



Wednesday
December 23, 1998

Part IV

**Department of
Education**

**34 CFR Chapter VI
Office of Postsecondary Education;
Higher Education Act of 1965; Notice of
Intent To Establish Negotiated
Rulemaking Committees; Proposed Rule**

DEPARTMENT OF EDUCATION**Office of Postsecondary Education****34 CFR Chapter VI****Higher Education Act of 1965; Notice of Intent To Establish Negotiated Rulemaking Committees**

AGENCY: Department of Education.

ACTION: Notice of negotiated rulemaking.

SUMMARY: The Secretary of Education (Secretary) announces his intention to establish four negotiated rulemaking committees to draft proposed rules to implement Title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998. The Secretary further announces the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process. The Secretary intends to select participants for the negotiated rulemaking process from nominees of these organizations or groups. The Secretary requests nominations for additional participants from anyone who believes that the organizations or groups listed do not adequately represent the statutory list of interests.

DATES: The deadline for receiving nominations for additional members on any of the four committees is January 6, 1999. The dates for the negotiation sessions for each committee are announced in the supplementary information section of the document.

ADDRESSES: Please send your nominations to Brian Kerrigan, U.S. Department of Education, 400 Maryland Avenue, SW, ROB-3, Washington D.C. 20202-5257, or fax them to Brian Kerrigan at (202) 205-0786. You may also e-mail your nominations to: hea98negotiated_rulemaking@ed.gov

FOR FURTHER INFORMATION CONTACT: Brian Kerrigan, U.S. Department of Education, 400 Maryland Avenue, SW, ROB-3, Washington, DC 20202-5257. Telephone: (202) 708-5217. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Department anticipates having four negotiating committees. The Department lists each committee below and the

issues each committee is likely to address. This list of issues is tentative. Issues may be added as the process continues, and some issues listed may not need regulations at all. Citations refer to sections of the Higher Education Amendments of 1998 (Pub. L. 105-244, enacted Oct. 7, 1998).

Committee I: Lender and Guaranty Agency Issues*Lender Issues*

Lender Default Claim Requirements—Section 417(c)(2)(A)
 Prohibited Inducements—Section 429(b)
 Small Volume Lenders—Section 417(b)(7)
 Tax-exempt Funding and Special Allowance Payments—Section 433(d)

Guaranty Agency Issues

Fees and Payments Issues:
 Account Maintenance Fee—Section 454
 Default Aversion Fee—Section 417(h)
 Loan Processing and Issuance Fee—Section 417(e)
 Reduction of Reinsurance Payments—Section 417(c)(7)
 Secretary's Equitable Share—Section 417(c)(5)

Reserves and Funds Issues:
 Recall of Reserves—Section 412(4)
 Federal Fund—Section 413(a)
 Operating Fund—Section 413(b)
 Required Minimum Reserve—Section 417(c)(7)(A)

Other Issues:
 Assignment of Loans—Section 417(c)(6)
 Blanket Guaranty—Section 418
 Lender of Last Resort—Section 417(g)
 Opportunity for Hearing—Section 417(c)(7)(E)
 Prohibited Inducements—Section 417(b)(9)(B)
 Reinsurance Requests—Section 417(c)(2)(B)
 Responding to Electronic Inquiries—Section 412(2)
 State Court Judgments—Section 484
 Unsolicited Applications—Section 417(b)(9)(A)
 Voluntary Flexible Agreements—Section 418
 Wage Garnishment Requirement—Section 490A

Committee II: Loan Issues (FFEL, Direct Loan, and Perkins Loan Programs)

Cohort Default Rate Issues:
 Improper Loan Servicing—Section 429
 Mitigating Circumstances—Section 429(a)(3)
 Participation Rate—Section 429(a)(3)
 Special Exemption Institutions—Section 429(a)(3)

