



4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2017-OPE-0076]

RIN 1840-AD26

Negotiated Rulemaking Committees; Negotiator Nominations and Schedule of Committee Meetings--Borrower Defenses, Financial Responsibility, and Gainful Employment

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committees.

SUMMARY: We announce our intention to establish two negotiated rulemaking committees to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The committees will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committees, and we set a schedule for committee meetings. We also announce the creation of a subcommittee,

and request nominations for individuals with pertinent expertise to participate on the subcommittee.

DATES: We must receive your nominations for negotiators to serve on the committees on or before [INSERT DATE 30 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 and Subcommittee Meetings section in the SUPPLEMENTARY INFORMATION section.

ADDRESSES: Please send your nominations for negotiators to Wendy Macias, U.S. Department of Education, 400 Maryland Ave., SW., room 6C111, Washington, DC 20202. Telephone: (202) 203-9155 or by email: negregnominations@ed.gov.

FOR FURTHER INFORMATION CONTACT: For information about the content of this document, including information about the negotiated rulemaking process or the nomination submission process, contact: Wendy Macias, U.S. Department of Education, 400 Maryland Ave., SW., room 6C111, Washington, DC 20202. Telephone: (202) 203-9155 or by email: Wendy.Macias@ed.gov.

For information about negotiated rulemaking in general, see [The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions](#) at www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html or contact: Wendy Macias, U.S. Department of

Education, 400 Maryland Ave., SW., room 6C111, Washington, DC 20202. Telephone: (202) 203-9155 or by email: Wendy.Macias@ed.gov.

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

SUPPLEMENTARY INFORMATION: On June 16, 2017, we published a document in the *Federal Register* (82 FR 27640) announcing our intent to establish two negotiated rulemaking committees under section 492 of the HEA to develop proposed regulations to (1) revise the gainful employment regulations published by the Department on October 31, 2014 (79 FR 64889), and (2) revise the regulations on borrower defenses to repayment of Federal student loans and other matters, and on the authority of guaranty agencies in the Federal Family Education Loan (FFEL) Program to charge collection costs under 34 CFR 682.410(b)(6) to a defaulted borrower who enters into a repayment agreement with the guaranty agency. We also announced two public hearings at which interested parties could comment on the topics suggested by the U.S. Department of Education (Department) and suggest additional topics for consideration for action by the negotiated rulemaking committees. Those hearings were held on July 10, 2017, in Washington, DC, and on July

12, 2017, in Dallas, Texas. We invited parties to comment and submit topics for consideration in writing as well. Transcripts from the public hearings are available at www2.ed.gov/policy/highered/reg/hearulemaking/2017/index.html. Written comments submitted in response to the June 16, 2017, document may be viewed through the Federal eRulemaking Portal at 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-2017-OPE-0076 in the search box to locate the appropriate docket.

Regulatory Issues

After considering the information received at the public hearings and the written comments, we have decided to establish the following two negotiating committees:

Committee 1--Borrower Defenses and Financial Responsibility Issues

Committee 2--Gainful Employment Issues

We list the specific topics the committees are likely to address under Committee Topics, below.

We intend to select negotiators for the committees who represent the interests significantly affected by the topics proposed for negotiations. In so doing, we will follow the requirement in section 492(b)(1) of the HEA that

the individuals selected must have demonstrated expertise or experience in the relevant topics proposed for negotiations. We will also select individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA. Our goal is to establish committees that will allow significantly affected parties to be represented while keeping the committee size manageable.

We generally select a primary and alternate negotiator for each constituency represented on a committee. The primary negotiator participates for the purpose of determining consensus. The alternate participates for the purpose of determining consensus in the absence of the primary. Either the primary or the alternate may speak during the negotiations.

A committee may create subgroups on particular topics that may involve individuals who are not members of the committee. In addition, individuals who are not selected as members of the committee will be able to observe the committee meetings, will have access to the individuals representing their constituencies, and may be able to participate in informal working groups on various issues between the meetings.

Committee Topics

The topics the committees are likely to address are:
Committee 1--Borrower Defenses and Financial Responsibility
Issues

1. Revisions to the regulations on borrower defenses
to repayment of Federal student loans and other matters:

- Borrower Defense (34 CFR 685.206);
- Misrepresentation (34 CFR 668 subpart F);
- Program Participation Agreement (34 CFR
668.14(b));
- Closed School Discharge (34 CFR 682.402, 34 CFR
685.214);
- False Certification (34 CFR 685.215);
- Financial Responsibility and Administrative
Capability (34 CFR 668 subpart L, 34 CFR 668.16); and
- Arbitration and class action lawsuits.

2. Revisions to regulations that will address whether
and to what extent guaranty agencies may charge collection
costs under 34 CFR 682.410(b)(6) to a defaulted borrower
who enters into a loan rehabilitation or other repayment
agreement within 60 days of being informed that the
guaranty agency has paid a claim on the loan.

