

**U.S. Department of Education
Borrower Defenses and Financial Responsibility
Negotiated Rulemaking**

**Meeting Summary
November 13-15, 2017**

Welcome

Kathleen Smith, Acting Assistant Secretary for Post-Secondary Education, on behalf of Secretary Betsy DeVos, welcomed the Borrower Defenses Negotiated Rulemaking Committee (“Committee”) and thanked them for agreeing to assist the Department in developing the proposed regulations.

Introductions

Committee members and facilitators introduced themselves.

Overview of the Negotiated Rulemaking Process

Commissioners Moira Caruso, Ted Bantle, and Rozmyn Miller, facilitators from the Federal Mediation and Conciliation Service (FMCS), explained the negotiated rulemaking process, consensus, and the roles of both the facilitators and the negotiators.

Review and Adopt Protocols

The Committee approved the organizational protocols, as proposed.¹ Significant discussion occurred in relation to Section 5E, specifically related to the level of public accessibility to the negotiations. The Committee was divided on whether to allow live streaming and other recorded media, with some members advocating for explicit Committee approval of live streaming and recording while others wished to prevent it. On day two, the Committee approved Section 5E as originally proposed with the understanding that the Department would have the sessions recorded, and the recordings made publically available. The Department strives to post the audio recordings in a 508 compliant format to its website within two weeks following the end of each negotiation session.

¹ Updated to identify committee membership.

Membership

Members of the Borrower Defenses and Financial Responsibility Negotiated Rulemaking Committee:

Community of Interest	Primary Negotiator	Alternate Negotiator
Students and Former Students	Joseline Garcia <i>President, U.S. Students Association</i>	Stevaughn Bush <i>Student, Howard University School of Law</i>
Consumer Advocacy organizations	Ashley Harrington <i>Special Assistant to the President and Counsel, Center for Responsible Learning</i>	Suzanne Martindale <i>Senior Attorney, Consumers Union</i>
Legal assistance organizations that represent students	Abby Shafroth <i>Staff Attorney, National Consumer Law Center</i>	Juliana Fredman <i>Bay Area Legal Aid</i>
Groups representing U.S. Military service members or veteran Federal student loan borrowers	William Hubbard <i>Vice President of Government Affairs Student Veterans of America</i>	Walter Ochinko <i>Research Director, Veterans Education Success</i>
State attorneys general and other appropriate State officials	John Ellis <i>Principal Deputy General Counsel & Division Chief State of Texas Office of Attorney General</i>	Evan Daniels <i>Assistant Attorney General, Government Accountability and Special Litigation Unit, Office of the Arizona Attorney General</i>
State higher education executive officers	Robert E. Anderson <i>President, State Higher Education Executive Officers Association</i>	
Accrediting agencies	Michale McComis <i>Executive Director, Accrediting Commission of Career Schools and Colleges</i>	Karen Peterson Solinski <i>Executive Vice-President, Higher Learning Commission</i>
Financial aid administrators	Valerie Sharp <i>Director, Office of Financial Aid, Evangel University</i>	Kimberly Brown <i>Vice President, Enrollment Management and Student Affairs, Des Moines University</i>
General counsels/attorneys and compliance officers	Aaron Lacey <i>Partner, Thompson Coburn LLP</i>	Bryan Black <i>Attorney</i>

