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DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[DOCKET ID ED-2018-OPE-0076]

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Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings-Accreditation and Innovation

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish one 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 we set a schedule for committee meetings. We also announce the creation of three subcommittees, and request nominations for individuals with pertinent expertise to participate on the subcommittees.

DATES: We must receive your nominations for negotiators to serve on the committees on or before November 15, 2018. The dates, times and locations of the committee meetings are set out in the *Schedule for Negotiations and Subcommittee Meetings* section in the SUPPLEMENTARY INFORMATION section.

ADDRESSES: Please send your nominations for negotiators to Aaron Washington, U.S. Department of Education, 400 Maryland Ave. SW., room 294-12, Washington, DC 20202. Telephone (202) 453-7241. Email: negregnominations@ed.gov.

FOR FURTHER INFORMATION CONTACT: For information about the content of this document, including information about the negotiated rulemaking process or the nomination submission process, 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 <https://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: On July 31, 2018, we published in the *Federal Register* (83 FR 36814) an announcement of our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations related to a number of higher education practices and issues, including: (1) accreditation; (2) distance learning and educational innovation; (3) TEACH grants; and (4) participation by faith-based educational entities.

We also announced three public hearings at which interested parties could comment on the topics suggested by the U.S. Department of Education (Department) and suggest additional topics for consideration for action by the negotiated rulemaking committees. Those hearings took place on September 6, 2018 in Washington, DC, on September 11, 2018 in New Orleans, Louisiana, and on September 13, 2018 in Sturtevant, Wisconsin. We invited parties to comment and submit topics for consideration in writing as well. Transcripts from the public hearings are available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html>.

Written comments submitted in response to the July 31, 2018, document may be viewed through the Federal eRulemaking Portal at *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-2018-OPE-0076 in the search box to locate the appropriate docket.

### *Regulatory Issues*

After considering the information received at the public hearings and the written comments, we have decided to establish a single *Accreditation and Innovation* negotiated rulemaking committee and three topic-based subcommittees to ensure sufficient representation of subject matter experts for each topic. We believe the addition of a TEACH Grants subcommittee, scheduling additional days for the committee meetings, and the use of redlined regulatory text as the starting point of negotiations instead of issue papers will address concerns raised by commenters and ensure proper attention to each topic.

We list the specific topics the 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 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. Only the primary negotiator may speak during the negotiations unless the primary negotiator is absent for the day or a significant portion of a day, in which case the alternate may speak during the negotiations.

In addition, individuals who are not selected as members of the committee will be able to observe the committee meetings, will have access to the individuals representing their constituencies, and may be able to participate in informal working groups on various issues between the meetings.

#### *Committee Topics*

The Accreditation and Innovation Committee will address the Secretary's recognition of accrediting agencies and related institutional eligibility issues (34 CFR parts 602 and 600), as

well as various technical corrections. The specific topics for negotiation will likely include:

- Requirements for accrediting agencies in their oversight of member institutions and programs.
- Criteria used by the Secretary to recognize accrediting agencies, emphasizing criteria that focus on educational quality and deemphasizing those that are anti-competitive.
- Simplification of the Department's recognition and review of accrediting agencies.
- Clarification of the core oversight responsibilities amongst each entity in the regulatory triad, including accrediting agencies, States, and the Department to hold institutions accountable.
- Clarification of the permissible arrangements between an institution of higher education and another organization to provide a portion of an education program (34 CFR 668.5).
- The roles and responsibilities of institutions and accrediting agencies in the teach-out process (34 CFR 600.32(d) and 602.24).
- Elimination of regulations related to programs that have not been funded in many years.

- Needed technical changes and corrections to program regulations that have been identified by the Department.

As part of the negotiated rulemaking process, we are forming three subcommittees: the Distance Learning and Educational Innovation Subcommittee; the Faith-Based Entities Subcommittee; and the TEACH Grants Subcommittee, to make recommendations to the committee. The committee will ultimately make determinations based on subcommittee recommendations, and committee discussions, on:

- Regulatory changes required to ensure equitable treatment of brick-and-mortar and distance education programs; enable expansion of direct assessment programs, distance education, and competency-based education; and to clarify disclosure and other requirements of state authorization.
- Protections to ensure that accreditors recognize and respect institutional mission, and evaluate an institution's policies and educational programs based on that mission; and remove barriers to the eligibility of faith-based entities to participate in the title IV, HEA programs.
- TEACH Grant requirements and ways to reduce and correct the inadvertent conversion of grants to loans.

