

DATE : March 3, 2007
TO : Loans Committee Members
FROM : Dan Madzellan
SUBJECT : Materials for the March 12-14 negotiating session

Enclosed are most of the materials for the next negotiating session. As with the materials for the second session, these will be posted to the Department's Negotiated Rulemaking website in a few days, but you are free to share this information as you see fit.

Before continuing, I want to thank the negotiators for their work "away from the table" over the past several weeks, and for sharing those results with the Department earlier this week. While the enclosed draft language might not reflect your suggestions, this does not mean we would not discuss your interests and concerns next week.

Included in this posting is a single package of draft regulatory language ("contextual format") in both pdf and MSWord formats. This package does not include language for preferred lenders nor prohibited inducements. We plan to provide you our language for these two provisions on Monday, March 5. (Note: I will be out of the office on Monday, so my colleague David Bergeron has agreed to forward the language for these two provisions to the group.) Also, we are not providing language for loan discharges for the crime of identity theft. Based on the discussions we've had both with outside parties and internally, the Department is proposing to eliminate this issue from consideration in this negotiated rulemaking session. We can discuss the Department's rationale for our decision at the March session.

The language again is provided in redline/strikeout contextual format. We've tried to take the language we provided for the February session and make changes to it in such a way as to preserve a history of the modifications. We hope you don't find this text too confusing. We are also maintaining the issue identification scheme (e.g. "FFEL/DL 7" for Frequency of Capitalization). However, I do want to point out a change with respect to MPN record retention ("FFEL/Perkins 2") and e-signature certification ("FFEL/Perkins 3").

Recall that in the February session we focused on these two issues programmatically. As a result, most of the discussion was centered on lender certification of e-signatures. For the March session, we want to separate the issues to help ensure a fuller discussion. Therefore, the language for the retention issue ("FFEL/Perkins 2") includes both FFEL and Perkins. Similarly, the language for the certification issue ("FFEL/Perkins 3") includes both programs. As you will see, this approach results in duplication of language across the two issues. Of course, the amendatory language that is published as an NPRM will not have this duplication.

Speaking of amendatory language, we are planning to provide that to you next week, probably on Wednesday. As you know, in the negotiated rulemaking process we aim for agreement on the language that will be published as a proposed rule in the Federal Register. Therefore, we have been working on a package of amendatory language that reflects the contextual language that we

are providing. Of course, any changes to the discussion draft (contextual format) would be reflected in the amendatory package.

With respect to an unscheduled future negotiating session, we are not committing ourselves to one at this time. However, we have reserved space here in our K Street office for April 18-20 for a fourth session if it is deemed appropriate to have an extra session. That determination depends largely on what the group accomplishes at the March session.

See you on the 12th.