

**NASFAA's Webinar Series  
on Reauthorization**

**Negotiated Rulemaking:  
Report to the Membership**

**June 2, 2009**

# Negotiated Rulemaking: Report to the Membership

June 2, 2009

## Agenda

Introduction

Loan Issues, Lender and Guaranty Agency Topics (Team I)

Loan Issues, School Topics (Team II)

Q&A on loan issues

Discretionary Grant Issues (Team IV)

General and Non-Loan Program Issues (Team V)

Q&A

**NASFAA Webinars**  
**Negotiated Rulemaking: Report to the Membership**  
**Presented June 2, 2009**

National Association of Student  
Financial Aid Administrators

**Negotiated Rulemaking:  
Report  
to the  
Membership**

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NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

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Introduction: NASFAA Staff

**Eunice Powell**  
Associate Director  
Professional Assessment, Training, &  
Regulatory Assistance (PATRA)  
NASFAA Staff  
Moderator

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Introduction: Primary Negotiator

**Heather McDonnell**  
Director of Financial Aid  
Sarah Lawrence College  
Team I:  
Loan Issues for  
Lenders and Guaranty Agencies

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# NASFAA Webinars

## Negotiated Rulemaking: Report to the Membership

Presented June 2, 2009

Introduction: Primary Negotiator

**Justin Draeger**  
Vice-President of Public Policy,  
Planning and Development  
NASFAA staff

Team II:  
Loan Issues for Schools

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Introduction: Primary Negotiator

**Jennifer Martin**  
Assistant Director, PATRA  
NASFAA Staff

Team IV:  
Discretionary Grants (TRIO, GEAR-UP,  
and Migrant/Seasonal Worker Programs)

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Introduction: Primary Negotiator

**Karen McCarthy**  
Assistant Director, PATRA  
NASFAA Staff

Team V:  
General and Non-Loan Program Issues

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# NASFAA Webinars

## Negotiated Rulemaking: Report to the Membership


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Introduction: Alternate Negotiator

**Joan Berkes**  
Director of Legislative and  
Regulatory Analysis  
NASFAA Staff

Team V:  
General and Non-Loan Program Issues

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Questions, please!

If you wish to ask a  
question, please do so by using  
the "QUESTION" box in the lower  
right hand corner  
of your screen

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Download Handouts for this Webinar

- Handouts are available for download on the NASFAA Web site at the NASFAA Webinar Center and will remain available at the end of this webinar

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# NASFAA Webinars


## Negotiated Rulemaking: Report to the Membership

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Technical Assistance

- For technical assistance, contact Chris McInnis at (202) 785-6954.
- You may also ask for help by writing to [Webinars@NASFAA.org](mailto:Webinars@NASFAA.org)

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Time for Questions



**Your  
Questions,  
Please!**

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Thank you for joining us!

Please join us again on  
Thursday, June 11, 2009 at  
1:30 p.m. EDT

Professional Judgment –  
It's Still Your Decision

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# NASFAA Webinars


## Introduction to Topic

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Introduction to Topic

- Negotiated Rulemaking committees operate by consensus on entire package
  - Tentative agreements reached along the way on individual issues
- Loan teams reached consensus
- Discretionary Grants team and General Provisions teams did not reach consensus

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Introduction

- Consensus binds ED to use agreed-upon language for Notice of Proposed Rulemaking (NPRM)
- Consensus precludes negative comment by negotiators
- Lack of consensus frees ED to propose whatever language it chooses, and negotiators to comment as they wish

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Introduction

- NPRM: Whether or not consensus was reached, public comment is important
- How do proposed rules play out at your campus?
  - Involve all affected campus offices & personnel
- Commend what you like
- Offer alternatives to what won't work well

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**NASFAA Webinars**  
**Team I: General and Lender Loan Issues**  
Presented June 2, 2009

National Association of Student  
Financial Aid Administrators

**Team I:  
General and Lender  
Loan Issues**

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**The Process Works!**

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**Negotiations and Caucuses**

- The evolution of regulation is an intricate discussion of relevance and appropriateness from each sector. The initial language gets revisited at a minimum of twice per session. Caucuses emerge informally as the discussion ensues. As research and rewrites are introduced, compromise on language is reached.
- The Department was very responsive on matters and language not in statute.
- Most of Team I's issues were lender, guarantor, or servicer specific. The school representatives kept the negotiations student-centric and often corrected misinformation or misunderstandings concerning our role in the issues.

