



DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
NEGOTIATED RULEMAKING  
SESSION 1, DAY 3, AFTERNOON  
JULY 2, 2025

P R O C E E D I N G S

MS. WEISMAN: Thank you all for your patience. Tamy, would you like to give a report out of the caucus?

MS. ABERNATHY: We are waiting for Betsy and Abby to come back. I think we have everyone else. Two minutes and we'll start. Ms. facilitator, we thank you so much for your patience.

MS. WEISMAN: Welcome back to the afternoon session. We're going to start right back in with Tamy from the Department and an update on the caucus.

MS. ABERNATHY: Thank you, Annmarie. We apologize to our viewing public. We apologize to our negotiators. It did take us a little longer, but I am pleased to announce that we have 15 substantive changes now, instead of 14. I will- sir? Fifteen offered substantive changes instead of 14 offered substantive changes. I would ask my colleague to please share the screen so that I could go over this with the negotiators. Wow, that is a bright color, isn't it? Here we are in H, our standard for determining a qualifying employer engaged in activities that have a substantial illegal purpose. One, the Secretary determines by clear and convincing evidence and after notice and opportunity to

respond, that a qualifying employer has engaged on or after July 1, 2026 in activities that have a substantial illegal purpose, by considering the materiality of any illegal activities or actions, by gauging both frequency or severity, and will not find that the organization has a substantial illegal purpose if it has only engaged in illegal activities or actions that are minor or purely technical. The Secretary will only use evidence not included in the subclause romanette one through romanette three. In instances where those activities or actions of a qualifying employer which have a substantial illegal purpose are severe and pervasive. In making such determination, the Secretary shall presume that any of the following is conclusive evidence that the employer engaged in activities that have a substantial illegal purpose: a final judgment by a State or Federal Court whereby the employer is found to have engaged in activities that have a substantial illegal purpose, a plea of guilty or nolo contendere, whereby the employer admits to have engaged in activities that have a substantial illegal purpose, or pleads nolo contendere to allegations that the employer engaged in activities that have a substantial illegal purpose, or a settlement that includes admission by the employer that it engaged in activities that have a substantial illegal purpose.

Described in subsection H of this section. Number two. Nothing in this subsection shall be construed to authorize the Secretary to determine an employer has a substantial illegal purpose based upon the employer or its employees exercising their First Amendment protected rights, or any other rights protected under the Constitution. We have added in that very bright color two different provisions that are new to you. At this time, we'll turn it over to Annmarie to take a pulse check.

MS. WEISMAN: So we're doing a pulse check on H, the text that Tamy just read. As a reminder, you can have a thumb up, thumb in the middle, or thumb down. And I'll be recording each of those, so if you could please keep your thumbs up until I get your attention again. Thank you. Okay, I see Betsy and Scott with thumbs in the middle. Is there anything that either of you would like to mention? Alyssa, were you middle? Okay, I apologize. So, for the three of you, do you have anything that you could recommend that might get you to a thumb up? Not required. Just asking. Betsy?

MS. MAYOTTE: We would possibly go to- if they- not necessarily a thumb up, but maybe something else if there was language added that said that these provisions wouldn't be used in cases of sanctuary cities, states, universities, and possibly churches. And we would

even be willing to consider that language, while preferably in the regulation, in the preamble.

MS. WEISMAN: Tamy, did you want to respond?

MS. ABERNATHY: We could withdraw this section altogether.

MR. ANDRADE: No, wait. Just the addition.

MS. ABERNATHY: The addition. Not the whole section. The- in red.

MR. ANDRADE: The first one  
(inaudible)

MS. ABERNATHY: The first one, we'd keep the second one. So the end of the paragraph where we talk about other rights protected under the Constitution we would retain, otherwise we're going to remove this particular section in red right there that starts with the Secretary will only use evidence not included in subclauses romanette one through three, in instances where those activities or actions of the qualifying employer which have a substantial legal purpose or severe and pervasive. So that would be what we will remove.

MS. WEISMAN: Betsy, would that address your issue?

MS. MAYOTTE: (inaudible)

MS. WEISMAN: I thought so.

MR. ANDRADE: Just a quick- what does this mean in terms of consensus? (inaudible) No, I know, but what is it-

MS. WEISMAN: You need to use the microphone, please.

MS. MAYOTTE: With respect, I don't think it's appropriate for you to ask me that question right now because she's asking for a pulse check, not for consensus. You're asking me for my vote (inaudible)

MS. ABERNATHY: So what that means, Jeff, is she said she would- it could change her pulse check to an up or down if we were to change and add language about the sanctuary states, which we have already discussed that is not going to be added. And our response is we're not going to add anything more. We would remove this section altogether, this one sentence. Now we're not going to remove that sentence altogether. Just kidding. Oh no, it's so much better than that. It's chaos (inaudible)

MR. ANDRADE: Do you think it's a goat rodeo?

