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DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2012-OPE-0008]

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 by 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 also announce two public hearings at which interested parties may suggest additional issues that should be considered for action by the negotiating committee. In addition, for anyone unable to attend a public hearing, we announce that the Department will accept written comments.

DATES: The dates, times, and locations of the public hearings are listed under the SUPPLEMENTARY INFORMATION section of this notice. We must receive written comments

suggesting issues that should be considered for action by the negotiating committee on or before May 31, 2012.

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 e-mail. 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 "How to Use Regulations.gov."

- Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed regulations, address them to Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006.

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

<http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html> or contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. Telephone: (202) 502-7526. E-mail: Wendy.Macias@ed.gov.

For information about negotiated rulemaking in general, see [The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions](#) at <http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html> or contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. Telephone: (202) 502-7526. E-mail: 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.

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, 1990 K Street, NW., room

8017, Washington, DC 20006. Telephone: (202) 502-7526. E-mail: Wendy.Macias@ed.gov.

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 the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select, from the nominees, individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA.

REGULATORY ISSUES

We intend to convene a committee to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of Title IV, HEA program funds, especially within the context of current technologies. In particular,

we intend to propose regulations to address the use of debit cards and other banking mechanisms for disbursing Federal Student Aid funds. In addition, we intend to propose regulations to improve and streamline the campus-based Federal Student Aid programs.

On September 26, 2011, the Department's Office of Inspector General issued an Investigative Program Advisory Report alerting the Department to the increasingly common discovery of groups of individuals who conspire to defraud the Title IV, HEA programs through distance education programs (the report is available at <http://www2.ed.gov/about/offices/list/oig/invtreports/l4210001.pdf>). In response to the report, on October 20, 2011, the Department issued Dear Colleague Letter GEN-11-17 (available at <http://ifap.ed.gov/dpcletters/GEN1117.html>) recommending actions that institutions can take to detect and prevent fraud in distance education programs and convened a Department-wide task force on the subject. The Department is now considering suggestions for regulatory changes to further help institutions combat fraud and protect students and taxpayers from fraudulent activity.

In addition, we are considering regulatory changes related to the disbursement of Title IV, HEA program funds, particularly electronic funds transfers (EFTs) made

directly to a student's bank account and available to the student via debit or another bank-provided card. We are interested in how or whether the use of EFTs, in lieu of checks, could provide one means to help prevent fraud or identify those involved in fraud rings. We are also interested in whether students should have a greater role in deciding to accept debit cards or other banking services provided through an institutionally-controlled process or contracted provider, particularly in view of the costs and fees associated with the use of those cards and services. We are requesting public input on these areas and others that the public believes should be addressed through regulations to ensure the proper use of Title IV, HEA program funds.

Finally, pursuant to Executive Order 13563, the Department issued its final "Plan for Retrospective Analysis of Existing Regulations" in August 2011 (the plan is available at <http://www2.ed.gov/policy/gen/reg/retrospective-analysis/index.html>). The Department's plan creates a defined policy, method, and schedule for identifying significant regulations, as determined under Executive Order 12866, that may be outmoded, ineffective, insufficient, or excessively burdensome, as well as

regulations that can be modified, streamlined, expanded, or repealed to be more effective and efficient, achieve better outcomes for students, and be easy to understand. As part of the retrospective analysis of existing regulations, the Department identified the need to review the regulations in 34 CFR parts 673, 674, 675, and 676 governing the campus-based Federal Student Aid programs (i.e., the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grants, and Federal Work-Study programs). The Department is considering whether to update and streamline the regulations governing these programs. We will consider changes that improve the administration and efficiency of these programs while reducing burden on regulated parties.

After a complete review of the public comments presented at the public hearings and in the written submissions, we will publish a document (or documents) announcing the specific subject areas for which we intend to establish a negotiated rulemaking committee, and a request for nominations for individual negotiators for the committee who represent the interests significantly affected by the proposed regulations.

Public Hearings

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

- May 23, 2012, at South Mountain Community College, 7050 South 24th Street, Student Union Building, Room 100-ABC, Phoenix, AZ 85042.
- May 31, 2012, at the U.S. Department of Education, 1990 K Street, NW., 8th Floor Conference Center, Washington, DC 20006.

The public hearings will be held from 9:00 a.m. to 4:00 p.m., local time. Further information on the public hearing sites, including directions, is available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html>.

Individuals desiring to present comments at the public hearings must register by sending an e-mail to negreg2012@ed.gov. The e-mail should include the name of the presenter along with 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 attempt to accommodate each speaker's preference but, if we are unable to do so, we will make the determination on a first-come first-served basis (based on the time and date the e-mail

was received). It is likely that each participant will be limited to five minutes. The Department will notify registrants indicating the specific location 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 walk-in 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.

Speakers may also submit written comments. In addition, for anyone who does not present at a public hearing, the Department will accept written comments through May 31, 2012. (See the ADDRESSES sections of this notice for submission information.)

SCHEDULE FOR NEGOTIATIONS

We anticipate that any committee established after the public hearings will begin negotiations in September 2012, with the committee meeting for up to three sessions of

approximately three days each at roughly monthly intervals. The committee will meet in the Washington, DC area. The dates and locations of these meetings will be published in a subsequent document in the Federal Register, and will be posted on the Department's Web site at:

<http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html>.

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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: <http://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.

Dated: April 26, 2012

David A. Bergeron,
Deputy Assistant Secretary for Policy, Planning,
and Innovation, delegated the authority to
perform the functions and duties of the Assistant
Secretary for Postsecondary Education.

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