ITT Tech is ongoing, and the BDU is currently drafting a memorandum that takes a more comprehensive view of ITT Tech’s conduct. However, because the BDU is not currently in possession of evidence that would substantiate allegations of misconduct occurring prior to 2005, we recommend that all ITT Tech applications reflecting a pre-2005 enrollment date be adjudicated in accordance with the following standard review protocol: BDU attorneys will individually adjudicate each application by opening each claim and reviewing all allegations made by the borrower and any supporting evidence provided by the borrower. If the borrower has provided evidence sufficient to support their allegations, then the application will be set aside for further review. However, where the borrower provides no evidence, or the evidence provided is insufficient to prove any allegations, denial of

employment prospects transferring credits, and program costs claims, dating back to 2009); *Villalba v. ITT Educ. Servs.*, No. 17-50003 (Bankr. S.D. Ind. Jan. 3, 2017) (private class action alleging that ITT Tech made misrepresentations relating to employment prospects, transferring credits, career services, program costs, and educational services claims, dating back to 2006); *United States ex rel. Lipscomb v. ITT Educ. Servs., Inc.*, No. 3:15-cv-00446-HES-JRK (M.D. Fla. Jan. 15, 2016) (private action by former employee alleging that ITT Tech made misrepresentations, relating to employment prospects, and transferability of credits, dating back to 2011). The BDU has also received evidence from the Iowa Attorney General relating to a multi-state investigation of ITT (on file with department), which includes dozens of interviews of former ITT employees, including Deans, Directors, financial aid staff, recruitment representatives, and registrar personnel.

¹⁰ For example, the BDU has received evidence from Veterans Education Success (“VES”) President Carrie Wofford, including trends of allegations in student complaints submitted to VES (on file with department); *see also* S. Health, Educ., Labor & Pensions Comm., For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success 13 (2012) (Senate Committee report finding misconduct by ITT Tech relating to employment prospects, transferring credits, and program costs, dating back to 2006).

¹¹ *See, e.g., Statement of Jason Halasa to Department of Education* (2015) (on file with department) (a former campus director provided the Department with a written statement, alleging that ITT Tech made misrepresentations relating to employment prospects, career services, educational services, and other fraudulent activities).

¹² *See, e.g., ITT Educ. Servs., Inc., Annual Report* (Form 10-K), at 73 (Mar. 15, 2016).

the application is appropriate. If additional evidence is discovered in the future, these pre-2005 claims can be revisited as may be warranted.

**Interrogatory Responses and Related Documents Cited in
Supplemental Complaint, March 19, 2021**

Document 4

To: Colleen Nevin
From: John Stephenson and Kaleigh Ward
Date: May 20, 2020
Re: ITT Technical Institute – Adjudication of Program Cost and Nature of Loan Allegations

I. Introduction

Former students of ITT Technical Institute (ITT) have submitted applications to the Borrower Defense Unit (BDU) alleging a variety of misrepresentations regarding ITT's program cost and the nature of student loans. BDU finds the evidence in the Department of Education's (Department) possession is not broadly applicable to ITT borrowers.¹ Borrowers who allege ITT misrepresented the cost of their program or the nature of their loans will be individually adjudicated and reviewed to determine whether the borrower provides sufficient evidence to warrant an approval.

II. Summary of Allegations

BDU sampled 150 applications raising a program cost allegation to identify trends in the applicant pool. The sampled applications allege that ITT misrepresented (1) how much the program would cost; (2) the availability of grants; and (3) that a loan was taken out without permission. Other sampled applications failed to allege a misrepresentation and, instead either alleged ITT failed to disclose information, or made general complaints about the high cost of attendance, high interest rates, the number of loans taken out, or provided statements related to their harm.

III. Evidence in the Department's Possession

The Department has reviewed statements from former ITT employees regarding ITT's program cost and the aid that borrowers received. These statements discuss that ITT recruiters created a general urgency to enroll,² failed to provide printouts of student ledgers,³ avoided

¹ Allegations regarding ITT's promise of a free laptop upon enrollment will be addressed in a separate memo, which is currently underway.

² Declaration of Jennifer Cody at 1, 3-4, *Consumer Financial Protection Bureau v. ITT Education, Inc.*, No. 1:14-cv-00292-SEB-TAB (S D. In. Jun. 6, 2016); Declaration of Pearl B. Gardner at 1, 5-6, *Consumer Financial Protection Bureau v. ITT Education, Inc.*, No. 1:14-cv-00292-SEB-TAB (S D. In. Sept. 22, 2016); See Declaration of Rodney Lipscomb at 3, *Consumer Financial Protection Bureau v. ITT Education, Inc.*, No. 1:14-cv-00292-SEB-TAB (S D. In. Aug. 17, 2016).

