

Deposition Transcripts

Cited in Supplemental Complaint, March 19, 2021

Transcript 3 – James Manning

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- JAMES MANNING -

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

DATE: December 17, 2020

TIME: 9:36 a.m.

VIDEOTAPED VIDEOCONFERENCE DEPOSITION
OF JAMES MANNING, pursuant to Agreement, before
Hope Menaker, a Shorthand Reporter and Notary
Public of the State of New York.

Page 2

1 - JAMES MANNING -

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

3

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1 - JAMES MANNING -

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

3

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15

16 ALSO PRESENT: (Via Zoom)

17

18 JOSEPH RAGUSO - Videographer

19

20

21

22

23

24

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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.

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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

12/17/2020

6 to 9

<p style="text-align: right;">Page 6</p> <p>1 - JAMES MANNING -</p> <p>2 proceedings into the record.</p> <p>3 THE REPORTER: The attorneys</p> <p>4 participating in this deposition acknowledge</p> <p>5 that I am not physically present in the</p> <p>6 deposition room and that I will be reporting</p> <p>7 this deposition remotely. They further</p> <p>8 acknowledge that in lieu of an oath</p> <p>9 administered in person, the witness will</p> <p>10 verbally declare his testimony in this matter</p> <p>11 is under penalty of perjury. The parties and</p> <p>12 their counsel consent to this arrangement and</p> <p>13 waive any objections to this manner of</p> <p>14 reporting. Please indicate your agreement by</p> <p>15 stating your name and your agreement on the</p> <p>16 record.</p> <p>17 MR. JARAMILLO: This is Joseph</p> <p>18 Jaramillo for plaintiffs and I agree.</p> <p>19 MR. MERRITT: This is Charlie</p> <p>20 Merritt, the defense agrees.</p> <p>21 THE VIDEOGRAPHER: We're now off the</p> <p>22 record. The time is 14:38 UTC.</p> <p>23 (Whereupon a brief recess was taken</p> <p>24 at this time.)</p> <p>25 THE REPORTER: Will the witness</p>	<p style="text-align: right;">Page 8</p> <p>1 - JAMES MANNING -</p> <p>2 this case.</p> <p>3 I wanted to go over a few of the</p> <p>4 ground rules for the deposition, particularly</p> <p>5 since we're doing this over Zoom. So, first of</p> <p>6 all, I wanted to confirm there's no one else in</p> <p>7 the room with you at this point.</p> <p>8 A. There's no one else in the room with</p> <p>9 me.</p> <p>10 Q. And can I have your agreement not to</p> <p>11 communicate with anyone else while we're on the</p> <p>12 record in the deposition through electronic device</p> <p>13 or otherwise?</p> <p>14 A. Yes. I'm assuming that means if I</p> <p>15 need to go off to ask counsel a question, that's</p> <p>16 permissible; isn't it?</p> <p>17 Q. Yes. Off -- off the record</p> <p>18 when -- when we're not doing questions and</p> <p>19 answers, you can speak with your counsel.</p> <p>20 A. Okay.</p> <p>21 Q. And can you identify any electronic</p> <p>22 communication devices in the room such as</p> <p>23 telephones or things of that nature, iPads?</p> <p>24 A. Yes. I have -- well, I'm working</p> <p>25 from a small laptop and I have two telephones,</p>
<p style="text-align: right;">Page 7</p> <p>1 - JAMES MANNING -</p> <p>2 kindly present his government-issued</p> <p>3 identification by holding it up to the camera</p> <p>4 for verification.</p> <p>5 (Verified.)</p> <p>6 THE VIDEOGRAPHER: We are now on the</p> <p>7 record, the time is 14:38 UTC.</p> <p>8 JAMES MANNING, called as a witness,</p> <p>9 having been duly sworn on December 17, 2020,</p> <p>10 by a Notary Public, was examined and</p> <p>11 testified as follows:</p> <p>12 2001 Pennsylvania Avenue NW</p> <p>13 Washington D.C. 20006</p> <p>14 (Business)</p> <p>15</p> <p>16 EXAMINATION BY MR. JARAMILLO:</p> <p>17 Q. Good morning, Mr. Manning. My name</p> <p>18 is Joseph Jaramillo and I'm one of the attorneys</p> <p>19 for the plaintiffs in this case.</p> <p>20 Can you please state your name for</p> <p>21 the record?</p> <p>22 A. James Manning.</p> <p>23 Q. Mr. Manning, thank you for making</p> <p>24 yourself available today and we appreciate you</p> <p>25 voluntarily appearing to serve as a witness in</p>	<p style="text-align: right;">Page 9</p> <p>1 - JAMES MANNING -</p> <p>2 electronic telephones in the room.</p> <p>3 Q. Can you -- can I have your agreement</p> <p>4 to put those out of reach so that you're not using</p> <p>5 those during the deposition while we're on the</p> <p>6 record?</p> <p>7 A. Sure. Let me put them out of reach.</p> <p>8 They're well out of reach.</p> <p>9 Q. Thank you, Mr. Manning.</p> <p>10 A. Sure.</p> <p>11 Q. Even though we're sitting here in our</p> <p>12 respective homes or offices, I want to emphasize</p> <p>13 that the -- the oath that you've taken carries</p> <p>14 the same weight as if given in a court of law. Do</p> <p>15 you understand that?</p> <p>16 A. I do.</p> <p>17 Q. And the court reporter, Ms. Menaker,</p> <p>18 is taking down everything we say and it will be</p> <p>19 produced in a transcript form later and serve as</p> <p>20 evidence in this the case. For that reason, it's</p> <p>21 important to give audible answers such as yes or</p> <p>22 no, rather than nods of the head or uh-huh or</p> <p>23 uh-uh. Do you understand that?</p> <p>24 A. Yes.</p> <p>25 Q. And it's also important that we don't</p>

<p style="text-align: right;">Page 10</p> <p>1 - JAMES MANNING -</p> <p>2 talk over each other so that Ms. Menaker can get a</p> <p>3 clear record of the questions and answers. I will</p> <p>4 do my best not to talk over you and I would ask</p> <p>5 that you could do your best not to talk over me.</p> <p>6 Is that acceptable?</p> <p>7 A. Yes.</p> <p>8 Q. Are you represented by legal counsel</p> <p>9 today in this deposition?</p> <p>10 A. Charlie Merritt, the Department of</p> <p>11 Justice attorneys that are handling this.</p> <p>12 Q. And they represent you in this</p> <p>13 deposition, correct?</p> <p>14 A. My understanding.</p> <p>15 Q. Okay. Now, from time to time Mr.</p> <p>16 Merritt may object to my questions during the</p> <p>17 deposition. I just want to explain that unless he</p> <p>18 instructs you not to answer the question, even</p> <p>19 though he has objected you are still under an</p> <p>20 obligation to answer my question. Do you</p> <p>21 understand that?</p> <p>22 A. Can you repeat that again so it's</p> <p>23 clear.</p> <p>24 MR. JARAMILLO: Ms. Menaker, can you</p> <p>25 read back my statement.</p>	<p style="text-align: right;">Page 12</p> <p>1 - JAMES MANNING -</p> <p>2 know.</p> <p>3 Q. Okay. Can you open that package,</p> <p>4 please?</p> <p>5 A. Here it is. Here are the documents.</p> <p>6 Q. Great. Thank you, Mr. Manning.</p> <p>7 Now, there should be a set of tabbed</p> <p>8 documents that are tabbed with Numbers 1 through</p> <p>9 22. Is that what you see before you?</p> <p>10 A. I see Tabs 1 through 22.</p> <p>11 Q. So during the course of the</p> <p>12 deposition, I'm going to ask you to look at some</p> <p>13 of these documents and I will refer to them by tab</p> <p>14 numbers. Do you understand that?</p> <p>15 A. Yes, and -- yes.</p> <p>16 Q. I'm going to have you look at the</p> <p>17 document that is marked as Tab 1 and in the</p> <p>18 electronic files there should simply appear the</p> <p>19 Number 1 on the PDF file and it would say "Revised</p> <p>20 Notice of Deposition of James Manning." Do you</p> <p>21 see that document?</p> <p>22 A. I do.</p> <p>23 Q. And have you seen this document</p> <p>24 before?</p> <p>25 A. I don't recall seeing the revised</p>
<p style="text-align: right;">Page 11</p> <p>1 - JAMES MANNING -</p> <p>2 (The question requested was read back</p> <p>3 by the reporter.)</p> <p>4 A. Yes.</p> <p>5 Q. In -- in other words, it may seem</p> <p>6 awkward because I'm going to ask you a question</p> <p>7 and Mr. Merritt may object, but the next step</p> <p>8 would be for you to still answer the question</p> <p>9 unless he instructs you not to answer. Do you</p> <p>10 understand that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, this is not an endurance</p> <p>13 contest. We can take breaks whenever we want.</p> <p>14 You can take a break whenever you want. My only</p> <p>15 request is that if I have a question pending, that</p> <p>16 you answer that question before we take the break.</p> <p>17 Do you understand that?</p> <p>18 A. Yes.</p> <p>19 Q. Is there any reason why you can't</p> <p>20 give truthful testimony today?</p> <p>21 A. No.</p> <p>22 Q. Now, did you receive a package with</p> <p>23 the -- the documents that we may look at today?</p> <p>24 A. I have a package. I haven't opened</p> <p>25 it so I assume it's the documents, but I don't</p>	<p style="text-align: right;">Page 13</p> <p>1 - JAMES MANNING -</p> <p>2 notice.</p> <p>3 MS. BERMAN: Sorry. Joseph, is there</p> <p>4 a password for the electronic documents?</p> <p>5 MR. JARAMILLO: Marcia, I'm sorry,</p> <p>6 there is. I just forwarded it to you.</p> <p>7 MS. BERMAN: Okay. Okay, great.</p> <p>8 Thanks.</p> <p>9 Q. So do you recall seeing a Notice of</p> <p>10 Deposition of James Manning at some point?</p> <p>11 A. Well, no, I guess I don't recall.</p> <p>12 Q. Did you ever receive a -- I'm sorry,</p> <p>13 did I cut you off?</p> <p>14 A. This is just a declaration I made</p> <p>15 previously.</p> <p>16 Q. Okay. So you do not recall seeing a</p> <p>17 notice of your deposition that's dated the -- the</p> <p>18 time -- or the time and the date of the</p> <p>19 deposition?</p> <p>20 A. I don't recall that.</p> <p>21 Q. And you are voluntarily appearing</p> <p>22 here today for this deposition, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Have you ever had your deposition</p> <p>25 taken before?</p>

