

BREAKOUT SESSION #22

Understanding The Negotiated Rulemaking Process

Vanessa Gomez

U.S. Department of Education

2023 FSA Training Conference for Financial Aid Professionals

AGENDA

1. What is Negotiated Rulemaking?
2. Preparing for Negotiations
3. Negotiations: Committee Meetings
4. Notice of Proposed Rulemaking
5. Public Comment Period
6. Final Regulations
7. Review: Ways to Participate
8. Case Study: Affordability and Student Loans Committee

WHAT IS NEGOTIATED RULEMAKING?

A process by which the Department works to develop a Notice of Proposed Rulemaking (NPRM) in collaboration with representatives of constituencies (negotiators) who will be affected significantly by the regulations.

The Department is required by law to use negotiated rulemaking to develop NPRMs for programs authorized under Title IV of the Higher Education Act of 1965, as amended.



NEGOTIATED RULEMAKING OVERVIEW

For more detailed information - [Regulations.gov](https://www.regulations.gov)



FEDERAL REGISTER NOTICES

- Intent to establish committee and announce public hearings
- Negotiator nominations and schedule for committee meetings



NEGOTIATIONS AND DEPARTMENT ACTIONS

- Committee meetings (negotiations) take place
- Publish NPRM in the *Federal Register*
- Comment period of 30-60-days



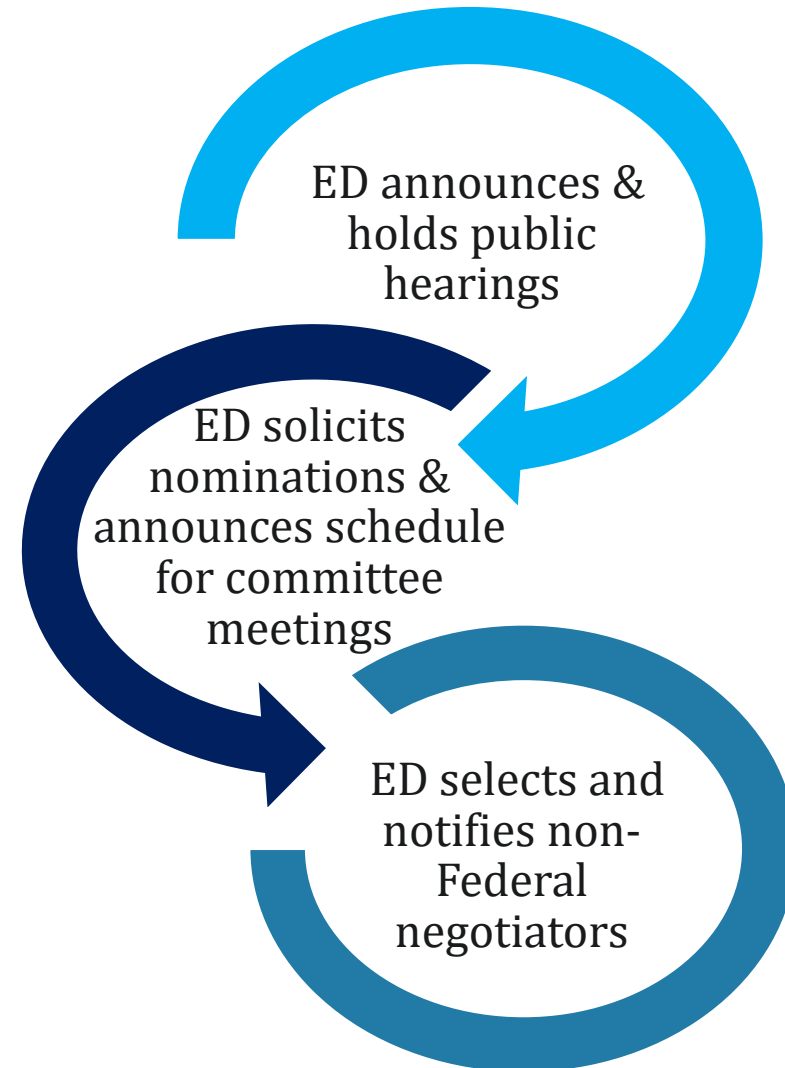
PUBLICATION OF FINAL RULE

- Statutory master calendar requirement to publish before November 1st
- New regulations effective the following July 1st if we meet our target goal of publishing by November 1st
- Possible early implementation if authorized by the Secretary

PREPARING FOR NEGOTIATIONS

Objective:

- What problem are we trying to solve?
- Does the Department have authority to regulate?
- Who are the relevant constituencies? (key stakeholders, including students)



NEGOTIATIONS: COMMITTEE MEETINGS

- Non-federal negotiators work with the Department to come to consensus on the Department's proposed regulations.
- These meetings are facilitated by a neutral third-party.
- Meetings are usually scheduled for three months.
- Public comments heard at the end of each committee meeting.

