



2023 Negotiated Rulemaking Student Loan Debt Relief 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:

U.S. Department of Education federal negotiator
Office of General Counsel (non-voting) representative
Non-federal primary and alternate negotiators
Facilitators from the Federal Mediation and Conciliation Service (FMCS)

B. The primary negotiator will participate for the purpose of determining consensus. The alternate will participate for the purpose of determining consensus in the absence of the primary negotiator. Other negotiators 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 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 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 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.

IV. Committee Membership

A. The committee may add negotiators. Requests for negotiators must be approved by all current primary committee negotiators. New negotiators may participate immediately upon admission to membership.

- B. Upon the initiation by any negotiator in writing and after consultation with the facilitators, the Secretary may remove a negotiator 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 negotiator and the committee.
- C. The Secretary may remove any negotiator who ceases to be employed by or be associated with the community of interests the individual was chosen to represent.

V. Decision Making

- A. The committee will operate by consensus, which means that there must be no dissent by any negotiator for the committee to be considered to have reached agreement. Negotiators 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 part of the proposed rule; thus, consensus could be reached for some parts, 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. Negotiators may not withdraw their consensus once consensus is achieved in the final vote for each part of the proposed rule.

VI. 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 negotiators for review and comment prior to publication of the proposed regulations. The Department is not required to adopt or respond to the negotiators' comments on the preamble.
- B. If the committee reaches consensus on part of the proposed regulations, the Department will use this consensus-based language in its proposed regulations, and negotiators 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 negotiators 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 negotiators in advance of the publication of the proposed regulations to allow negotiators 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 negotiators may comment positively or negatively on those changes and on other parts of the proposed regulations.

VII. 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 negotiators, 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 negotiators in a timely fashion. To the extent practicable, the Department will provide negotiators with documents for discussion at committee meetings at least seven days in advance of the meetings.
- C. 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 negotiators.
- D. All committee meetings, but not caucuses, are open to the public and will be livestreamed to provide access to the public.
- E. Committee negotiators will remain engaged in the work of the committee and refrain from other activity (including posting to social media) during the time committee meetings are in session. Breaks will be provided with times announced by the facilitators.
- F. Negotiators must discuss the views of other negotiators at the negotiating table in a respectful manner.
- 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 more time is needed and a target date for providing the data, and/or 3) explaining why some or all the data cannot or will not be provided. The Department will share any data supplied with the entire committee.

VIII. The Virtual Negotiation Process

- A. The facilitator will announce each part of the proposed rules. The first time a part is discussed during each session, the Federal negotiator will provide an overview of it. A negotiator who wishes to speak on the part 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 negotiator may speak at a time. All other committee members' microphones are to remain muted.
- C. When called on, a negotiator will have up to three minutes to speak. A negotiator who exceeds the time may be muted. The facilitator will remind the member when there is 30 seconds remaining.
- D. To preserve time, a negotiator should not repeat a previously made point when it is that negotiator's turn to speak. In the interest of time, facilitators may mute a negotiator if it appears the negotiator is only repeating previously made points.

IX. 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 negotiator calls for a caucus, a facilitator will collect the names of all negotiators who will participate in the caucus so participating members can be invited to the breakout room or a separate meeting.

- C. The negotiator 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. Negotiations resume when the caucus has ended.
- D. The negotiator who called for the caucus will lead the discussion. The facilitators will ensure that negotiators who wish to speak are provided time to do so using the time allotted.

X. Safeguards for Members

- A. Any negotiator may withdraw from the negotiations at any time, without prejudice, by notifying the facilitator(s) in writing.
- B. Any negotiator 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 negotiators 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 negotiator will generally be limited to discussion of the overall objectives and progress of the negotiations. Negotiators 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.