

**U.S. Department of Education
Student Debt Relief
Negotiated Rulemaking**

**Meeting Summary
November 6 & 7, 2023**

Welcome

Introductions

FMCS Facilitator welcomed the parties to Session 2 and conducted the roll call of negotiators, General Counsel for the Department of Education, and the Federal Negotiator.

Old Business

The Department provided verbal responses to some questions and data requests that were made at Session 1.

Additional Membership Discussion and action

There was a request for a new consistency group with an existing alternate negotiator being named primary. There was opposition to move negotiators around as they were each carefully selected by the Department for their current roles.

The committee was reminded that, per protocols, proposals can be made to add additional groups however the proposal needs to name the constituency and provided a name for a primary and alternate. Bios would need to be submitted to the negotiators prior to discussion and movement at the table to act on the proposals.

No further action on this item was brought forward during the two-day session.

It was announced by FMCS that Primary Negotiator for U.S. Military Service Members, Veterans, or Groups Representing them, Michael Jones had notified FMCS and the Department that he is no longer able to fulfill the role. Therefore, Vincent Andrews will move from the alternate role to the Primary. The alternate position will remain vacant for now.

Membership

The following individuals are the members of the Student Loan Debt Relief Negotiated Rulemaking Committee:

Community of Interest	Primary Negotiator	Alternate Negotiator
Civil Rights Organizations	Wisdom Cole, NAACP	India Heckstall, Center for Law and Social Policy
Legal Assistance Organizations that Represent Students or Borrowers	Kyra Taylor, National Consumer Law Center	Scott Waterman, Student Loan Committee of the National Association of Chapter 13 Trustees
State Officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education.	Lane Thompson, Oregon DCBS - Division of Financial Regulation	Amber Gallup, New Mexico Higher Education Department
States Attorneys General	Yael Shavit, Office of the Massachusetts Attorney General	Josh Devine, Missouri Attorney General's Office
Public Institutions of Higher Education, Including Two-Year and Four-Year Institutions	Melissa Kunes, The Pennsylvania State University	J.D. LaRock, North Shore Community College
Private Nonprofit Institutions of Higher Education	Angelika Williams, University of San Francisco	Susan Teerink, Marquette University
Proprietary Institutions	Kathleen Dwyer, Galen College of Nursing	Belen Gonzalez, Mech-Tech College
Historically Black Colleges and Universities, Tribal Colleges and Universities and Minority-Serving Institutions (institutions of higher education eligible to receive Federal Assistance under title III, parts A and F, and title V of the HEA)	Sandra Bohan, Salish Kootenai College	Carol Peterson, Langston University
Federal Family Education Loan (FFEL) Lenders, Servicers or Guaranty Agencies	Scott Buchanan, Student Loan Servicing Alliance	Benjamin Lee, Ascendium Education Solutions, Inc.
Student Loan Borrowers Who Attended Programs of Two-Years or Less	Ashley Pizzuti, San Joaquin Delta College	David Ramirez, Pasadena City College
Student Loan Borrowers Who Attended Four-Year Programs	Sherrie Gammage, The University of New Orleans	Sarah Christa Butts, University of Maryland

Student Loan Borrowers Who Attended Graduate Programs	Richard Hasse, State University of New York at Stony Brook	Dr. Jalil Bishop, University of California, Los Angeles
Currently Enrolled Postsecondary Education Students	Jada Sanford, Stephen F. Austin University	Jordan Nellums, University of Texas
U.S. Military Service Members, Veterans, or Groups Representing them	Vincent Andrews, Veteran	Vacant
Consumer Advocates	Jessica Ranucci, New York Legal Assistance Group	Ed Boltz, Law Offices of John T. Orcutt, P.C.
Individuals with Disabilities or Groups Representing them	John Whitelaw, Community Legal Aid Society, Inc. (CLASI)	Waukecha Wilkerson, Sacramento State University
Federal Negotiator	Tamy Abernathy, Director of Policy Coordination Group for the Office of Post Secondary Education	

The Agenda

The Department provided draft redlined regulatory text for the negotiators to consider one week prior to the Session. Throughout the two-day session the parties addressed the following:

- Regulatory Text ahead of Subpart G
- Students who owe more than they borrowed
- Long time in repayment
- Borrowers that were eligible but did not apply
- FFEL
- Low financial value programs
- Gainful Employment

The Department also provided an Issue Paper on Hardship one week prior to the start of Session 2 as well as posting on the Department’s website.

The Department provided an overview of the paper. There were eight questions that were read and discussed in depth one at a time by the negotiators and the Department.

1. Applying a standard used in providing student loan discharges through bankruptcy in the Department’s regulations would require the Department to establish a standard for review. At present, bankruptcy discharges are governed by an undue hardship standard, which courts have interpreted using the *Brunner* test (or another, similar test called “totality of the circumstances”). This relies upon three factors: (1) being unable to maintain a minimal standard of living, (2) the financial circumstances are unlikely to change, and (3) there’s been a good faith effort to repay their loans. While a hardship process under the Higher Education Act need not be subject to the same test, these standards may be informative of the considerations other

policymakers have used to identify hardship. Given that, which elements, if any, of this undue hardship consideration would be appropriate to adopt here? How can they be assessed in a manner consistent with the Department's limited capacity for individualized review?

2. Many of the forms of hardship identified, such as familial wealth or significant expenses for medical or childcare, are not obtainable from the Department's administrative records. Given that, what types of administrative data might be available to the Department related to the areas of hardship identified?
3. How should the Department consider operational limitations in administering a hardship process, such as limited resources, the need to rely on other agencies or external parties to provide data, and the challenges in requiring borrowers to complete applications?
4. If the hardship process was based upon an application, what upfront criteria should be put in place before a borrower could apply, given the significant operational limitations on an application-based approach?
5. The Department already offers income-driven repayment plans to assist borrowers who are facing monthly financial hardships over an extended period. Should a hardship approach consider past, present, and future circumstances creating additional financial hardship? How could the Department account for past, present, and future potential borrower situations in a streamlined manner?
6. IDR plans are based on Federal poverty guidelines, which vary by family size. The Department uses the Federal poverty guidelines as an indicator of the amount of income needed for necessities that should be protected from student loan payments, such as food and housing. How should the Department determine whether the Federal poverty guidelines are or are not a reasonable approximation of a particular borrower's necessary expenses?
7. Which of the items proposed by negotiators above in the summary from Session 1 are most indicative of a hardship that would not otherwise be captured by an existing Federal program, such as income-driven repayment, total and permanent disability discharges, or something else?
8. What thresholds or standards should the Department use for the items above to determine if a borrower is experiencing hardship?

Public Comment

The Committee provided a sixty (60) minute opportunity for public comment at the end of each day. Public comment was received on both days of the session.

Next Meeting

The next meeting will be held via Zoom Gov December 11 & 12, 2023.

Next Steps

FMCS will distribute a final summary and a final agenda to the negotiators. In addition, the Department will distribute draft regulatory policy text prior to the next negotiation session. Any redlined regulatory text that committee members want to share with the Department should be sent to the facilitators no later than close of business on November 14, 2023. Additionally, any questions members have should be directed to the facilitators. All requests for a meeting with the Department should be sent to the facilitators to seek arrangements.

Committee members will communicate with others within their communities of interest to inform and get feedback from them.