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14 to 17

<p style="text-align: right;">Page 14</p> <p>1 - JAMES MANNING -</p> <p>2 A. No.</p> <p>3 Q. Have you ever given testimony in</p> <p>4 court before?</p> <p>5 A. Yes.</p> <p>6 Q. How many times?</p> <p>7 A. Multiple times years ago.</p> <p>8 Q. When was the last time that you</p> <p>9 recall?</p> <p>10 A. About 1983.</p> <p>11 Q. Do you recall what court the trial</p> <p>12 took place in?</p> <p>13 A. No.</p> <p>14 Q. Do you recall the state in which the</p> <p>15 trial took place?</p> <p>16 A. District of Columbia.</p> <p>17 Q. What was your role in that case, if</p> <p>18 any?</p> <p>19 A. I'm trying to -- I'm trying to recall</p> <p>20 the, the -- the particulars. I can't recall if it</p> <p>21 was a trial or not. I, at the time, was serving</p> <p>22 as special agent at the security service at the</p> <p>23 State Department. There was an incident at the</p> <p>24 State Department that went to court and I went to</p> <p>25 testify on it; and I don't remember beyond that</p>	<p style="text-align: right;">Page 16</p> <p>1 - JAMES MANNING -</p> <p>2 A. 1977, 1978.</p> <p>3 Q. And -- and you were a witness in this</p> <p>4 case?</p> <p>5 A. I was the complainant and I</p> <p>6 testified.</p> <p>7 Q. Okay, and what court was that in?</p> <p>8 A. West Roxbury District Court, Boston,</p> <p>9 Massachusetts.</p> <p>10 Q. Any other cases that you can recall</p> <p>11 giving testimony in?</p> <p>12 A. No.</p> <p>13 Q. What did you do to prepare for</p> <p>14 today's deposition?</p> <p>15 A. I -- I talked to counsel and I</p> <p>16 revisited my declaration and declarations made by</p> <p>17 Colleen Nevin and Diane Jones.</p> <p>18 Q. How many times did you meet with</p> <p>19 counsel?</p> <p>20 A. A few, like three. I'm -- I'm not</p> <p>21 sure how many.</p> <p>22 Q. And what are the dates or approximate</p> <p>23 dates that you met with them?</p> <p>24 A. Over the last few days.</p> <p>25 Q. About how many hours did you spend</p>
<p style="text-align: right;">Page 15</p> <p>1 - JAMES MANNING -</p> <p>2 because it was a one-time thing.</p> <p>3 Q. And you were -- so you were a witness</p> <p>4 in that case and you gave testimony?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall give -- I'm sorry, go</p> <p>7 ahead.</p> <p>8 A. It wasn't '83. It was -- it was</p> <p>9 probably -- '81, '82 probably.</p> <p>10 Q. Do you recall giving testimony in any</p> <p>11 other court cases before that?</p> <p>12 A. Yes. I testified regularly in</p> <p>13 (unintelligible) District Court in Boston,</p> <p>14 Massachusetts between 1975 and 1978 when I was a</p> <p>15 university police officer at Northeastern</p> <p>16 University.</p> <p>17 Q. And before those cases do you recall</p> <p>18 giving testimony in any court cases, any other</p> <p>19 court cases?</p> <p>20 A. The only other court case that I</p> <p>21 would have testified in was a civil action where I</p> <p>22 had a two-family house in Boston and a tenant that</p> <p>23 didn't want to leave or wasn't paying rent to me.</p> <p>24 I wanted to remove him from the space.</p> <p>25 Q. When was that case, approximately?</p>	<p style="text-align: right;">Page 17</p> <p>1 - JAMES MANNING -</p> <p>2 meeting with them?</p> <p>3 A. Oh, I don't recall specifically, but</p> <p>4 maybe about four.</p> <p>5 Q. Four hours total or four hours in</p> <p>6 each meeting?</p> <p>7 A. Total. Maybe a little more than four</p> <p>8 total. No four-hour meeting.</p> <p>9 Q. And how did you meet with them; was</p> <p>10 this in person or via Zoom or by telephone?</p> <p>11 I'm sorry, can you repeat your</p> <p>12 answer.</p> <p>13 A. I was, you know, just using this same</p> <p>14 type of system, the Zoom system.</p> <p>15 Q. And who were the counsel that you met</p> <p>16 with over Zoom?</p> <p>17 A. Charlie Merritt, Marcia -- I forget</p> <p>18 Marcia's last name. Marcia. I -- I don't recall</p> <p>19 Marcia's last name. Call into Charlie. And Kevin</p> <p>20 -- and I don't recall his last name either. He</p> <p>21 was on the call with Charlie.</p> <p>22 Q. Anybody else?</p> <p>23 A. Not that I recall, but --</p> <p>24 Q. And you said you reviewed your</p> <p>25 declaration?</p>

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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

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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

1 - JAMES MANNING -

2 reflection of the remarks you made in January,

3 2018 of the negotiated rulemaking -- negotiate --

4 wait, Negotiated Rulemaking Committee?

5 A. Yes.

6 Q. Do any of these documents refresh

7 your recollection of the facts?

8 A. I'm -- I'm sure they did, but I

9 couldn't say specifically what at this moment.

10 Q. Other than meetings with your counsel

11 over Zoom-type platform, did you speak with

12 anybody else about your deposition?

13 A. No.

14 Q. You didn't speak with anybody

15 currently at the Department of Education other

16 than counsel, legal counsel, about your

17 deposition?

18 A. I didn't speak to anybody about the

19 deposition. I had somebody approach me at a

20 reception who said they heard I was going to be

21 doing a deposition.

22 Q. And who was that?

23 A. Someone who knew me, but I -- I

24 didn't know, a young woman. I think she was in

25 the General Counsel's Office, actually. I don't

Page 23

1 - JAMES MANNING -

2 know her name.

3 Q. Okay.

4 A. There was no conversation beyond

5 that.

6 Q. I'm sorry?

7 A. I said there was no conversation

8 beyond that.

9 Q. When was this reception?

10 A. The day before yesterday.

11 Q. Where did it take place?

12 A. In the Barnard Auditorium at the U.S.

13 Department of Education.

14 Q. How many people were there?

15 A. Approximately 50.

16 Q. And what was the occasion for the

17 reception?

18 A. A holiday reception at the end of

19 an administration.

20 Q. Was Secretary DeVos there?

21 A. She stopped by, yes.

22 Q. Did you speak with her?

23 A. I did.

24 Q. Did you speak with her about your

25 deposition?

Page 24

1 - JAMES MANNING -

2 A. No.

3 Q. Did you speak with her about this

4 case?

5 A. No.

6 Q. Did you speak with her about the

7 Calvillo Manriquez case?

8 A. No.

9 Q. Did you speak with her about borrower

10 defense?

11 A. No.

12 Q. And you didn't speak with anybody

13 else about this case that was at that reception?

14 A. Nobody else.

15 Q. Besides the -- the unidentified woman

16 that you mentioned?

17 A. Yes.

18 Q. Okay. Did you review any of the

19 deposition transcripts in this case?

20 A. No.

21 Q. Okay.

22 A. I mean, people that have since

23 been -- been deposed previously up to now, is that

24 what you're saying?

25 Q. Yes. There are -- as you may be

Page 25

1 - JAMES MANNING -

2 aware, there are people who have been deposed

3 previously in this case.

4 A. No, I have not read any of those

5 depositions.

6 Q. And you -- you did not talk to

7 Colleen Nevin about your deposition today?

8 A. No, I did not.

9 Q. You didn't talk to Diane Auer Jones?

10 A. I did not.

11 Q. You did not talk to Mark Brown about

12 it?

13 A. No, I did not.

14 Q. Mr. Manning, we're going to be

15 discussing a lot, as -- as you may imagine, the

16 borrower defense to Repayment Discharges of

17 federal student loans today.

18 A. Yes.

19 Q. I will refer to those in the

20 shorthand as just borrower defense or sometimes

21 even BD. Will that make sense to you?

