

DATES: The notice of proposed rulemaking published in the **Federal Register** on April 13, 2023, 88 FR 22860, is withdrawn as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Bianca Costello, U.S. Department of Education, 400 Maryland Avenue SW, Fifth Floor, Washington, DC 20202. Telephone: (202) 219-2126. Email: bianca.costello@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 2023, the Department published a notice of proposed rulemaking titled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” (Athletics NPRM) in the **Federal Register** that proposed amending 34 CFR 106.41 of the Department’s regulations implementing Title IX. 88 FR 22860. The intent of the Athletics NPRM was to “propose a regulatory standard under Title IX that would govern a recipient’s adoption or application of sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female athletic team consistent with their gender identity.” *Id.* The Department’s proposed rule provided that, if a recipient adopts or applies sex-related criteria that would limit or deny a student’s eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or educational level: (i) be substantially related to the achievement of an important educational objective, and (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied. 88 FR 22891.

The Department invited the public to comment on all aspects of the Athletics NPRM, as well as the Regulatory Impact Analysis. In response, the Department received more than 150,000 public comments on the Athletics NPRM during the 30-day comment period.

Withdrawal of the Notice of Proposed Rulemaking and Termination of the Rulemaking Proceeding

The Department reviewed and considered all comments submitted during the comment period and appreciates the time and effort spent by commenters in sharing their views with

the Department. Commenters offered a broad spectrum of opinions on the Athletics NPRM. Some commenters expressed general support for the proposed regulation, and some asked the Department to modify the proposed regulation to provide for more students to participate on a sex-separate athletic team consistent with their gender identity, particularly at the elementary and secondary school levels. Other commenters opposed the proposed regulation in its entirety and asked the Department to withdraw the Athletics NPRM. Numerous commenters expressed concerns about the application of the proposed regulation in practice, arguing that the proposed regulation was unclear or too complex for recipients to implement, and many commenters offered alternative regulatory text for the Department’s consideration to clarify, simplify, elaborate on, or substantively change the focus and impact of the proposed rule. Additionally, a significant number of commenters included discussions of case law, scientific studies and research papers, and existing athletic association policies and practices regarding athletic eligibility criteria that, according to the commenters, supported the adoption, modification, or withdrawal of the proposed regulation.

The Department recognizes that there are multiple pending lawsuits related to the application of Title IX in the context of gender identity, including lawsuits related to Title IX’s application to athletic eligibility criteria in a variety of factual contexts. In light of the comments received and those various pending court cases, the Department has determined not to regulate on this issue at this time. Therefore, the Department hereby withdraws the Athletics NPRM and terminates this rulemaking proceeding. We do not intend for a final rule to be issued on this NPRM. If, in the future, we decide it is appropriate to issue regulations on this topic, we will do so via a new notice of proposed rulemaking, subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*

To the extent the Department receives complaints of discrimination about a recipient’s obligation to provide equal opportunity to participate in athletics regardless of sex, it will continue to apply the longstanding legal standards reflected in the athletics regulations at 34 CFR 106.41 and in U.S. Dep’t of Health, Educ., and Welfare, Office for Civil Rights, A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 FR 71413 (Dec. 11, 1979), <https://www.govinfo.gov/content/pkg/FR-1979-12-11/pdf/FR-1979-12-11.pdf>.

The Athletics NPRM issued on April 13, 2023, is hereby withdrawn, and the rulemaking proceeding for that NPRM is terminated as of the date of publication of this notice in the **Federal Register**.

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Miguel Cardona,

Secretary of Education.

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DEPARTMENT OF EDUCATION

34 CFR Parts 600, 602, and 668

[Docket ID ED-2022-OPE-0050]

RIN 1840-AD82, 1840-AD83, 1840-AD86

Program Integrity and Institutional Quality: State Authorization, Cash Management, Accreditation and Related Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Termination of negotiated rulemaking process for State Authorization, Cash Management, Accreditation and Related Issues.

SUMMARY: The U.S. Department of Education (Department) announces the termination of the negotiated rulemaking process for three Program Integrity and Institutional Quality issues that were undertaken as part of a larger negotiated rulemaking process for

Federal programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA): State Authorization, Cash Management, Accreditation and Related Issues (Accreditation).

DATES: The negotiated rulemaking process for State Authorization, Cash Management, and Accreditation and Related Issues is terminated as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Scott Prince, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202. Telephone: (202)453-5568. Email: NegRegNPRMHelp@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2023, the Department published a notification in the **Federal Register** announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the HEA. *See* 88 FR 17777.