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# NASFAA Webinars


## Team I: General and Lender Loan Issues

Presented June 2, 2009

Color Coding of Issues

-  Reached consensus easily
-  Some controversy
-  Almost the deal breaker

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The Issues

- Determining Borrower Eligibility for In-School Deferment
  - ✓ Notification requirement for borrowers granted a deferment on an unsubsidized loan
- Borrower Notification When the Transfer, Sale, or Assignment of a Loan Results in a Change in the Party to Whom Payments Must be Sent
  - ✓ Notifications required when a lender no longer exists or participates in FFEL

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The Issues

- Lender and Guaranty Agency Prohibited Inducements
  - ✓ Quid pro quo issues
- Lender Forbearance and Borrower Contact Requirements
  - ✓ More transparency

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# NASFAA Webinars


## Team I: General and Lender Loan Issues

Presented June 2, 2009

Issues, con't.

- **Applicability of the Servicemembers Civil Relief Act to FFEL and Direct Loan Borrowers and related FFEL Lender Special Allowance Payment Calculations**
  - ✓ Automatic deferments
- **Guaranty Agency Notifications to Borrowers in Default; Financial and Economic Literacy for Rehabilitated Borrowers**
  - ✓ "National credit bureau" definition

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More Issues

- **PLUS Loan Deferments and Interest Capitalization**
  - ✓ Capitalization occurs at the point the loan enters repayment (not at disbursement)
- **Consolidation Loan Borrower Eligibility and Applicant Disclosures**
  - ✓ FFEL borrowers consolidating into DL can take advantage of the no interest accrual for active duty servicemembers

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More Issues

- **Consumer Credit Reporting After Loan Rehabilitation; Eligibility for Loan Rehabilitation**
  - ✓ New reporting requirements for defaulted loans that have been rehabilitated
- **FFEL and Direct Loan Teacher Loan Forgiveness**
  - ✓ Adds employment at educational service agencies for forgiveness

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**NASFAA Webinars**  
**Team I: General and Lender Loan Issues**  
Presented June 2, 2009

More Issues, con't.

- Required Education Loan Borrower Disclosures by FFEL Lenders
  - ✓ Truth in Lending (TILA) disclosures
- Consumer Education Information Provided by Guaranty Agencies
  - ✓ Must work with schools to develop consumer education materials

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Even more

- Consumer Education Information Provided by Guaranty Agencies
  - ✓ Must work with schools to develop consumer education materials
- New Audit Requirement for FFEL School Lenders and Eligible Lender Trustees (ELTs) Originating FFEL Loans for an Institution or School-Affiliated Organization
  - ✓ Rules for schools that make or originate loans

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Issues

- Loan Discharges Based on Total and Permanent Disability
  - ✓ Improves the TPD process and communication
- Required Education Loan Borrower Disclosures by Lenders
  - ✓ New Part 601 disclosure requirements for FFEL and private education loans

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NASFAA Webinars  
Team II: School-Based Loan Issues  
Presented June 2, 2009

National Association of Student  
Financial Aid Administrators

**Team II:  
School-Based Loan  
Issues**

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**CONSENSUS**

**Ingredients:**

*Take 14 Issues, add 1 Letter to the Federal Reserve,  
1 Letter to Congress, and add plenty of debate and  
compromise. Stir vigorously for three months.*

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Color Coding of Issues

-  Reached consensus easily
-  Some controversy
-  Almost the deal breaker

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# NASFAA Webinars


## Team II: School-Based Loan Issues

Presented June 2, 2009

School-Based Loan Issues

- **Issue 1: Required Disclosures for Covered Entities**
- **Issue 2: Program Participation Agreement (PPA) – Code of Conduct**
- **Issue 3: Disclosures of Reimbursements for Service on Advisory Boards**
- **Issue 4: PPA – Private Education Loan Certification**
- **Issue 5: Information and Dissemination Activities**
- **Issue 6: Exit Counseling**
- **Issue 7: PPA – Preferred Lender Lists**

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School-Based Loan Issues

- **Issue 8: Cohort Default Rate Calculation, Institutional Eligibility, and Default Prevention Plans**
- **Issue 9: Entrance Counseling**
- **Issue 10: Direct Loan Borrower Disclosures – DROPPED**
- **Issue 11: Mandatory Assignment of Defaulted Loans – DROPPED**
- **Issue 12: Expansion of TEACH, Head Start, and Law Enforcement Cancellation Categories**
- **Issue 13: Addition of New Public Service Cancellation Categories**
- **Issue 14: Military Service Cancellation**