22 A. Yeah, BDTR would make sense to me to.

23 Q. BDTR meaning Borrower Defense to

24 Repayment?

25 A. Yes.

<p style="text-align: right;">Page 26</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Mr. Manning, do you have a LinkedIn</p> <p>3 profile?</p> <p>4 A. I do.</p> <p>5 Q. And did you create that profile?</p> <p>6 A. Yes.</p> <p>7 Q. Did you, yourself, enter the</p> <p>8 information in that profile?</p> <p>9 A. Nobody else that I'm aware of put</p> <p>10 anything on my profile.</p> <p>11 Q. Okay. I'll just represent to you</p> <p>12 that I -- I went on LinkedIn and I looked at your</p> <p>13 profile and there's a feature on LinkedIn to</p> <p>14 generate the profile in a resume-type format and I</p> <p>15 did that so that we could go over your career</p> <p>16 background and experience at the Department of</p> <p>17 Education today as sort of a guidepost; and so I</p> <p>18 would like to have you turn to Tab 2 in your stack</p> <p>19 of documents.</p> <p>20 A. Are we done with Tab 1?</p> <p>21 Q. Yes, we're done with Tab 1.</p> <p>22 A. Okay.</p> <p>23 MS. BERMAN: Joseph, I just want</p> <p>24 to -- excuse me, I just want to note for the</p> <p>25 record that I'm not able to open the Dropbox</p>	<p style="text-align: right;">Page 28</p> <p>1 - JAMES MANNING -</p> <p>2 the Revised Notice of Deposition of James</p> <p>3 Manning, and I would like to now mark the</p> <p>4 second tab in the PDF files for Mr. Manning</p> <p>5 as Exhibit 32.</p> <p>6 (Whereupon, Exhibit 31 was marked at</p> <p>7 this time.)</p> <p>8 (Whereupon, Exhibit 32 was marked for</p> <p>9 identification.)</p> <p>10 Q. Mr. Manning, have you had a chance to</p> <p>11 look at the document that is Tab 2 in your</p> <p>12 package?</p> <p>13 A. Well, I -- I started to, but I went</p> <p>14 back because I had seen the Notice, this -- I was</p> <p>15 just looking for the first time at the actual</p> <p>16 Notice of Deposition.</p> <p>17 Q. Okay. So, just for clarity, you were</p> <p>18 looking at a document outside of the packet that</p> <p>19 you received?</p> <p>20 A. No. I'm looking at the document that</p> <p>21 was behind Tab 1.</p> <p>22 Q. Okay, and that document is called</p> <p>23 "Revised Notice of Deposition of James Manning"?</p> <p>24 A. Yes, and it's just about, you know,</p> <p>25 today's date basically. I think that's being the</p>
<p style="text-align: right;">Page 27</p> <p>1 - JAMES MANNING -</p> <p>2 attachments. I seem to be the only person on</p> <p>3 our team having trouble with it, but it's</p> <p>4 not -- it's opening for me. It's asking me</p> <p>5 to do all sorts of things like create an</p> <p>6 account; and I tried to do that, but that</p> <p>7 didn't even work.</p> <p>8 MR. JARAMILLO: Mr. Merritt, can we</p> <p>9 go off the record for this?</p> <p>10 MR. MERRITT: Yes.</p> <p>11 THE VIDEOGRAPHER: Going off the</p> <p>12 record, the time is 15:08 UTC.</p> <p>13 (Whereupon, a brief discussion was</p> <p>14 held off record.)</p> <p>15 THE VIDEOGRAPHER: We're now on the</p> <p>16 record, time is 15:11 UTC.</p> <p>17 Q. Okay, Mr. Manning, so I'm having you</p> <p>18 look at Tab 2.</p> <p>19 MR. JARAMILLO: And, Ms. Menaker, I</p> <p>20 would like to have you mark this as --</p> <p>21 actually, Ms. Menaker, we did not mark the</p> <p>22 first tab, did we?</p> <p>23 THE REPORTER: We did not.</p> <p>24 MR. JARAMILLO: Okay. Can we mark</p> <p>25 the first tab as Exhibit 31, that would be</p>	<p style="text-align: right;">Page 29</p> <p>1 - JAMES MANNING -</p> <p>2 deposition there, right.</p> <p>3 Q. Did -- had you received that document</p> <p>4 before you got it in the package today?</p> <p>5 A. No.</p> <p>6 Q. Okay. Well, let's move on to Tab 2.</p> <p>7 A. Okay.</p> <p>8 Q. And please take a moment to look at</p> <p>9 that and let me know if that accurately reflects</p> <p>10 the information from your LinkedIn profile?</p> <p>11 Mr. Manning, I'm sorry to interrupt</p> <p>12 your review, I know you're looking carefully --</p> <p>13 A. I'm -- I'm on the last page. It's</p> <p>14 a -- this is --</p> <p>15 Q. I'll let you finish up and then we</p> <p>16 can talk about it.</p> <p>17 A. Okay.</p> <p>18 Q. Is this an accurate -- was this</p> <p>19 information on -- on this document as to Exhibit</p> <p>20 32 reflect your -- the information that you put on</p> <p>21 your LinkedIn profile?</p> <p>22 A. It seems to be from another document</p> <p>23 rather than what I put in my LinkedIn profile.</p> <p>24 This looks like a -- a resume that I've used a</p> <p>25 number of times. I didn't -- I don't -- I have to</p>

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<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>

<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>

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<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>

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<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>

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<p style="text-align: right;">Page 50</p> <p>1 - JAMES MANNING -</p> <p>2 borrower and also fair to the taxpayer.</p> <p>3 Q. Do you have an understanding of why</p> <p>4 that needed to be looked at?</p> <p>5 A. I think the feeling was that it</p> <p>6 needed to be looked at because there -- there were</p> <p>7 some that thought that borrowers making a claim,</p> <p>8 that was accepted to get a hundred percent relief;</p> <p>9 and the question was raised in that group whether</p> <p>10 or not that should always be a case or if there</p> <p>11 was an approach that could look at it through a</p> <p>12 different lens.</p> <p>13 Q. And who suggested that in the group?</p> <p>14 A. Who specifically suggested that?</p> <p>15 Q. Yes.</p> <p>16 A. I, I -- I don't recall who was the</p> <p>17 first person to -- to say that. I think that --</p> <p>18 that when it came up, that there was, you know,</p> <p>19 further discussion on that; and that ult --</p> <p>20 ultimately the -- the group decided/recommended an</p> <p>21 approach to looking at developing methodology that</p> <p>22 could look at claims and make judgments on whether</p> <p>23 someone should get a hundred percent or some</p> <p>24 lesser percentage. There -- there was a range</p> <p>25 that went down to ten percent, as I recall.</p>	<p style="text-align: right;">Page 52</p> <p>1 - JAMES MANNING -</p> <p>2 Q. And what specifically did he</p> <p>3 recommend with respect to the -- with the relief</p> <p>4 methodology?</p> <p>5 MR. MERRITT: Objection to the extent</p> <p>6 it calls for deliberative privileged</p> <p>7 information.</p> <p>8 MR. JARAMILLO: Are you instructing</p> <p>9 the witness not to answer?</p> <p>10 MR. MERRITT: Yes. Just your</p> <p>11 question asked for a recommendation, correct?</p> <p>12 MR. JARAMILLO: I'll -- I'll</p> <p>13 rephrase.</p> <p>14 Q. Was anything that Phil Jeunst</p> <p>15 suggested put into writing?</p> <p>16 A. Oh, yes, absolutely. It was put into</p> <p>17 effect.</p> <p>18 Q. How was it put into writing?</p> <p>19 A. I -- I don't recall, but it was</p> <p>20 actually -- it was ultimately put aside by the</p> <p>21 court.</p> <p>22 Q. A partial relief meth -- methodology</p> <p>23 that resulted from the Borrower Review Defense</p> <p>24 Panel was -- was put -- set aside by the court in</p> <p>25 the Calvillo Manriquez case?</p>
<p style="text-align: right;">Page 51</p> <p>1 - JAMES MANNING -</p> <p>2 And most of the folks at the table</p> <p>3 were not expert enough to -- to develop that, but</p> <p>4 there was an individual that was part of the group</p> <p>5 who was a career member of the Department from the</p> <p>6 finance office, Phillip Jeunst, who was -- was</p> <p>7 qualified and charged to look at the issue and</p> <p>8 come back with a proposal and a methodology that</p> <p>9 could be used to make determinations that would</p> <p>10 allow for forgiveness from ten percent to a</p> <p>11 hundred percent.</p> <p>12 Q. And you said that person's name was</p> <p>13 Phillip Jeunst?</p> <p>14 A. Yeah, I think it was like</p> <p>15 J-E-U-N-S-T. I might have spelled that</p> <p>16 indirectly. J-U-E-N-S-T I think. There might</p> <p>17 have been a G in there, too. I -- I can't</p> <p>18 remember how he spelled his name.</p> <p>19 Q. And what was his position?</p> <p>20 A. He was from the finance office.</p> <p>21 Q. Do you know if he's still with the</p> <p>22 Department of Education?</p> <p>23 A. I believe he is, yes.</p> <p>24 Q. Do you know his current position?</p> <p>25 A. I do not.</p>	<p style="text-align: right;">Page 53</p> <p>1 - JAMES MANNING -</p> <p>2 MR. JARAMILLO: Can we go off the</p> <p>3 record.</p> <p>4 (Whereupon, a brief discussion was</p> <p>5 held off record.)</p> <p>6 Q. Mr. Manning, you froze there on the</p> <p>7 video screen for a second, so I'm not sure -- I</p> <p>8 didn't hear an answer. I'm just -- I'm just going</p> <p>9 to repeat my question.</p> <p>10 A. Go ahead.</p> <p>11 Q. When you say that the -- what Mr.</p> <p>12 Phillip Jeunst suggested was -- was put aside by</p> <p>13 the court, are you referring to the court's order</p> <p>14 enjoining the use of the average earnings rule in</p> <p>15 the Calvillo Manriquez case?</p> <p>16 A. Yes, that's correct.</p> <p>17 Q. Did anything about the borrower</p> <p>18 defense Panel review cause a delay in the</p> <p>19 Department's issuance of borrower defense</p> <p>20 decisions?</p> <p>21 MR. MERRITT: Objection, vague.</p> <p>22 Q. You can answer the question.</p> <p>23 A. I'm sorry, can you repeat it, please.</p> <p>24 Did anything?</p> <p>25 Q. I'll rephrase it. Let's back up a</p>

