SESSION #10

NEGOTIATED RULEMAKING – HOW TO GET INVOLVED

Annmarie Weisman
U.S. Department of Education
2020 Virtual FSA Training Conference for Financial Aid Professionals
AGENDA

01  Introduction to Negotiated Rulemaking
02  Negotiated Rulemaking: Ways to Get Involved (Before, During, and After Rulemaking Sessions)
INTRODUCTION TO NEGOTIATED RULEMAKING
Objective: Identify topics to regulate and the relevant constituencies (key stakeholders)

Students are always a key stakeholder!
WHAT IS NEGOTIATED RULEMAKING?

Objective: Bring together stakeholders and the Department to reach consensus on language and/or major concepts to utilize in NPRM

ED proposes topics
Negotiated Rulemaking sessions
Notice of Proposed Rulemaking (NPRM)
WHAT IS NEGOTIATED RULEMAKING?

**Objective:** Collect and summarize public feedback on the NPRM, publish final rule, and answer outstanding questions through sub-regulatory guidance.
IDENTIFYING ISSUES TO NEGOTIATE

1. ED determines if new regulations are necessary
   • Statutory requirement: *Title IV* regulations must generally use the negotiated rulemaking process ("neg reg" or "reg neg").
   • Many times, ED publishes reports on the major actions the Department plans to issue in the near and long term in the Agency Rule List.

2. ED publishes notices in the *Federal Register*
   • Announcing public meetings soliciting nominations for negotiators

3. ED uses public feedback to develop list and publishes in the *Federal Register*
HOW IS THE PROCESS STRUCTURED?

• Negotiating committee usually meets for three sessions of 3–4 days each
• Goal: reaching consensus

• Between sessions:
  • Department drafts regulatory language based on previous committee meetings and distributes to negotiators
  • Negotiators may form subcommittees to work on specific issues
WHAT IS CONSENSUS?

• No dissent by any member of committee

• Absence/silence of member at time of final vote = not dissenting

• Members may not withdraw consensus if we reach final consensus
WHAT HAPPENS AFTER NEGOTIATIONS?

Consensus not reached:

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

Consensus reached:

• Department may share preamble language with negotiators to review for accuracy
• Department generally must use regulatory language developed during negotiations in NPRM
• ED may depart from consensus if compelling public comment received on NPRM
FINAL STEPS

• NPRM published in *Federal Register* with public comment period

• If consensus reached, negotiators and persons/entities whom they represent may not comment negatively on regulatory language

• Comments used to develop final regulations; summarized and addressed in preamble of final regulations

• Final regulations published in *Federal Register*
ED must publish regulations on/before November 1 for a July 1 effective date the following year, but the Secretary may designate any or all provisions for early implementation.
NEGOTIATED RULEMAKING – WAYS TO GET INVOLVED
WAYS TO GET INVOLVED

• **Before Sessions**: Public Hearing testimony

• **During Sessions**:
  • Serving as a Negotiator or Alternate
  • Providing input or feedback to the negotiator
  • Making a public comment

• **After Sessions**: Submitting Public Comments on Proposed Rules
WAYS TO GET INVOLVED

• **Before Sessions**: Public Hearing testimony

  • Issues being negotiated help to determine who should get involved

  • How?
    • In person at a public hearing
    • In writing
PUBLIC HEARING TESTIMONY

• Open to the public

• Usually in five-minute periods

• Scheduled in advance vs. same-day slots

• Speak on topic(s) listed in notice or other relevant topic(s)

• Held a couple of months or more prior to negotiations
WAYS TO GET INVOLVED

• During Sessions:
  • Negotiator
  • Alternate
  • Constituent
  • Member of the Public
HOW ARE NEGOTIATORS SELECTED?

• Nominated (self or from others)
• Selected by the Department
• Negotiators represent constituents who will be significantly affected
  • *i.e. organizations that represent different types of institutions, students, loan servicers*
• Committee consists of
  • ~15–18 negotiators (*and an alternate* for each)
  • A Department representative
  • A neutral facilitator
NEGOTIATED RULEMAKING – OPEN TO THE PUBLIC?

- Members of public may observe, but they cannot speak unless recognized by the negotiating committee
  - Daily public comment period
  - Use of social media and technology

- Caucuses (i.e. meetings of negotiators) open to public at discretion of the committee

- Printed materials made available to public
WAYS TO GET INVOLVED

• **After Sessions:**
  • Submit public comments on proposed rules
  • Provide feedback to negotiator representing your constituency
WRITTEN PUBLIC COMMENT – RESPONDING TO THE NPRM

• Consult other stakeholders
  • Group comments accepted (associations, systems, institutions)
  • Individual (representing institution vs. member of the public)
• Consider and suggest alternatives
• Be specific
• Organize your comment by topic
• Submit in a timely manner
Weak Comment*

I love what the Department of Education is proposing. It’s great!!!
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
SUBMITTING A PUBLIC COMMENT

• Submit online at regulations.gov
  • Immediate confirmation to confirm receipt
  • Format:
    • Short: Include within online text area
    • Long: Microsoft Word rather than a PDF

• Do not submit both online and by mail
• Consider reviewing submitted comments
VIEWING COMMENTS ON REGULATIONS.GOV
• Enter the docket number (or other relevant text) in the Search box to view posted comments

• This site is publicly available (no registration or login required)
After opening the docket folder, you will see a page that looks similar to the screenshot shown here.

You can view all public comments.

Tip: Use CTRL – F (Find) and enter a name or keywords to quickly locate a comment.
After clicking on the title, you will see the docket page.

Click “Open Docket Folder”.
After opening the docket folder, you will see a page that looks similar to this.

You can view all public comments.

Tip: Use CTRL – F (Find) and enter a name or keywords to quickly locate a comment.
RESOURCES

• Websites
  • federalregister.gov (notices)
  • regulations.gov (public comments)
  • ifap.ed.gov (announcements)
  • reginfo.gov (agency rule list)

Previous Rulemaking (OPE site):
CONTACT:
ANNMARIE WEISMAN
annmarie.weisman@ed.gov