Unsuccessful Appeals—Section 429(a)(1)(A)
 Certification, Origination, and Disbursement Issues:
 Certification Requirements—Section 417(a)(1)
 Disbursement by Schools—Section 422
 Disclosure Requirements—Sections 428(a) and (b)
 Loan Limits—Sections 417(b), 423(b), and 423(c)
Repayment Issues:
 Capitalization—Section 423(c)
 Deferments—Section 417(b)
 Forbearance—Sections 417(b) and 423(e)
 Grace Periods—Section 417(b)
 Repayment Plans—Section 417(b)
Discharge and Forgiveness Issues:
 Child Care Provider Forgiveness Program—Section 425
 Disabled Veterans—Section 490F
 Discharge for Failure to Pay Refunds—Section 431
 Teaching Service Forgiveness—Sections 424 and 456
Other Issues:
 Consolidation—Sections 420(a) and (c)
 Definition of Default—Section 429(c)
 Interest Rates—Sections 416 and 420
 Master Promissory Note—Section 427(c)
 Origination Fees—Section 433(d)
 PLUS Eligibility—Section 419
Federal Perkins Loan Program Issues:
 Closed School Discharge—Section 464(d)
 Cohort Default Rates—Sections 462(c) and (d)
 Credit Bureau Reporting—Section 463(b)
 Deferment and Cancellation Benefits—Sections 464(c)(3) and 465
 Expanded Lending Option—Section 463(a)(1)
 Incentive Repayment Program—Section 464(d)
 Loan Limits—Section 464(a)
 Rehabilitation Program—Section 464(d)

Committee III: Refunds, Program, and Student Eligibility Issues

Refunds/Return of Title IV Aid—Section 485
Student Eligibility Issues
 Statement of Educational Purpose—Section 483(a)(1)
 Freely Associated States—Sections 483(a)(2) and (c)
 Home-Schooled Students—Section 483(b)
 Telecommunications Courses—Section 483(d)
 Verification of Income Data—Section 483(e)

Suspension of Eligibility for Drug-related Offenses—Section 483(f)
 Treatment of Veterans and Americorps—Sections 417(a)(1)(C) and 479

Program Issues

Federal Pell Grant Program:
 Eligibility of Teacher Certification Students—Section 401(e)
 Loss of Eligibility for High Default Rates—Section 401(f)
 SSIG/Leveraging Educational Assistance Partnership Program—Sections 407(a) and (b)
 Special Leveraging Educational Assistance Partnership Program—Section 407(c)
 National Early Intervention Partnership and Scholarship Program—Section 403
 Academic Achievement Incentive Scholarship Program—Section 404
 Campus-Based Programs—Common Provision
 Reasonable Portion for Non-Traditional Students—Sections 406(b), 443(d), and 464(b)
 Federal Supplemental Educational Opportunity Grant Program
 Carry Forward/Carry Back—Section 406(d)
 Special Summer Carry Back—Section 406(d)
 Federal Work-Study Program:
 Definition of Community Services—Section 441(b)
 Employment in Internships, Practical, or Research Assistantships—Section 443(a)
 Pay for Travel or Training—Section 443(b)
 Increase to 7 Percent Community Service—Section 443(c)
 Reading Tutoring or Family Literacy Project—Section 443(c)
 Ninety Percent Federal Share—Section 443(e)
 Credit to Student's Account—Section 444
 Work Colleges—Section 445

Committee IV: Institutional Eligibility Issues

Accrediting Agency Issues—Section 492
 Audit Requirements—Section 489
 Branch Campuses—Section 493(h)
 Change of Ownership—Section 489
 Consumerism Issues:
 Electronic Consumerism—Section 446(a)
 Exit Counseling for Borrowers—Section 486(b)
 Student Right-to-Know—Section 486(a)
 Institutions That Offer Athletic Aid—Section 486(d)
 Campus Crime—Section 486(e)
 Equity in Athletics—Section 486(f)

Definitions of Eligible Institutions
 Issues: Section 101 (all issues)
 Foreign Veterinary Schools
 Percentage of Incarcerated Students
 85/15 Rule
 Eligibility and Certification
 Procedures—Section 493(a)
 Evidence of Authority to Operate in a State—Section 491
 Financial Guarantees from Owners/
 Failure to Pay Refunds—Section 493(c)
 Financial Responsibility—Section 493(b)
 Foreign Schools Audits and
 Certification—Section 493(e)
 Responsibilities of States—Section 491
 Quality Assurance Program—Section 490

Each negotiating committee will be balanced and representative of the significantly affected interests, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies. To the extent possible, the Secretary will select from the nominations individuals reflecting the diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets.