<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>

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<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>

<p style="text-align: right;">Page 62</p> <p>1 - JAMES MANNING -</p> <p>2 new administration's approach was to find ways to</p> <p>3 limit relief commensurate with what the Department</p> <p>4 viewed as the harm to the borrower; is that true?</p> <p>5 A. No, I don't think that is phrased</p> <p>6 correctly.</p> <p>7 I don't think we were thinking of the</p> <p>8 taxpayer, you know, first and then looking to --</p> <p>9 to have a balance. I think we were looking to try</p> <p>10 to make it fair across the board.</p> <p>11 Q. So what were you doing to protect the</p> <p>12 taxpayer?</p> <p>13 MR. MERRITT: Objection, overbroad.</p> <p>14 Q. You can answer.</p> <p>15 A. I -- I think, though, protecting the</p> <p>16 taxpayer was -- I don't know what happened when we</p> <p>17 were deciding correctly for borrowers.</p> <p>18 Q. Was the interest of schools also a</p> <p>19 consideration in revising the -- the relief</p> <p>20 awarded to borrowers?</p> <p>21 A. I, I -- I never heard that was raised</p> <p>22 as a consideration.</p> <p>23 Q. So, in your view, the considerations</p> <p>24 were the taxpayer and the borrower?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 64</p> <p>1 - JAMES MANNING -</p> <p>2 which the difficulty of reviewing borrower</p> <p>3 defense applications -- sorry about that.</p> <p>4 So as relevant to this witness, the</p> <p>5 only topic that the court authorized</p> <p>6 discovery into is the extent to which the</p> <p>7 difficulty of reviewing borrower defense</p> <p>8 applications actually caused or justified the</p> <p>9 Secretary's 18-month delay and I don't think</p> <p>10 that question relates to that topic.</p> <p>11 MR. JARAMILLO: Well, the court did</p> <p>12 say that there was a strong showing of agency</p> <p>13 pretext, the class had been prejudiced by</p> <p>14 delay, and the court said we need to know</p> <p>15 what's really going on and that led him to</p> <p>16 compel discovery on the topic you listed, but</p> <p>17 other topics as well that Mr. Manning might</p> <p>18 have knowledge of including the denial issue</p> <p>19 before this suit and under the previous</p> <p>20 administration and the extent to which the</p> <p>21 Secretary denied applications of students who</p> <p>22 attended the school subject to findings of</p> <p>23 misconduct. This all gets to pretext and</p> <p>24 potential causes of the delay.</p> <p>25 Are you going to instruct him not to</p>
<p style="text-align: right;">Page 63</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Any other considerations?</p> <p>3 A. I'm sure there were other</p> <p>4 considerations discussed at the table. I don't</p> <p>5 recall what they were.</p> <p>6 Q. In your view, the prior</p> <p>7 administration did not sufficiently take into</p> <p>8 account the interest of the taxpayer?</p> <p>9 MR. MERRITT: Objection. We're</p> <p>10 getting beyond the scope of the discovery the</p> <p>11 court authorized.</p> <p>12 Q. You can answer unless your counsel</p> <p>13 instructs you not to.</p> <p>14 MR. MERRITT: Well, which topic is</p> <p>15 this relevant to?</p> <p>16 MR. JARAMILLO: Well, this is</p> <p>17 background leading towards the eventual delay</p> <p>18 in the processing of applications and it has</p> <p>19 to do with the view of the new administration</p> <p>20 toward Borrowers Defense claims and what</p> <p>21 would be used to evaluate them.</p> <p>22 MR. MERRITT: I don't think that's a</p> <p>23 topic. I mean, if the court's -- as relevant</p> <p>24 to this witness, the only topic the court</p> <p>25 authorized discovery into is the extent to</p>	<p style="text-align: right;">Page 65</p> <p>1 - JAMES MANNING -</p> <p>2 answer that question?</p> <p>3 MR. MERRITT: You're correct that</p> <p>4 some of the topics could be relevant to Mr.</p> <p>5 Manning.</p> <p>6 I will state that the court's general</p> <p>7 statement that the pretext do not set the</p> <p>8 parameters for a technical discovery, the</p> <p>9 actual topics that you listed do.</p> <p>10 At this point we are very, very far</p> <p>11 before the 18-month delay the court</p> <p>12 referenced, which as you now began in 2018.</p> <p>13 So I guess, at this point, I'll -- I'll ask</p> <p>14 you to restate the question.</p> <p>15 MR. JARAMILLO: We can move on.</p> <p>16 Q. Mr. -- Mr. Manning, you testified</p> <p>17 earlier that it was determined that the Secretary</p> <p>18 needed to approve the applications of</p> <p>19 approximately 16,000 borrowers of -- that were</p> <p>20 prelim -- that were approved by the prior</p> <p>21 administration, but not actually discharged; is</p> <p>22 that correct?</p> <p>23 A. Correct.</p> <p>24 Q. And were you involved in the</p> <p>25 Secretary's approval of those applications?</p>

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<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>

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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>

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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>

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1 - JAMES MANNING -
 2 sending e-mails to the Secretary.
 3 Q. And no text messages?
 4 A. No, none.
 5 Q. And underneath you as under acting
 6 Secretary, was FSA, correct?
 7 A. Yes, in -- in principal the
 8 Undersecretary had oversight of the Higher
 9 Education programs, so FSA is part of Education
 10 and Career Adult Education.
 11 Q. Who from FSA reported directly to
 12 you?
 13 A. Oh, a whole cadre of folks at
 14 different times. I mean, there was a group of
 15 senior leaders of or ten or so that met regularly
 16 with me.
 17 Q. Did any of them meet regularly with
 18 you about borrower defense?
 19 A. The issue of borrower defense may
 20 have come up from time to time in general
 21 meetings, but...
 22 Q. Who at FSA was responsible for
 23 overseeing the implementation of borrower defense
 24 during your tenure at the Department?
 25 A. The director of the Enforcement group

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1 - JAMES MANNING -
 2 officially had that responsibility.
 3 Q. And who was that during your tenure?
 4 And if it was multiple people just tell me who
 5 recall, please.
 6 A. Oh, it was multiple people and it
 7 was -- I just forgot the name. I just saw his
 8 name on a e-mail not too long ago. Robert -- I
 9 don't remember his last name. He left actually
 10 earlier; he left in February and then Laura Kim
 11 and then shortly after that she left and Colleen
 12 Nevin effectively was the senior person there.
 13 And I would seek Colleen from time to
 14 time until -- until Jillian Schmoke became the
 15 director of the borrower -- of the, you know,
 16 Enforcement Unit in the summer of '17. So '17
 17 probably August.
 18 Q. And, Mr. Manning, you've named people
 19 that were, as you described it, in the role of
 20 director of Enforcement within FSA, correct?
 21 A. Yes.
 22 Q. Between you and that role of director
 23 of Enforcement, was there anybody else in the
 24 chain of reporting?
 25 A. Between me and director?

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1 - JAMES MANNING -
 2 Q. Yes.
 3 A. Not at FSA.
 4 Q. Okay. Anywhere else?
 5 A. Quite frankly, I don't know -- not
 6 that I know of.
 7 Q. Okay. So these people, when they
 8 were in that role, reported directly to you?
 9 A. I -- actually Jillian Schmoke when he
 10 came onboard, he came onboard and we had a
 11 full-time COO that was Wayne Johnson, and he
 12 reported to Wayne while Wayne was COO through
 13 July, '17 through January, '18. That --
 14 Q. And Jillian -- go ahead. I'm sorry.
 15 A. Yeah, that was the reporting
 16 relationship.
 17 Q. So from Julian Schmoke up to Wayne
 18 Johnson and then up to you?
 19 A. Yes.
 20 Q. Did Colleen Nevin ever directly
 21 report to you?
 22 A. On paper I'm sure she did. Let's
 23 see. It would have after the senior leaders had
 24 left -- I'm sorry, I don't know the gentleman's
 25 name -- and then Laura Kim. At -- at that point,

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1 - JAMES MANNING -
 2 Colleen reported directly to me.
 3 Q. It -- go ahead. I'm sorry.
 4 A. It -- it would have been -- you know,
 5 if it wasn't March, '17 it could have been shortly
 6 after that, early '17.
 7 Q. And, Mr. -- Mr. Manning, please don't
 8 take offense at my question, but I want to do a
 9 quick check-in to see if there's any reason that
 10 you're having trouble recalling any facts today
 11 and you don't have to tell me the reason at this
 12 point, but I want to know if you are having
 13 trouble.
 14 A. Oh, well, I'm only reporting on what
 15 I -- well, I'm trying to remember things that I
 16 think I -- I should remember, but that are not
 17 coming right to mind.
 18 Q. Okay.
 19 A. I have been away from that for a
 20 while. I've been doing other work and I really
 21 haven't been following any issues in and around,
 22 you know, the Department or borrower defense or I
 23 didn't focus on those things.
 24 Q. I -- I understand, Mr. Manning, but I
 25 just want to make sure that there's nothing that

