



Negotiated Rule Making 2024

Jo Alice Blondin, Ph.D. President

Overview of Process

What is and Why
“Neg Reg”?



“Under negotiated rulemaking, the Department works to develop an NPRM in collaboration with representatives of the parties who will be affected significantly by the regulations.”

-U.S. Department of Education

Program Integrity and Institutional Quality

- 15 Primary Non-Federal Negotiators Selected
- January, February, and March in Virtual Meetings
- Facilitators provide orientation and organization
- USDOE staff presents their cases for rule changes
- Negotiators submit language changes/recommendations
- Caucuses can be called by negotiators at any time
- Voting occurs in the March session on each issue
- USDOE drafts language for Notice of Proposed Rule Making

Process, Continued

- ❑ U.S. Department of Education forwards language on proposed rules to OBM (Office of Budget and Management (currently only 3 issues forwarded: R2T4, Distance Education, and TRIO)
- ❑ USDOE published proposed rules in Federal Register for public comment (30-60 days)
- ❑ USDOE considers public comment
- ❑ Final rules published, if before 1 November 2024, will go into effect by 1 July 2025.

Who Negotiates?

- Federal officials representing the relevant Department and topic of negotiation
- Interested Parties Most Impacted by Regulatory Changes
- Primary and alternate negotiators are selected by the Department based on applications from organizations and individuals
- Main Committee negotiated 5 Issues and a Sub-Committee negotiated on TRIO Programs

Why Was I Selected?

- Nominated by AACCC/Dr. Bumphus as a negotiator in November 2023 and selected in late December 2023
- AACCC submitted my CV and application letter
- Focus of 2024 USDOE Neg Reg were topics that I had some expertise in several topics:
 - Accreditation (Chair of HLC Board of Trustees at the time)
 - Distance Education
 - Financial Aid/R2T4
 - State Authorization

Federal Negotiators

- U.S. Department of Education: Gregory Martin
Office of General Counsel
- U.S. Department of Education officials Denise Morelli and
Donna Mangold (non-voting)
- Federal Mediation and Conciliation Service - Cynthia
Jeffries, John Weathers, Brady Roberts, Kevin Wagner,
and Krystil Smith (non-voting)

Non-Federal Negotiators

- Business Officers from Higher Education: Joe Weglarz, Marist College
- Civil Rights Organizations/Consumer Advocates: Carolyn Fast, The Century Foundation
- Financial Aid Administrators: JoEllen Price, San Jacinto College
- HBCUs, Tribal Colleges, and HSIs: Charles Prince, Dillard University
- Institutional Accrediting Agencies: Jamiene S. Studley, WASC
- Legal Assistance: Robyn Smith, Legal Aid Foundation of Los Angeles
- Private Nonprofit Institutions: Erika Linden, Des Moines University
- Programmatic accreditor: Laura King, Council on Ed. for Public Health

Non-Federal Negotiators, Continued

- Proprietary Institutions: Jillian Klein, Strategic Education, Inc.
- Public Four-Year Institutions: Jason Lorgan, University of CA, Davis
- Public Two-Year Institutions: Jo Alice Blondin, Clark State College
 - Alternate: Michael Cioce, Rowan College of Burlington County (NJ)
- State AGs: Diana Hooley, Massachusetts Attorney General's Office
- State Officials: John Ware, OH State Board of Career Colleges/Schools
- Students or borrowers: Jessica Morales, American University
- Military/Veterans: Barmak Nassirian, Veterans Education Success

Issues Covered

- ❑ Return of Title IV Funds (No Consensus-NPRM published)
- ❑ Cash Management (No Consensus)
- ❑ State Authorization (No Consensus)
- ❑ Distance Education (No Consensus-NPRM published)
- ❑ Accreditation (No Consensus)
- ❑ TRIO Programs (Consensus-NPRM published)

Structure of Neg Reg

- ❑ USDOE Presented each issue (accompanied by an issue paper that was redlined with their proposed changes)
- ❑ Each negotiator could speak for 3 minutes
- ❑ Alternate negotiators could “come to the table” to speak on specific issues
- ❑ Changes and alterations to language were sent every evening or at breaks
- ❑ 4 days M-Th January, February, and March from 10-4 p.m. EST, with public comment from 3:30-4 p.m. every day.

