




MASFAA Conference 2009

**Midwest Association of Student
Financial Aid Administrators**

Negotiated Rulemaking: An Insider's View

Presented by:
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**Negotiated Rulemaking:
An Insider's Perspective**

- What is Negotiated Rulemaking?
- What is the process?
- Who participates?
- Examples of successful negotiation
- From bill to regulation




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Statutory Authority

- Part of 1998 HEA reauthorization
- HEA §492 outlines parameters
 - Secretary shall involve public in developing proposed regulations
 - All regulations promulgated by the Secretary are subject to negotiated rulemaking
 - Secretary has authority to conclude such action is impracticable, unnecessary or contrary to public interest

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Statutory Authority

- HEA §492 outlines parameters, cont'd
 - Secretary holds regional meetings to solicit input from the community on issues to be addressed during negotiations
 - Negotiators nominated by groups representing students, legal aid organizations, post-secondary schools, guarantors, lenders, secondary markets, servicers, collection agencies
 - Secretary selects negotiators from list of nominees



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Negotiated Rulemaking Process

- Department convenes meetings
 - Teams assembled by topic, for example:
 - general loan topics
 - school-related loan topics
 - accreditation
 - discretionary grants
 - general and non-loan programmatic issues
 - Facilitated by independent 3rd party
 - Meeting protocols established by federal and non-federal negotiators
 - Meetings open to public

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Negotiated Rulemaking Process

- Team establishes protocols for
 - Adding new members
 - Establishing subcommittees
 - Caucusing
 - Contact with the press
 - Withdrawing from the process
 - Adding Issues to be considered

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Negotiated Rulemaking Process

- Schedule includes three meetings
 - Meeting 1
 - Protocols
 - Identification of issues to be negotiated
 - Issue Review
 - Meeting 2
 - Finalize Issues to be negotiated
 - Draft Regulations
 - Meeting 3
 - Final Regulations
- Additional meetings may be scheduled as needed




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Negotiated Rulemaking Process

- **Goal** – achieve intended public policy while limiting unintended negative consequences and costs
- **Approach** – convene balanced group of stakeholders with expertise and experience to deliberate on issues, interests, and concerns relative to regulation
- **Outcome** – consensus regulatory language for Notice of Proposed Rulemaking (NPRM)




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Negotiated Rulemaking Process

- Principles of consensus
 - General agreement or accord
 - Consent versus support
 - Enlightened self interest
- Responsibilities of negotiators
 - Voice opinions and concerns
 - Assist with developing solutions to satisfy objectives
 - Consent to livable proposals
 - Block consensus for serious objections
 - Maintain ongoing contact with constituents

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Negotiated Rulemaking Process

- Negotiation key to productive meetings
- Department provides draft language
- Team reviews and suggests revisions
- Department revises language to reflect agreement in concept or provides options
- Team reviews with goal of achieving consensus
- Outside activities/meetings occur throughout
 - Team FFELP
 - Two-way feedback between negotiators




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Negotiators

- Teams consist of primary and alternate negotiators
- Primary will participate for purposes of determining consensus (voting)
 - Alternate will participate in absence of primary




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2009 Loans—Lender/General Loan Issues (Team I)

<ul style="list-style-type: none">• United States Students Association<ul style="list-style-type: none">◦ Jonathan S. Sachs; Adam Briones• Legal Aid<ul style="list-style-type: none">◦ Deanne Loonin; Lauren Saunders• Public 2- year Institutions<ul style="list-style-type: none">◦ George Chin• Public 4-year Institutions<ul style="list-style-type: none">◦ Carrie Steere-Salazar; Kris Wright• Private, Non-profit Institutions<ul style="list-style-type: none">◦ Heather McDonnell; Bonnie Lee Behm• Private, For-profit Institutions<ul style="list-style-type: none">◦ Tom Babel; William Leach	<ul style="list-style-type: none">• Guaranty Agencies<ul style="list-style-type: none">◦ Mary Mowdy; Richard George• Lenders (for-profit)<ul style="list-style-type: none">◦ Brenda Dillon; Tom Levandowski• Lenders (not-for-profit)<ul style="list-style-type: none">◦ Cheryl Hughes; Scott Giles• Credit Unions<ul style="list-style-type: none">◦ Michael Kim; Rhonda Summerbell• Lender Servicers<ul style="list-style-type: none">◦ Diane Freundel; Wanda Hall• Department of Education<ul style="list-style-type: none">◦ Pam Moran
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2009 Lender/General Loan Team I Topics

- In-school and PLUS deferments
- Borrower notification and disclosure issues – Lender
- Prohibited inducements
- Forbearance and borrower contact requirements
- Servicemembers Civil Relief Act
- Borrower notification and financial literacy issues – Guarantor
- Consolidation loan borrower eligibility and disclosures




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2009 Lender/General Loan Team I Topics, Cont'd

- Consumer education information – Guarantor
- Audit requirements for school lenders and ELT's
- Consumer credit reporting/loan rehabilitation
- Teacher loan forgiveness
- Total and permanent disability
- IBR and partial financial hardship eligibility




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2009 School-Related Loan Team II Topics

- Required disclosures for covered entities
- Program participation agreement (PPA)
- Disclosures of reimbursements
- PPA: private education loan certification and preferred lender lists
- Information and dissemination activities
- Cohort default rates
- Exit and entrance loan counseling
- Perkins loan cancellation categories

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Examples of Successful Negotiation

- Team I
 - Total and permanent disability (TPD)
 - Income-based repayment (IBR)
- Team II
 - Preferred lender arrangements (PLA)



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TPD – Successful Negotiation

- Eliminated up-front 3-year conditional period
- Negotiated for 5-year to 3-year post-discharge monitoring period
- Negotiated for improved borrower notification if reinstatement occurs
 - Notification will include critical information about loan reinstatement
 - In Preamble, Department agrees to take steps to further improve its notices to borrowers who have applied for or received disability discharges to more clearly explain the process and borrower's responsibilities

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IBR – Successful Negotiation

- IBR was not originally on Team I agenda
- Negotiators agreed to address IBR “fixes”
- Negotiated changes to:
 - Balance used to determine eligibility for IBR; will be greater of 1) balance at time of entering repayment or 2) balance when IBR is requested
 - How to view debt of married couples who file joint tax return; removed “penalty”

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PLA – Successful Negotiation

- Department agreed to exemptions to preferred lender arrangement requirements
 - PLA arrangement does not exist if private education loan provided to student is made by the covered institution and the loan is:
 - Funded by the school's own funds
 - Funded by donor-directed contributions
 - Made under Title VII or VIII of Public Service Health Act; or
 - Made under an institutional payment plan of school


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End Result – New Rules

- Final regulations to be published by November 1, 2009 in *Federal Register*


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**Negotiated Rulemaking 2009
Part II**

- *Federal Register* – May 26, 2009
- Department held hearings during summer
 - Solicited topics for negotiation
- *Federal Register* -- September 9, 2009
- Team I – Program Integrity Issues
- Team II – Foreign School Issues
- Sessions beginning in November 2009
 - Three sessions each

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Questions?

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