MS. ABERNATHY: No. We're good. We're, we're good.

MR. ANDRADE: Okay.

MS. ABERNATHY: Y'all are killing me here. Jacob is going to interject to keep us all back on track.

MR. LALLO: Yeah, to go back to the boring details. I think the reason we have to approach this way, we, we said we can't do carve-outs for any particular organization of any type, we want this to be flatly neutral, but in particular with items like churches and specific types of cities, it runs counter to the way a qualifying employer is organized under the reg. It- the entire way we do this is so we don't have to spell out every single job and type of employer. They're laid out all under one grouping. And to add carve-outs in there for specific types of organizations, which, you know, we've heard a lot of argument about 501(c)(3)s and how they are supposed to be read broadly, you're asking us to carve them out into an even more narrow chunk. And I don't think we can do that.

MS. MAYOTTE: That's a good point. I'm not asking you to exclude cities, states, universities, churches. I'm asking- and I am open to language suggestions. My concern is that the addition of severe and pervasive. The way the general public understands when we say sanctuary city or sanctuary university, that the Department wouldn't, for want of a better phrase, go

after a city, a state university, a church, or being a sanctuary city and exclude them because they are a sanctuary city, state church, university, goat rodeo.

MS. WEISMAN: Bob?

MS. MAYOTTE: And I apologize if I didn't make-

MR. CAREY: Would taking out the words are severe and pervasive resolve that?

MS. MAYOTTE: No (inaudible)

MR. CAREY: Okay. Okay. I'm just- I'm not fully-

MS. MAYOTTE: Picking up what I'm putting down.

MR. CAREY: Right. So I'm just trying to figure out what your objection to this language is.

MS. MAYOTTE: I have no objection to that language.

MR. CAREY: Okay.

MS. WEISMAN: Betsy, what I'm hearing you saying-

MS. MAYOTTE: I have no objection to the language. My fear is that the language that they added, which I'm grateful for, does not go far enough to protect a particular target that I think is being considered with this overall proposal.

MS. WEISMAN: Jacob?

MR. LALLO: I think you know, I- while I understand your concern, you're asking us to read not only- like even if we put this into the preamble to effectively make promises as to how this reg will be applied and beyond the fact that I think that that's, you know, really not something that we're entitled to do, I think that it's fundamentally unfair to everyone else who's considered a qualifying employer to basically promise that it won't be applied to certain organizations, but it will be applied to everybody else.

MS. MAYOTTE: I'm not asking you to not apply it to certain organizations. If the City of Boston you find that there is severe and pervasive terrorist activities, then I- it's reasonable that that would be applied. Again, I'm not asking for a specific type of entity to be excluded, and I do apologize for not making that clear. I'm asking that the fact of one of these entities being considered a so-called sanctuary, whatever, is not that these rules will not be used in that scenario. So I'm asking for a scenario to be excluded, not an entity, an entity type.

MS. WEISMAN: Jeff?

MR. ANDRADE: As I said, the terms sanctuary city, sanctuary states aren't defined terms.

They're used differently depending on who is talking about them and where they're being talked about. And that introduces yet another level of ambiguity. Again, we're not focused on particular entities. Everybody is a qualifying employer. We're looking at the actions that are being performed by those qualifying employers without regard to what type of organization or what they call themselves or what other people call themselves.

MS. WEISMAN: Does the Department have what it needs then from H? There were, I made the offer if they wanted to mention anything that would help get them there. I didn't see any cards, but you're certainly welcome to do that. Scott?

MR. BUCHANAN: Sure. I mean, just as a reminder, I think in general on the totality involves policy, I represent FFEL lenders and guarantors. And as a constituency where PSLF is not available, we leave that to the other negotiators to determine whether they wish to reach consensus. And so my sideways vote is do not deny consensus if there is among the other negotiators, because this is an area outside of, you know, our constituency. But we appreciate the opportunity to provide some technical assistance and support throughout this, and certainly will continue to support some of the operational provisions that I- that we have voted in

favor for.

MS. WEISMAN: Any further comments?  
Then let's move on to I. Tamy, would you like to walk through I?

MS. ABERNATHY: Yes, ma'am.

MS. WEISMAN: Thank you.

MS. ABERNATHY: I, process for determining when an employer engaged in activities that have a substantial illegal purpose. One, the Secretary will determine that a qualifying employer violated the standard under subsection H of this section when the Secretary: romanette one, receives an application as referenced under subsection E of this section, which the employer does not certify that it did not participate in activities that have a substantial illegal purpose or determines that the- romanette two, determines that the qualifying employer engaged in activities that have a substantial illegal purpose under subsection H of this section, unless prior to the issuance of the Secretary's determination, the Secretary approves a corrective action plan, which includes the factors set forth in subsection J2 of the section. Notwithstanding subsection I1, the Secretary shall, in the event an employer is operating under a shared identification number or other unique identifier, consider the organization to be separate if

the employer is operating separately and distinctly for the purposes of determining whether an employer is eligible.