³ See Declaration of Rodney Lipscomb at 2, *Consumer Financial Protection Bureau v. ITT Education, Inc.*, No. 1:14-cv-00292-SEB-TAB (S D. In. Aug. 17, 2016).

borrowers' questions regarding financial aid,⁴ avoided discussions about total program cost,⁵ and that ITT allegedly changed its policy regarding ITT's Opportunity Scholarship.⁶

In addition to statements by former employees, the Department has also reviewed internal documents and ITT audit reports.⁷ These reports noted that out of 142 audits conducted, only three statements by recruiters were categorized into the most problematic category.⁸

The Department is not currently aware of any evidence relating to widespread misrepresentation of ITT's program cost or the nature of loans borrowers received. However, borrower defense applicants may provide evidence to support their individual allegations.

IV. Claims Involving False Certification

Borrowers also submitted program cost and nature of loans allegations that ITT representatives signed loan documents in borrowers' names without their knowledge or consent. However, claims involving false certification are not actionable under BD regulations.⁹ Therefore, relief should be sought through the appropriate channels and BD approvals are not warranted.¹⁰

V. Conclusion

Borrowers submitted a variety of program cost and nature of loan allegations against ITT. After reviewing the available evidence, BDU finds the evidence is not generally applicable to ITT borrowers. Therefore, borrowers who allege that ITT misrepresented the cost of their program or the nature of their loans will be individually adjudicated and reviewed to determine

⁴ Interview with Chris Schuetz, former ITT employee, Lexington, KY (Aug. 26, 2014).

⁵ Interview with Amy Destefanis, former Financial Aid Coordinator (August 21, 2014); *see also* Interview with Linda Spohn, former Director of Finance (August 20, 2014); Affidavit of Dawn Lueck at 4, *In re: ITT Educational Services, Inc., et al.*, No. 17-50003, (Bankr. S.D. In. Jan. 3, 2017).

⁶ Disclosure Statement, *United States of America ex rel. Rodney Lipscomb v. ITT Educational Service, Inc.*, provided to the United States Department of Justice and the United States Attorney's Office for the Middle District of Florida, (May 4, 2015) (specifically noting that the change in policy was conveyed to him by a student and not through ITT Headquarters).

⁷ ITT's Mystery Shopper program, which was run by ITT's Internal Audit Department (though conducted by an independent third-party company), was designed to analyze prospective students' initial experiences with ITT. These mystery shops resulted in written summaries, called "Job Detail Reports".

⁸ ITT Educational Services, Inc., *Operations Review Compliance and Internal Audit*, slide 23 (on file with author) (noting, in this ITT compliance presentation, that out of 142 mystery shops conducted, three shops involved Tier I issues guaranteeing shoppers financial aid. This amounted to 2.1 percent of all shops evaluated.).

⁹ 34 C.F.R. §685.215

¹⁰ FEDERAL STUDENT AID, <https://studentaid.gov/manage-loans/forgiveness-cancellation/false-certification#apply> (last visited Apr. 9, 2020). BD will gather evidence related to false certification allegations and will forward it to the appropriate contacts within the Department.

whether the borrower provides sufficient evidence to warrant an approval.¹¹ If additional evidence is discovered in the future, these claims will be revisited as warranted.

¹¹ This analysis may be re-examined upon receipt of additional information or evidence.

**Interrogatory Responses and Related Documents Cited
in Supplemental Complaint, March 19, 2021**

Document 5

Memorandum

To: Colleen Nevin
From: Serena Anand, Ashley Bykerk, and Daniel Spurlock
Date: May 20, 2020
Re: ITT Technical Institute – Adjudication of Educational Services Allegations

I. Introduction

This memorandum addresses applications submitted to the Borrower Defense Unit (BDU) that are premised on alleged misrepresentations by ITT Technical Institute (ITT) regarding its provision of educational services. For the reasons stated below, BDU finds that the evidence in the Department of Education’s (Department) possession relating to this issue is not broadly applicable to ITT borrowers. Borrowers who allege that ITT misrepresented its educational services will be individually adjudicated and reviewed to determine whether the borrower has provided sufficient evidence to warrant an approval.¹

II. Summary of Allegations

BDU sampled 150 applications raising an educational services allegation to identify trends in the applicant pool. The sampled applications allege that ITT misrepresented (1) that its instructors would be experts in their fields; (2) that ITT courses would be taught using modern technology; (3) that a program would include hands-on training or internships; and (4) that particular certifications would be provided upon completion of a course or program. Other sampled applications failed to allege a misrepresentation and, instead, made general complaints about the availability of classes or programs or about the quality of ITT’s instructors, its equipment, or its curricula.

III. Evidence in the Department’s Possession

BDU reviewed statements of former ITT employees to look for evidence related to possible misrepresentations about ITT’s provision of educational services. Although many of the statements are highly critical of ITT, few of the statements relate to ITT’s educational services. Those that do fail to identify any actual misrepresentations by ITT; do not relate to the kinds of alleged misrepresentations asserted by applicants; and/or are limited in scope to the few individual campuses where the employees worked.²

¹ This analysis may be re-examined upon receipt of additional information or evidence.