Structure of Committees

The ultimate goal of negotiated rulemaking is to reach a consensus through discussion and negotiation among interested and affected parties, including the Department of Education (Department). With this in mind, the Department will conduct these negotiations within a structure that is designed to meet this goal fairly and efficiently and that takes into account the large number and complex nature of the issues to be negotiated. The meetings will be open to the public.

The Department has identified the organizations listed below as effective representatives of the interests that are significantly affected by the subject matter of the negotiated rulemaking. The Department anticipates that these organizations will participate as members of one or more of the negotiated rulemaking committees, either alone or in combination with others. Organizations not listed that have expressed an interest in participating in the process are encouraged to work with the listed organizations to ensure that their views are known. The committees may also create subgroups on particular topics that would involve additional parties.
 Accrediting Commission of Career Schools and Colleges of Technology

American Association of Collegiate Registrars and Admissions Officers
 American Association of Community Colleges
 American Association of Cosmetology Schools
 American Association of State Colleges and Universities
 American Association of Universities
 American Council on Education
 Association of American Universities
 Career College Association
 Coalition of Higher Education Assistance Organizations
 Consumer Bankers Association
 Education Finance Council
 Educational Loan Management Resources
 Federation of Associations of Schools of Health Professions
 Hispanic Association of Colleges and Universities
 Legal Services Counsel (a coalition)
 National Association for Equal Opportunity in Higher Education
 National Association of College and University Business Officers
 National Association of Independent Colleges and Universities
 National Association of State Student Grant Aid Programs
 National Association of State Universities and Land-Grant Colleges
 National Association of Student Financial Aid Administrators
 National Association of Student Loan Administrators
 National Council of Higher Education Loan Programs
 National Direct Student Loans Coalition
 Sallie Mae
 State Higher Education Executive Officers Association
 Student Loan Servicing Alliance
 United Negro College Fund
 United States Public Interest Research Group
 United States Student Association

Schedule for Negotiations

There are expected to be a total of approximately five meetings of each committee, all of which will be held in the metropolitan Washington, DC area. The following is the schedule for negotiations for each of the four committees.

This schedule is subject to change.

COMMITTEE I

Session 1: January 19–20
 Session 2: February 16–17
 Session 3: March 22–24
 Session 4: April 19–20
 Session 5: May 17–19

COMMITTEE II

Session 1: January 21–22
 Session 2: February 18–19

Session 3: March 24–26
 Session 4: April 21–23
 Session 5: May 19–21

COMMITTEE III

Session 1: February 1–3
 Session 2: February 24–25
 Session 3: April 6–8
 Session 4: May 3–5
 Session 5: May 24–26

COMMITTEE IV

Session 1: February 3–5
 Session 2: February 26–27
 Session 3: April 8–10
 Session 4: May 5–7
 Session 5: May 26–28

Invitation for Additional Nominations

If an individual, organization or group believes that there is a significantly affected interest that would not be represented by the proposed members and wishes to apply for membership or nominate an individual for membership, it may do so. Requests for membership should be sent to Brian Kerrigan at the

address stated at the beginning of this notice, no later than January 6, 1999. A request must include:

1. A description of the significantly affected interest to be represented and the reason that the organizations listed in this notice do not adequately represent that interest;
2. The name of the individual, organization or group that is making the nomination;
3. The name of the nominee and the committee for which the nominee is proposed;
4. The present job of the nominee.

Please note that participation in the rulemaking process is not limited to members of the committee. Following the negotiated rulemaking process, the Department will publish proposed rules in the **Federal Register** for public comment. The target date of publication of proposed rules developed by the committees is July, 1999.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in Text or portable document format (pdf) on the World Wide Web at either of the following sites:

<http://ocfo.ed.gov/fedreg/htm>
<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 1090a.
 (Catalog of Federal Domestic Assistance Number does not apply.)

Dated: December 21, 1998.

Richard W. Riley,
Secretary of Education.

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