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DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2021-OPE-0077]

Negotiated Rulemaking Committee; Negotiator Nominations and
Schedule of Committee Meetings

AGENCY: Office of Postsecondary Education, Department of
Education.

ACTION: Intent to establish 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). The committee 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 committee and request nominations for advisors to the
committee. The Department has also set a schedule for
committee meetings.

DATES: We must receive your nominations for negotiators to
serve on the committee seven days from the date of

publication. The dates and times of the committee meetings are set out in the *Schedule for Negotiations* section in the SUPPLEMENTARY INFORMATION section. All meetings will be virtual.

ADDRESSES: Please email your nominations for negotiators to negregnominations@ed.gov. If you are unable to email your nomination, send it to Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C179, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For information about negotiated rulemaking, see "The Negotiated Rulemaking Process for Title IV Regulations - Frequently Asked Questions" at <https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>. For information about the content of this document, including additional information about the negotiated rulemaking process or the nomination submission process, contact: Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C179, Washington, DC 20202. Telephone: (202) 452-6708. Email: vanessa.gomez@ed.gov.

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

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2021, we published an announcement of our intent to establish negotiated rulemaking committees under section 492 of the HEA to develop proposed regulations related to a number of higher education practices and issues in the *Federal Register* ([86 FR 28299](#)) (Negotiated Rulemaking Committee Notice). We also announced three public hearings at which interested parties could comment on the topics suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committees. Those hearings took place virtually on June 21, June 23, and June 24, 2021.

On August 10, 2021, the Department published a *Federal Register* notice ([86 FR 43609](#)) announcing our intent to establish the Affordability and Student Loans Committee. That committee is currently meeting to address issues that include borrower defense to repayment; closed school, false certification, and total and permanent disability Federal student loan discharges; income-driven repayment; Public Service Loan Forgiveness; pre-dispute arbitration and required class action waivers; interest capitalization; and Pell Grants for people who are enrolled in prison education programs.

On October 4, 2021, we published an announcement in the *Federal Register* ([86 FR 54666](#)) of our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations related to the 90/10 rule. Section 2013 of the American Rescue Plan Act of 2021 (ARP) amended HEA section 487(a)(24) to make changes to the statutory provision that requires a proprietary institution to derive at least 10 percent of its revenues from sources that are not Federal education assistance funds. Federal education assistance funds are "Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution." We then held two additional public hearings on the topic of 90/10 on October 26 and October 27, 2021. We invited parties to comment in writing as well. Recordings and transcripts from the public hearings are available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

You may view written comments submitted in response to the aforementioned *Federal Register* notices through the Federal eRulemaking Portal at www.regulations.gov. Instructions for finding comments are available on the site under "FAQ." Enter Docket ID ED-2021-OPE-0077 in the search box to locate the appropriate docket.

Committee Topics

After considering the information received at the public hearings and the written comments, we have decided to establish the Institutional and Programmatic Eligibility Committee to address the following topics:

- (1) 90/10 under 34 CFR 668.28;
- (2) Ability to benefit under 34 CFR 668.156;
- (3) Certification procedures for participation in title IV, HEA programs under 34 CFR 668.13;
- (4) Change of ownership and change in control of institutions of higher education under 34 CFR 600.31;
- (5) Financial responsibility for participating institutions of higher education under 34 CFR 668.15 and 34 CFR part 668, subpart L, such as events that indicate heightened financial risk;
- (6) Gainful employment (formerly located in 34 CFR part 668, subpart Q); and
- (7) Standards of administrative capability under 34 CFR 668.16.

We intend to select negotiators for the Institutional and Programmatic Eligibility Committee who represent the interests of those significantly affected by the topics proposed for negotiation. In so doing, we will comply with 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 a committee 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 negotiator. The Department will provide more detailed information to both primary and alternate negotiators selected to participate on the committee about the logistics and protocols of the meetings.

Members of the public may observe the committee meetings, will have access to individuals representing their constituencies, and may be able to participate in informal working groups on issues between the meetings.

