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DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2023-OPE-0039]

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 Federal 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. We also announce the creation
of a subcommittee, and request nominations for individuals
with pertinent expertise to participate on the
subcommittee. The Department has also set a schedule for
committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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, please contact Aaron Washington.

Telephone: (202) 987-0911. Email:
aaron.washington@ed.gov.

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 on the nomination submission process, email: negregnominations@ed.gov.

For information about the content of this document, including additional information about the negotiated rulemaking process, please contact Aaron Washington.

Telephone: (202) 987-0911. Email:
aaron.washington@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2023, we published in the *Federal Register* (88 FR 17777) an announcement of our intent to establish a negotiated rulemaking committee. We also announced public hearings at which interested parties could comment on the topics for negotiation suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committee. Those hearings took place virtually on April 11-13, 2023.

You may view written comments submitted in response to the aforementioned *Federal Register* notice through the Federal eRulemaking Portal at www.regulations.gov. Instructions for finding comments are available on the site under "FAQ." Enter Docket ID ED-2023-OPE-0039 in the search box to locate the appropriate docket.

Committee Topics

After considering the information received at the public hearing and the written comments, we have decided to establish the Program Integrity and Institutional Quality Committee (Committee) to address the following topics:

1. The Secretary's recognition of accrediting agencies under [34 CFR part 602](#) and related parts;

2. Institutional eligibility under [34 CFR 600.2](#), including State authorization as a component of such eligibility under [34 CFR 600.9](#);

3. The requirements for distance education under [34 CFR 600.2](#) that pertain to clock hour programs and reporting for students who enroll primarily online;

4. Return of title IV funds, to address requirements for participating institutions to return unearned title IV funds in a manner that protects students and taxpayers while easing the administrative burden for institutions of higher education under [34 CFR 668.22](#);

5. Cash management, to address timely student access to disbursements of title IV, HEA Federal student financial assistance and provisions related to credit balances, escheatment, and loss of such funds under [34 CFR part 668, subpart K](#); and

6. The eligibility requirements for participants in the Federal TRIO Programs.

As a part of the negotiated rulemaking process, we are forming a Federal TRIO Programs Subcommittee to expand the range of expertise and constituencies represented on this topic. The Committee will consider the subcommittee's

recommendations in its consideration of proposed regulations relating to changes to participant eligibility requirements in the Federal TRIO Programs.

The subcommittee will address TRIO participant eligibility and make recommendations to the Committee. The subcommittee is not authorized to make decisions for the Committee. The subcommittee may be comprised of some members of the Committee (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 issues to be negotiated to serve on the Committee (see Constituencies for Negotiator Nominations), we seek nominations for individuals with expertise regarding the Federal TRIO Programs, particularly the eligibility requirements, to serve on the subcommittee. Before conclusion of the negotiations, the subcommittee will present its recommendations for regulatory changes to the Committee for its consideration.

We intend to select negotiators for the 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 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 size manageable. We encourage negotiators, to the extent they are able, to demonstrate support from organizations, entities, or individuals beyond themselves.

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. The subcommittee will only include primary members. We will not select alternates for the subcommittee.

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.

At the end of each day of the main committee meetings (except for the final day of the final session), 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/2023/index.ht](http://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html)

[ml](http://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html). We will notify speakers of the time slot reserved for them and provide information on how to log in to the hearing as a speaker. An individual may make only one presentation during the public comment periods. If we receive more registrations than we can accommodate, we reserve the right to reject the registration of an entity or individual affiliated with an entity to present comments to ensure that a broad range of entities and individuals are able to present.

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 negotiators who represent these constituencies. We particularly encourage individuals or organizations representing the interests of historically underserved or low-income communities to nominate themselves. We also

encourage institutions of higher education that are currently recipients of a Federal TRIO Program grant to submit nominations under the appropriate constituency on the main committee.

Nominations should include evidence of the nominee's specific knowledge of the issues listed under the Committee Topics heading earlier in this notice. The Department strongly encourages nominees to list all constituencies under which they would like to be considered. The Department reserves the discretion to have a nominee represent a constituency based upon their background and experience even if the individual was not nominated for that specific category. Constituencies for the Committee are:

- (1) Civil rights organizations and consumer advocates.
- (2) Legal assistance organizations.
- (3) State officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education.
- (4) State attorneys general.
- (5) Students or borrowers, including currently enrolled borrowers, or groups representing them.

(6) U.S. military service members, veterans, or groups representing them.

(7) Public four-year institutions of higher education.

(8) Public two-year institutions of higher education.

(9) Private nonprofit institutions of higher education.

(10) Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority-serving institutions (institutions of higher education eligible to receive Federal assistance under title III, parts A and F, and title V of the HEA).

(11) Proprietary institutions of higher education.

(12) Institutional accrediting agencies recognized by the Secretary.

(13) Programmatic accrediting agencies recognized by the Secretary, to include State agencies recognized for the approval of nurse education.

(14) Financial aid administrators.

(15) Business officers from institutions of higher education.

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.

A negotiator is expected to represent the interests of their constituency 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.

We are also interested in nominations for members of the Federal TRIO Programs Subcommittee from individuals who represent the following groups:

- (1) Institutions of higher education.
- (2) Public or private agencies or organizations, including community-based organizations with experience in serving disadvantaged youth.
- (3) Secondary schools, including local educational agencies with secondary schools.
- (4) Current or former participants in a Federal TRIO Program.

(5) State officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education.

We encourage institutions of higher education, public and private agencies and organizations, and secondary schools that are currently recipients of a Federal TRIO Program grant to submit nominations.

Nominations

We request that nominations for both the committee and the subcommittee include the information described in this section.

(1) The name of the nominee;

(2) The name of the constituency (or constituencies) 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; and

(5) The nominee's contact information, including 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: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>. The Department will also provide information at that site about how any committee vacancies can be filled at the beginning of the first committee meeting.

Schedule for Negotiations

The Committee will meet for three sessions on the following dates:

Session 1: January 8-11, 2024.

Session 2: February 5-8, 2024.

Session 3: March 4-7, 2024.

Session times will be from 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.

The subcommittee will meet for two sessions on the following dates:

Session 1: January 12, 2024.

Session 2: February 9, 2024.

Session times will be from 10:00 a.m. to 12:00 p.m. and 1:00 p.m. to 3:00 p.m., Eastern time. There will not be a public comment period for the subcommittee meetings.

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 session 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/2023/index.html. The Department will also post recordings and transcripts of the meetings on that site.

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.

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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.

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