

**U.S. DEPARTMENT OF EDUCATION
TITLE IV NEGOTIATED RULEMAKING TEAM
TEAM II: SCHOOL ISSUES**

**Meeting Summary
April 24-26, 2002
Washington, DC**

Welcome

The third and final negotiating session of Team II commenced at approximately 1:30 p.m. on April 24, 2002, as scheduled, and adjourned on April 26, 2002, at approximately 3:30 p.m. Negotiators for all members of Team II and the facilitators were present.

Review and Adopt Draft Summary of March 6-8, 2002 Meeting

The draft meeting summary was adopted with revisions. The final meeting summary will be released to the public and distributed via the listserv and the Department of Education website.

Public Comment

Opportunities for public comment were provided at various times throughout the negotiating session. Janel Casera of the National Direct Student Loan Coalition provided comments on the 90/10 Rule.

Review of all Issues Subject to Negotiations

The agenda for the meeting was comprised of reviewing documents previously distributed by the Department and updates on other issues, which the Department viewed as non-regulatory items. For each issue, the federal negotiator explained each proposed regulation or Department action, which was then discussed by the negotiators. The negotiators sought to reach tentative agreements on each issue subject to negotiations. By consensus of the negotiators, the issue of the 90/10 Rule, 600.5, was removed from the negotiating agenda.

Tentative agreements were reached on regulatory language for the following issues:

Employment Flexibility for Proprietary Schools under FWS	675.21(b)
Electronic Process: Return Receipt Requirement (Fed Up #7)	668.165(a)(3)(ii)
Treatment of Branch Campuses	600.8
Change of Ownership (Fed Up #81)	668.13

Return of Title IV Aid:

Late disbursements (Fed Up #35 and 36)	668.22, 668.164(g)(3)(ii), 668.164(g)(3)(i), 668.164(g)(2)(ii)(D)
---	--

Attendance (Fed Up #39)	668.22(j)(1)(B)
Leave of absence (Fed Up #41)	668.22(d)(4)
Gear Up (Fed Up #82)	694.10
Overpayment	668.35(c), 673.5(f), 690.79
ATB Testing Requirements (Fed Up #86)	668.32(e)(1) and (2)

Non-Regulatory Responses:

The Department proposed non-regulatory responses for a number of issues. Tentative agreements on these issues reflect the negotiators' agreement that the Department not alter existing regulatory language at this time. Such tentative agreements were reached on the following issues:

Home Schooled Students	668.32(e)(4)
School Eligibility 50% Rules	600.7
Electronic Process (Fed Up #5)	(no regulatory cite)
50% Grant Protection (Fed Up #42)	(no regulatory cite)
Electronic Federal Work Study Process (Fed Up #8)	675.19(b)(2)(I)
Waivers for Community Service (Fed Up #88)	675.18(g)
EADA Reporting (Fed Up #75)	668.23, 668.41(g), 668.47
Purchase/Rental of Computer in Need Analysis (Fed Up #89 and #99)	(no regulatory cite)
Regaining of Student Eligibility (Fed Up #94)	(no regulatory cite)
Overaward Tolerances (Fed Up #100)	673.5

Conceptual Agreement

The Team reached a conceptual agreement, but did not finalize regulatory language for the following issue:

Timely Refunds	(no regulatory cite)
-----------------------	----------------------

No Agreements Reached

The Team did not reach agreement on the following issues:

12-Hour Rule (Fed Up #65)

668.2(b)(2)(ii)(B)

Incentive Compensation (Fed Up #64)

668.14

Conclusion of the Negotiations

As draft regulatory language was being developed to reflect an agreement in concept for the issue of Timely Refunds, the Team reached impasse on the issues of the 12-Hour Rule and Incentive Compensation.

The goal of the negotiations was to reach final consensus on all issues on the Team’s negotiating agenda. Dissent on proposals offered for the issues of the 12-Hour Rule and Incentive Compensation made it impossible to reach final consensus on the complete “package” of issues.

The non-federal negotiators proposed a “carve out” of these issues from the package in order that the tentative agreements on all other issues be considered final agreements and therefore, subject to Provision IV.C of the Team’s Organizational Protocols:

If the committee reaches a final consensus on some but not all issues, the Department will include the consensus-based language in its proposed regulations, and committee members and those persons and entities whom they represent will refrain from commenting negatively on the consensus-based language, except as provided in paragraph IV D.

A “carve out” can be accomplished only by consensus of the Team. The Department dissented from the proposal for a carve out. Thus, the negotiations concluded without final consensus on all issues. As a result, the Department is not obligated to use any of the negotiated language in its Notice of Proposed Rulemaking, and all negotiators are free to comment negatively on any such proposed regulations.

The Department thanked the negotiators for their commitment and hard work throughout the negotiations.