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Program Participation Agreement (PPA) Changes (§668.14)

- Code of conduct
- Preferred Lender Lists
- Private education loan certification (self certification)
  - Resulted in a [letter to Congress](#) seeking additional technical amendments to the HEOA

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# NASFAA Webinars

## Team II: School-Based Loan Issues

Presented June 2, 2009

### Advisory Board Disclosures (§668.16)

- Report to ED any reasonable reimbursement paid or provided by a lender
- Reasonable = applicable state government reimbursement policy applicable to the school or federal cost principles (See OMB Circulars [A-21](#) or [A-122](#))

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### Information and Dissemination Activities (§668.42)

Describe for prospective and enrolled students the terms and conditions of loans students receive under the FFEL, Direct Loan, and Perkins Loan programs in addition to a general description of the programs.

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### Entrance & Exit Counseling

- Incorporates several statutory changes to be incorporated into entrance counseling for FFEL and Direct Loans and exit counseling for Perkins, FFEL, and Direct Loans
- Incorporates other changes about *how* entrance and exit counseling may be performed

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# NASFAA Webinars

## Team II: School-Based Loan Issues

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### Perkins Loan Issues

- Expansion of TEACH, Head Start, & Law Enforcement cancellation categories on Federal Perkins Loans
- Amend loan cancellation provisions for members of the military in areas of hostilities
  - For service that ended prior to August 14, 2008, caps maximum loan amount that can be cancelled to 50 percent outstanding loan balance
  - For service that ended after August 14, 2008, up to 100 percent of the outstanding loan amount can be cancelled

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### Cohort Default Rate Calculation, Institutional Eligibility, & Default Prevention Plans

- Creates a new “Subpart N” to implement the new three-year cohort default rate provisions
- Sanctions for a cohort default rate that is 30 percent or above would not be imposed before 2014

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### Required Disclosures for Covered Entities

- Stumbling block
- Institutional loans, institutional payment plans, and other federal loans as “private educational loans” will not be subject to preferred lender arrangements

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**NASFAA Webinars**  
**Team II: School-Based Loan Issues**  
Presented June 2, 2009

Comments to Federal Reserve

- NASFAA, ACE, NACUBO, NAICU, & COHEAO [submitted joint comments](#) on TILA proposed rules on May 26
- Definition of private educational loan
- Nonsensical nature of self-certification form

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Questions on Loan Issues?

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NASFAA Webinars  
Team IV: Discretionary Grants  
Presented June 2, 2009

National Association of Student  
Financial Aid Administrators

**Team IV:  
Discretionary Grants**

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Discretionary Grants

- Migrant Education
- GEAR UP
- TRIO Programs

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Migrant Education

- Definitions
- Conforming changes
- Incorporating current administrative practice into regulation

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# NASFAA Webinars

## Team IV: Discretionary Grants

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**GEAR UP**

- Priority
- Funding rules
- Duration of awards
- Matching

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**GEAR UP**

- Required and allowable services
- Scholarship component
- Continuity of student services

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**TRIO Programs**

- Number of applications/branch campuses
- Definitions
- Required and permissible services

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**NASFAA Webinars**  
**Team IV: Discretionary Grants**  
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TRIO Programs

- Outcome criteria
- Updates to regulations
- Review process for unsuccessful applicants

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Discretionary Grants

- Team IV failed to reach consensus
- Issues that prevented consensus
  - Allowable costs for Talent Search
  - Appeals process for unsuccessful TRIO applicants

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NASFAA Webinars  
Team V: General Issues  
Presented June 2, 2009

National Association of Student  
Financial Aid Administrators

**Team V:  
General and Non-Loan  
Program Issues**

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Team V: 31 Issues

- Pell Grant, FWS, TEACH Grant programs
- Student consumer information, policies, and procedures
- Proprietary school issues
- LEAP and GAP programs
- Miscellaneous (anything that doesn't fit elsewhere!)