As part of the negotiated rulemaking process, we are
forming a Financial Responsibility Subcommittee for

Committee 1 to have preliminary discussions of whether or how the Financial Accounting Standards Board's (FASB) recent changes to the accounting standards for financial reporting (see FASB Accounting Standards Update (ASU) 2016-14 "Presentation of Financial Statement of Not-for-Profit Entities" at http://fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176168381847&acceptedDisclaimer=true) necessitate modifications to the Department's financial responsibility regulations with respect to the calculation of the Primary Reserve Ratio, the Equity Ratio, and the Net Income Ratio that are used to calculate an institution's composite score, as well as whether clarifications of terms used in the Primary Reserve, Equity, and Net Income ratio calculations in appendix B to 34 CFR part 668, subpart L, are needed as a result of changes in the financial accounting standards, including:

- For the Primary Reserve Ratio: (1) changes to the definition of "expendable net assets" in the numerator to conform to new terminology; (2) changes to the definition of "total expenses" in the denominator to conform to new terminology; and (3) clarification of the treatment of endowment losses, terms of endowments, retirement liabilities, long-term debt, and construction-in-progress.

- For the Equity Ratio, changes to the definition of “modified net assets” in the numerator to conform to new terminology.

- For the Net Income Ratio: (1) changes to the definition of “change in unrestricted net assets” in the numerator to conform to new terminology; (2) the addition of losses from underwater endowments to the numerator to reflect changes in treatment; (3) changes to the definition of “total unrestricted revenue” in the denominator to conform to new terminology; (4) clarification of the treatment of other investment and pension trust fund losses; and (5) changes to the treatment of leases.

Subcommittees are formed to address specified issues and to make recommendations to the committee.

Subcommittees are not authorized to make decisions for the committee. The Financial Responsibility Subcommittee may be comprised of some Committee 1 members (negotiators) as well as individuals who are not committee members, but who have expertise that will be helpful in developing proposed regulations. Therefore, in addition to asking for nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on this committee (see Constituencies for Negotiator Nominations), we are asking for nominations for

individuals with specific types of expertise to serve on the Financial Responsibility Subcommittee (see Areas of Expertise for Financial Responsibility Subcommittee). The topics for the subcommittee are primarily focused on issues affecting non-profits, but may touch issues that affect other sectors, so we welcome nominees with expertise across institution types. The subcommittee meetings will be held between committee meetings (see Schedule for Negotiations and Subcommittee Meetings). Before the conclusion of the negotiations, the Financial Responsibility Subcommittee will present any recommendations for changes to Committee 1 for its consideration.

Committee 2--Gainful Employment Issues

Revisions to the gainful employment regulations in 34 CFR part 668, subpart Q, including, but not limited to, the debt-to-earnings rates measure, sanctions, and reporting and disclosure of information, as well as related reporting and disclosure regulations in 34 CFR 668.41.

Topics for both committees may be added or removed as the process continues.

Constituencies for Negotiator Nominations

We have identified the following constituencies as having interests that are significantly affected by the topics proposed for negotiations. The Department plans to

seat as negotiators individuals from organizations or groups representing these constituencies.

Committee 1--Borrower Defenses and Financial Responsibility Issues

- Students and former students.
- Consumer advocacy organizations.
- Legal assistance organizations that represent students and former students.
- Groups representing U.S. military service member or veteran Federal student loan borrowers.
- Financial aid administrators at postsecondary institutions.
- General counsels/attorneys and compliance officers at postsecondary institutions to address issues related to establishing a process for reviewing borrower defense claims and determining institutional liabilities associated with such claims, as well as administrative repayment liabilities for this topic through program reviews and audit determinations under the Department's regulations.
- Chief financial officers and experienced business officers at postsecondary institutions to address

issues such as institutional financing and liability, as opposed to student billing.

- State attorneys general and other appropriate State officials.
- State higher education executive officers.
- Institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA.
- Two-year public institutions of higher education.
- Four-year public institutions of higher education.
- Private, nonprofit institutions of higher education.
- Private, for-profit institutions of higher education with an enrollment of 450 students or less.
- Private, for-profit institutions of higher education with an enrollment of 451 students or more.
- FFEL Program lenders and loan servicers.

- FFEL Program guaranty agencies and guaranty agency servicers (including collection agencies).
- Accrediting agencies.

Committee 2--Gainful Employment Issues

- Students and former students.
- Consumer advocacy organizations.
- Legal assistance organizations that represent students and former students.
- Groups representing U.S. military service member or veteran Federal student loan borrowers.
- Financial aid administrators at postsecondary institutions.
- General counsels/attorneys and compliance officers at postsecondary institutions.
- Chief financial officers and experienced business officers at postsecondary institutions.
- State attorneys general and other appropriate State officials.
- State higher education executive officers.
- Business and industry (for example, labor economists or data experts).

- Institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA.
- Two-year public institutions of higher education.
- Four-year public institutions of higher education.
- Private, nonprofit institutions of higher education.
- Private, for-profit institutions of higher education with an enrollment of 450 students or less.
- Private, for-profit institutions of higher education with an enrollment of 451 students or more.
- Accrediting agencies.

The goal of each committee is to develop proposed regulations that reflect a final consensus of the committee. Consensus means that there is no dissent by any member of a negotiating committee, including the committee member representing the Department. An individual selected

as a negotiator is expected to represent the interests of his or her organization or group 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, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments on the proposed regulations that are submitted by members of such an organization or group.

Areas of Expertise for Subcommittee on Financial Responsibility

The Department plans to select individuals from organizations or groups with expertise in both financial accounting standards and the Department's financial responsibility standards for institutions for participation on the Financial Responsibility Subcommittee, which is part of Committee 1. Nominations must include evidence of the nominee's specific knowledge in these areas. Such individuals from organizations or groups may include, but are not limited to, representatives of:

- Private, nonprofit institutions of higher education, with knowledge of the accounting

standards and title IV financial responsibility requirements for the private, nonprofit sector.

- Private, for-profit institutions of higher education, with knowledge of the accounting standards and title IV financial responsibility requirements for the for-profit sector.
- Accrediting agencies.
- Chief financial officers (to include experienced business officers and bursars) at postsecondary institutions.
- Associations or organizations that provide accounting guidance to auditors and institutions.
- Certified public accountants or firms who conduct financial statement audits of title IV participating institutions.
- The Financial Accounting Standards Board (FASB), with expertise in the applicable financial accounting and reporting standards set by FASB.

Nominations

Nominations should include:

- The committee (Borrower Defenses and Financial Responsibility or Gainful Employment) or

subcommittee (Financial Responsibility) for which the nominee is nominated.

- The name of the nominee, the organization or group the nominee represents, and a description of the interests that 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 or area of expertise that the nominee will represent.
- The nominee's commitment that he or she 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.

For a better understanding of the negotiated rulemaking process, prior to committing to participate, nominees should review [The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions](http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html) at www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.

Nominees will be notified whether or not they have been selected as soon as the Department's review process is completed.

Schedule for Negotiations and Subcommittee Meetings

Committee 1--Borrower Defenses and Financial Responsibility Issues committee will meet for three sessions on the following dates:

Session 1: November 13-15, 2017

Session 2: January 8-11, 2018

Session 3: February 12-15, 2018

Sessions will run from 9 a.m. to 5 p.m.

The November committee meetings will be held at the Holiday Inn Washington Capitol at:

550 C Street, SW., Congressional II Room

Washington, DC 20024

The January committee meetings will be held at the U.S. Department of Education at:

Union Center Plaza (UCP) Center

830 First Street, NE., Lobby Level

Washington, DC 20002

The February committee meetings will be held at the U.S. Department of Education at:

Barnard Auditorium

400 Maryland Ave, SW.

Washington, DC 20202

The committee meetings are open to the public.

The Financial Responsibility Subcommittee will meet on the following dates:

Meeting 1: November 16-17, 2017

Meeting 2: January 4-5, 2018

Meeting 3: January 29-30, 2018

Meetings will run from 9 a.m. to 5 p.m.

The subcommittee meetings will be held at the U.S.

Department of Education:

Training and Development Center

First floor

400 Maryland Ave, SW.

Washington, DC 20202

The November 16-17, 2016, meeting will be held in room 1W103. The January 4-5, 2017, meeting will be held in room 1W128. The January 29-30, 2017, meeting will be held in room 1W103. Arrangements will be made to allow members to attend remotely.

The subcommittee meetings are not open to the public.

Committee 2--Gainful Employment Issues committee will meet for three sessions on the following dates:

Session 1: December 4-7, 2017

Session 2: February 5-8, 2018

Session 3: March 12-15, 2018

Sessions will run from 9 a.m. to 5 p.m.

The December committee meetings will be held at the
U.S. Department of Education at:

Union Center Plaza (UCP) Learning Center

830 First Street, NE., Lobby Level

Washington, DC 20002

The February committee meetings will be held at the
U.S. Department of Education:

Barnard Auditorium

400 Maryland Ave, SW.

Washington, DC 20202

The March committee meetings will be held at the U.S.
Department of Education at:

Potomac Center Plaza Auditorium

550 12th Street, SW.

Washington, DC 20202

The committee 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) by
contacting Wendy Macias, U.S. Department of Education, 400
Maryland Ave., SW., room 6C111, Washington, DC 20202.

Telephone: (202) 203-9155 or by email:

Wendy.Macias@ed.gov.

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. 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 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. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Kathleen A. Smith,
Acting Assistant Secretary
for Postsecondary Education.

[FR Doc. 2017-18510 Filed: 8/29/2017 8:45 am; Publication Date: 8/30/2017]