WHAT IS CONSENSUS?

Consensus means there is no dissent by any member of the negotiating committee.

All agreements reached during the negotiations are assumed to be tentative agreements until members of the committee vote on the entire proposed regulatory language at the end of the final session of the negotiated rulemaking.

AFTER NEGOTIATIONS: WRITING THE NPRM

Consensus reached

- The Department must generally use regulatory language developed during negotiations in the NPRM
- The Department may share preamble language with negotiators to review for accuracy

Consensus not reached

- The Department determines whether to proceed with regulation
- May use all, a portion, or none of the regulatory language developed during negotiations in the NPRM
- The Department drafts preamble language; not shared with negotiators

PUBLIC COMMENT: RESPONDING TO THE NPRM

- 30–60-day comment period
- Submit online at [regulations.gov](https://www.regulations.gov)
- Please do not submit the same comment online and by mail
- Consider reviewing others' submitted comments
- **Tip:** Co-sign a comment instead of sending the same comment separately

PUBLIC COMMENT: RESPONDING TO THE NPRM

Weak comment*

- Wake up Department of Education. This regulation does not solve the problem.

Stronger comment*

- I disagree with the Department's proposal to eliminate entrance loan counseling. Data on default rates published by the Department in 2018 showed that the FY 2015 national cohort default rate is 10.8%. We must continue to provide information to borrowers to try to reduce this number.

**Comments are illustrative examples only and do not represent actual proposed regulations.*

FINAL REGULATIONS

- Public comments are used to develop final regulations; they are summarized and responded to in the preamble with an explanation of what change was made or why no change was made
- Final regulations are published in the Federal Register

REVIEW: HOW TO PARTICIPATE IN NEG REG

- Before Negotiations
 - Deliver public testimony during public hearing
- During Negotiations
 - Serve as a primary or alternate negotiator (See *Federal Register* for application process)
 - Provide input or feedback to negotiators representing your constituency
 - Make a public comment
- After Negotiations
 - Submit public comments on proposed rules

NEG REG WEBSITE



U.S. Department of Education

Student Loans	Grants	Laws	Data
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Negotiated Rulemaking for Higher Education 2021-22

Click on the menu buttons for more information


General Information	Affordability and Student Loans Committee	Pell for Prison Education Subcommittee	Institutional and Programmatic Eligibility Committee
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Click on the link with  to expand or collapse the information

General Information

This page provides information regarding the Department's negotiated rulemaking in 2021-2022 to make regulatory changes for the programs authorized by Title IV of the Higher Education Act of 1965, as amended. For more information about negotiated rulemaking in general, please see our [question and answer page](#).

[Federal Register Notices and Fact Sheets](#) 

[Public Hearing Information](#) 

How Do I Find...

- Student loans, forgiveness
- Higher Education Rulemaking
- College accreditation
- Every Student Succeeds Act (ESSA)
- FERPA
- FAFSA
- 1098, tax forms

[More >](#)

Information About...

- Elevating Teaching
- Early Learning
- Engage Every Student
- Unlocking Career Success
- Cybersecurity

CASE STUDY: AFFORDABILITY AND STUDENT LOANS

The Department convened Negotiated Rulemaking for the Affordability and Student Loans Committee in 2021

More information available at [OPE's negotiated rulemaking website.](#)

AFFORDABILITY AND STUDENT LOANS TIMELINE

Intent to Establish Negotiated Rulemaking Committees and Public Hearings

- May 26, 2021

Negotiator Nominations and Schedule of Committee Meetings

- August 10, 2021

Negotiations held:

- Session 1: October 4-8, 2021
- Session 2: November 1-5, 2021
- Session 3: December 6-10, 2021

NEGOTIATED TOPICS

CONSENSUS

- Total and Permanent Disability Discharge
- Eliminate Interest Capitalization
- False Certification Discharge
- Pell Grant Eligibility for Prison Education Programs

NON-CONSENSUS

- Closed School Discharge
- Public Service Loan Forgiveness (PSLF)
- Borrower Defense to Repayment
- Pre-Dispute Arbitration
- Income-Driven Repayment (IDR) Plans

AFFORDABILITY AND STUDENT LOANS TIMELINE

- [NPRM](#) published in the *Federal Register* on July 13, 2022
- Public Comment Period closed on August 12, 2022
 - Over 4,000 comments posted to Regulations.gov
- [Final Rule](#) published in the *Federal Register* on Nov 1, 2022

RESOURCES

- [Reginfo.gov](https://www.reginfo.gov): Unified Agenda – Rulemaking plan (with dates)
- [Federalregister.gov](https://www.federalregister.gov) (notices)
- [Regulations.gov](https://www.regulations.gov) (public comments)

THANK YOU!

Vanessa Gomez
Management & Program Analyst
Vanessa.Gomez@ed.gov