

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

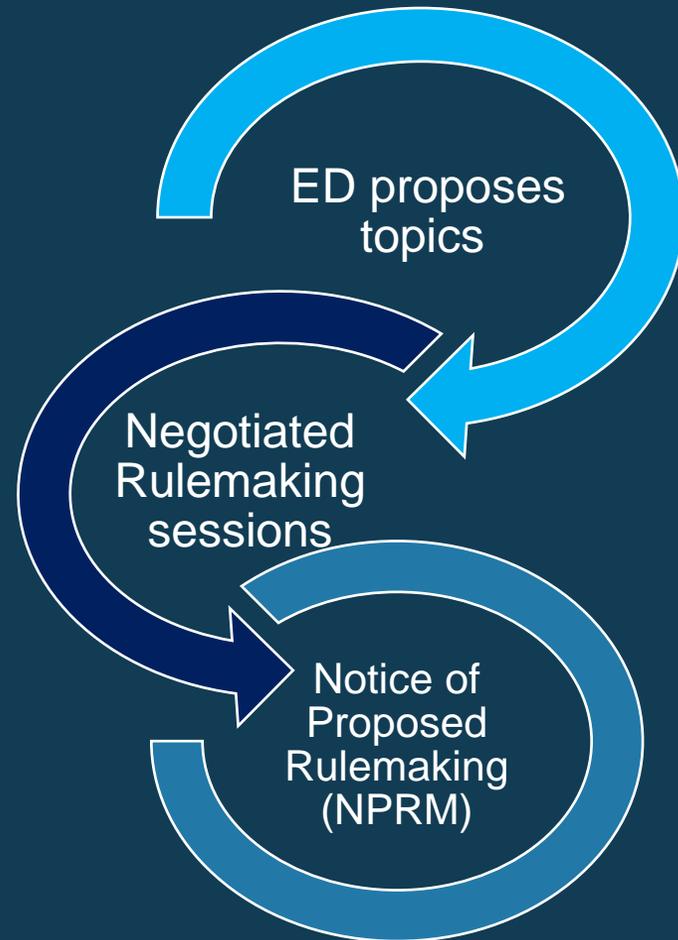
PLANNING FOR NEGOTIATED RULEMAKING



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

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*

MASTER CALENDAR



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

WRITTEN PUBLIC COMMENT – RESPONDING TO THE NPRM

Weak Comment*

I love what the Department of Education is proposing. It's great!!!

Stronger Comment*

I agree with the proposed regulation on loan counseling. Data on default rates published by the Department showed that borrowers who do not complete their program are more likely to default. Therefore, I support requiring loan counseling for all first-year students in a program and would support additional counseling each academic year as proposed.

**Comments are illustrative examples only and do not represent actual proposed regulations*

WRITTEN PUBLIC COMMENT- RESPONDING TO THE NPRM

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](https://www.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

REGULATIONS.GOV – PUBLIC SITE

- 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)

The screenshot shows the homepage of regulations.gov. At the top right, there is a navigation menu with links for Home, Help (circled in red), Resources, and Contact Us. Below the navigation menu is a search bar with a magnifying glass icon and the text "SEARCH". To the right of the search bar are buttons for "Browse" and "Learn". The main content area features a red banner that reads "Make a difference. Submit your comments and let your voice be heard." Below this banner is a search box with the text "SEARCH for: Rules, Comments, Adjudications or Supporting Documents:" and a "Search" button. A red arrow points to the search box, and a red box highlights the search area. Below the search box is a link for "Advanced Search".

regulations.gov
Your Voice in Federal Decision-Making

Home Help Resources Contact Us

SEARCH Browse Learn

Make a difference. Submit your comments and let your voice be heard.

SEARCH for: Rules, Comments, Adjudications or Supporting Documents:

Search

Advanced Search

What's Trending

- Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020
Closing on Aug 17, 2018
- Compliance with Statutory Program Integrity Requirements
Closing on Jul 31, 2018
- Regulation of Premium Cigars
Closed on Jul 25, 2018
- Hunting and Trapping in National Preserves: Alaska
Closing on Sep 06, 2018
- Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting...

Comments Due Soon

- Today (37)
- Next 3 Days (50)
- Next 7 Days (252)
- Next 15 Days (391)
- Next 30 Days (763)
- Next 90 Days (1,065)

Newly Posted

- Today (51)
- Last 3 Days (222)
- Last 7 Days (516)
- Last 15 Days (1,024)
- Last 30 Days (1,868)
- Last 90 Days (5,864)

Unable to submit a comment?