On April 11–13, 2023, the Department held a virtual public hearing at which individuals and representatives of interested organizations provided advice and recommendations relating to the issues identified in the March 24 notification. We also took written public comments from March 24, 2023, through April 24, 2023.

On November 29, 2023, the Department published a negotiated rulemaking in the **Federal Register** announcing its intent to establish a negotiated rulemaking committee and soliciting nominations for individual negotiators to represent key stakeholder constituencies for the issues to be negotiated to serve on the rulemaking committee. *See* 88 FR 83365. The document covered six issues:

(1) The Federal TRIO programs, including improvements to programmatic eligibility and operations under 34 CFR parts 642 through 647;

(2) The Secretary's recognition of accrediting agencies in 34 CFR part 602 and related parts;

(3) Institutional eligibility under 34 CFR 600.2, including State authorization as a component of such eligibility under 34 CFR 600.9;

(4) Return of title IV funds, to address requirements for participating institutions to return unearned title IV funds in a manner that protects students and taxpayers while easing

administrative burden for institutions of higher education under 34 CFR 668.22;

(5) Cash management, to address timely student access to disbursements of title IV, HEA Federal student financial assistance and provisions related to credit balances, escheatment, or loss of such funds under 34 CFR part 668, subpart K; and

(6) The definition of “distance education” under 34 CFR 600.2 as it pertains to clock hour programs and reporting for students who enroll primarily online.

The Department held three negotiated rulemaking sessions of four days each. During each daily negotiated rulemaking session, we provided an opportunity for public comment and expanded that time to one hour for the second and third sessions. Additionally, non-Federal negotiators shared feedback from their stakeholders with the negotiating committee.

On July 24, 2024, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing to amend the Student Assistance General Provisions regulations to promote program integrity and institutional quality in three of the six negotiated rulemaking issues: (1) distance education; (2) the return of title IV, HEA funds; and (3) the Federal TRIO programs. *See* 89 FR 60256. This document does not apply to the issues covered in the July 24, 2024, NPRM, which will be addressed through that separate rulemaking.

This document pertains to the three remaining issues included in the November 29, 2023, notification establishing the negotiated rulemaking committee: accreditation, state authorization, and cash management. For the reasons discussed below, the Department is terminating the negotiated rulemaking process for these issues.

Termination of the Negotiated Rulemaking Process for State Authorization, Cash Management, Accreditation and Related Issues

The Department began the rulemaking efforts described above to amend 34 CFR parts 600, 602, and 668 to create more student-friendly policies relating to the use and receipt of Federal student financial aid and to hold institutions accountable for providing high-quality educational opportunities. However, the Department has decided not to make any regulatory changes on the issues of accreditation, state authorization, and cash management at this time, to allow for additional evaluation of recent changes in other regulations and industry practices. This decision reflects

the Department's commitment to deliberative policymaking and consideration of feedback received during the negotiated rulemaking process, which highlighted the need for additional time and further study. Terminating the negotiated rulemaking process at this time will allow the agency to gather additional data, assess evolving industry practices, and evaluate whether existing regulations remain necessary or require modification.

The Department considered several factors in reaching the decision to terminate the negotiated rulemaking process on these remaining three identified issues. We considered that two of the areas—state authorization and accreditation—have recently undergone significant changes, as explained below, that continue to affect the field even after the conclusion of negotiated rulemaking, and we decided it is preferable to wait and see the effectiveness of those changes before issuing further regulations. Waiting to assess the effects of these changes will allow the Department to better identify any needed future alterations and improve the evidentiary base for future rulemaking.

Regarding state authorization, the Department decided to terminate the negotiated rulemaking process so we could observe the effects of two recent policy changes. One is a change to § 668.14(b)(32)(iii) that went into effect on July 1, 2024. *See* 88 FR 74568. The new regulation requires institutions to certify to the Department that they are in compliance with all State laws related to closure of postsecondary institutions, including record retention, teach-out plans or agreements, and tuition recovery funds or surety bonds. That change addressed one of the major concerns the Department had related to state authorization—ensuring that States were not limited in their ability to manage the effects of closure on students living within their borders, even if the college is located in a different state. Given that the change to § 668.14(b)(32)(iii) only took effect a few months ago, evaluating its effect as closures occur will help the Department understand whether further modifications may be necessary.

