

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Office of Postsecondary Education; Notice of Negotiated Rulemaking for Programs Authorized Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice of establishment of negotiated rulemaking committees.

SUMMARY: We announce our intention to establish five negotiated rulemaking committees to prepare proposed regulations under Title IV of the Higher Education Act of 1965, as amended (HEA). Each 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 that are involved in the student financial assistance and grant programs authorized under Title IV of the HEA to serve on these committees.

DATES: We must receive your nominations for negotiators to serve on the committees on or before January 23, 2009.

ADDRESSES: Please send your nominations for negotiators to Patty Chase, U.S. Department of Education, 1990 K Street,

NW., room 8034, Washington, DC 20006, or by fax at (202) 502-7874. You may also e-mail your nominations to Patty.Chase@ed.gov. Nominees will be notified by letter whether or not they have been selected as negotiators, as soon as the Department's review process is completed.

FOR FURTHER INFORMATION CONTACT: For information about 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. You may also e-mail your questions about the nomination submission process to: Wendy.Macias@ed.gov.

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

If you use a telecommunications device for the deaf (TDD), 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 computer diskette) by contacting Wendy Macias at the address, telephone number, or e-mail address listed above.

SUPPLEMENTARY INFORMATION: On September 8, 2008, we published a notice in the Federal Register (73 FR 51990) announcing our intent to establish negotiated rulemaking committees to develop proposed regulations to implement (1) the changes made to the HEA by the Higher Education Opportunity Act of 2008 (HEOA), Pub. L. 110-315, that affect programs authorized under Title IV of the HEA and, (2) possibly, the provision added to section 207(c) of the HEA by the HEOA that requires the Secretary to submit to a negotiated rulemaking process any regulations the Secretary chooses to develop under amended section 207(b)(2) of the HEA, regarding the prohibition on a teacher preparation program from which the State has withdrawn approval or terminated financial support from accepting or enrolling any student who received Title IV aid. We announced our intent to develop these proposed regulations by following the negotiated rulemaking procedures in section 492 of the HEA. The notice also announced a series of six regional hearings at which interested parties could suggest topics

for consideration for action by the negotiating committees. We invited parties to submit topics for consideration in writing, as well. We heard testimony and received written comments from approximately 250 people. Transcripts from the hearings can be found at www.ed.gov/HEOA.

REGULATORY ISSUES: After consideration of the information received at the regional hearings and in writing, we have decided to establish the following five negotiating committees:

- Team I—Loans—Lender/General Loan Issues
- Team II—Loans—School-based Loan Issues
- Team III—Accreditation
- Team IV—Discretionary Grants
- Team V—General and Non-Loan Programmatic Issues

We list the topics each committee is likely to address elsewhere in this notice under Committee Topics.

Because of the large volume of changes made by the HEOA that must be implemented through negotiated rulemaking, not all provisions will be regulated at this time. In particular, the provisions affecting foreign schools (the majority of which are not effective until July 1, 2010) and unfunded programs will be regulated through the negotiated rulemaking process at a later date. For

Team III-Accreditation, in addition to the provisions of the HEOA, we have included several issues identified during the 2007 negotiated rulemaking process, which did not result in published regulations.

As we did not receive any requests from the public to negotiate the provision added to section 207(c) of the HEA, and the Secretary has determined that it is not necessary to issue regulations in this area at this time, we will not be negotiating this provision of the HEOA in these negotiated rulemaking sessions. Regulations implementing HEOA changes to other areas of Title II of the HEA, as well as Titles III, V, VI, and VII, and those areas of Title I that do not affect the Title IV programs, will be implemented either through notice-and-comment rulemaking or, where the regulations will merely reflect the changes to the HEA and not expand upon those changes, without notice and comment. The only exception will be in the case of regulations that are needed to implement the initial grant competition under a new or substantially revised program authority; in these situations section 437(d)(1) of the General Education Provisions Act (20 U.S.C. §1232(d)(1)) permits the Secretary to issue regulations without first soliciting public comment.