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<p style="text-align: right;">Page 82</p> <p>1 - JAMES MANNING -</p> <p>2 might be impeding your recollection today. For</p> <p>3 example -- and you don't have to tell me if you</p> <p>4 don't want to, but sometimes medications may have</p> <p>5 an impact on recollections.</p> <p>6 I just wanted to make sure there's</p> <p>7 nothing that you're aware of that could be</p> <p>8 impacting your recollection today; and, again, I</p> <p>9 apologize if this is sensitive for you, I know --</p> <p>10 I know it -- it would be for -- for most people,</p> <p>11 but are you aware of anything that might be</p> <p>12 impacting your recollection, other than the</p> <p>13 passage of time between your time at the</p> <p>14 Department and now?</p> <p>15 A. No. Passage of time.</p> <p>16 Q. Okay. You're not aware of anything</p> <p>17 else?</p> <p>18 A. I'm not aware -- not aware of</p> <p>19 anything else.</p> <p>20 Q. Okay, I know it's kind of awkward,</p> <p>21 but I just kind of had to ask just because, you</p> <p>22 know -- I know you're doing your best and you're</p> <p>23 taking time to think and jog your memory and I</p> <p>24 just wanted to make sure nothing was --</p> <p>25 A. Just the fact that I'm 67 and not 57</p>	<p style="text-align: right;">Page 84</p> <p>1 - JAMES MANNING -</p> <p>2 take an active role; and when I dealt directly</p> <p>3 with Colleen who was to get updated on activities,</p> <p>4 but I had full faith and confidence in her and</p> <p>5 allowed her to do her job.</p> <p>6 Q. So effectively during that time</p> <p>7 period, was Colleen Nevin in charge of borrower</p> <p>8 defense for the Department of Education?</p> <p>9 MR. MERRITT: Objection,</p> <p>10 mischaracterization of prior testimony.</p> <p>11 Q. You can answer the question.</p> <p>12 A. So repeat it again. Was Colleen</p> <p>13 what?</p> <p>14 Q. Was she effectively the person in</p> <p>15 charge of -- of the borrower defense program at</p> <p>16 the Department when she reported directly to you</p> <p>17 and you had full faith and -- and confidence in</p> <p>18 her?</p> <p>19 A. Well, she was -- she was in charge of</p> <p>20 the Borrower Defense Unit. She wasn't -- your --</p> <p>21 your statement was too broad in terms of, you</p> <p>22 know, for the whole Department. There was</p> <p>23 oversight, but she ran the borrower defense Unit</p> <p>24 and...</p> <p>25 Q. And who gave that oversight to her?</p>
<p style="text-align: right;">Page 83</p> <p>1 - JAMES MANNING -</p> <p>2 anymore.</p> <p>3 Q. I understand. I find myself going</p> <p>4 through some slowdowns as well.</p> <p>5 So did you communicate directly with</p> <p>6 Colleen -- strike that.</p> <p>7 Did you have any written</p> <p>8 communications with Colleen Nevin about borrower</p> <p>9 defense?</p> <p>10 A. Not that I recall.</p> <p>11 Q. No e-mails between you and her about</p> <p>12 borrower defense?</p> <p>13 A. I'm not saying no e-mails, but I</p> <p>14 don't recall.</p> <p>15 Q. Okay. What involvement did you have,</p> <p>16 if any, in overseeing the borrower defense program</p> <p>17 as acting Undersecretary?</p> <p>18 A. As acting Undersecretary? Re --</p> <p>19 repeat the question.</p> <p>20 Q. Did you have a role in overseeing the</p> <p>21 borrower defense program when you were acting</p> <p>22 Undersecretary in the Trump Administration?</p> <p>23 A. Well, in -- in principle the</p> <p>24 Undersecretary oversees FSA. During those periods</p> <p>25 when there was someone else as COO, I would not</p>	<p style="text-align: right;">Page 85</p> <p>1 - JAMES MANNING -</p> <p>2 A. Well, the -- the leaders in the</p> <p>3 Enforcement Unit initially, which would have led</p> <p>4 to Julian Schmoke spending more of that time.</p> <p>5 Q. And what was your understanding of</p> <p>6 the role of the Borrower Defense Unit?</p> <p>7 A. They received an adjudicated</p> <p>8 applications for borrower defense relief.</p> <p>9 Q. So that was one step in the process</p> <p>10 of borrower defense's claim review and processing</p> <p>11 during your time at the Department?</p> <p>12 A. Yes.</p> <p>13 Q. Well, let's go through the whole</p> <p>14 process step by step. When -- when claims came</p> <p>15 into the Department, who was in charge of that</p> <p>16 intake?</p> <p>17 A. Claims for borrower defense came into</p> <p>18 the Department?</p> <p>19 Q. Yes.</p> <p>20 A. My understanding is they went</p> <p>21 directly to the Borrower Defense Unit.</p> <p>22 Q. And what did the Borrower Defense</p> <p>23 Unit do with them?</p> <p>24 A. They reviewed them, made decisions on</p> <p>25 whether or not they were sufficient to be given</p>

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<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>

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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>

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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>

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<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>

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<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>

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<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</p> <p>2 aside the methodology that we had established and</p> <p>3 to -- to use going forward.</p> <p>4</p> <p>5 Q. Sir, what category of claims did that</p> <p>6 methodology apply; do you know?</p> <p>7 A. No, I don't recall.</p> <p>8 Q. It only applied to the class members</p> <p>9 involved in to Calvillo Manriquez case; is that</p> <p>10 right?</p> <p>11 A. I don't know if that's correct or</p> <p>12 not. I don't recall the specifics of the finding.</p> <p>13 Q. And -- and when you submitted the</p> <p>14 declaration in the Calvillo Manriquez case, did</p> <p>15 you have an understanding of what that case</p> <p>16 involved?</p> <p>17 A. At that time when I wrote -- when I</p> <p>18 signed the document I understood all of that, yes.</p> <p>19 Q. But as you sit here today you don't</p> <p>20 have a clear recollection of it?</p> <p>21 A. I absolutely do not have a clear</p> <p>22 recollection of it.</p> <p>23 Q. Do you recall that the methodology</p> <p>24 enjoined in the Calvillo Manriquez case was</p> <p>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)</p> <p>2 Q. Please repeat your answer, Mr.</p> <p>3 Manning, about Mr. Riemer.</p> <p>4 A. What was -- what was your question</p> <p>5 again directly, so I make sure I'm answering the</p> <p>6 right question.</p> <p>7 Q. Okay, I'm sorry. Did Justin Riemer</p> <p>8 make the decision?</p> <p>9 A. I don't expect that could be the case</p> <p>10 because he personally didn't have that authority</p> <p>11 and wouldn't have made a mistake like that. He</p> <p>12 would have come to me, if he needed.</p> <p>13 Q. Who had the authority to make a</p> <p>14 decision like that?</p> <p>15 A. Well --</p> <p>16 MR. MERRITT: Objection, vague.</p> <p>17 MR. JARAMILLO: That's not vague.</p> <p>18 Q. You just testified Mr. Riemer</p> <p>19 that -- I mean, excuse me, Mr. Manning, that</p> <p>20 Justin Riemer did not have the authority to make</p> <p>21 as such a decision?</p> <p>22 A. Well, in the first one -- go back and</p> <p>23 repeat the original question because I didn't --</p> <p>24 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?</p> <p>2 A. Only the CCI students, is that what</p> <p>3 you said?</p> <p>4 Q. For the class members of that case</p> <p>5 which were CCI students, I believe, with job</p> <p>6 placement race claims -- I apologize if I'm not</p> <p>7 getting that correctly -- correct?</p> <p>8 A. I specifically didn't recall that was</p> <p>9 only CCI students.</p> <p>10 Q. So your recollection is that the</p> <p>11 Calvillo Manriquez's case included students other</p> <p>12 than CCI students?</p> <p>13 A. No. You asked the question -- I</p> <p>14 didn't recall one way or the other that there was</p> <p>15 specified schools. I didn't recall.</p> <p>16 Q. Okay. Did you review the Calvillo</p> <p>17 injunction order?</p> <p>18 A. I don't believe I did review the</p> <p>19 injunction order. I'm not an attorney and I would</p> <p>20 have attorneys like Justin Riemer of -- look at</p> <p>21 that form.</p> <p>22 Q. Is it possible that Justin Riemer</p> <p>23 made the decision to stop issuing borrower defense</p> <p>24 --</p>	<p style="text-align: right;">Page 121</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 what the decision was.</p> <p>2 Q. What we're talking about here, Mr.</p> <p>3 Manning, is who made the decision to stop issuing</p> <p>4 borrower's defense decisions during the time</p> <p>5 period?</p> <p>6 A. Well -- well, in --in Justin Riemer's</p> <p>7 time? I'm -- I'm a little confused here.</p> <p>8 I think that I need to go back and</p> <p>9 have, you know, the last couple of questions and</p> <p>10 answers repeated to me so I -- cause I've lost my</p> <p>11 place in thought here.</p> <p>12 Q. Well, why don't we just -- why don't</p> <p>13 we just move on. I'm just going to ask -- try to</p> <p>14 make my questions clear and specific.</p> <p>15 A. Well, that would be good.</p> <p>16 Q. Yes. Did Secretary DeVos make a</p> <p>17 decision to stop issuing decisions on borrower</p> <p>18 defense applications?</p> <p>19 A. I don't know the answer to that</p> <p>20 question.</p> <p>21 Q. Would she have the authority to issue</p> <p>22 such a decision?</p> <p>23 A. Probably counsel -- I'll the</p> <p>24 double-check with OGC, but I believe that the</p>

