



4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2013-OPE-0130]

Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings--Title IV Federal Student Aid Programs, Program Integrity and Improvement

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intention to establish.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (title IV Federal Student Aid programs). 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 we set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee 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 section in the SUPPLEMENTARY INFORMATION section.

ADDRESSES: Please send your nominations for negotiators to Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. Telephone: (202) 502-7526 or by email: wendy.macias@ed.gov.

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process or the nomination submission process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. Telephone: (202) 502-7526 or by email: wendy.macias@ed.gov.

For general information about the negotiated rulemaking process, 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>.

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 May 1, 2012, we published a notice in the Federal Register (77 FR 25658) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of title IV Federal Student Aid program funds, especially within the context of current technologies. In particular, we announced our intent to propose regulations to address the use of debit cards and other banking mechanisms for disbursing title IV Federal Student Aid program funds, and to improve and streamline the campus-based Federal Student Aid programs. We also announced two 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 committee. Those hearings were held on May 23, 2012, in Phoenix, Arizona, and on May 31, 2012, in Washington, DC. We invited parties to comment and submit topics for consideration in writing as well.

On April 16, 2013, we published a notice in the Federal Register (78 FR 22467), which we corrected on April

30, 2013 (78 FR 25235), announcing additional topics for consideration for action by the negotiated rulemaking committee. The additional topics for consideration were cash management of funds provided under the title IV Federal Student Aid programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock to credit hour conversion; gainful employment; changes made by the Violence Against Women Reauthorization Act of 2013, Public Law 113-4 (VAWA), to the campus safety and security reporting requirements in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act); and the definition of "adverse credit" for borrowers in the Federal Direct PLUS Loan Program. We announced three public hearings at which interested parties could comment on the new topics suggested by the Department and suggest additional topics for consideration for action by the negotiating committee. On May 13, 2013, we announced in the Federal Register (78 FR 27880) the addition of a fourth hearing. The hearings were held on May 21, 2013, in Washington, DC; May 23, 2013, in Minneapolis, Minnesota; May 30, 2013, in San Francisco, California; and June 4, 2013, in Atlanta, Georgia. We also

invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. Transcripts from all six public hearings are available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html>. Written comments submitted in response to the May 1, 2012, and April 16, 2013, notices may be viewed through the Federal eRulemaking Portal at [www.regulations.gov](http://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-2012-OPE-0008 in the search box to locate the appropriate docket.

On June 12, 2013, we announced our intention to establish a negotiated rulemaking committee to prepare proposed regulations to establish standards for programs that prepare students for gainful employment in a recognized occupation (78 FR 35179). On September 19, 2013, we announced our intention to establish a negotiated rulemaking committee to prepare proposed regulations to address the changes made by the VAWA to the campus safety and security reporting requirements in the Clery Act (78 FR 57571).

Regulatory Issues: After considering the information received at the regional hearings and the written comments, we have decided to establish a third negotiating committee to prepare proposed regulations to address program integrity and improvement issues for the title IV Federal Student Aid programs. We list the specific topics the Program Integrity and Improvement Committee is likely to address under Committee Topics, below.

We intend to select negotiators for the committee 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 subjects under negotiation. 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.

The committee may create subgroups on particular topics that may involve additional individuals who are not members of the committee. Such individuals who are not selected as members of the committee will be able to attend the meetings, have access to the individuals representing

their constituencies, and participate in informal working groups on various issues between the meetings. The committee meetings will be open to the public.

Committee Topics: The topics the Program Integrity and Improvement Committee is likely to address are:

- Cash management of funds provided under the title IV Federal Student Aid programs, including the use of debit cards and the handling of title IV credit balances.
- State authorization for programs offered through distance education or correspondence education.
- State authorization for foreign locations of institutions located in a State.
- Clock to credit hour conversion.
- The definition of "adverse credit" for borrowers in the Federal Direct PLUS Loan Program.
- The application of the repeat coursework provisions to graduate and undergraduate programs.

These topics are tentative. Topics may be added or removed as the process continues.

The committee's consideration of the cash management regulations will concern, in part, whether they provide

opportunities to deter fraud and otherwise ensure proper use of title IV Federal Student Aid program funds within the context of current technologies. We note that the Department has taken a number of non-regulatory steps to address the concerns in this area raised by the September 26, 2011, Office of Inspector General's (OIG) Investigative Program Advisory Report. On October 20, 2011, the Department issued Dear Colleague Letter GEN-11-17, recommending actions that institutions can take to detect and prevent fraud in distance education programs and announcing the establishment of a Department-wide task force on the subject. The Department also implemented changes to the verification requirements. For example, Dear Colleague Letter GEN-13-09, published March 8, 2013, describes Department screening procedures for students with unusual enrollment histories and requires institutions to resolve the resulting Institutional Student Information Record codes for these students. We believe that these non-regulatory efforts will mitigate the vulnerabilities identified by the OIG report, and will consider their results in deciding whether additional rule changes are needed in the future to address student fraud.

The Department continues to review the valuable testimony offered at the public hearings and the comments

submitted through the public comment process regarding other proposed rulemaking topics, and may form additional committees to consider other topics.

Constituencies: 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:

- Students.
- Legal assistance organizations that represent students.
- Consumer advocacy organizations.
- State higher education executive officers.
- State attorneys general and other appropriate State officials.
- Business and industry.
- 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, non-profit institutions of higher education.
- Private, for-profit institutions of higher education.
- Regional accrediting agencies.
- National accrediting agencies.
- Specialized accrediting agencies.
- Financial aid administrators at postsecondary institutions.
- Business officers and bursars at postsecondary institutions.
- Admissions officers at postsecondary institutions.
- Institutional third-party servicers who perform functions related to the title IV Federal Student Aid programs (including collection agencies).
- State approval agencies.
- Lenders, community banks, and credit unions.

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 the negotiating committee, including the committee member representing the Department. An individual selected as a negotiator will be 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.

Nominations: Nominations should include:

- The committee for which the nominee is nominated (Program Integrity and Improvement).
- 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 subjects to be negotiated.

- Evidence of support from individuals or groups within the constituency 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, fax number, and email address.

For a better understanding of the negotiated rulemaking process, nominees should review The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions at <http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html> prior to committing to serve as a negotiator.

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

Schedule for Negotiations: The Program Integrity and Improvement Committee will meet for three sessions on the following dates:

Session 1: February 19-21, 2014

Session 2: March 26-28, 2014

Session 3: April 23-25, 2014

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

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

Department of Education at:

1990 K Street, NW.

Eighth Floor Conference Center

Washington, DC 20006

The 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) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of the 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: [www.federalregister.gov](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: November 15, 2013.

---

Lynn B. Mahaffie,  
Acting Deputy Assistant  
Secretary for Policy,  
Planning, and Innovation,  
delegated the authority to  
perform the functions and  
duties of the Assistant  
Secretary for Postsecondary  
Education.

[FR Doc. 2013-27850 Filed 11/19/2013 at 8:45 am;

Publication Date: 11/20/2013]