We intend to select participants for the negotiated rulemaking committees that represent the interests significantly affected by the proposed regulations. In so doing, we will follow the new 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). Our goal is to establish committees that will allow significantly affected parties to be represented while keeping the committee size manageable.

The committees may create subgroups on particular topics that would involve additional individuals who are not members of the committees. Individuals who are not selected as members of the committees 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.

The Department has identified the constituencies listed below as having interests that are significantly affected by the subject matter of the negotiated rulemaking

process. The Department plans to seat as negotiators individuals from organizations or groups representing each of the constituencies. The Department anticipates that individuals from organizations or groups representing each of these constituencies will participate as members of one or more committees, except where noted. These constituencies are:

- students
- legal assistance organizations that represent students
- financial aid administrators at institutions of higher education
- business officers and bursars at institutions of higher education
- institutional servicers (including collection agencies)
- State higher education executive officers
- State Attorneys General and other appropriate State officials
- State student grant agencies
- business and industry
- institutions of higher education eligible to receive Federal assistance under Title III, Parts A and B, 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
- private, non-profit institutions of higher education
- private, for-profit institutions of higher education
- guaranty agencies and guaranty agency servicers (including collection agencies)
- lenders, secondary markets, and loan servicers
- regional accrediting agencies
- national accrediting agencies
- specialized accrediting agencies
- State approval agencies
- State student grant agencies
- special populations, including migrant and seasonal farmworkers, and entities that provide outreach and support services (for Team IV–Discretionary Grants)
- individuals with intellectual disabilities (for Team V–General and Non-Loan Programmatic Issues, Student eligibility)

- digital content owners (for Team V-General and Non-Loan Programmatic Issues, Peer-to-peer file sharing/copyrighted material)
- technology providers (for Team V-General and Non-Loan Programmatic Issues, Peer-to-peer file sharing/copyrighted material)
- law enforcement (for Team V-General and Non-Loan Programmatic Issues, Campus safety issues)
- campus safety (for Team V-General and Non-Loan Programmatic Issues, Campus safety issues)

The negotiation of proposed regulations for the following issues on the Team V agenda requires the representation of some very specific constituencies who are affected parties for purposes of these issues only:

- Title IV eligibility for individuals with intellectual disabilities;
- Peer-to-peer file sharing/copyrighted material; and
- Campus safety (Hate crime reporting, Emergency response and evacuation procedures, Disclosure of fire safety standards and measures, and Missing person procedures).

For these issues, we will be selecting "single-issue negotiators" whose participation on the committee will be limited to the negotiation of only the specific issue. As

previously noted, the committee may form subgroups for preliminary discussions of these, or other, issues to include individuals who are not members of the committee but who have expertise that would be helpful.

The goal of each 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. An individual selected as a negotiator will be expected to represent the interests of their organization or group. 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 that are submitted by members of such an organization or group.

Nominations should include:

- 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 subject, or subjects, to be negotiated;
- Evidence of support from individuals or groups of 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; and
- The nominee's contact information, including address, phone number, fax number, and e-mail address.

For a better understanding of the 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.

COMMITTEE TOPICS

The topics the committees are likely to address are:

Team I—Loans—Lender/General Loan Issues

- Loan discharges based on total and permanent disability (including Perkins Loans) (HEOA section 437)
- Federal PLUS loan repayment, post-half-time enrollment deferment, and interest capitalization (HEOA section 424)
- Consumer credit reporting after loan rehabilitation/Eligibility for loan rehabilitation (HEOA section 426)
- FFEL and Direct Loan teacher loan forgiveness (HEOA

sections 429 and 454)

