Issue Paper

Proposed Regulatory Language
Team IV – TRIO

Origin: **HEOA Sec. 403(a)**

Issue: **Number of Applications: Branch Campuses and Different**
                     Populations

Statutory cites: **HEA Sec. 402A(c)(5); 402A(h)(1)and (2)**

Regulatory cites: Definitions in 34 CFR 643.7 (TS); 644.7 (EOC); 645.6 (UB);
                     646.7 (SSS); 647.7 (McNair)

                     SSS: 34 CFR 646, Subpart B – How Does One Apply for an
                     Award? Section 646.10; (How many applications for a Student
                     Support Services award may an eligible applicant submit?)

                     Amend/revise 34 CFR 642, Subpart B – What Kinds of Projects
                     Does the Secretary Assist Under This Program? (TRIO Training)
                     and Subpart B of 34 CFR 643 (TS); 644 (EOC); 647 (McNair) and
                     Subpart C of 34 CFR 645 (UB); – Assurances to include a new
                     section entitled "How many applications may an eligible applicant
                     submit?"

Background: Entities applying for grants under most of the TRIO programs have
traditionally been permitted to apply for multiple grants under each program. However,
except for the Student Support Services program, the regulations for these programs do
not specifically address this issue. For Talent Search (TS), Upward Bound (UB), and
Educational Opportunity Centers (EOC) the practice has been that an eligible entity could
apply for more than one grant provided each application proposed to serve students in
different target schools (TS and UB) or a different target area (EOC). Also, in UB an
entity could apply for grants under each of the three project types (Regular Upward
Bound, Upward Bound Math-Science (UBMS) and Veterans Upward Bound (VUB)).

For the TRIO Training program, the Application Notice for the competition stipulates the
number of applications an entity can submit (e.g., one application per program priority).

In the SSS program, the regulations provide that an applicant could submit more than one
grant application as long as each application proposed a project that served a different
campus or a different population of participants as those terms were defined in 34 CFR
646.7

Summary of issue: The HEOA establishes new requirements for the submission of more than one application by an eligible entity by adding definitions for a "different campus" of an institution of higher education and a "different population". The statute defines "different population" as a population "separate and distinct from other populations" or that "has distinct needs for specialized services".   These changes apply to all of the TRIO programs.

Updated information since February 18-20, 2009 meeting:

The Department intends to modify the definition sections of each of the TRIO regulations to include the new statutory definitions for "different campus" and "different population" and for the SSS program to delete the old definition for a "different population."

The Department plans to propose that for the Talent Search (TS), Upward Bound (UB), and Educational Opportunity Centers (EOC) programs, we will continue with current practice that an eligible entity may apply for more than one grant provided each application proposes to serve students in different target schools (TS and UB) or a different target area (EOC). Also, we intend to propose that in UB an entity may apply for grants under each of the three project types (Regular Upward Bound, Upward Bound Math-Science (UBMS) and Veterans Upward Bound (VUB)). For the McNair program we intend to propose that an applicant may submit more than one application for McNair grants as long as each application describes a project that serves different campuses. We have prepared draft proposed regulations for these programs that reflect a new or updated section on the number of applications an eligible entity can submit (see 34 CFR 643.10 (TS); 644.10 (EOC); 645.20   (UB) and 647.10 (McNair) of draft revised regulations).

For the Student Support Services (SSS) program, we propose that the Secretary will stipulate the different populations in the <u>Federal Register</u> Notice Inviting Applications for each grant competition. This approach is being used for the 2010 SSS competition.

Issue Paper

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Proposed Regulatory Language
Team IV – TRIO

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Origin: **HEOA Sec. 403(a)**

Issue: **Definitions**

Statutory cites: **HEA Sec. 402A, 402B, 402C, 402D, and 402F**

Regulatory cites: **34 CFR 643.7 (TS); 644.7 (EOC); 645.6 (UB); 646.7 (SSS); 647.7 (McNair)**

Summary of issue: The HEOA created new definitions for some terms and uses other new terms that may need to be defined through regulations.   New terms with a clear statutory definition will need to be reflected at appropriate places in the regulations. Some of the other terms that are new to TRIO may be defined in other parts of the HEOA or other program regulations. There are also terms that the Department needs to define through the regulations. The regulations need to be amended to add or change the terms and definitions.

Terms added by the HEOA that are new to the TRIO programs include:
 "homeless children and youth" (as defined in section 725 of the McKinney-Vento Homeless Assistance Act) (All programs);
"students in foster care" (All programs);
 "regular secondary school diploma" (Talent Search and Upward Bound);
"rigorous secondary school program of study" (see 34 CFR §691.16) (Talent Search and Upward Bound);
"connections to services" (Talent Search);
 "financial literacy and economic literacy" (All programs);
"groups traditionally underrepresented in postsecondary education" (All programs);
 "disconnected students" (All programs); and
"students who have a high risk of academic failure" (Upward Bound).