² The employee statements that discuss educational services include (i) the statement of an adjunct professor at the ITT-Everett campus alleging that the campus course catalogue reflected three Bachelor’s Degree programs that the campus was not offering and (ii) the statement of a dean at ITT-Tallahassee alleging that recruiters at his campus

Internal ITT records relating to its “mystery shopper” program, which tracked and assessed ITT’s recruiters clandestinely as they interacted with actors who they believed to be prospective students, also relate to ITT’s educational services.³ A review of mystery shopper summaries shows that recruiters sometimes made claims amounting to puffery that ITT had the newest technology or offered expert instruction.⁴ However, representations like these are inherently vague and subjective, and, regardless, the Department lacks evidence that such representations were false.

BDU also reviewed internal ITT reporting on its students’ satisfaction with their classroom experience through surveys that were completed for each course. The results of these surveys were reported to ITT’s Board of Directors, and a meeting report from October 2011 indicates “consistent and high student satisfaction over the past five quarters.”⁵ The report reflects that students gave ratings of 4 out of 5 on average in the categories of course content expectations, textbook and course material satisfaction, lab and other equipment condition, instructor preparedness, and instructor value to my education, in the years 2010-2011.⁶

BDU is not currently aware of any evidence relating to any common or widespread misrepresentation of ITT’s educational services.⁷ However, borrower defense applicants may provide evidence to support their individual allegations.

IV. Conclusion

sometimes misrepresented course offerings and trainings. *See* ITT Tech Instructor (Everett Campus) Complaint to Washington State Attorney General and ACICS, May 2016; Attestation of Rodney Lipscomb, filed in *Villalba v. ITT Educational Services, Inc.*, Case No. 17-50003 (U.S. Bankr. S.D. Ind. 2017) (filed as Exhibit 2 to the Declaration of Toby Merrill). [All documents cited in this memorandum are being maintained on file with the author.]

³ *See generally* ITT Internal Audit Files, Overview of 2011 Mystery Shopper Program. Mystery shoppers working for an independent third-party company would pose as prospective students and would set up interviews with unwitting ITT recruiters, both in person and on the phone. The shopper prepared a written summary of the interaction at the conclusion of each mystery shop, noting if the recruiter made problematic representations about ITT. *Id.*

⁴ *See, e.g.*, ITT Compliance and Internal Audit Operations Review, October 6, 2011.

⁵ ITT Educational Services, Inc., October 2011 Board Meeting Book, p. 20.

⁶ *Id.*

⁷ In addition to the evidence summarized herein, BDU also has reviewed evidence in connection with the following sources, among others: (1) Department records and letters submitted to, and received from, ITT; (2) materials shared by other governmental agencies; (3) information and evidence filed in connection with various court actions and investigations, including federal actions, actions initiated by state attorneys general, as well as private litigation; (4) ITT policies, practices, and controls; (5) ITT marketing materials, contractual agreements, and similar documents that were distributed to all students; (6) internal ITT reviews and audits; (7) materials provided by legislative committees and other third-party organizations; (8) a statement made by a former ITT employee to the Department; and (9) ITT government financial filings.

Borrowers submitted a variety of educational services allegations against ITT. After reviewing the available evidence, BDU finds the evidence is not generally applicable to ITT borrowers. Therefore, borrowers who allege that ITT misrepresented its educational services will be individually adjudicated and reviewed to determine whether the borrower provides sufficient evidence to warrant an approval.⁸ If additional evidence is discovered in the future, these claims will be revisited as warranted.

⁸ This analysis may be re-examined upon receipt of additional information or evidence.

**Interrogatory Responses and Related Documents Cited
in Supplemental Complaint, March 19, 2021**

Document 6

ITT Technical Institute – Evidence Considered Protocol

Applicable to:

ITT Technical Institute

Entering Evidence Considered Manually:

1. Open a case with a suggested closing correspondence value of Standard Denial with Evidence Considered in status 3.10.
2. In the “Evidence Considered” field on the case select the following:
 - Consumer Financial Protection Bureau (CFPB)
 - Evidence obtained by the Department in conjunction with its regular oversight activities
 - IA Attorney General’s Office
 - MA Attorney General’s Office
 - NM Attorney General’s Office
3. In the “Other Evidence” field on the case input the following as separate lines:
 - Transcript of Testimony of ITT Tech Recruiter before the National Advisory Council on Institutional Quality and Integrity (NACIQI) (June 23, 2016).
 - Materials compiled by ITT Tech’s accreditor, the Accrediting Council for Independent Colleges and Schools (ACICS).
 - Materials compiled by non-profit group, Veterans Education Success (VES).
 - Materials prepared by ITT Educational Services, Inc.
4. The case is now ready to process following the normal borrower notification letter creation process.

Bulk Update Options:

1. Bulk update (by work ticket to Accenture) all ITT Technical Institute cases in 3.10 with the following:
 - a. In the “Evidence Considered” dropdown, select:
 - Consumer Financial Protection Bureau (CFPB)
 - Evidence obtained by the Department in conjunction with its regular oversight activities
 - IA Attorney General’s Office
 - MA Attorney General’s Office
 - NM Attorney General’s Office
 - b. In the “Other Evidence” field input as separate lines:
 - Materials compiled by non-profit advocacy group, Veterans Education Success (VES)
 - Financial documents and other corporate materials prepared by ITT Educational Services, Inc.
2. Process following the normal borrower notification letter creation process.