- Applicability of the Servicemembers Civil Relief Act to Federal Family Education Loan (FFEL) and Direct Loan borrowers and related FFEL lender special allowance payment calculations on affected loans (PLUS endorsers) (HEOA section 422)
- Borrower eligibility for deferment (HEOA section 422)
- Changes to prohibited inducement provisions governing FFEL lenders and guaranty agencies (HEOA sections 422 and 436)
- FFEL Consolidation Loan–borrower eligibility (HEOA section 425)
- New audit requirement for FFEL school lenders and Eligible Lender Trustees (ELTs) originating FFEL loans for an institution or school-affiliated organization (HEOA section 436)
- Required education loan borrower disclosures by lenders (HEOA section 120)
 - Definitions (Education loan, Private education loan, Lender, Preferred lender arrangement)
 - Required lender disclosures
 - Required lender reporting and certification
- Lender forbearance information and contact requirements

(HEOA section 422)

- Guaranty agency notifications to borrowers in default
(HEOA section 422)
- Financial and economic literacy information for
rehabilitated borrowers (HEOA section 426)
- Required lender disclosures to FFEL borrowers (HEOA
section 434)
 - Required FFEL (non-consolidation) disclosures before
loan disbursement
 - Required FFEL (non-consolidation) borrower disclosures
before repayment
 - Special disclosure rules on PLUS and Unsubsidized
loans
 - New borrower disclosures during repayment
- Notification to a FFEL borrower when the transfer, sale,
or assignment of a loan will result in a change in the
party to whom the borrower must send payments (HEOA
section 422)
- FFEL Consolidation Loan-application disclosures to
Perkins Loan and Direct Loan borrowers (HEOA section 425)
- Consumer education information provided by guaranty
agencies (HEOA section 435)

Team II-Loans-School-based Loan Issues

- Cohort default rate calculation, default prevention plans, and institutional eligibility (HEOA section 436)
- Exit counseling (HEOA section 488(b))
- Entrance counseling (HEOA section 488(g))
- Program Participation Agreement (HEOA section 493)
 - Code of Conduct
 - Preferred Lender Lists
 - Private Education Loan Certification
- Required education loan borrower disclosures by institutions of higher education, and institution-affiliated organizations (HEOA section 120)
 - Definitions (Covered institution, Institution-affiliated organization, Officer, Agent)
 - Required borrower disclosures by covered institutions and institution-affiliated organizations that participate in a preferred lender arrangement
 - Required reporting by covered institutions and institution-affiliated organizations
 - Other covered institution and institution-affiliated requirements
- Information and dissemination activities—terms and conditions under which students receive FFEL, Direct Loans and Perkins Loans (HEOA section 488(a))

- Disclosure of reimbursements for service on advisory boards (HEOA section 1011)
- Direct Loan borrower disclosures by Direct Loan schools (HEOA section 451)
- Perkins Loan Program
 - Mandatory assignment (HEOA section 463)
 - Reinstatement of loans discharged due to death or disability if the borrower receives another Title IV loan; if the borrower earns income in excess of the poverty line; or if the Secretary determines it is necessary to resume collection (HEOA section 464)
 - Expansion of teacher, Head Start, and law enforcement cancellation categories (HEOA section 465)
 - Addition of new public service cancellation categories (HEOA section 465)
 - Military service cancellation (HEOA section 465)

Team III-Accreditation

- Distance education and correspondence education (HEOA sections 495(1)(A) and (5))
- Due process and appeals (HEOA section 495(1)(C))
- Accreditation team members (HEOA section 495(2)(A))
- Operating Procedures (HEOA section 495(2)(C))
 - Growth monitoring

- Teach-out plan approval
- Summary of agency actions
- Confirmation of disclosure of transfer of credit policies and criteria

(The following issues are not from changes made by the HEOA, but were identified during the 2007 negotiated rulemaking process, which did not result in published regulations.)