MS. WEISMAN: If we can see those thumbs. We have one to the side and that's Scott.

MR. BUCHANAN: Same issue as before. This is a matter of policy that relates to the direct loan program.

MS. WEISMAN: Thank you. Then let's move on to J for regaining eligibility.

MS. ABERNATHY: J, regaining eligibility as a qualifying employer. An organization that loses eligibility for failure to meet the conditions of paragraph B27 of this section may regain eligibility to become a qualifying employer after five years from the date the Secretary determines the organization engaged in activities that have a substantial illegal purpose, in accordance with subsection H of this section. If at or other- if at or after that time, the organization certifies on a borrower's subsequent application that the organization is no longer engaged in activities that have a substantial illegal purpose, as defined in paragraph B30 of this section, or two, the Secretary approves a corrective action plan signed by the employer that includes romanette one, a certification that the employer

is no longer engaging in activities that have a substantial illegal purpose, as defined in paragraph B30 of this section. Romanette two, a plan describing the employer's compliance controls that are designed to ensure that the employer will not engage in activities that have a substantial illegal purpose, as defined in paragraph B30 of this section in the future, and any other, any other terms or conditions imposed by the Secretary designed to ensure that the- that employers do not engage in actions or activities that have a substantial illegal purpose.

MS. WEISMAN: If we could do a pulse check with thumbs, please. So the only thumb I see to the middle is Scott. Same reason. Okay. Thank you very much. Definitely sensing a theme. So that takes care of J. If we could then move on, Tamy, to K, the newer section.

MS. ABERNATHY: K, borrower notification of regained eligibility. If an employer regains eligibility under subsection J of this section, the Secretary shall update within 30 days the Qualifying Employer List, which is accessible to borrowers for purposes of certification or application.

MS. WEISMAN: And if we could see a pulse check on that with thumbs. And on K, we have tentative agreement. Congratulations. We have a question

from Kaity.

MS. MCNEILL: I just wanted to give a reminder about the preamble language that we discussed in caucus concerning definitions and state concerning a child.

MS. ABERNATHY: During our caucus, we also discussed the definition of child. And we've had an official request to make sure that in our preamble language that we include, and I'm sure I'm supposed to remember all that this is right now, but I'm sorry, I do not. So Kaity, would you please be so kind as to remind me what I'm supposed to say so that we can, that we can make sure that we get it right? And I'm sorry, I did not write it down, so forgive me. I only wrote down some of it. My apologies.

MS. BOUTELL: Yes, we have the definition of a child is 19, but state law, many states have the definition of a child as 18. And so there was a concern that college campuses that offer any sort of student health services to 18-year-olds would be in violation. And we were told in our caucus that that would not be the case, that applicable state law would apply so that 18-year-olds could receive that care. And so the Department mentioned that they would include that information in the preamble, just so that there wouldn't

be concerns and worries.

MS. WEISMAN: Thank you, Heather.

MS. ABERNATHY: Yes, thank you, Heather.

MS. WEISMAN: So we have tentative agreement on a couple of areas. We did have a couple thumbs down in a couple of areas. I think we've heard the reasons for the thumbs down. If anybody wants to bring up other issues that they didn't feel that they've expressed, I think this is the time to do that. And then we need to kind of discuss where we go in terms of checking for consensus. Has the Department- does the Department feel that it's heard enough to be able to go to a consensus check, or is there more you want to discuss?

MS. ABERNATHY: We've heard enough. Thank you.

MS. WEISMAN: Okay. Do any of the negotiators feel that there's anything that they wanted to ask the Department? Bob?

MR. CAREY: I- since we're talking about preambulatory language, there was, as I understand, there was recently Department action to remove preamble, preamble language from another regulation. And I know that my organization, National Defense Committee, we've,

we've supported such. Is there any concern that preamble language is- has no effect since it is preamble and that we- if we want to resolve something, it needs to be within the text of the regulation?

MR. ANDRADE: I think the question came up with regard to explaining the interaction of the language that we had with applicable state law. And this is again, just to explain the impact.

MS. WEISMAN: I'd like to recognize Jonathan Houston from the Department's Office of General Counsel.

MR. HOUSTON: Hi, everyone. Preamble language is best construed as an interpretive rule. It's not a legislative rule, any- anything in a preamble. So it's not binding on the public or the agency, but it informs the public how we might think about a particular issue. The preamble language that accompanies a regulatory or legislative rule is that it's just interpretive language, not part of the actual text.