1. The topics that the Distance Learning and Educational Innovation Subcommittee is likely to address include, but are not limited to:

- Simplification of State authorization 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).
- The definition of "regular and substantive interaction," as that term is used in the definitions of "correspondence course" and "distance education" (34 CFR 600.2, 600.7, and 668.10).
- The definition of the term "credit hour" (34 CFR 600.2, 602.24 and 668.8).
- The requirement that an institution demonstrates a reasonable relation 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)).
- The barriers to innovation in postsecondary education and to student completion, graduation, or employment, including, but not limited to, regulatory barriers in

the Department's institutional eligibility regulations and student assistance general provisions (34 CFR part 600 and 34 CFR part 668).

- Direct assessment programs and competency-based education, 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 implementation of such programs, such as certain requirements for term-based academic calendars and satisfactory academic progress.

2. The topics that the TEACH Grants Subcommittee is likely to address include, but are not limited to: The simplification and clarification of TEACH Grant program requirements to minimize the inadvertent grant-to-loan conversions and to provide opportunities to correct erroneous conversions (34 CFR part 686).

3. The topics that the Faith-Based Institutions Subcommittee is likely to address include, but are not limited to: Requirements for accrediting agencies to honor institutional mission and 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, and the eligibility of

students to obtain certain benefits under those programs (34 CFR 600.11 and parts, 674, 675, 676, 682, 685, 690, 692, and 694).

These subcommittees will address the specified issues and make recommendations to the committee. Subcommittees are not authorized to make decisions for the committee. The subcommittees may be comprised of some Accreditation and Innovation Committee members (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 are asking for nominations for individuals with specific types of expertise to serve on one of the three subcommittees (see *Areas of Expertise for the Distance Learning and Educational Innovation Subcommittee*, *Areas of Expertise for the Faith-Based Entities Subcommittee*, and *Areas of Expertise for the TEACH Grants Subcommittee*). The subcommittees' meetings will be held between committee meetings (see *Schedule for Negotiations and Subcommittee Meeting*). Before the conclusion of the negotiations, each subcommittee will present any recommendations for regulatory changes to the Accreditation and Innovation

Committee for its consideration. Only the committee has power to reach consensus on regulations.

#### *Constituencies for Negotiator Nominations*

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 for organizations or groups representing these constituencies.

#### Accreditation and Innovation Committee

- Students.
- Legal assistance organizations that represent students.
- Financial aid administrators at postsecondary institutions.
- National Accreditation Agencies.
- Regional Accreditation Agencies.
- Programmatic Accreditation Agencies.
- Institutions of higher education primarily offering distance education.
- 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, 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.
- Faith-based institutions of higher education.
- Private, nonprofit institutions of higher education.
- Private, proprietary institutions of higher education.
- Employers.
- Veterans.

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. However, the Department seeks consensus independently on the predetermined sets of topics addressed by each subcommittee and the committee. Although only the committee, not the subcommittees, can vote on consensus, the issues will be divided into groups by the Department and the committee will have an opportunity to vote on each.

An individual selected as a negotiator is 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 a member of such an organization or group.

*Areas of Expertise for the Distance Learning and Educational Innovation Subcommittee*

The Department plans to select individuals from organizations or groups with expertise in direct assessment programs, distance education, and competency-based education. The subcommittee will focus 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 implementation of such programs, including certain requirements for term-based academic calendars and satisfactory academic progress. Nominations must include evidence of the nominee's specific knowledge in these areas, citing specific topics outlined in the *Committee Topics* section. Such

individuals from organizations or groups may include but are not limited to, representatives of:

- Students.
- Legal assistance organizations that represent students.
- Private, nonprofit institutions of higher education, with knowledge of direct assessment programs and competency-based education.
- Private, for-profit institutions of higher education, with knowledge of direct assessment programs and competency-based education.
- Public institutions of higher education, with knowledge of direct assessment programs and competency-based education.
- Accrediting agencies.
- Associations or organizations that provide guidance to or represent institutions with direct assessment programs and competency-based education.
- Financial aid administrators at postsecondary institutions.
- Academic executive officers at postsecondary institutions.

- Non-profit organizations supporting inter-State agreements related to State authorization of distance or correspondence education programs.
- State higher education executives.

