

Neg Reg Wraps Up With PLUS Loans, More Cash Management Conversation

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During Friday's session, negotiators made progress on several issues of the Department of Education's (ED) 2013–14 Program Integrity and Improvement negotiated rulemaking, including the definition of adverse credit under the PLUS Loan Program and state authorization of distance education.

PLUS Adverse Credit

ED presented the first draft of changes to the adverse credit definition in the [PLUS loan program](#), which have not been examined since 1994. Delinquent accounts, including collection accounts and charge-offs, would only be considered adverse credit history if they occurred during the two years preceding the date of the credit report, instead of the current five-year window. The current five-year window would continue to apply for more serious adverse credit circumstances, such as defaults, bankruptcy, foreclosure, repossession, tax liens, wage garnishment, and write-offs of Title IV debts.

In addition, delinquent accounts would only be considered adverse credit if the applicant has one or more delinquent debts with a total combined outstanding balance greater than \$2,085. In deriving the \$2,085, federal negotiators explained that their current practice is to consider delinquencies under \$500 in the extenuating circumstances process after an applicant has been denied a PLUS. Adjusting for inflation, that \$500 would be \$780 in today's dollars. ED added \$1,305, which represents the median delinquent debt level for PLUS denials in the 2012–13 award year, to the \$780, which equals \$2,085. ED's intention is to approve upfront applicants with small amounts of delinquent debts, who are highly likely to be successful in repayment, rather than funnel them through the extenuating circumstances process, which is burdensome for all parties. Several negotiators recommended that the \$2,085 figure should be indexed to inflation in the regulations, which ED will consider in drafting its next proposal.

In previous neg reg sessions, several negotiators had brought up the need for loan counseling for parent PLUS borrowers. ED stated that it does not have the statutory authority to require loan counseling for all PLUS borrowers, but its proposed regulations do require PLUS applicants who are initially denied and are later approved through the extenuating circumstances process to complete PLUS loan counseling, which would be offered by ED.

Several school-based negotiators requested that ED expand the current 90-day window for credit checks. ED explained that the 90-day window is an operational, not regulatory issue, but that they would consider the negotiators' request.

Cash Management

Negotiators also circled back to several issues previously discussed during the session, including draft regulations for cash management issues. ED started by offering the committee their thoughts on [Thursday's counterproposal](#) from the negotiators representing banks and credit unions and those representing third-party servicers.

The federal negotiators said they were not necessarily opposed to many of the counterproposal's changes, including provisions regarding costs incurred by students and parents and the definition of sponsored cards. However, they added that more work is needed and they needed to know the negotiators' intent in several sections of their proposal before making a decision on how to proceed with the next draft.

The committee also discussed ED's draft regulations on the inclusion of the cost of books and supplies as part of tuition and fees. The draft language provided by ED permits inclusion only if those books and supplies, including books or supplies that are substantially the same in content or function, are not available from any source other than the institution.

School negotiators expressed concerns that this provision may cause unintended consequences, such as stifling innovation, prohibiting rental programs currently offered that dramatically lower students' expenses, and giving perverse incentives to publishers. Non-federal negotiators suggested including language to require schools to provide disclosures about certain institutional programs related to books and supplies as part of tuition and fees, which ED said they would take under consideration.

State Authorization for Distance Education and Foreign Locations

The issues of state authorization for distance education and foreign locations of domestic institutions were also discussed after federal negotiators presented amended language to the committee that took into account Wednesday's and Thursday's discussions.

Regarding state authorization of distance education, ED said it tried to incorporate some of the technical and clarifying suggestions made by the committee, including that the legal authorization in a state is for the purposes of eligibility for Higher Education Act (HEA) funding. Although many non-federal negotiators objected to ED's proposal stating that an institution is not considered to be legally authorized to offer distance education in a state if it is exempt

from state approval or licensure requirements based solely on accreditation, years in operation, or other comparable exemption (such as lack of physical presence in the state), ED's latest draft retains the provision. ED did offer revised wording that clarifies which specific criteria would be permissible for states to consider in legally authorizing an institution for distance education purposes, such as fiscal viability, the student refund policy, tuition and fees, the student complaint process, etc.. Negotiators raised several concerns about the wording of that provision and the impact it may have on institutions, which ED said they would consider when re-drafting.

ED's latest draft also incorporates a "de minimus" standard based on student enrollment in distance education in a state. Their proposal states that an institution is considered to be legally authorized for distance education in a state if the school's total enrollment in that state does not exceed 30 students. Although school-based negotiators welcomed the concept of the "de minimus" standard, they had several operational questions as to how it would be carried out, which ED will consider.

Although the negotiating agenda includes only state authorization for distance education and foreign locations, ED's latest draft includes a state authorization provision that would apply beyond the context of distance education. A school would not be legally authorized in an state (including its "home" state) for purposes of program eligibility for Title IV funds if the program does not meet the requirements for graduates to receive certification required in the state in the occupation for which the program is intended, unless the school obtains a written acknowledgment from each student that the program does not fulfill these requirements.

Negotiators generally agree on the content of the requirement, but there is strong disagreement as to whether this should apply only to distance education or to all program formats. Negotiators representing students and consumers feel that the student protections provided by this provision should be offered to all students regardless of program format. Other negotiators argued strongly that the scope of their negotiations is limited to distance education, and therefore this provision should be limited to distance education.

Finally, the committee reached tentative agreement on draft regulations regarding state authorization of foreign locations of domestic institutions after ED made minor technical changes and clarifications to their draft. This was the third of six issues that the committee has reached tentative agreement on, with the other two being changes to the [clock-to-credit-hour conversion](#) and changes to regulations governing [repeated coursework](#).

The committee will reconvene May 19 and 20 to discuss a second draft of the proposed changes to the definition of adverse credit under the PLUS program, as well as to discuss the final drafts of the state authorization and cash management regulations.

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