MR. CAREY: Okay.

MS. WEISMAN: Would the Department like a few minutes to confer?

MS. ABERNATHY: No.

MS. WEISMAN: Are you ready for a consensus check?

MS. ABERNATHY: We are.

MS. WEISMAN: Okay. As a reminder, the consensus check will be on all of the topics that we've discovered or discussed. If the Department has consensus, the Department will use that consensus language as part as its regulatory language in the Notice of Proposed Rulemaking or the NPRM. There would be the ability to make only minor technical changes, things like renumbering, subject-verb agreement, very minor editorial kinds of changes. Otherwise, it will use the language that is the consensus language. If consensus is not reached, the Department will write its own notice of proposed rulemaking, informed by the conversation here, but may write what it wishes. Are there any questions about consensus? With consensus, we're asking you for a thumb up, a thumb down, or you may abstain. Remember that abstaining is not blocking consensus. I also remind people that consensus is not a vote, so it's not a majority rules. We need to have all thumbs up in order to have consensus or abstentions. Any thumb down is a block. Any questions on that? Okay. This is your call for consensus. We have Scott abstaining and we have Betsy with a thumbs down. Did I miss anyone else? Okay, I'll record that. Does the Department have any final words to say to the group?

MS. ABERNATHY: I do, or we do. While we did not reach consensus on the proposed amendatory text, the work done here will have long long-lasting impact on restoring the Public Service Loan Forgiveness program as directed by the Secretary. No consensus means that there was a dissent by a member or members of the negotiating committee. And because, as Annmarie stated earlier, final consensus was not achieved, the language in the notice of proposed rulemaking may not mirror what you saw here today. We are not bound to using any language or tentative agreements developed over the last three days. The Department may publish an NPRM that looks significantly different from our discussions here. We will, of course, respond to every unique public comment made during the Notice of Proposed Rulemaking comment period, and consider each of them when crafting our final rule. I want to thank you, Committee. You've given us a lot of solid ideas which will assist us in the coming months as we prepare the draft rule. In addition, we appreciate your time and engagement. It's our first negotiated rulemaking back in person, so it's taken time to get some of the problems ironed out. We appreciate your patience and your willingness to dedicate time to this important endeavor. I do want to say one of the quotes that I like to use with my team is never doubt

that a small group of thoughtful, committed people can change the world. Indeed- it is the only thing that ever has. And that's from Margaret Mead. It has been a privilege working alongside you in developing these rules on restoring Public Service Loan Forgiveness. We've enjoyed the formidable and spirited conversations and new terms that we will now use forever and ever. We've learned a lot from you. On behalf of Secretary McMahon, Deputy Undersecretary James Bergeron, and the Federal team, Deputy Assistant Secretary Jeff Andrade, and Jacob Lallo, we thank you, Committee, for serving with us during these negotiations. And thank you to our public for participating. Additionally, we want to give a hearty thank you and extend the deepest appreciation for the considerable work done by our conference and event management team, the technical staff, the staff in the Office of the General Counsel, the staff in the Policy, Planning, and Innovation Division, including the Administrative and Auxiliary Services Team and the Policy Coordination Group, which is my team, along with many others across the Department who have worked tirelessly to coordinate efforts and deliverables for these negotiated rulemaking activities. We want to extend the heartiest of thank-yous to our facilitator, who did her very best to keep us on track and keep us aligned, and

worked very hard throughout these last three days. We could not have done this without you. So, thank you for your commitment to this process, to the Department, to the service, thank you. Next steps. My team starts drafting the notice of proposed rulemaking, which will reflect some of the discussions and the decisions made here the last three days. Please still monitor the negotiated rulemaking website for updates. Safe travels. Thank you again for your work during this session and for your commitment to the cause. We appreciate your service, and I appreciate working alongside you these last three days.

MS. WEISMAN: Thank you, Tamy. I just want to echo my thank-you to all of the negotiators, to the Department staff, and other department officials who made this negotiated rulemaking happen. It is the first one in person in about five years, six years, I guess. Your time and your dedication, and your energy has been beyond exceptional from the time that I spoke with each of you on the phone to do the orientation calls, it was very clear to me that we had a really great group of people to work with. And I feel honored as well to have worked with you. And I thank you for your patience in working with me. We've heard a range of perspectives. We've heard a lot of good ideas, and I'm sure the

Department will use those as they're drafting and keep those things in mind. And I hope that you see an NPRM soon that, that you feel you can also make a comment on. This is my shameless plug for- it's really important that US negotiators, whether alternate or primary, as well as members of the public who followed this discussion, continue to follow through and engage on this rule. And don't forget, you are part of the public. So make that public comment. And again, just my thanks. It's been great to have you and great to work with you. Safe trip home.