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

<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>

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<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>

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<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>

<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>

<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>

<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>

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<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>

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<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>

<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>

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<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>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>
Page 267	Page 269
<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>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 style="text-align: center;">- JAMES MANNING -</p> <p>1 Q. Would the Borrower Defense Unit be in</p> <p>2 charge of creating borrower defense policy or</p> <p>3 would that come from somewhere else in the</p> <p>4 Department?</p> <p>5 A. The Borrower Defense Unit at FSA?</p> <p>6 Q. Yes.</p> <p>7 A. Would they be in charge of developing</p> <p>8 policy?</p> <p>9 Q. Correct.</p> <p>10 A. Without oversight?</p> <p>11 Q. Sure, let's start there. I mean, I'm</p> <p>12 -- I think I have an idea what the answer is, but</p> <p>13 I want to hear it from you.</p> <p>14 A. No, they didn't develop their own</p> <p>15 policy.</p> <p>16 Q. Okay. Who developed their policy</p> <p>17 with regard to borrower defense?</p> <p>18 A. I don't recall all the participants</p> <p>19 who were involved.</p> <p>20 Q. Okay.</p> <p>21 MR. MERRITT: (Unintelligible</p> <p>22 crosstalk) the witness mentioned he was</p> <p>23 tired, so I mean we can go off the record if</p> <p>24 you want to, but I just want to ask for a</p> <p>25</p>	<p style="text-align: right;">Page 272</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 ask you a few more questions and then we'll</p> <p>2 take the break and then we'll get a time</p> <p>3 check and wrap up.</p> <p>4 THE VIDEOGRAPHER: The time --</p> <p>5 THE WITNESS: You know what, if we're</p> <p>6 going to do it that way, let me go ahead and</p> <p>7 just take a -- a break now and let's get back</p> <p>8 and finish it up.</p> <p>9 MR. JARAMILLO: Okay, fine. Off the</p> <p>10 record.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 THE VIDEOGRAPHER: And the time is</p> <p>13 23:09 UTC.</p> <p>14 (Whereupon, there was a brief recess</p> <p>15 in the proceedings.)</p> <p>16 THE VIDEOGRAPHER: We're now on the</p> <p>17 record. The time is 23:17 UTC.</p> <p>18 Q. So, Mr. Manning, we were talking</p> <p>19 about pol -- policy decisions at the Department</p> <p>20 regarding borrower discharge and I would like to</p> <p>21 know: If there was a policy to delay issuing</p> <p>22 borrower defense decisions for an extended period</p> <p>23 of time, who is the person responsible in the</p> <p>24 Department for making such a decision or who would</p> <p>25</p>
<p style="text-align: right;">Page 271</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 time check and maybe a break.</p> <p>2 MR. JARAMILLO: Let's -- let's -- I</p> <p>3 mean, if you don't mind, just a couple more</p> <p>4 questions on this topic and then we can do</p> <p>5 that. If that -- unless -- Mr. Manning, are</p> <p>6 you requesting a break right now or can you</p> <p>7 bear with a couple more annoying questions?</p> <p>8 MR. MERRITT: Okay.</p> <p>9 THE WITNESS: You're just doing your</p> <p>10 job. How -- how much longer are we going to</p> <p>11 go?</p> <p>12 MR. JARAMILLO: Well, I have a few</p> <p>13 more questions on this topic and then we</p> <p>14 might not have that much time left, but with</p> <p>15 the time left I do have some other things I</p> <p>16 wanted to cover relatively quickly.</p> <p>17 THE WITNESS: Go ahead. What were</p> <p>18 you saying?</p> <p>19 MR. JARAMILLO: So can I ask you a</p> <p>20 few more questions or do you want to take a</p> <p>21 break now?</p> <p>22 THE WITNESS: Well, let's power</p> <p>23 through it because I --</p> <p>24 MR. JARAMILLO: All right. Let me</p> <p>25</p>	<p style="text-align: right;">Page 273</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>1 be, to your experience? Who?</p> <p>2 A. I'm thinking. I just -- you know --</p> <p>3 who would be the person responsible for</p> <p>4 recommending a decision like that?</p> <p>5 Q. And for making a decision like that.</p> <p>6 A. Well, responsible or have the</p> <p>7 authority or -- I mean --</p> <p>8 Q. Okay, let's -- who would have the</p> <p>9 authority to make a decision like that?</p> <p>10 A. Well, it depends on what the policy</p> <p>11 is you're talking about.</p> <p>12 Are you talking about real policy or</p> <p>13 policy changes, then that was the purpose of us</p> <p>14 reopening the negotiated rulemaking in November,</p> <p>15 2017.</p> <p>16 Q. Okay, let's -- I don't want to talk</p> <p>17 about the administrative policy that required, you</p> <p>18 know, publication and notice.</p> <p>19 I want to talk about an internal</p> <p>20 Department policy about how to handle borrower</p> <p>21 discharge claims and specifically a policy or</p> <p>22 decision that would call for not reviewing -- I</p> <p>23 mean, strike that -- not issuing decisions on</p> <p>24 borrower defense claims.</p> <p>25</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>

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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

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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

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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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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

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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

12/09/2020

2 to 5

Page 2

1
2
3 December 9, 2020
4 9:11 a.m. (EST)
5
6
7
8 Remote Videotaped Deposition of COLLEEN M.
9 NEVIN, 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 Alabama.
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24
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Page 4

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Colleen M. Nevin
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6 to 9

<p style="text-align: center;">Page 6</p> <p style="text-align: center;">C O N T E N T S</p> <p>EXAMINATION OF COLLEEN M. NEVIN: PAGE:</p> <p>By Ms. Ellis 10</p> <p>By Mr. Merritt 262</p> <p style="text-align: center;">E X H I B I T S</p> <p style="text-align: center;">(Attached to the Transcript)</p> <p>DEPOSITION PAGE:</p> <p>Exhibit 21 Declaration Of Colleen M. Nevin 17</p> <p>Exhibit 22 Defendants' Responses And Objections To Plaintiffs' First Set Of Interrogatories 29</p> <p>Exhibit 23 Exhibit 18 To The Declaration Of Colleen M. Nevin Titled Standard Protocol 184</p>	<p style="text-align: center;">Page 8</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>THE COURT REPORTER: The attorneys</p>
<p style="text-align: center;">Page 7</p> <p style="text-align: center;">P R E V I O U S L Y M A R K E D E X H I B I T S</p> <p>DEPOSITION PAGE:</p> <p>Exhibit 5 October 24, 2016 Email 237</p> <p>Exhibit 7 May 4, 2017 Email 129</p> <p>Exhibit 12 April 21, 2019 PowerPoint Titled Borrower Defense To Repayment 157</p> <p>Exhibit 13 Defendants' Response To August 31, 2020 Order 80</p> <p>Exhibit 15 Declaration Of Eileen Connor 92</p> <p>Exhibit 19 Defendants' Response Regarding The Court's Request At The October 1, 2020 Class Hearing 173</p>	<p style="text-align: center;">Page 9</p> <p>participating in this deposition acknowledge that I am not physically present in the room and that I will be reporting this deposition remotely.</p> <p>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.</p> <p>The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.</p> <p>Now, if I could ask all parties to please state their agreement to the stipulation on the record.</p> <p>MS. ELLIS: We agree.</p> <p>MR. MERRITT: I agree.</p> <p>THE COURT REPORTER: All right. Now, Ms. Nevin, if I could have you please hold up your driver's license for me.</p> <p>THE WITNESS: This is going to be part of the record, part of the videotape, you know, the personal information?</p> <p>THE COURT REPORTER: I guess we could actually get him to cut that off while I look at it.</p>

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10 to 13

<p style="text-align: right;">Page 10</p> <p>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?</p>	<p style="text-align: right;">Page 12</p> <p>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</p>
<p style="text-align: right;">Page 11</p> <p>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</p>	<p style="text-align: right;">Page 13</p> <p>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</p>

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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>

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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>

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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>