CFOS and business officers	Kelli Hudson Perry <i>Assistant Vice President for Finance and Controller, Rensselaer Polytechnic Institute</i>	Dawn Robinson <i>Dean of Administration and Fiscal Services (CFO), Roanoke Chowan Community College</i>
Minority serving institutions	Robert Flanigan, Jr. <i>Vice President for Business and Financial Affairs & Treasurer, Spelman College</i>	Lodriguez Murray <i>Vice President, Public Policy & Government Affairs, United Negro College Fund</i>
Two-year public institutions	Dan Madzellan <i>Associate Vice President for Government Relations, American Council on Education</i>	Barmak Nassirian <i>Director of Federal Policy Analysis, American Association of State Colleges and Universities</i>
Four-year public institutions	Alyssa Dobson <i>Director of Financial Aid and Scholarships, Slippery Rock University</i>	Kay Lewis <i>Assistant Vice-Provost, Enrollment Executive Director of Financial Aid and Scholarships, University of Washington</i>
Private, non-profit institutions	Ashley Ann Reich <i>Senior Director of Financial Aid Compliance and State Approvals, Liberty University</i>	Gregory Jones <i>President, Compass Rose Foundation</i>
Private, for-profit institutions with an enrollment of 450 students or less	Mike Busada <i>General Counsel and Vice President, Ayers Career College</i>	Chris DeLuca <i>Attorney at Law, DeLuca Law LLC</i>
Private, for-profit institutions with an enrollment of 451 students or more	Michael Bottrill <i>CFO and CEO, SAE Institute North America</i>	Linda Rawles <i>Rawles Law</i>
FFEL Program lenders and loan servicers	Wanda Hall <i>Senior Vice President and Chief Compliance Officer, Edfinancial Services</i>	Colleen Slattery <i>Federal Contract and Compliance Officer, MOHELA</i>
FFEL Program guaranty agencies and guaranty agency servicers (including collection agencies)	Jaye O'Connell <i>Director of Collections and Compliance, Vermont Student Assistance Corporation (VSAC)</i>	Sheldon Repp <i>Special Advisor and Counsel, National Council of Higher Education Resources</i>
U.S. Department of Education	AnnMarie Weisman <i>Federal Negotiator</i>	

Petitions for Membership

- The Committee approved a petition to add Dr. Robert Anderson, representing the State Higher Education Executive Officers community of interest, to the Committee.
- The Committee approved a petition to add Dr. Julianne Malveaux to the Financial Responsibility Subcommittee.
- The Committee denied a petition to add Blake Harden to the Financial Responsibility Subcommittee.

Finalizing the Agenda

The Committee approved the following eight issues, comprising the scope of issues it will negotiate:

1. Whether to establish a Federal standard for the purpose of determining if a borrower can establish a defense to the repayment of a loan based on an act or omission of an institution
2. Developing a regulatory framework for the process of submitting and evaluation a borrower defense to repayment claim
3. Financial responsibility and administrative capability
4. Pre-dispute arbitration agreements, class action waivers, and internal dispute processes
5. Closed school discharge
6. False certification
7. Guaranty agency collection fees
8. Whether to recalculate a borrower's subsidized usage period and interest accrual, if applicable, when the borrower receives a discharge of a loan for which he or she has not received all or part of the educational benefit of the loan

All eight issues are further developed in the Issue Papers provided to the Committee by the Department prior to the meeting.

The Committee elected not to include the following issues, proposed by member Wanda Hall, in the agenda:

1. Administrative forbearance to collect and process supporting information
2. Administrative forbearance for timely recertification and recalculated IDR payments
3. IDR after day 270 of delinquency
4. REPAYE payment application (Technical Correction)
5. Closed school discharge application when borrower fails to respond (Technical Correction)

Discussion of Issues

The Committee discussed the eight aforementioned substantive issues in detail. Discussion of each topic began with the Department reviewing each issue paper and associated questions. Then, Committee members had the opportunity to pose additional questions as well as offer their interests, concerns, and preferences relative to each issue.

Additional Participants

During the three-day meeting, three non-negotiators addressed the committee:

- James Manning, Acting Under Secretary, U.S. Department of Education, at the request of the Committee, provided information regarding Department's processing of existing borrower defense claims.
- John Kolotos, Subcommittee Chairperson, at the request of the Committee, provided additional information regarding the nature and work of the Subcommittee.
- Remington Gregg, from Public Citizen, upon petition by William Hubbard and consensus approval by the Committee, provided comment on Issue #4 related to pre-arbitration clauses, class action waivers, and internal dispute resolution processes.

Public Comment

The Committee provided opportunity for public comment at the end of each day. Public comment was received on all three days of the meeting.

Next Meeting

The next meeting will be held on January 8 – 11, 2018 and is located at:
Union Center Plaza (UCP – FSA Learning Center)
Lobby Level
830 First Street, NE
Washington, DC 20002

Next Steps

The facilitators will distribute a draft summary of the first meeting, and a draft agenda for the next meeting. In addition, the Department will distribute draft regulatory text related to the issues discussed prior to the next negotiation. Any information that members want to share with the Department, or the Committee as a whole, should be sent to the facilitators. Additionally, any questions members have may be directed to the facilitators.

Committee members will communicate with others within their communities of interest to inform and get feedback from them.

Attendance

All members and alternates of the Committee were present for this session.