- Recognition when not fully compliant
- Demonstration of compliance within 12 months
- Direct assessment programs definition
- Definition of recognition
- Substantive change
- Monitoring throughout period
- Subparts C and D–Recognition process, limitation, suspension and termination
- Recordkeeping
- Confidentiality

Team IV–Discretionary Grants

- TRIO Programs
 - Branch campuses and different populations (HEOA section 403(a))
 - Appeals process for unsuccessful TRIO grant applicants

- (HEOA section 403(a))
 - Revised outcome criteria and measurement of progress
(HEOA section 403(a))
 - Foster care and homeless youth (HEOA section 403(a))
 - Required services and permissible services (HEOA section 403)
- GEAR UP (HEOA section 404)
 - Priority
 - Funding rules
 - Duration of awards
 - Revised definition of partnerships
 - Changes to matching funds
 - Waiver of matching funds
 - Revision to required and allowable activities under GEAR UP
 - Revised scholarships
 - Establishment of a scholarship trust fund
 - Redistribution or return to the Department of Education of unused scholarship funds after six years
- Special Programs for Students Whose Families are Engaged in Migrant and Seasonal Farmwork (HEOA section 408)
 - High school equivalency program eligibility and activities

- College assistance migrant program eligibility and activities
- Reservation and allocation of funds

Team V—General and Non-Loan Programmatic Issues

- Readmission requirements for servicemembers (HEOA section 487)
- 90/10 rule (HEOA section 493)
- Institutional requirements for teach-out/eligibility and certification procedures—treatment of teach-outs (HEOA sections 493(f) and 496)
- Financial assistance for individuals with intellectual disabilities (HEOA sections 485(a)(8) and 709) (including “student with an intellectual disability” and “comprehensive transition and postsecondary programs for students with intellectual disabilities,” definitions in Title VII of the HEA that apply)
- Definition of baccalaureate “liberal arts” programs offered by proprietary schools (HEOA section 102(d)(1)(A)(i))
- Consumer information
 - Peer-to-peer file sharing/copyrighted material (HEOA sections 488(a) and 493)
 - Institutional plans for improving the academic program

(HEOA section 488(a))

- Placement of and types of employment obtained by graduates of degree or certificate programs/types of graduate and professional education (HEOA section 488(a))
- Retention rates (HEOA section 488(a))
- Hate crime reporting (HEOA section 488(e))
- Emergency response and evacuation procedures (HEOA section 488(e))
- Disclosure of fire safety standards and measures (HEOA sections 488(a))
- Missing person procedures (HEOA section 488(g))
- Year-round Pell Grant (HEOA section 401)
- Pell Grants and Children of Soldiers (HEOA section (HEOA section 401)
- TEACH Grants—extenuating circumstances (HEOA section 412(a)(1))
- Federal Work Study (FWS)
 - Definition of community service (HEOA section 441(2))
 - Grants for FWS Program (HEOA section 443)
 - Flexible use of funds (HEOA section 444)
 - Additional funds for off-campus community service (HEOA section 446)

- Work Colleges (HEOA section 447)
- LEAP/Grants for Access and Persistence (GAP) Program (HEOA section 407)
 - Notification to students
 - GAP non-Federal share
 - Application for an allotment under GAP
 - Roles of partners in GAP
 - GAP Program activities
 - Applicability of LEAP Program requirements in GAP
 - GAP maintenance of effort requirement

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

SCHEDULE FOR NEGOTIATIONS

We anticipate that negotiations for these committees will begin in February 2009, with each committee meeting for three sessions of approximately three days at roughly monthly intervals. The committees will meet in the Washington, DC area. The dates and locations of these meetings will be published in a subsequent notice in the Federal Register, and will be posted on the Department's Web site at: <http://www.ed.gov/HEOA>. Please note that the upcoming personnel changes in the executive branch of the Federal government may affect these plans.

The schedule for negotiations has been developed to ensure publication of the final regulations by the November 1 statutory deadline for publishing student financial assistance final regulations (to be addressed by Teams I, II, III, and V). Although not subject to the November 1 statutory deadline, the schedule for the Title IV discretionary grant programs (to be addressed by Team IV) will provide for the publication of regulations in time for competitions to be held during fiscal year 2010.

Electronic Access to This Document

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Dated:

Vince Sampson,
Deputy Assistant Secretary
for Postsecondary Education.