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Pell Grant: **Year-Round Pell**

Permits second Scheduled Award for student to accelerate his or her progress to degree or certificate, if enrolled at least half-time

- "Acceleration"
- Placement of cross-over summer terms
- Recalculation
- Transfer students

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# NASFAA Webinars

## Team V: General Issues

Presented June 2, 2009

### Pell Grant: Children of Soldiers Killed in Certain Action

- Reduces EFC to zero for surviving child
- Must applicant initially be Pell-eligible to qualify?
  - Applicable only to Pell Grant
  - Regulations do not address procedural issues (identification and notification)

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### Readmission for Servicemembers

- “Promptly readmit”
- “Same academic status”
- Institutional charges and equipment charges

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### Federal Work-Study

- Most HEOA changes were straightforward, no need for negotiations
- Conform FWS rules to the cash management rules
  - Not related to HEOA, but added to the agenda by the negotiators

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# NASFAA Webinars

## Team V: General Issues

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### Consumer Information: Outcomes

- **Employment placement information**
  - Consensus withheld
  - Requiring disclosure of placement rate if the school calculates one
- Types of graduate and professional education in which 4-year graduates enrolled
- Retention rates
- Further disaggregation of graduation or completion rates

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### Fire Safety Standards

- Annual fire safety report
- Fire log
- Report of fire statistics to ED
- Attempt to mimic campus security rules where logical
- Definitions are important

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### Missing Person Procedures

- Applies only to schools with on-campus housing
- Per HEOA, contact information must be “confidential”
- Tentative agreement: accessible only to authorized campus officials, and may not be disclosed except to law enforcement officials outside of a missing person investigation

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**NASFAA Webinars**  
**Team V: General Issues**  
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**Emergency Response and Evacuation Procedures**

Statement of policy must include:

- Procedures to immediately notify campus community upon confirmation of significant threat to health or safety of students or employees occurring on campus
- Description of the process and the titles of the person or organization that will carry out the above procedures

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**Emergency Response and Evacuation Procedures**

Statement of policy must include (continued):

- Procedures for disseminating emergency information to the larger community
- Procedures to test the emergency response and evacuation procedures at least annually
- Statement that the school will take into account only the safety of the community and will follow its emergency notification procedures unless doing so will compromise efforts to contain emergency

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**Other Consumer Information Issues**

- Peer-to-peer file sharing
  - Involve IT staff in reviewing NPRM
- Institutional plans for improving academic program
  - School decides what is a plan and when it becomes a plan

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**NASFAA Webinars**  
**Team V: General Issues**  
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**Proprietary School Issues: 90/10 Rule**

- As before, for-profit institutions must derive at least 10% of their revenue from non-Title IV sources
- Law changed consequences of and penalty for failure to meet rule
- Source of 10% caused debate
  - Net present value of loans
  - Tuition discount vs. scholarship

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**Teach-Out Agreements**

Issues revolve around acquiring closed school as an additional location

- Two-year rule
- Closed school's liabilities
- Closed school's default rate

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# Negotiated Rulemaking: Winter/Spring 2009

## Team V Issues

- Federal Pell Grant
  - Year-round grants
  - Children of soldiers
- Readmission for Servicemembers
- Federal Work Study
  - Employment
    - ✓ Teaching civics, raising awareness of government functions or resources, or increasing civic participation
    - ✓ Priority employment in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations
  - Conform the FWS rules to the cash management rules
    - ✓ Authorizations
    - ✓ Requiring a bank account
    - ✓ Stored-value cards and similar devices
    - ✓ \$200 prior-year charges
  - Definition of Community Service
  - Flexible use of funds to pay disaster-affected students
  - Work Colleges
- Consumer Information
  - Outcomes
    - ✓ The placement of, and types of employment obtained by, graduates of the institutions' degree or certificate programs
    - ✓ The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled
    - ✓ Retention rates of certificate- or degree-seeking undergraduates
    - ✓ Modification of graduation and completion rates
  - Fire safety standards
  - Missing person procedures
  - Hate crime reporting
  - Emergency response and evacuation procedures
  - Peer-to-peer file sharing
  - Institutional plans for improving academic program

- Proprietary School-Specific Issues
  - 90/10 (Non-Title IV revenue requirement)
    - ✓ Net present value of loans
    - ✓ Tuition discount and scholarships
  - Baccalaureate in “liberal arts” in proprietary schools
- Teach-Out Requirements and Procedures
- TEACH Grant Extenuating Circumstances
- Students in Specialized Programs for Intellectual Disabilities
- LEAP
  - Non-federal share
  - Notification to students of source of LEAP funds
- GAP
  - Program activities – partnerships
  - Program activities – award
  - Program activities – early notification
  - Applicability of LEAP program requirements in GAP
  - Allotment: application
  - Allotment: determination
  - Matching
  - Statutory and regulatory relief
  - Estimated financial assistance