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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2015-OESE-0130]

Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Intent to establish a negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee prior to publishing proposed regulations to implement part A of title I, Improving Basic Programs Operated by Local Educational Agencies, of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). The negotiating committee will include representatives of constituencies that are significantly affected by the topics proposed for negotiations, including Federal, State, and local education administrators, tribal leadership, parents and students, including historically underrepresented students, teachers, principals, other school leaders (including charter school leaders), paraprofessionals, members of State and local boards of

education, the civil rights community, including representatives of students with disabilities, English learners, and other historically underserved students, and the business community. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee, and we set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The dates, times, and locations of the committee meetings are set out in the Schedule for Negotiations section in the SUPPLEMENTARY INFORMATION section of this notice.

ADDRESSES: Submit your nominations for negotiators to James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W246, Washington, DC 20202. Telephone (202) 260-9737 or by email: [OESE.ESSA.nominations@ed.gov](mailto:OESE.ESSA.nominations@ed.gov).

FOR FURTHER INFORMATION CONTACT: James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W246, Washington, DC 20202. Telephone (202) 260-9737 or by email: [OESE.ESSA.nominations@ed.gov](mailto:OESE.ESSA.nominations@ed.gov).

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background:

On December 10, 2015, the President signed into law the ESSA, amending the ESEA. Among other things, the ESSA reauthorizes, for a four-year period, programs under title I of the ESEA, which are designed to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.

On December 22, 2015, we published a request for information and notice of meetings (RFI) in the Federal Register (80 FR 79528), seeking advice and recommendations on regulatory issues under title I of the ESEA, and providing notice of regional meetings at which stakeholders were able to provide such advice and recommendations. Those meetings were held on January 11, 2016, in Washington, DC, and on January 19, 2016, in Los Angeles, California. The Department will post transcripts from the hearings on its Web site at <http://www2.ed.gov/policy/elsec/leg/essa/index.html> as soon as they are available.

In response to the RFI, the Department received written comments from more than 370 individuals and organizations. Those written comments may be viewed through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Instructions for finding comments are available on the site under "How to Use Regulations.gov" in the Help section. Individuals can enter docket ID ED-2015-OESE-0130 in the search box to locate the appropriate docket.

Regulatory Issues: After considering the advice and recommendations provided at the regional meetings and through written comments, we have decided to establish a negotiating committee to:

(1) Prepare proposed regulations that would update existing assessment regulations to reflect changes to section 1111(b)(2) of the ESEA, including:

(i) Locally selected nationally recognized high school assessments, under section 1111(b)(2)(H);

(ii) The exception for advanced mathematics assessments in 8th grade, under section 1111(b)(2)(C);

(iii) Inclusion of students with disabilities in academic assessments, including alternate assessments based on alternate academic achievement standards for students

with the most significant cognitive disabilities, subject to a cap of 1.0% of students assessed for a subject;

(iv) Inclusion of English learners in academic assessments and English language proficiency assessments; and

(v) Computer-adaptive assessments.

(2) Prepare proposed regulations related to the requirement under section 1118(b) of the ESEA that title I, part A funds be used to supplement, and not supplant, non-Federal funds, specifically:

(i) Regarding the methodology a local educational agency uses to allocate State and local funds to each title I school to ensure compliance with the supplement not supplant requirement; and

(ii) The timeline for compliance.

These topics are tentative. Topics may be added or removed as the process continues.

Selection of Negotiators: We intend to select negotiators for the committee who represent the interests that may be significantly affected by the topics proposed for negotiation. In so doing, we will comply with the requirement in section 1601(b)(3)(B) of the ESEA, that negotiators be selected from among individuals or groups that provided advice and recommendations in response to the

RFI (e.g., if a member of an organization provided a response to the RFI, then another member of that organization can be nominated and selected for the committee), including representation from all geographic regions of the United States, in such numbers as will provide an equitable balance between representatives of parents and students and representatives of educators and education officials. In addition, we will select negotiators who will contribute to the diversity and expertise of the negotiating committee. Our goal is to establish a committee that will allow significantly affected parties to be represented while keeping the committee small enough to ensure meaningful participation by all members.

We intend to select at least one negotiator for each constituency represented on the committee. For any constituency that is represented by only one negotiator, we will also select an alternate. In cases of constituencies for which an alternate is selected, the primary negotiator will participate for the purpose of determining consensus; the alternate negotiator will participate for the purpose of determining consensus only in the absence of the primary negotiator. All members, including any alternates, may speak during the negotiations.

Individuals who are not selected as members of the committee will be able to attend the committee meetings (which will be open to the public - see below).

Constituencies: The Department plans to seat as negotiators one or more individuals representing these constituencies:

- State administrators and State boards of education;
- Local administrators and local boards of education;
- Tribal leadership;
- Parents and students, including historically underserved students;
- Teachers;
- Principals;
- Other school leaders, including charter school leaders;
- Paraprofessionals;
- The civil rights community, including representatives of students with disabilities, English learners, and other historically underserved students;
- The business community; and
- Federal administrators.

The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. An individual selected as a negotiator will be

expected to represent the interests of his or her constituency and participate in the negotiations in a manner consistent with the goal of developing proposed regulations on which the committee will reach consensus. If consensus is reached, the negotiator and, if applicable, his or her employer organization, is bound by the consensus and may not submit a negative comment through the public comment process on the resulting proposed regulations. The Department will not consider any such negative comments.

Nominations: Nominations should include:

- The name of the nominee and the constituency the nominee represents.
- Evidence of the nominee's expertise or experience in the topics proposed for negotiations.
- Evidence of support from individuals or groups within the constituency that the nominee will represent.
- The nominee's commitment that he or she is available to attend all negotiation sessions and will actively participate in good faith in the development of the proposed regulations.
- The nominee's contact information, including address, phone number, and email address.



Nominees will be notified of whether they have been selected as negotiators as soon as the Department's review process is completed.

Schedule for Negotiations: The committee will meet for two sessions on the following dates:

- Session 1: March 21-March 23, 2016
- Session 2: April 6-April 8, 2016

In addition, an optional third session may be scheduled for April 18-April 19, 2016, if the committee determines that a third session would enable the committee to complete its work of developing proposed regulations that reflect a final consensus of the committee. Sessions will run from 9 a.m. to 5 p.m.

The committee meetings will be held at the U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

The meetings are open to the public.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

The site of the meetings for the negotiated rulemaking process is accessible to individuals with

disabilities. If you need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in alternative format), notify the program contact person listed under FOR FURTHER INFORMATION CONTACT in advance of the scheduled meeting date. We will make every effort to meet any request we receive.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 1, 2016.

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John B. King, Jr.,  
Acting Secretary of Education.

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