Terms with new or revised definitions included in the HEOA:
 "different campus" (All programs);
"different population" (All programs);
"veteran eligibility" (All programs); and
"groups underrepresented in graduate education"(McNair).

Terms not currently defined in regulations:
 "scholarly and research activities" (McNair);
"summer internships" (McNair);
"youths with potential for education at the postsecondary level" (Talent Search); and
"individual with disabilities" (defined in SSS regulations but not in TS, UB, or EOC

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regulations)

Note: Definitions specific to the Talent Search program will be addressed during the discussion of the HEOA changes to the goals and purposes of the Talent Search program.

Updated information since February 18-20, 2009 meeting:

We are proposing to add to the draft regulations for the applicable program(s) definitions or revised definitions for:

"homeless children and youth" (as defined in section 725 of the McKinney-Vento Homeless Assistance Act) (All programs);
"students in foster care" (All programs);
 "regular secondary school diploma" (Talent Search and Upward Bound);
"rigorous secondary school program of study" (see 34 CFR §691.16) (Talent Search and Upward Bound);
"financial literacy and economic literacy" (All programs);
"students who have a high risk of academic failure" (Upward Bound);
"different campus" (All programs);
"different population" (All programs);
"veteran eligibility" (All programs); and
"groups underrepresented in graduate education"(McNair);
"scholarly and research activities" (McNair);
"summer internships" (McNair); and
"individual with disabilities" (defined in SSS regulations but not in TS, UB, or EOC regulations)

We do not believe that regulatory definitions for the following terms are needed:

"connections to services" (Talent Search);
"groups traditionally underrepresented in postsecondary education" (All programs);
"disconnected students" (All programs); and
"youth with potential for education at the postsecondary level" (Talent Search).

Issue Paper

<p style="text-align:center">Proposed Regulatory Language
Team IV – TRIO</p>

Origin: **HEOA Sec. 403(a)**

Issue: **HEOA changes the current Talent Search (TS) required and permissible services**

Statutory cites: **HEA Sec. 402A and 402B**

Regulatory cites: 34 CFR 643.4 (Services); 643.7 (Definitions); 643.21 (Selection Criteria) 643.22 (Prior Experience Criteria); 643.32 (Other Requirements)

Summary of issue: The HEOA made fundamental changes to the goals and purpose of the Talent Search program. These statutory changes seem to require Talent Search projects to provide more intensive academic interventions as reflected by the changes to the lists of required and permissible Talent Search services and the new program outcome criteria added by the HEOA. The list of Talent Search services and the outcome criteria are now similar to those of the Upward Bound program. The Department needs to determine how theses changes to the Talent Search program should be implemented through regulations and what distinctions are or should be made between the Upward Bound and Talent Search programs.

Updated information since February 18-20, 2009 meeting:

Because the HEOA has fundamentally changed the goals and purpose for the Talent Search program, some of the nonfederal negotiators met with other TRIO professionals to develop recommendations on how to implement these changes through revisions to the existing regulations. The negotiators provided the Department with a suggested version of proposed changes for the Talent Search regulations.

The Department has prepared draft proposed regulations for the Talent Search program to incorporate statutory changes, add definitions, and address the new prior experience criteria. The Department also proposes to remove the current regulatory requirement of a minimum numbers of participants to be served (section 643.32(b)). The Department proposes to address the number of participants a TS project is expected to serve each year of the grant cycle through the Notice Inviting Applications for the competition than through regulations.

During the first meeting, the committee discussed the new criteria for prior experience. Some committee members expressed concern about requirement to assess the extent to

which the grantee met or exceeded its postsecondary completion objective. The statute uses the term "to the extent practicable."

The HEA requires the Department to use the completion criteria, if practicable. If the Department determines that it is not practicable to track completion, the appropriate decision would be to not use the criteria at all. However, to justify such a conclusion, the Department would need to explore all options for tracking completion such as allowing grantees to try to track only a sample of their students or allowing grantees to use an electronic survey or similar lower-cost method.

The Department has included most of the recommendations of the group in the draft proposed regulations but placed some of the proposed changes in different sections of the regulations than suggested by the group.

The TRIO group also submitted suggestions for revisions to the Talent Search regulations for the selection criteria for Need and Plan of Operation on Friday, March 13.

The approved agenda for the negotiations limited the sections of the selection criteria that we would consider for changes to the objectives and the plan of operation. However, the Department is willing to discuss changes to the Need section for the Talent Search program because the HEOA has made fundamental changes to the purpose and goals of this program.

Additional Discussion:
The Department would like to discuss further the TRIO group's suggestions regarding allowable costs for transportation and tuition and the Need selection criteria.