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26 to 29

<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>

<p style="text-align: right;">Page 34</p> <p>1 I think those were all the people that</p> <p>2 he reported to.</p> <p>3 Q Okay. Did instructions on borrower</p> <p>4 defense policy come from the Office of the Under</p> <p>5 Secretary during the period when James Manning was</p> <p>6 the acting under secretary?</p> <p>7 A Yes.</p> <p>8 Q And what about the current period when</p> <p>9 Diane Jones has been the under secretary?</p> <p>10 A Well, the chain of communication has</p> <p>11 changed a little bit, so when Mark Brown became</p> <p>12 the chief operating officer, he put a number of</p> <p>13 processes, kind of chains of communication or</p> <p>14 paths of communication in place.</p> <p>15 So, generally speaking, I think most of</p> <p>16 the instruction from the Office of the Under</p> <p>17 Secretary during Mark Brown's tenure has been</p> <p>18 through him.</p> <p>19 Q Okay. But it's your understanding that</p> <p>20 the Office of the Under Secretary sets borrower</p> <p>21 defense policy and those policy instructions then</p> <p>22 come to FSA through Mark Brown?</p> <p>23 A I don't know that the Office of the</p> <p>24 Under Secretary sets all policy. I know that OUS</p> <p>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</p> <p>2 secretary's office may have had input on that.</p> <p>3 Policy in terms of applications with</p> <p>4 the schools, how we advise schools of the claim</p> <p>5 against them, the, you know, evidence-exchange</p> <p>6 process, things along those lines, and the</p> <p>7 development of any kind of written communications</p> <p>8 are all areas that -- that the Office of the Under</p> <p>9 Secretary would provide input on.</p> <p>10 Q Did anyone summarize Diane Auer Jones'</p> <p>11 deposition testimony for you?</p> <p>12 A No.</p> <p>13 Q Okay. If we could turn back to your</p> <p>14 declaration, which we've marked as Exhibit 21.</p> <p>15 You know, before -- before we do that, I just want</p> <p>16 to follow up on one thing you just said that OUS</p> <p>17 sets or contributes to policy on written</p> <p>18 communications.</p> <p>19 Written communications with who?</p> <p>20 A With schools, with borrowers.</p> <p>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</p> <p>24 of your declaration -- that's on page 2 -- to just</p> <p>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,</p> <p>2 who is the secretary's chief of staff, I believe,</p> <p>3 have both been involved as well. So I'm not</p> <p>4 exactly sure what the structure is over there, but</p> <p>5 it -- whatever the LBJ policy is -- would</p> <p>6 typically come to Mark Brown.</p> <p>7 Q But the Office of the Under Secretary</p> <p>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</p> <p>11 on the adjudication of borrower defense</p> <p>12 applications?</p> <p>13 A That some of the policy comes from the</p> <p>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</p> <p>18 policy directives on the adjudication of borrower</p> <p>19 defense applications that comes from the Office of</p> <p>20 the Under Secretary?</p> <p>21 A Well, that's communicated from the</p> <p>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</p> <p>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</p> <p>3 you state again what that document -- how it's</p> <p>4 labeled? I have to --</p> <p>5 MS. ELLIS: Sorry, yes that's the --</p> <p>6 MR. MERRITT: -- click in separately</p> <p>7 each document.</p> <p>8 MS. ELLIS: The Declaration of Colleen</p> <p>9 Nevin in the Dropbox, that is tab 22. We've</p> <p>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</p> <p>14 responsibilities as director of BDU. The first</p> <p>15 one says, Conducting legal research and analyses</p> <p>16 of borrower defense claims.</p> <p>17 So can you describe what sort of legal</p> <p>18 research and analyses you do or that you oversee?</p> <p>19 A Sure. Well, so one of the three</p> <p>20 regulations that apply to borrower defense claims</p> <p>21 is the 1995 regulation which is based on an</p> <p>22 application in state law, and that means that the</p> <p>23 borrower's application has to be adjudicated to</p> <p>24 determine whether the borrower states an act or</p> <p>25 omission that would provide a cause of action</p>

<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>

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<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>

<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>

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<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>

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<p style="text-align: right;">Page 90</p> <p>1 Q Do you think he would know who was 2 involved in the final sign-off process? 3 A I would think so. That would be the 4 typical process, yeah. 5 Q Okay. You said you believe it took a 6 matter of weeks to develop these form letters. 7 A That's my recollection, yes. 8 Q Do you know what -- what made it 9 complicated or time-consuming to put these 10 together? 11 A I don't know. 12 Q Is there anywhere in -- in this form D 13 letter where the applicable law would be filled 14 in? 15 A I mean, there's an applicable law 16 section. It doesn't -- I think this letter is for 17 both. I'm sorry. I'm just reading. It's been a 18 while. 19 Q Go ahead. 20 A (Witness reviews document.) 21 Yeah, it looks like this is for both 22 regulations. The applicable state law is not in 23 here for the 2016 regulation. Obviously, it's a 24 federal standard, so there wouldn't be anything 25 along this line.</p>	<p style="text-align: right;">Page 92</p> <p>1 that that wasn't necessary because it was argued 2 that regardless of what state law might have 3 applied that the application would be denied. 4 Q So I'd like to look at an example of a 5 completed form D denial letter. 6 MS. ELLIS: So this will be behind tab 7 15 in your hard copies. On the Dropbox, the 8 bracket 15 ECF 129-1, Connor declaration. This 9 was marked as Exhibit 15 in the deposition of 10 Diane Jones. 11 (Exhibit 15 referred to.) 12 BY MS. ELLIS: 13 Q And there's a number of attachments 14 here. I'm looking at the affidavit of Theresa 15 Sweet that begins at page 24 of the PDF, page 24 16 of the ECF filing. 17 A Okay. 18 Q And then attached to -- further 19 attached to the affidavit of Theresa Sweet all the 20 way down at page 51 of the document is a -- an 21 example of form D. This is the form D that 22 Theresa Sweet, the named plaintiff in this case, 23 received. 24 A That's exhibit B to her affidavit? 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 2 discussions about whether the applicable state law 3 under the '95 regs would be listed in a denial 4 letter? 5 A There was a conversation about that, 6 and the -- that was not necessarily populated in 7 all of the cases for the reason I mentioned 8 before, which is that the cases that were going 9 out with this letter -- this letter was drafted 10 after a bunch of cases were already adjudicated 11 and not the other way around. 12 And, so, the intent was to send out -- 13 actually, I don't know if it was this letter or C 14 because they're pretty similar. I think it might 15 have been C actually that I'm thinking of. 16 But I -- my recollection is that there 17 was discussion of whether or not to include state 18 law as a field but that would have required more 19 time for my team to go back and, you know, fill in 20 any data that needed to -- with respect to state 21 law where it really wasn't being denied because of 22 state law; it was being denied for the reasons 23 that I mentioned before. 24 Q Uh-huh. 25 A And, so, I think the conclusion was</p>	<p style="text-align: right;">Page 93</p> <p>1 A Yeah. Got it. 2 Q Okay. So if you -- if you go down to 3 the second page of this attachment, there's that 4 section as we were just looking at in the form 5 denial where it lists the allegations and then the 6 reasons for denial. 7 Allegation 1: Employment Prospects. 8 You allege that Brooks Institute engaged in 9 misconduct related to employment prospects. This 10 allegation fails for the following reason(s): 11 Failure to state a legal claim. 12 Is there any way that we could tell 13 from reading this letter what was wrong with 14 Theresa Sweet's employment-prospects allegations? 15 A Well, clearly, all we can tell from 16 this is my team concluded that their -- the 17 specific claim with respect to the employment 18 prospects did not state a legal claim. That's 19 what's in here. 20 Q And is that also the case with regard 21 to allegations 2 and 3? 22 A That is the -- the reason that's 23 included, right. 24 Q We discussed earlier that it should be 25 unlikely that an allegation of employment</p>

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<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>

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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>

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<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>

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<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>

<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>

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<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 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 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 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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<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>

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<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) administrative, 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>

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<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>

<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>

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<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>

<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?</p> <p>6 A At what point in time?</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>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?</p> <p>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.</p> <p>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.</p> <p>14 MS. ELLIS: Okay. Well, I accept that 15 the witness is not answering on the basis of 16 privilege.</p> <p>17 BY MS. ELLIS:</p> <p>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?</p> <p>21 A That's what -- yes, that's what we've 22 plied to the JPR claims.</p> <p>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.</p> <p>5 That's my recollection.</p> <p>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.</p> <p>13 Was it your understanding that -- that 14 there was any rationale under state law for 15 awarding 100 percent relief to those borrowers?</p> <p>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.</p> <p>3 MS. ELLIS: Can the witness answer?</p> <p>4 THE WITNESS: You want me to answer? 5 I'm not aware of anything that would 6 preclude 100 percent.</p> <p>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.)</p> <p>13 BY MS. ELLIS:</p> <p>14 Q Does this document look familiar to 15 you?</p> <p>16 A Vaguely. I'm sure I probably worked on 17 it myself, but it's been a while.</p> <p>18 Q Do you remember what purpose this was 19 prepared for?</p> <p>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>

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<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>

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<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>

<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>

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<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>