Constituencies for Negotiator Nominations

We have identified the following constituencies as having interests that are significantly affected by the

topics proposed for negotiation. We plan to include as negotiators individuals from organizations or groups representing these constituencies and/or individuals who are a part of the constituency. We particularly encourage organizations representing the interests of historically underserved and/or low-income communities to submit their nominations. We also encourage nominations for individuals who have expertise in formal or State-approved career pathways programs. Nominations should include evidence of the nominee's specific knowledge in these areas, citing specific topics outlined in the *Committee Topics* section. The Department strongly encourages nominees to list all constituencies under which they would like to be considered. The Department reserves the discretion to place a nominee in a constituency based upon their background and experience even if the individual was not nominated for that specific category. Constituencies for the Institutional and Programmatic Eligibility Committee are:

- (1) Students and student loan borrowers.
- (2) U.S. military service members, veterans, or groups representing them.
- (3) Legal assistance organizations that represent students and/or borrowers.

(4) Civil rights organizations and consumer advocacy organizations.

(5) State Attorneys General.

(6) State higher education executive officers, State authorizing agencies, and/or State regulators of institutions of higher education and/or loan servicers.

(7) Financial aid administrators at postsecondary institutions.

(8) Two-year public institutions of higher education.

(9) Four-year public institutions of higher education.

(10) Private nonprofit institutions of higher education.

(11) Proprietary institutions.

(12) Minority-serving institutions - 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, Native American-Serving Nontribal Institutions, and Asian American and Native American Pacific Islander-Serving Institutions.

(13) Accrediting agencies.

The goal of the 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 their organization or group and to 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 a member of such an organization.

Advisors

The Department also invites nominations for two advisors who will serve as a resource to the committee. These advisors will not be members of the committee and will not impact consensus. We seek an advisor from each of the following categories:

(1) A labor economist or an individual with experience in policy research, accountability, and/or analysis of higher education data.

(2) A compliance auditor with experience auditing institutions that participate in the title IV, HEA programs.

The advisors will be expected to be available throughout the duration of the Institutional and Programmatic Eligibility Committee meetings.

Nominations

We request that nominations include the information described in this section.

(1) The name of the nominee;

(2) The name of the constituency, constituencies, or advisor category for which the nominee is being nominated (see *Constituencies for Negotiator Nominations*);

(3) The nominee's place of employment or institution at which they are or were enrolled and, if different, the organization the nominee represents;

(4) A resume or evidence of the nominee's expertise and experience in the topics proposed for negotiations or in the advisor subject matter categories; and

(5) The nominee's contact information, including the nominee's email address, telephone number, and mailing address.

Please see the ADDRESSES section for submission information. We will confirm receipt of nominations to the submitter. The Department will provide additional information to those we select to serve as negotiators. Once complete, a list of negotiators will be posted here: www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.htm

1. If a constituency does not have a qualifying nominee, the Department will also provide information at that site about how any vacancies can be filled at the beginning of the January 18, 2022, committee meeting.

Schedule for Negotiations

The Institutional and Programmatic Eligibility Committee will meet for three sessions on the following dates:

Session 1: January 18-21, 2022, 10:00 a.m. to 12:30 p.m. and 1:00 p.m. to 4:30 p.m. with a public comment period from approximately 4:00 p.m. to 4:30 p.m. (Eastern time).

Session 2: February 14-18, 2022, 10:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. with a public comment

period from approximately 3:30 p.m. to 4:00 p.m. (Eastern time).

Session 3: March 14-18, 2022, 10:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. with a public comment period from approximately 3:30 p.m. to 4:00 p.m. (Eastern time).

All sessions will be conducted virtually and available for the public to view. Individuals who wish to observe the committee meetings will be required to register for each day they would like to observe. We will post registration links closer to the start of negotiations on our website at

www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html. The Department will also post recordings and transcripts of the meetings on that site.

At the end of each day (except for the final day of Session 3), the Department will reserve 30 minutes for public comment. We will provide information on how to request time to speak on our website at www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in

an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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 at www.govinfo.gov. 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 the 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

Michelle Asha Cooper,
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to Perform the Functions*

*and Duties of the
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