The Department also believes it is worth evaluating how State-led efforts at improving state authorization proceed before making further regulatory changes. This particularly involves the policy modification process adopted by the National Council for State Authorization Reciprocity Agreements (NC-SARA), an organization formed in partnership with four regional compacts

in which almost all states across the country participate for purposes of providing state authorization and reciprocity. NC-SARA first started using a policy modification process in January 2023 to create a formal mechanism for addressing issues with state authorization and reciprocity.¹ That process continues to be refined. As many commenters noted during the public hearings and negotiated rulemaking sessions on state authorization, allowing this policy modification process to continue is one way to address the Department's goals.

Regarding accreditation, the Department adopted a series of final regulations in this area that went into effect on July 1, 2020. See 84 FR 58834. These regulations made significant changes to the Department's process for reviewing and recognizing accrediting agencies. Although these regulations went into effect four years ago, the Department is still in the midst of the first cycle of implementing these changes across all accrediting agencies. That is a result of the five-year timeframe on renewal of recognition for accrediting agencies, as well as the requirements that agencies submit applications for renewal two years before their deadline for renewal and the additional periods institutions have for submitting compliance or monitoring reports. Allowing a full 5-year review cycle under the 2020 regulations for all accrediting agencies provides a greater opportunity to demonstrate the effectiveness of the existing rules and evaluate outcomes before making other changes to the process. This also allows Department staff to focus on existing reviews instead of directing focus away from these key activities. Seeing the effects across a full cycle will help us better identify any needed modifications.

The Department also has decided to terminate the negotiated rulemaking process on the third remaining regulatory area, cash management. While we discussed several regulatory changes to this topic, the most significant was a proposal addressing textbook billing practices. That issue generated significant discussion during negotiated rulemaking and from public commenters, among all the cash management proposals. We are persuaded by concerns raised during the negotiated rulemaking sessions about the need to gather additional data, assess evolving industry practices, and evaluate how policies related to the costs of books and supplies as part of

tuition and fees best serve students and their use of financial aid. The current provisions are in § 668.164(c) and (m). The Department received public feedback during the negotiated rulemaking process articulating the benefits of these policies. The Department also acknowledges concerns from commenters, including from students who have experience navigating these products, that these policies may not always deliver costs to students that are below market rates or may not give students a true opportunity to opt out. Given this mix of input, we believe further research to assess the benefits or drawbacks of this way of billing for textbooks is needed before proceeding with rulemaking. Additionally, because textbook billing is the most significant issue related to cash management addressed by the committee, we do not believe exploring further regulatory changes in this part of the regulations is the best use of limited Department resources at this time. Any institution that includes the costs of books and supplies as part of tuition and fees as described in 668.164(c) must ensure they have a clearly communicated and actionable policy under which the student may opt out of the method the institution provides for students to obtain books and supplies. If the Department continues to find that institutions are not complying with the current requirements in § 668.164(c) and (m), we may propose additional protective or restrictive measures to ensure that students have access to books or supplies at below competitive market rates.

For the reasons described above, at this time the Secretary exercises his discretion to terminate the negotiated rulemaking process for issues related to accreditation, state authorization, and cash management. Were the Department to issue a regulation in this area in the future, it would be bound by the requirements of Section 492(a) and (b) of the HEA, 20 U.S.C. 1098a(a) and (b).

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Miguel Cardona,

Secretary of Education.

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DEPARTMENT OF EDUCATION

34 CFR Parts 30 and 682

[Docket ID ED-2023-OPE-0123]

RIN 1840-AD93

Student Debt Relief for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program; Withdrawal

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The U.S. Department of Education (Department) is withdrawing a notice of proposed rulemaking (NPRM) that, under the Secretary's authority to waive repayment of a loan provided by the Higher Education Act of 1965, as amended (HEA), proposed to do the following: amend regulations regarding waiver of certain student loan debts; provide targeted debt relief as part of efforts to address the burden of student loan debt; and modify the Department's existing debt collection regulations to provide greater specificity regarding certain non-exhaustive situations in which the Secretary may exercise discretion to waive all or part of any debts owed to the Department.

DATES: The notice of proposed rulemaking published in the **Federal Register** at 89 FR 27564 on April 17, 2024, is withdrawn as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Tamy Abernathy, U.S. Department of

¹ <https://www.nc-sara.org/sara-policy-modification-process>.