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<p style="text-align: right;">Page 182</p> <p>1 If the reviewer sees any borrower evidence to 2 support even some of it, then that's it. They 3 stop and it gets set aside, you know, escalated, 4 essentially, for consideration by one of the 5 senior team.</p> <p>6 Q So if an applicant provides any 7 documentation to support their claim, it gets set 8 aside?</p> <p>9 A Not any documentation because a lot of 10 what we get is -- you know, we have borrowers who 11 allege, you know, an employment prospect, kind of 12 they guaranteed me a job type of thing. And then 13 the evidence that they attached may be relevant to 14 something but not to that, so like a transcript or 15 a program manual that doesn't have any 16 representations regarding employment prospects, 17 things like that. There would have to be evidence 18 relevant to the claim that would potentially 19 support the claim.</p> <p>20 If they make multiple claims and the 21 evidence is relevant to any of that, then it would 22 be set aside.</p> <p>23 Q Does the department make available any 24 guidance to borrowers about the types of documents 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 3 printed materials on the -- on the Dropbox. This 4 is bracket 25 Nevin Declaration Exhibit 18 5 standard protocol.</p> <p>6 MS. ELLIS: And this has not previously 7 been marked. I'd like to -- I'd like to mark 8 this -- I believe we're on Exhibit 23 now.</p> <p>9 (Deposition Exhibit 23 was marked for 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 16 what would be used for -- like we were referring 17 to before, the cases that, you know, are a one-off 18 kind of scenario or, you know, where there's not 19 common evidence that would result in a separate 20 protocol being developed for that particular 21 school.</p> <p>22 Q And when -- when you say "one-off," 23 that doesn't necessarily mean that there was only 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 2 tried to build that into it to, you know, give 3 borrowers an indication of the kinds of things 4 that would be helpful. So to some extent, I think 5 that's in the newer application. I'm not aware of 6 anything that was out there, though, previously.</p> <p>7 Q Did the department make publicly 8 available any sort of list or other reference 9 of -- of schools, programs, time periods for which 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 15 October 14th, 2020, when this was filed, was any 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, 19 wouldn't have a way of knowing whether their claim 20 could potentially fit into existing common 21 evidence?</p> <p>22 A That's correct.</p> <p>23 Q And they wouldn't necessarily know what 24 kind of documentation they would have to submit in 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, 2 we use that loosely to mean generally, you know, 3 very small number of claims. I think, typically, 4 we've viewed the threshold that, you know, under 5 ten historically, but there are cases where we 6 have probably somewhere in the 10 to 20 range that 7 might still get this.</p> <p>8 Q Would this be a protocol that's applied 9 to claims where there might actually be many from 10 a particular school, but they've been determined 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 14 Institutes, potentially thousands of claims.</p> <p>15 A No, this would never be for anything 16 like that.</p> <p>17 If you look at the 2A -- 2A, you move 18 on to part II. 2B, 6 to 20, there's a memo 19 template that's completed as soon as the school 20 hits six claims to determine whether the 21 department, you know, has got any records 22 regarding the school.</p> <p>23 We do that for -- for part A, that's 24 kind of done on the back end in the clearance 25 process, but, you know, the schools that are in --</p>

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<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>

<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>

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<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>

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<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>

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<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>

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<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>

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210 to 213

<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>

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<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>

<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>

<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>


<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</p> <p>2 in the course of trying to adjudicate cases that</p> <p>3 are outside the parameters, they get set aside.</p> <p>4 But otherwise, you know, they're usually not</p> <p>5 assigned.</p> <p>6 Once the facts are fully analyzed and</p> <p>7 reduced to a statement of common facts where we</p> <p>8 have such evidence, and then there's a legal memo</p> <p>9 for 2016 if that's the regs that would apply to</p> <p>10 the loans at issue, or for '95 where that's the</p> <p>11 regs that apply to the loans at issue, then</p> <p>12 there's a new -- it's probably an update to the</p> <p>13 previous protocol that will change that so that</p> <p>14 instead of saying if you see a claim between 2012</p> <p>15 and 2014, move on to the next case -- set that one</p> <p>16 aside and go on to the next.</p> <p>17 Now, there's a framework for whether or</p> <p>18 not that case would be adjudicated as an approval.</p> <p>19 So it will replace that case once we have the</p> <p>20 criteria that would allow for the yea or nay</p> <p>21 decision on somebody who's potentially covered by</p> <p>22 the common evidence.</p> <p>23 Does that answer your question?</p> <p>24 Q I think I understand that part of the</p> <p>25 process.</p>	<p style="text-align: right;">Page 256</p> <p>1 A Correct.</p> <p>2 Q And it's too early yet to say</p> <p>3 whether -- whether that sampling will be done</p> <p>4 again to update the protocols?</p> <p>5 A I mean, if we're not getting in a whole</p> <p>6 lot more applications from the school, then</p> <p>7 probably not. I think it will depend on the</p> <p>8 school, and chances are if there's a huge uptick</p> <p>9 in cases from a school, it's probably related to</p> <p>10 something happening outside of BD. That there was</p> <p>11 a law enforcement action; that there was some kind</p> <p>12 of fine by the department; something that might</p> <p>13 cause us to revisit those cases anyway.</p> <p>14 And then we would probably do an</p> <p>15 entirely new or updated version of what originally</p> <p>16 led to the, you know, clearing cases for</p> <p>17 adjudication, and figure out if there are cases</p> <p>18 that we need to revisit.</p> <p>19 Q What size samples were you taking on a</p> <p>20 percentage?</p> <p>21 A I don't remember to be honest with you.</p> <p>22 I know for -- for ITT, I remember seeing 500</p> <p>23 because that has a large volume of applications,</p> <p>24 and we were trying to get samples, you know, for</p> <p>25 as many as we could.</p>
<p style="text-align: right;">Page 255</p> <p>1 During the period before the parameters</p> <p>2 of the common evidence are fully known, what</p> <p>3 happens to applications from those schools?</p> <p>4 A They're not assigned.</p> <p>5 Q They're just held until there's some</p> <p>6 parameters of common evidence?</p> <p>7 A I mean, "held" suggests that they're</p> <p>8 picked up and put down or something. We can</p> <p>9 assign based on schools. We can assign based on</p> <p>10 different parameters with the Salesforce database.</p> <p>11 So they're just not selected to be assigned to</p> <p>12 adjudicators.</p> <p>13 Q Yes, yes, held in the database is --</p> <p>14 A Yes. They --</p> <p>15 Q Yes.</p> <p>16 A They're just still there, yes.</p> <p>17 Q Yes.</p> <p>18 And then once the parameters of the</p> <p>19 common evidence are defined, those are released to</p> <p>20 the reviewers to determine whether they should be</p> <p>21 set aside or adjudicated right now?</p> <p>22 A Correct.</p> <p>23 Q And as part of the process of defining</p> <p>24 the parameters of the common evidence, that's when</p> <p>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</p> <p>2 application before we develop a protocol because</p> <p>3 then we'll be reviewing every application at least</p> <p>4 twice if not more than that, and we'd just -- you</p> <p>5 know, we'd never get through any of the cases.</p> <p>6 But I think if there's a range, though,</p> <p>7 we have specific requirements depending on the</p> <p>8 number of applications that we have from the</p> <p>9 school. I just don't recall off the top of my</p> <p>10 head what they are.</p> <p>11 Q Are there written records of how the</p> <p>12 sampling process was conducted?</p> <p>13 A Well, the memo discusses, you know,</p> <p>14 generally what they saw that -- I guess it depends</p> <p>15 on what you mean by "written records."</p> <p>16 Q What -- what about the sampling process</p> <p>17 is memorialized in the memos?</p> <p>18 A How many cases were looked at, that</p> <p>19 kind of thing, if there were patterns. Generally,</p> <p>20 the sampling results in fairly generic responses,</p> <p>21 but where we see, you know, John Smith told me X</p> <p>22 kind of thing or reference to a specific kind of</p> <p>23 document or anything that's of any more specific</p> <p>24 nature would -- would go into that discussion in</p> <p>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>

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<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>

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1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over

4 carefully and make any necessary corrections. You

5 should state the reason in the appropriate space

6 on the errata sheet for any corrections that are

7 made.

8 After doing so, please sign the errata

9 sheet and date it.

10 You are signing same subject to the

11 changes you have noted on the errata sheet which

12 will be attached to your deposition.

13 It is imperative that you return the

14 original errata sheet to the deposing attorney

15 within thirty (30) days of receipt of the

16 deposition transcript by you. If you fail to do

17 so, the deposition transcript may be deemed to be

18 accurate and may be used in court.

19

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1 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 _____, _____

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20 _____

21 NOTARY PUBLIC MY COMMISSION EXPIRES

22

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1 E R R A T A S H E E T

2 IN RE: THERESA SWEET, et al. v. ELISABETH DEVOS,

3 in her official capacity as Secretary of the

4 United States Department of Education.

5

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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.

CORRECTION AND REASON

PAGE	LINE	
		"has" should be
<u> 19 </u>	<u> 12 </u>	"hasn't" _____
		Beckwood should be
<u> 49 </u>	<u> 21 </u>	Westwood _____
<u> 49 </u>	<u> 22 </u>	American should be "Marinello"
<u> 64 </u>	<u> 21 </u>	"in-state" should be
<u> 82 </u>	<u> 11 </u>	"intake" _____
<u> 86 </u>	<u> 11 </u>	"an illegal" should be "a
<u> 100 </u>	<u> 6 </u>	legal" _____
<u> 126 </u>	<u> 4 </u>	"crew at" should be
<u> 156 </u>	<u> 22 </u>	"COO" _____
<u> 170 </u>	<u> 5 </u>	"included" should be
<u> 181 </u>	<u> 3 </u>	"concluded" _____
<u> 223 </u>	<u> 5 </u>	"power" should be
<u> 223 </u>	<u> 6 and 7</u>	"Bauer" _____
225	<u> 19 </u>	"plied" should be
<u> 231 </u>	<u> 2 </u>	"applied" _____
<u> 234 </u>	<u> 2 </u>	"release" should be
<u> 239 </u>	<u> 7 </u>	"relief" _____
<u> 1.12.21 </u>		"lot" should be
(DATE)		"law" _____
		"AG" should be
		"IG" _____
		"release" should be
		"relief" _____
		"proved" should be "approved"
		"proved should be "approved" _____
		____document should be
		"documents" _____
		"courtroom" should be "court"

Colleen M. Newin

(SIGNATURE)

