



DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2018-OPE-0076]

Negotiated Rulemaking Committee; Public Hearings

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (title IV, HEA programs). We also announce our intention to create two subcommittees for this committee. In addition, we announce three public hearings at which interested parties may comment on the topics suggested by the Department and may suggest additional topics that should be considered for action by the negotiating committee. We will also accept written comments on the topics suggested by the Department and suggestions for additional topics that should be considered for action by the negotiating committee. The Department will present negotiators with proposed regulatory language at the first negotiating session.

DATES: The dates, times, and locations for the public hearings are listed under SUPPLEMENTARY INFORMATION. We must receive written comments on the topics suggested by the Department and additional topics that should be considered for action by the negotiating committee on or before September 14, 2018.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery: The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments, address them to Aaron Washington, U.S. Department of Education, 400 Maryland Ave., SW, room 294-12, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information about the public hearings, go to www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html or contact: Aaron Washington, U.S. Department of Education, 400 Maryland Ave., SW, room 294-12, Washington, DC 20202. Telephone: (202) 453-7241. Email: aaron.washington@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: Aaron Washington, U.S. Department of Education, 400 Maryland Ave., SW, room 294-12, Washington, DC 20202. Telephone: (202) 453-7241. Email: aaron.washington@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: Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. We announce our intent to develop proposed title IV regulations by following the negotiated rulemaking procedures in section 492 of the HEA.

We intend to select participants for the negotiated rulemaking committee from nominees of organizations and groups that represent the interests significantly affected by the proposed regulations. In accordance with section 492(b)(1) of the HEA, we will select from the nominees individual negotiators who reflect the diversity among program participants.

Regulatory Issues

We intend to convene a negotiated rulemaking committee to develop proposed regulations to revise the regulations related to the Secretary's recognition of accrediting agencies in 34 CFR part 602, and related parts as described below. The proposed topics for negotiation would include:

- Requirements for accrediting agencies in their oversight of member institutions;
- Requirements for accrediting agencies to honor institutional mission;
- Criteria used by the Secretary to recognize accrediting agencies, emphasizing criteria that focus on educational quality;
- Developing a single definition for purposes of measuring and reporting job placement rates; and
- Simplifying the Department's process for recognition and review of accrediting agencies.

In addition to developing proposed regulations on the core functions of accreditation, the committee would also develop proposed regulations in a number of areas to promote greater access for students to high-quality, innovative programs by revising the regulations related to:

(1) State authorization, to address the requirements related to programs offered through distance education or correspondence courses, including disclosures about such programs to enrolled and prospective students, and other State authorization issues (34 CFR 600.9 and 668.50);

(2) The definition of "regular and substantive interaction," as that term is used in the definitions of

"correspondence course" and "distance education" in 34 CFR 600.2, 600.7, and 668.10;

(3) The definition of the term "credit hour" as it is used in 34 CFR 600.2, 602.24, 603.24, and 668.8;

(4) The requirement that an institution demonstrate a reasonable relationship between the length of a program and entry-level requirements for the recognized occupation for which the program prepares the student (34 CFR 668.8(e)(1)(iii) and 668.14(b)(26));

(5) The arrangements between an institution and another institution or organization to provide a portion of an educational program (34 CFR 668.5);

(6) The roles and responsibilities of institutions and accrediting agencies in the teach-out process (34 CFR 600.32(d) and 602.24);

(7) The barriers to innovation and competition in postsecondary education or to student completion, graduation, or employment, including, but not limited to, those contained in the Department's institutional eligibility regulations (34 CFR part 600) and student assistance general provisions (34 CFR part 668);

(8) The simplification and clarification of program requirements to minimize inadvertent grant-to-loan conversions and to improve outcomes for Teacher Education

Assistance for College and Higher Education (TEACH) Grant recipients (34 CFR part 686);

(9) Direct assessment programs and competency-based education (34 CFR 668.10), focusing on the ability of institutions to develop, and students to progress through, innovative programs responsive to student, employer, and societal needs, including consideration of regulations that are barriers to the implementation of such programs, such as certain requirements for term-based academic calendars and satisfactory academic progress; and

(10) In light of the recent United States Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), and the October 6, 2017, Memorandum for All Executive Departments and Agencies issued by the Attorney General of the United States pursuant to Executive Order No. 13798,¹ the committee would consider revisions to the various provisions of the regulations regarding the eligibility of faith-based entities to participate in the title IV, HEA programs, including the Gaining Early Awareness and Readiness for Undergraduate Programs program, and the eligibility of students to obtain certain benefits under those programs

¹ <https://www.justice.gov/opa/press-release/file/1001891/download>

(34 CFR 600.11 and parts 628, 674, 675, 676, 682, 685, 690, 692, and 694).

