

**U.S. Department of Education
Negotiating Committee—Gainful Employment
2013
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).

II. Participation

- A. The committee consists of the following members:

- B. The 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. Either the member or an alternate may speak during the negotiations.

- C. With approval by a consensus of the committee, individuals, including specialists, who are invited by a member, may participate in committee or subcommittee meetings as needed and appropriate, but are not members of the committee.

- D. The committee may add members. Requests for membership must be approved by a consensus of the committee under such conditions as the committee establishes at the time. New members may begin to participate immediately upon admission to membership.

- E. Subcommittees may be formed by the committee to address specified issues and to make recommendations to the committee. Subcommittees are not authorized to make decisions for the committee. Subcommittee meetings will be open to any member of the committee and may be held between the meetings of the committee. All committee members will be notified of all subcommittee meetings.

- F. Upon the initiation by any member and after consultation with the facilitators, the Secretary may remove a member he determines is not acting in good faith in accordance with paragraph VI B of these protocols. The Secretary will provide an explanation in writing to the committee.

- G. 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.

III. Decision Making

The committee will operate by consensus, meaning that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Thus, no member can be outvoted. Members should not block or withhold consensus unless they have serious reservations about the approach or solution that is proposed for consensus. Absence will be equivalent to not dissenting. All consensus agreements reached during the negotiations will be assumed to be

tentative agreements until members of the committee reach final agreement on regulatory language. Once final consensus is achieved, committee members may not thereafter withdraw their consensus.

IV. 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 will 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 a final consensus on all issues, the Department will use this consensus-based language in its proposed regulations, and committee members and the organizations whom they represent will refrain from commenting negatively on the consensus-based regulatory language, except as provided in paragraph IV C.
- C. The Department will not 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 sufficiently in advance of the publication of the proposed regulations so as to allow them a real opportunity to express their concerns to the Secretary. If the Department alters consensus-based language, it also will identify the changes made subsequent to 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.

V. 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. A caucus for the purpose of consultation may be requested of the facilitator(s) at any time by any member.
- 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, but not subcommittee meetings or caucuses, are open to the public.

VI. Safeguards for Members

- A. Any member may withdraw from the negotiations at any time without prejudice, by notifying the facilitator(s) in writing.
- B. All members and the organizations they represent shall act in good faith in all aspects of these negotiations.
- C. 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 during contact with the media, the investment community, and other organizations outside the community of interest represented by the member.

VII. Meeting Facilitation

- A. The facilitator(s) will serve at the discretion of the committee, and will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing and distributing a record of agreements, and helping the parties resolve their differences and achieve consensus on the issues to be addressed by the committee.
- B. The facilitator(s) will be available to facilitate all meetings of the full committee and, to the extent possible, subcommittee meetings and caucuses.