Submitted Language and Signed On to Support

- Distance Education and Asynchronous Clock Hours
- Cash Management and Inclusive Access Programs
- Distance Education and Attendance/Additional Location
- Accreditation Issue re: Board Composition
- Accreditation Issue re: Substantive Change Visits
 - During the process, I received inputs from organizations, such as HLC, AACCC, ACCT, WICHE, President's Roundtable, Career Colleges, and individual institutions

My Focus on Accreditation During Neg Reg

- ▣ Advancing student success through accurate data collection but no “bright lines” (Problems with FT/FT data)
- ▣ Championing mission-driven accreditation
- ▣ Emphasizing the importance of peer review
- ▣ Promoting student consumer protections (HLC’s “Student Right to Know Guide”)
- ▣ Assuring institutional and accreditor accountability.
- ▣ NOTE: NACIQI reviews each accrediting agency for compliance with federal recognition criteria, including a regular review of how the agency utilizes student outcomes data

Impacts to Community Colleges

- ▣ State Reciprocity Agreements (NC-SARA)
- ▣ Distance Education and Clock Hours
- ▣ Accreditation:
 - ▣ Board composition
 - ▣ “Bright lines”
 - ▣ Substantive Change and Costs
- ▣ “Inclusive Access” Programs in Jeopardy

Return to Title IV: No Consensus

- Attendance-taking re: bad actors/stifles online/hybrid
- “The proposed rule “asserts without providing explicit evidence that the documentation of withdrawals is a greater problem in distance education courses than for in-person classes. On this shaky policy foundation, ED is proposing to impose a sweeping compliance burden on institutions that outweighs the possible benefit.”—Dr. Walter Bumphus, President and CEO, AACC

Distance Education: No Consensus

- If accepted and enacted, the final language from Neg Reg would require institutions to (information from WCET/WICHE):
 - Take attendance for ALL distance education courses.
 - Classify students in programs that are mostly at a distance to be placed in a special “virtual location” category.
 - Increase data collection for distance students.
 - Stop using asynchronous courses for institutions that use the clock-hour method to disburse financial aid (Asynchronous credit hour courses are not affected).

TRIO: Consensus

The proposed changes to TRIO would expand student eligibility and provide greater access to postsecondary education for disadvantaged students under three programs that offer student services in a pre-postsecondary education setting—the Talent Search program, the Educational Opportunity Centers program, and the Upward Bound program by expanding participant eligibility **to include all students who have enrolled in or who seek to enroll in a high school. (From USDOE Consensus Document)**



What Happened Next?



DOE takes feedback

Rewrites rules

NPRM released

Interested parties may submit feedback within 30 days of release

DOE publishes final rules

Fall 2024 with compliance timelines

Challenge to Agency Deference

*Overturing of
Chevron v. NRDC*



- ▣ Chevron v. NRDC had required judges to defer to federal agencies' interpretations of rules passed by Congress and signed into law. Its overturning in June 2024 (Loper Bright v. Raimondo) will result in more challenges to federal rule making processes.



- What can my college do to voice concerns over the upcoming Notice of Proposed Rule Making for Cash Management, Accreditation, and State Authorization? When will they be released?

For more information on the Notice of Proposed Rule Making
(deadline for comment has past):

<https://www.regulations.gov/document/ED-2024-OPE-0050-0001>

Benefits to Participation

- Networking and colleagues
- National participation and impacts
- Continued professional development, particularly around advocacy
- Commitment to represent community colleges and accreditors and support their viewpoints

Thank you.

www.clarkstate.edu