



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

2021 Negotiated Rulemaking
Affordability and Student Loans Committee

Organizational Protocols

I. Mission Statement

The U.S. Department of Education has established this negotiated rulemaking committee to develop proposed student financial assistance regulations pursuant to Sec. 492 of the Higher Education Act of 1965, as amended (HEA). The goal of the committee's work is to obtain consensus on proposed regulations.

II. Participation

A. The committee consists of the following members:

US Department of Education

Jennifer Hong, Federal Negotiator

Todd Davis, Soren Lagaard, and Brian Siegel
Office of General Counsel (non-voting)

Facilitators

Kayla Mack
Cynthia Jeffries
Brady Roberts
Emil Totonchi

B. The primary member will participate for the purpose of determining consensus. The alternate will participate for the purpose of determining consensus in the absence of the member. Other members may not serve as a proxy in the absence of the primary and the alternate negotiator for a constituency.

C. The primary and alternate will work together as a team to represent their constituency. A primary and alternate negotiator may decide that the alternate negotiator will take the primary negotiator's place at the table for certain topics and will inform the facilitators in advance of the discussion of the topic. A primary negotiator may request that an alternate negotiator be provided an opportunity to speak on a particular subtopic. Facilitators will determine at what point the alternate may speak.

III. Meeting Facilitation

A. The facilitator(s) will help to ensure that negotiations run smoothly, develop meeting agendas, prepare and distribute a record of agreements, help parties to resolve their differences, and work to achieve consensus on the issues addressed by the committee.

B. The facilitator(s) will be available to facilitate full committee meetings and any caucuses.

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The Department of Education's mission is to promote student achievement and preparation for global Competitiveness by fostering educational excellence and ensuring equal access.

IV. Committee and Subcommittee Membership

- A. The committee may add members. Requests for membership must be approved by all current primary committee members. New members may participate immediately upon admission to membership.
- B. Upon the initiation by any member in writing and after consultation with the facilitators, the Secretary may remove a member he determines is not acting in good faith in accordance with these protocols. In such a case, the Secretary will provide an explanation in writing to the member and the committee.
- C. The Secretary may remove any member who ceases to be employed by or be associated with the community of interests the individual was chosen to represent.
- D. The Department and/or the committee may form a subcommittee(s) to address specified issues and to make recommendations to the committee. The Department has formed the Prison Education Program Subcommittee for this negotiation. A subcommittee may consist of committee members (primary or alternate negotiators) and/or individuals who are not committee members but who have expertise that will be helpful in developing proposed regulations. As the subcommittee is not a decision-making or voting body, it will not include alternates. Subcommittee meetings will be held between the meetings of the committee. All committee members will be notified of all subcommittee meetings.

V. Advisors

- A. Advisors are not members of the committee and will not impact the consensus vote. The advisors will be expected to be available during all committee meetings (excluding any subcommittee meetings).
- B. There will be two advisors at the table who will serve as resources to assist this committee. One advisor will represent qualifying employers on the topic of Public Service Loan Forgiveness. The other advisor will provide expertise in economic and/or higher education policy analysis and higher education data and will support the committee in evaluating and understanding its options.
- C. Any member of the negotiating committee and/or any of the facilitators may request assistance from the advisors as needed during the negotiating sessions.
- D. Advisors may provide written materials to the committee and/or request to speak by informing the facilitators in advance of or during a meeting.
- E. With approval by a consensus of the primary members of the committee, individuals who are invited by a primary member but who are not members of the committee may participate in committee or subcommittee meetings as needed and appropriate.

VI. Decision Making

- A. The committee will operate by consensus, which means that there must be no dissent by any

member for the committee to be considered to have reached agreement. Members should not block or withhold consensus unless they have serious reservations about what is proposed. Absence will be equivalent to not dissenting.

- B. Consensus will be separately determined for each issue; thus, consensus could be reached for some issues, but not others.
- C. All agreements reached during the negotiations will be assumed to be tentative until the call for final agreement on regulatory language. Committee members may not withdraw their consensus once consensus is achieved in the final vote for each issue.

VII. Agreement

- A. The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. If consensus is reached on the proposed regulations, the Department may provide a preamble, consistent with the proposed regulations, to the members of the committee for review and comment prior to publication of the proposed regulations. The Department is not required to adopt or respond to the committee members' comments on the preamble.
- B. If the committee reaches consensus on regulations on an issue, the Department will use this consensus-based language in its proposed regulations, and committee members and their employers will refrain from commenting negatively on the consensus-based regulatory language, except as provided below in paragraph C of this section.
- C. The Department will act in good faith regarding consensus reached and will not substantively alter the consensus-based language of its proposed regulations unless the Department reopens the negotiated rulemaking process or provides a written explanation to the committee members regarding why it has decided to depart from that language. That written explanation will contain a detailed statement of the reasons for altering the consensus-based language and will be provided to the committee members in advance of the publication of the proposed regulations to allow committee members a real opportunity to express their concerns to the Department. If the Department alters consensus-based language, it will also identify the changes made after consensus in the preamble to the proposed regulations, and committee members may comment positively or negatively on those changes and on other parts of the proposed regulations.