FAA Section 333

The FAA has recently issued part 107, which addresses the majority of 333 petitions. Please visit www.faa.gov/uas/

APIs for Developers

REGULATIONS.GOV – PUBLIC SITE

- 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.

The screenshot shows the regulations.gov website interface. At the top, there is a search bar with the word "education" entered. Below the search bar, it says "228 results for 'education'". On the left side, there is a "Filter Results By..." section with a red box around it and a red arrow pointing to it. This section includes "Comment Period" with options for "Open (0)" and "Closed (0)", and "Document Type" with options for "Notice (2,298)", "Proposed Rule" (checked), "Rule (265)", "Supporting & Related Material (2,205)", "Other (42)", and "Public Submission (77,619)". Below the filters, there is a "Posted" section with a "Search All" dropdown. The main content area shows two search results. The first result is titled "Title I--Improving the Academic Achievement of the Disadvantaged; Individuals With Disabilities Education Act (IDEA)-- Assistance to States for the Education of Children With Disabilities". It includes a "Comment Period Closed" notice for Feb 28, 2006, and an "Open Docket Folder" link. The second result is titled "Measuring Educational Gain in the National Reporting System for Adult Education". It also includes a "Comment Period Closed" notice for Nov 17, 2006, and an "Open Docket Folder" link. Both results show document contents and proposed rule information.

REGULATIONS.GOV – PUBLIC SITE

- After clicking on the title, you will see the docket page.
- Click “Open Docket Folder”.



The screenshot shows the regulations.gov website interface. At the top, there is a navigation bar with links for Home, Help, Resources, and Contact Us. A search bar contains the word 'education'. Below the navigation bar, the main content area features the site logo and the tagline 'Your Voice in Federal Decision-Making'. The primary heading is 'PR Program Integrity: Gainful Employment'. A red circle highlights the 'Open Docket Folder' link, with a red arrow pointing to it from the text on the left. The page content includes a notice that the proposed rule was issued by the Department of Education (ED) and that the comment period is closed as of July 18, 2018. It also provides an 'Action' section with the text 'Announcement of applicable dates; request for comments.' and a 'Summary' section detailing the Department's announcement regarding compliance dates for gainful employment regulations. A 'Dates' section specifies that the Department is allowing additional time until July 1, 2019, for institutions to comply with 34 CFR 668.412(d) and (e). The page also includes a 'Document Information' sidebar with fields for ID, Date Posted, and Federal Register Number, and a 'Comments' section showing a count of 69 comments.

REGULATIONS.GOV – PUBLIC SITE

- After opening the docket folder, you will see a page that looks similar to this.

The screenshot shows the regulations.gov website interface. At the top, there is a navigation bar with links for Home, Help, Resources, and Contact Us. A search bar contains the word 'education'. Below the navigation is a header for the docket: 'Program Integrity: Gainful Employment; Announce of applicable dates'. Underneath, it says 'Docket Folder Summary' and 'View all documents and comments in this Docket'. The docket ID is 'ED-2017-OPE-0090' and the agency is 'Department of Education (ED)'. There is a 'Take a Tour!' button and a 'Sign up for Email Alerts' section showing '115 Comments Received*'. A table of 'Primary Documents' is visible, listing three documents related to 'Program Integrity: Gainful Employment' with their respective dates and comment periods.

- You can view all public comments.

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

This screenshot shows the 'Supporting Documents' section, which currently displays 'No documents available.'. Below this, the 'Comments' section is highlighted with a red circle. It shows a list of comments with their text, submitter names, and dates. The first comment is from 'The Institute for College Access & Success (TICAS)' by Debbie Cochrane, posted on 07/23/2018. The second comment is from an 'Anonymous Anonymous' user, posted on 07/23/2018. The third comment is also from an 'Anonymous Anonymous' user, posted on 07/23/2018. A red arrow points from the 'Comments' link in the previous screenshot to this section.

RESOURCES

- Websites
 - [federalregister.gov](https://www.federalregister.gov) (notices)
 - [regulations.gov](https://www.regulations.gov) (public comments)
 - ifap.ed.gov (announcements)
 - [reginfo.gov](https://www.reginfo.gov) (agency rule list)

Previous Rulemaking (OPE site):

- www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html



CONTACT:

ANNMARIE WEISMAN

annmarie.weisman@ed.gov