Finally, we intend to convene two subcommittees for this committee. One subcommittee would address proposed regulations related to direct assessment programs/competency-based education (34 CFR 668.10) focusing on the ability of institutions to develop, and students to progress through, innovative programs responsive to student, employer, and societal needs. This subcommittee could consider revisions to regulations that are barriers to the implementation of such programs, including certain requirements for term-based academic calendars and satisfactory academic progress, among other topics. The second subcommittee would make recommendations to the committee regarding revisions to the regulations regarding the eligibility of faith-based entities to participate in the title IV, HEA programs. Proposed subcommittees are formed to address specified issues and to make recommendations to the committee regarding proposed regulatory language. Subcommittees do not make decisions for the committee. While committee meetings are open to the public to attend in person, subcommittee meetings will be made available through a Department-provided livestream.

We intend to provide draft proposed regulatory language for discussion by the negotiating committee and the subcommittees prior to the first meeting of the committee or subcommittees.

After reviewing the public comments presented at the hearings and in the written submissions, we will publish a document (or documents) in the *Federal Register* announcing the specific topics for which we intend to establish the negotiated rulemaking committee and a request for nominations for individual negotiators for the committee who represent the communities of interest that would be significantly affected by the proposed regulations. We will also announce the specific topics for which we intend to establish subcommittees and request nominations for individuals with pertinent expertise to participate on the subcommittees. This document will also be posted on the Department's website at:

www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html.

Public Hearings

We will hold three public hearings for interested parties to discuss the rulemaking agenda. The public hearings will be held:

- September 6, 2018, at the U.S. Department of Education, 400 Maryland Ave., SW, Barnard Auditorium, Washington, DC 20202.

- September 11, 2018, at Xavier University, Convocation Center Annex, Room 111, Building 62, 7800 Washington Ave., New Orleans, LA 70125.

- September 13, 2018, at Gateway Technical College, SC Johnson iMET Center, 2320 Renaissance Blvd., Sturtevant, WI 53177.

The Washington, DC public hearing will be held from 9:00 a.m. to 4:00 p.m., Eastern Daylight Time. The New Orleans, LA and Sturtevant, WI public hearings will be held from 9:00 a.m. to 1:00 p.m., Central Daylight Time. Further information on the public hearing sites is available at www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html.

Individuals who would like to present comments at the public hearings must register by sending an email to negreghearing@ed.gov. The email should include the name of the presenter along with the public hearing at which the individual would like to speak, the general topic(s) the individual would like to address, and a general timeframe during which the individual would like to speak (for

example, a presenter could indicate morning or afternoon, or before 11:00 a.m. or after 3:00 p.m.). We will make the determination on a first-come, first-served basis, based on the time and date the email was received. Each participant will be limited to five minutes. The Department will notify registrants of the date and time slot reserved for them. An individual may make only one presentation at the public hearings. If we receive more registrations than we are able to accommodate, the Department reserves the right to reject the registration of an entity or individual that is affiliated with an entity or individual that is already scheduled to present comments, and to select among registrants to ensure that a broad range of entities and individuals is allowed to present. We will accept registrations for any remaining time slots on a first-come, first-served basis, beginning at 8:30 a.m. on the day of the public hearing at the Department's on-site registration table. Registration is not required to observe the public hearings; however, space may be limited.

The Department will post transcripts of the hearings to www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html. Although the Department will not be video recording the hearings, speakers should be aware that, since these

are public meetings, they may be filmed or recorded by members of the public.

Speakers may submit written comments at the public hearings. In addition, the Department will accept written comments via the Federal eRulemaking portal, and by postal mail, commercial delivery, or hand delivery. (See the ADDRESSES section of this document for submission information.)

Schedule for Negotiations

We anticipate that any committee established after the public hearings will begin negotiations in January of 2019, with the committee meeting for up to three sessions of three days each at roughly four- to eight-week intervals. The Department will post transcripts and audio of the sessions to www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html. We anticipate that any subcommittees established will begin meeting in January or February, after the first meeting of the committee. The committee and subcommittees will meet in the Washington, DC area. The dates and locations of these meetings will be published in a subsequent notice in the *Federal Register*, and will be posted on the Department's website at:

www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format by contacting Aaron Washington, U.S. Department of Education, 400 Maryland Ave., SW, room 281-13, Washington, DC 20202.

Telephone: (202) 203-9155. Email: Aaron.Washington@ed.gov.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations 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). 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.

Diane Auer Jones,

Principal Deputy Under Secretary

Delegated to Perform the Duties of Under Secretary and Assistant Secretary, Office of Postsecondary Education.

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