
FIRST SESSION OF NEGOTIATED RULEMAKING ON ACCREDITATION HELD

The first session of the negotiated rulemaking committee on accreditation to develop regulations implementing the Higher Education Opportunity Act of 2008 (HEOA) was held in Washington, D.C. on March 4-5. As also reported in the March 6, 2009 [Inside Higher Ed](#), nonfederal negotiators met with representatives from the U.S. Department of Education (USDE) to (1) consider and adopt the protocols or rules by which the committee would operate that had been formulated by USDE (2) finalize the committee membership and (3) determine which proposals for new regulations would be considered for potential rulemaking by USDE.

The committee adopted the [protocols](#) for conducting committee business without making any changes to the USDE formulation. There are three striking features here. First, proposals for new regulations will be considered approved by the committee only if all negotiators (federal and nonfederal) agree. If a proposal is approved, USDE will issue the regulation for public comment without alteration or, under certain conditions, with some modifications. If a proposal is not approved, USDE is free to issue the regulation as it sees fit. Second, the nonfederal negotiators are obligated not to comment publicly on the proposals during the negotiations or the public comment period that follows. The organization nominating the negotiator is similarly bound. Third, the Secretary of Education may remove any negotiator who is deemed to be not acting in good faith.

The [committee](#) then considered petitions for additional members of the committee and agreed to add one member from a higher education association.

WORKSHOP-STYLE REVIEW OF PROPOSALS

The committee's review of proposal covered three areas. Are all of the 16 initial proposals to be considered, whatever the source or rationale for their inclusion? How are the nonfederal negotiators to respond to the proposals offered by USDE? Are there additional proposals that should be considered?

As noted in the previous [Federal Update](#), a number of the initial proposals do not derive from HEOA, but either were addressed during the 2007 negotiated rulemaking on accreditation or concern other topics. Several nonfederal negotiators questioned whether these issues are appropriate for further regulation; however, all of these issues will be considered during future sessions of the committee.

Of the [16 issues](#), four evoked the greatest discussion by nonfederal negotiators: (Issue 8) recognition procedures (Issue12) growth monitoring (Issue 13) substantive change and (Issue15) due process and appeals. In the main, the conversation focused on how any new regulations in these areas would impact the current five-year cycle of federal recognition review for accreditors (both the frequency of review and the extent of

reporting to USDE). Would new regulations increase the number of appearances by accreditors before USDE? Would the new language mean that accreditors need to expect that they not only must adhere to a specific schedule for a review cycle but also need to be prepared for additional calls for appearance? Would the regulations mean an expansion of the level of detail for information accreditors currently provide USDE? And, how would these changes affect the institutions and programs that are reviewed by accreditors?

With regard to (Issue 3) student achievement, (Issue 4) transfer of credit criteria, (Issue 10) distance education and correspondence education and (Issue 15) due process and appeals, the nonfederal negotiators strongly urged that regulatory language mirror statute, repeatedly stating that any regulations developed should hold closely to the precise statutory language governing those areas.

USDE proposed to add three issues for consideration by the committee:

- (Issue 17) The minimally acceptable level of experience that accrediting organizations must have in order to seek USDE recognition. The intent appears to be to require accreditors to have more experience than current regulation requires in order to be federally recognized.
- (Issue 18) The composition of accreditation decision-making bodies: the definition of "practitioner" and a revised definition of "representative of the public." The intent appears to be to include more individuals who have fewer ties to higher education than those elected or appointed under existing regulation.
- (Issue 19) The constituents to be consulted when accrediting organizations seek comment for major changes such as revision of accreditation standards and policy. The intent appears to be to create a larger role for constituencies external to higher education and accreditation in decisions about major changes.

Following lengthy discussion, the committee voted against adding these three issues for consideration. At this writing, the committee on accreditation will take up only the initial 16 proposals.

REFLECTIONS...

As discussed in the [Federal Update Number 1](#), CHEA is focusing on three questions of vital importance to member institutions and recognized accreditors as this negotiated rulemaking proceeds: 1) *How* do the proposals advance the quality assurance and quality improvement capacity of accrediting organizations? 2) *What* financial impact will the proposals have on both accreditors and institutions, and *who* will be responsible for any additional costs associated with the implementation of additional regulations? 3) *What* problems will be solved (to the extent that these proposals represent expanded government scrutiny of higher education through accreditation)?

The committee actions to (a) focus on statutory language and not develop additional regulatory language in key areas such as transfer of credit and due process and (b) maintain the proposals for regulation to the initial 16 and not add proposals that would further expand regulation are consistent with the concern that drives the questions above. The balance of appropriate accountability and appropriate independence suggested by these questions is essential to sustain the higher education-accreditation partnership. The negotiators, by taking a cautious approach to expanding regulatory language and expanding areas to be regulated, are reflecting awareness of the importance of this balance and the partnership.

The negotiated rulemaking committee will meet next on April 21-23. At that time, the committee will consider draft regulatory language for each of the 16 issues being addressed.

CHEA will remain actively involved throughout the negotiated rulemaking process and we will keep institutional members, CHEA-recognized accreditors and the public informed on any developments.

This Update will inform CHEA members and interested parties on federal policy developments related to self-regulation and peer review. Please direct any inquiries or comments to Jan Friis, CHEA's Vice President of Government Affairs, at friis@chea.org or at (202) 955-6126.

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