VIII. Committee Meetings

- A. The facilitator(s) will maintain a clear and reliable record of tentative and final agreements reached during the negotiation process, as well as discussions of preamble language. The draft meeting summaries will be provided to members, who may share them with others within their community of interests. After review and approval by the committee, this record will be made available to the public.
- B. The Department will make every effort to distribute materials to committee members in a timely fashion. To the extent practicable, the Department will provide members with documents for discussion at committee meetings at least seven days in advance of the meetings.
- C. Any member may request a caucus through the facilitator(s) at any time for the purpose of

consultation.

- D. The facilitator(s) will be responsible for developing an agenda for all meetings of the committee. This agenda will be developed in consultation with the members of the committee.
- E. All committee meetings and subcommittee meetings, but not caucuses, are open to the public and will be livestreamed to provide access to the public.
- F. Committee members will remain engaged in the work of the committee and refrain from other activity (including posting to social media) during the time that committee meetings are in session. Breaks will be provided with times announced by the facilitators.
- G. If a negotiator requests data from the Department to clarify implications of potential actions or deepen the understanding of a topic, the Department will respond to the request prior to or at the next negotiation session. The response will be one of the following: 1) providing the requested data, 2) stating that more time is needed and a target date for providing the data, and/or 3) an explanation of why some or all of the data cannot or will not be provided. The Department will share any data supplied with the entire committee.

IX. The Virtual Negotiation Process

- A. The facilitator will announce each topic. The first time a topic is discussed during each session, the Federal negotiator will provide an overview of the topic. A committee member who wishes to speak on that topic should virtually raise their hand. The facilitators will determine the order by which committee members speak. Committee members must wait until called to speak and follow facilitator instructions.
- B. Only one committee member may speak at a time. All other committee members' microphones are to remain muted.
- C. When called on, a committee member will have up to three minutes to speak. A committee member who exceeds the time may be muted. The facilitator will remind the member when there are 30 seconds remaining.
- D. To preserve time, a committee member should not repeat a previously made point when it is that committee member's turn to speak. In the interest of time, facilitators may mute a committee member if it appears that the committee member is only repeating previously made points.

X. The Virtual Caucus Process

- A. Any negotiator may call for a caucus, which generally consists of a subset of negotiators. A caucus stops the discussions of the full committee.
- B. When a committee member calls for a caucus, a facilitator will collect the names of all committee members who will participate in the caucus so that participating members can be invited to the breakout room or a separate meeting.

- C. The committee member who called for the caucus should request the amount of time expected for the caucus to facilitate the return to negotiations. Additional time may be granted at the discretion of the facilitators and the Federal negotiator. The facilitators will communicate any change in schedule to all negotiators. Negotiators resume when the caucus has ended.
- D. The committee member who called for the caucus will lead the discussion. The facilitators will ensure that members who wish to speak are provided time to do so using the time allotted.

XI. The Virtual Subcommittee Process

- A. Cameras should remain on during active negotiations at all sessions. Cameras should be turned off during breaks and may also be turned off during a brief absence.
- B. Subcommittee members will remain engaged in the work of the subcommittee and refrain from other activity (including posting to social media) during the time that subcommittee meetings are in session.
- C. The Federal subcommittee lead will introduce each new topic. A subcommittee member who wishes to speak on that topic should virtually raise their hand. A Department staff member will serve as the facilitator, determine speaking order, and call upon subcommittee members when it is their turn to speak. Subcommittee members must wait their turn and follow the Department staff instructions.
- D. Only one subcommittee member may speak at a time. All other subcommittee members' microphones are to remain muted.
- E. The subcommittee will provide timely recommendations to the committee. The committee may also request additional information from the subcommittee as needed.

XII. Safeguards for Members

- A. Any member may withdraw from the negotiations at any time, without prejudice, by notifying the facilitator(s) in writing.
- B. Any member whose employment changes during the negotiations will notify the facilitator(s) of that change. The Department will determine if they are still an appropriate representative of the constituency for which they were selected.
- C. All members and the organizations they represent shall act in good faith in all aspects of these negotiations.
- D. Contact with the media, the investment community, and other organizations outside the community of interest represented by the member will generally be limited to discussion of the overall objectives and progress of the negotiations. Members will refrain from characterizing the views, motives, and interests of other members regarding negotiated rulemaking during contact with the media, the investment community, other organizations outside the community of interest represented by the member, and to the public including, but not limited to, through social media.