

Gainful Employment Negotiated Rulemaking Committee Meetings

Opening Remarks of
Jeff Appel, Deputy Under Secretary, U.S. Department of Education
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1. Good morning. I'm Jeff Appel, Deputy Under Secretary at the U.S. Department of Education, and I'd like to welcome the Committee back for the second round of negotiated rulemaking on gainful employment.
2. Welcome also to members of the public, and a special welcome to Congresswoman Foxx who is here with us today.
3. Let me start by extending a sincere thank you to the Committee on behalf of Secretary Duncan and Under Secretary Kanter for your flexibility and patience as we worked to reschedule this session.
4. I know we were all supposed to be here in October, but due to a lapse in appropriations and the government shut down that lasted 17 days, work on GE had to be halted which set us back from our original schedule.
5. I'm really pleased to see that Committee members and alternates were able adjust your schedules so that all communities of interest are represented here today, and I know everyone here is really ready to dig-in.
6. So a lot has happened since the last time this group was altogether.
7. The Committee held a conference call that was open to the public on September 25, 2013, for the purpose of discussing the approval of new GE programs.

8. The Committee working groups put forward several proposals and ideas on a number of the key concepts we discussed at the last session, including programmatic repayment rates, programmatic cohort default rates, and new program approvals.
9. We know that was a ton of work for the Committee members and are really grateful for your hard work in getting those in and on time.
10. Department staff have since reflected on the last session and the Committee conference call, and have carefully reviewed each working group proposal.
11. Based on your input and additional thought by Department staff, we have drafted new regulatory text for your review and consideration.
12. This new draft is more comprehensive and responds to a number of concerns raised by the Committee and further advances a number of the Department's goals that I outlined at the first session.
13. This was our best attempt at synthesizing the input we received from the Committee in the context of our overall objectives and put something forward for you to react to.
14. We've made tremendous progress. But I want to emphasize that this is not a finished product.
15. To get there, we need to hear your reactions, we need to understand your questions, and most of all we need to hear your ideas for improvement.
16. It's very important that everyone goes into this negotiation understanding that this draft regulatory text is a starting point for this week's discussion.

17. We want to hear your critiques and criticisms, but we really need constructive suggestions on how to modify the rule.
18. One of the goals of this process is consensus.
19. But the primary goal, for all of us, is getting it right and designing the best possible gainful employment rule.
20. So the Department walks into this negotiation with its mind still very much open to all aspects of the rule.
21. As I laid out at the last session, the Department is engaged in this rulemaking to help solve a problem.
22. The educational programs that we are talking about today can only be eligible under the law to participate in the federal student aid program if they prepare students for gainful employment in a recognized occupation.
23. Participation is not an entitlement under the law; it is conditioned on meeting this fundamental requirement.
24. While many GE programs are providing high-quality education and training for their students, far too many are failing to do so.
25. Without the training to achieve adequate earnings, these former students struggle to pay back the debt they took on.
26. Our guiding principles for this rule have not changed. As I stated at the last session, the Department's objectives for the gainful employment rule are as follows:
 - a. First, institutions with programs having little or no value, and that lead to high indebtedness for students should improve them or risk no longer qualifying for taxpayer support.

- b. Second, institutions should be given time and be motivated to improve those programs that are not among the very worst, but still do not have outcomes that meet minimum acceptable levels of performance.
 - c. And third, programs that produce exceptional results for students should be recognized and emulated. We remain interested in discussing with you ways in which the best programs could be identified and rewarded and how best practices could be highlighted and shared with others.
27. As we discussed the draft rule with these principles in mind at the first session, your input provided valuable guidance that has informed this new draft.
28. For instance, during the first session, we heard concerns that the initial proposal did not account for students who do not complete a program. Programs could have passed the metrics despite having high numbers of students who don't complete a program and end up unprepared for, and unable to find, employment.
29. We responded to this concern by adding two metrics to the existing debt-to-earnings measures for your consideration: a program cohort default rate and a loan portfolio repayment measure. Both of the new metrics hold programs accountable for the outcomes of students who complete GE programs as well as those who do not complete.
30. Under this draft, programs must not fail any one of the three metrics to maintain eligibility. Each measure serves as a separate indicator of program performance and meets a unique goal.
31. We also tried to address concerns that GE programs on the verge of ineligibility leave students vulnerable, students who should be protected in the event programs do not improve.

32. To address this concern, we designed a provision that provides students with some protection if such programs fail to improve, to the amount needed to ensure that students' debt does not exceed the rule's debt thresholds.
33. Specifically, this proposal would require an institution with a program that could become ineligible in an immediately succeeding year to be prepared to pay down the debts of students enrolled in the program to the extent students' debts exceed the rule's thresholds.
34. We also heard concerns about the interest rate used for the debt-to-earnings calculations and that the transition period would not afford longer term programs a sufficient opportunity to improve.
35. To address these concerns, we clarified that the interest rate used will be the lowest rate from the four years prior to when the program results are measured, and we extended the transition period to accommodate programs with longer durations.
36. These are just a few examples of where we have made changes or improvements based on ideas or concerns raised by this Committee.
37. But we also know there are a number of issues and ideas that were raised during the last session and by the working groups that are not incorporated into this draft.
38. For instance, we know there is concern that we did not include a placement rate metric in the draft.
39. We want to use this session to provide you with some feedback on those topics, and talk through those issues in more detail.
40. Finally, I want to address a concern that I anticipate the Committee may have, which is that we have not provided an estimate of the

number of programs that may be affected under the programmatic cohort default rate or loan portfolio repayment measures.

41. Our data team is working very hard to develop estimates on the potential impact of those metrics, and ensure that the data used to do this are reliable. We will make available to the public any reliable estimates we can produce as soon as we can
42. But, the absence of this analysis at this moment should not be a deterrent from robust discussion on the merits of these proposed metrics. We think these measures are very much worth considering in response to the concern that the rule might otherwise fail to address non-completers.
43. So I know everyone is anxious to get to work.
44. I just want to note that I realize reconciling the diverse interests, perspectives, and opinions with respect to each aspect of this rule will be challenging.
45. But with all of the expertise at this table, I am optimistic that this session will be an extremely productive step forward toward a rule that accomplishes the Department's policy goals in a balanced, reasonable and practical manner.
46. On behalf of Secretary Duncan and Under Secretary Kanter, I thank the Committee for your time and for lending your expertise to this very important process.
47. Thank you.