Negotiated Rulemaking: Accreditation and Innovation, Session 1, Day 1

After a one-and-a-half-day delayed start due to inclement weather in the DC area, the Accreditation and Innovation rulemaking committee finally got underway at noon today. After opening remarks from a senior Department official and general introductions from each negotiator, the remainder of the afternoon was dedicated to revising and approving the committee’s protocols and considering additions to the committee membership.

Opening Remarks

Diane Auer Jones, principal deputy under secretary at the Department, provided the afternoon’s opening remarks. Characterizing the rulemaking process as a tremendous opportunity to make a difference for students, Auer Jones listed several high-level objectives the Department hopes to achieve by revising a wide-range of Federal regulations:

- protect students and taxpayers;
- reduce and simplify regulations without creating intolerable risk;
- help stop credential inflation and ensure career mobility;
- better engage employers as pivotal players in workforce preparation;
- develop mechanisms to adjust for risk (e.g., expedited approvals); and
- honor institutional mission.

Auer Jones mentioned the redlined text made available by the Department last Monday is the starting point for these negotiations, and she is optimistic the rulemaking committee can reach consensus on the final regulatory text.

Topic-Related Consensus

The federal negotiator, Annmarie Weisman, explained the Department intends to group pre-determined topics together to determine consensus on final regulatory text that would be used in the proposed rule(s). This grouping process is a notable departure from previous negotiations, which relied on an all or nothing approach when determining consensus on language. Although the groupings are subject to change by the rulemaking committee, the Department currently proposes to include the following topics in three discrete buckets:

1. accreditation, the definition of a credit hour, and the Robert C. Byrd Honors Scholarship program;
2. distance education, state authorization for online programs, competency-based education, and related items; and
3. TEACH Grants and faith-based issues.
Committee Protocols

The rulemaking committee spent considerable time reviewing and modifying the written protocols that will govern its work over the next three months. In the proposed protocols, the Department indicated it was trying a few new approaches for this rulemaking to address concerns from past negotiators. This includes grouping pre-determined topics together so consensus can hopefully be achieved on at least some regulatory text; introducing several subcommittees to support the committee’s robust agenda and to provide subject-matter expertise; and limiting speaking time of the alternate negotiator to streamline dialogue and reduce duplication of ideas from the same constituency. After lengthy discussion and relatively benign changes, the committee approved its protocols.

Petitions for Membership

Carrying over to Wednesday will be the consideration of new members to the rulemaking committee and three subcommittees, which promises to be contentious.

Although a representative from BAM Technologies was added to the rulemaking committee as the alternate negotiator for employers, additional nominations halted when the negotiator representing legal assistance organizations that represent students, Robyn Smith, withheld consensus to add state higher education executives as a new stakeholder group. Smith appears to be withholding consensus until the committee also adds as a new stakeholder group State attorneys general. The Department, as well as several other negotiators, made clear they do not believe State attorneys general are a significantly impacted stakeholder group that would bring value to the rulemaking process in the same way state higher education executives would. The committee agreed to postpone further discussion on these and other nominations until Wednesday.

About Accreditation and Innovation Negotiated Rulemaking

Pursuant to notice published in the Federal Register, the U.S. Department of Education convened today a negotiated rulemaking committee to overall a wide range of regulations related to accreditation, institutional eligibility, TEACH Grants, and faith-based initiatives. The purpose of this committee is to reduce certain oversight responsibilities of accreditors, provide more flexibility for both accreditors and schools, encourage more affordable and innovative programs, reduce oversight redundancies amongst members of the triad, revise the service obligation requirements for TEACH Grant recipients, and eliminate restrictions on religious schools’ participation in certain Federal student aid programs.

The rulemaking committee’s charge is to work with the Department throughout three public sessions, which are set at roughly monthly intervals, to develop proposed regulatory language on the above-referenced topic with the goal of reaching consensus on proposed regulations. Consensus in the context of this rulemaking process means that there is unanimous concurrence among all committee members. If the committee reaches a final consensus on all issues, the
Department will use this consensus-based language in its Notice of Proposed Rulemaking(s). Only under very limited circumstances will the Department depart from the consensus-based language.

The rulemaking committee is currently composed of 16 primary and 15 alternate non-federal negotiators that represent constituencies who will be affected by the regulations, including students, postsecondary institutions, and consumer advocacy groups. A primary negotiator participates for the purpose of determining consensus, and an alternate participates for the purpose of determining consensus in the absence of the primary. The committee includes a federal negotiator, who represents the interests of the Department. Only the primary negotiator is generally permitted to speak during the negotiations.

The committee will be supported by three subcommittees that will meet between meetings of the rulemaking committee.

Facilitators, who are impartial representatives and independent from the rulemaking committee, provided a summary of the responsibilities of each negotiator. Each negotiator should clearly understand the issues to be able to succinctly articulate the position and interests of the organizations he or she represents. The absence of a voice in the rulemaking process will be interpreted to mean agreement on the issue being discussed. Although a negotiator may not agree with everything said, he or she should be open to exploring the concerns of other committee members. Each negotiator should actively seek ways to alter his or her proposals so that consensus can be achieved.

All details regarding this negotiated rulemaking including the agenda, a list of negotiators, and meeting times may be found here.