*Areas of Expertise for the Faith-Based Entities Subcommittee*

The Department plans to select individuals from organizations or groups with expertise in the eligibility of faith-based entities to participate in the title IV, HEA programs. These would include, but are not limited to, individuals with knowledge of the Federal Work Study programs, the title IV, HEA discretionary grant programs, accreditation, and other areas of the Department's postsecondary education regulations that contain specific provisions concerning faith-based entities. Nominations must include evidence of the nominee's specific knowledge in these areas. Such individuals from organizations or groups may include but are not limited to, representatives of:

- Students.
- Faith-based entities eligible for title IV, HEA programs.
- Officers of institution-based Gaining Early Awareness and Readiness for Undergraduate Program grantees.

- Institutions of higher education with knowledge of faith-based entities' participation in the title IV, HEA programs.
- Institutions of higher education with knowledge of faith-based entities' participation in the title IV, HEA programs and that are 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.
- Accrediting agencies.
- Associations or organizations that focus on issues related to faith-based entities or the participation of faith-based entities in Federal programs.
- Financial aid administrators at postsecondary institutions.

*Areas of Expertise for the TEACH Grants Subcommittee*

The Department plans to select individuals from organizations or groups with expertise in teacher education programs, student financial aid, and high-need teacher education programs.

Nominations must include evidence of the nominee's specific knowledge in these areas. Such individuals from organizations or groups may include but are not limited to, representatives of:

- Students who are or have been TEACH Grant recipients.
- Legal assistance organizations that represent students.
- Financial aid administrators at postsecondary institutions.
- State primary and secondary education executive officers.
- Institutions of higher education that award or have awarded TEACH grants and that are 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 institutions of higher education that award or have awarded TEACH grants.
- Four-year institutions of higher education that award or have awarded TEACH grants.

- Organizations or associations that represent the interests of students who participate in title IV programs.
- Organizations or associations that represent financial aid administrators.

### *Nominations*

Nominations should include:

- The committee or subcommittee for which the nominee is nominated.
- The name of the nominee, the organization or group the nominee represents, and a description of the interest that the nominee represents.
- Evidence of the nominee's expertise or experience in the topics proposed for negotiations.
- The nominee's commitment that he or she will actively and respectfully participate in good faith in the development of the proposed regulations with the goal of reaching consensus and without disparaging other committee members, their organizations, or their motives.
- The nominee's contact information, including address, telephone number, and email address.

For a better understanding of the negotiated rulemaking process, prior to committing to participate, nominees should review *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>.*

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

*Schedule for Negotiations and Subcommittee Meetings*

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

*Session 1:* January 14-16, 2019

*Session 2:* February 19-22, 2019

*Session 3:* March 25-28, 2019

Sessions will run from 9:00 a.m. to 5:00 p.m.

The January committee meetings will be held at location in the Washington, DC area to be determined.

The February committee meetings will be held at a location in the Washington, DC area to be determined.

The March committee meetings will be held at a location in the Washington, DC area to be determined.

The committee meetings are open to the public.

The Distance Learning and Educational Innovation Subcommittee will meet on the following dates:

*Meeting 1:* January 17-18, 2019

*Meeting 2:* February 12-13, 2019

*Meeting 3: March 11-12, 2019*

Meetings will run from 9:00 a.m. to 5:00 p.m.

The January subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The February subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The March subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The subcommittee meetings will be made available through a Department-provided livestream.

The Faith-Based Entities Subcommittee will meet on the following dates:

*Meeting 1: January 17-18, 2019*

*Meeting 2: February 12-13, 2019*

*Meeting 3: March 11-12, 2019*

Meetings will run from 9:00 a.m. to 5:00 p.m.

The January subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The February subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The March subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The subcommittee meetings will be made available through a Department-provided livestream.

The TEACH Grants Subcommittee will meet on the following dates:

*Meeting 1:* January 17-18, 2019

*Meeting 2:* February 12-13, 2019

*Meeting 3:* March 11-12, 2019

Meetings will run from 9:00 a.m. to 5:00 p.m.

The January subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The February subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The March subcommittee meetings will be held at a location in the Washington, DC area to be determined.

The subcommittee meetings will be made available through a Department-provided livestream.

The Department will publish a separate notice in the *Federal Register* announcing the locations of each meeting.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting 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.

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Date: October 11, 2018

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