Issue Paper

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Proposed Regulatory Language
Team IV – TRIO

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Origin: HEOA Sec. 403(a)

Issue: **Outcome Criteria**

Statutory cites: **HEA Sec. 402A(c)(2)(A); 402A(f); and 402H(a)(1)(C)**

Regulatory cites: 34 CFR 642.32 (TRIO Training); 643.22 (TS); 644.22 (EOC); 645.32 (UB); 646.22 (SSS); 647.22 (McNair)

Summary of issue: The HEOA establishes specific outcome criteria to be used to determine a grantee's prior experience (PE) points and for the purpose of reporting annually to the Congress on program performance. The HEOA does not stipulate the distribution of the PE points among the new outcome criteria for each program. The HEOA does not establish specific outcome criteria for TRIO Training. The Training regulations have not been updated to reflect the current practice of awarding 15 PE points.

Note: The new outcome criteria for the Talent Search program will be addressed during the discussion of the HEOA changes to the goals and purposes of the Talent Search program.

Updated information since February 18-20, 2009 meeting:

The draft proposed regulations for the Student Support Services, McNair, Talent Search, EOC, and Upward Bound programs include a proposed distribution of the fifteen points among the criteria for PE points. Under this issue paper for the changes to the Talent Search program, the requirement for tracking participants through completion of postsecondary education is addressed.

Note: A group of TRIO representatives submitted recommendations on prior experience criteria for Talent Search and Upward Bound late on Friday, March 13th. With a couple of small exceptions, the proposed criteria and point distribution for Talent Search and regular Upward Bound are similar to what Department is proposing proposed. The one major difference is the group's proposal to use postsecondary retention in place of postsecondary completion. This proposal is not consistent with the HEA.

Additional Discussion: The Department would like further discussion on how the Secretary should adjust PE scores for grantees that failed to serve the approved number of participants.

Issue Paper

Proposed Regulatory Language
Team IV – TRIO

Origin: **HEOA Sec. 403(a)**

Issue: **Foster Care and Homeless Youth**

Statutory cites: **HEA Sec. 402A**

Regulatory cites: **To be determined**

Summary of issue: A new provision added by the HEOA identifies new groups of students that projects can serve, including foster care youth and homeless children and youth. The HEOA clarifies that specific services for foster care and homeless youth are permissible and directs the Secretary, as appropriate, to require applicants for funds under the TRIO Programs to make available services to these youth.

Updated information since February 18-20, 2009 meeting:

We are proposing to include definitions for foster care youth and homeless children and youth which have been added to the Definitions sections of the program regulations.

Issue Paper

Proposed Regulatory Language
Team IV – TRIO

Origin: **HEOA Sec. 403(a)**

Issue: **Required and Permissible Services**

Statutory cites: **HEA Sec. 402A, 402B, 402C, 402D, 403E, 402F, and 402G**

Regulatory cites: 34 CFR 642.10 and 642.34 (Training); 643.4 (TS); 644.4 (EOC);
                          645.11, 645.13, and 645.14 (UB); 646.4 (SSS); 647.4 (McNair)

Summary of issue: The HEOA amends the statutory provisions for the TRIO programs
providing services to pre-college and college students (Upward Bound, Talent Search,
Student Support Services, and McNair). The HEA now lists certain services that projects
must provide to participants and optional activities that programs may offer to students.
Prior to the new law, except for the Upward Bound statute that required projects funded
for two or more years to provide instruction in core subjects, projects could choose from
a number of permissible activities/services.

Note: The changes to the Talent Search program required and permissible services will
be addressed during the discussion of the HEOA changes to the goals and purposes of the
Talent Search program.

Updated information since February 18-20, 2009 meeting:

The draft proposed regulations reflect the statutory changes to the required and
permissible services in each program.

Issue Paper

Proposed Regulatory Language
Team IV – TRIO

Origin: HEOA Sec. 403(a)

Issue: **Updates to TRIO Regulations**

Statutory cites: **HEA Sec. 402A, 402B, 402C, 402D, 403E, 402F, and 402G**

Regulatory cites: 34 CFR 642 (Training); 643 (TS); 644 (EOC); 645 (UB); 646 (SSS); 647 (McNair)

Summary of issue: The TRIO program regulations need to be modified to reflect changes made by the HEOA and established administrative practices.

Needed changes include the following:
--updating the selection criteria related to "Objectives" (All programs);
--adding to SSS selection criteria a criterion on the applicant's effort to provide sufficient financial aid to meet the student's full need and to maintain the load burden of each student at a manageable level;
--adding (or revising) the existing McNair selection criteria to include the "Award Considerations" from the HEA;
--updating the allowable and unallowable cost sections of the SSS regulations to address Grant Aid and temporary housing for homeless and foster care youth; and
--considering revisions to the regulations on minimum number of participants to be served by TS, EOC, and UB, UBMS, and VUB projects.

Many sections of the TRIO Training regulations need to be updated or revised to reflect current law and practice.

Updated information since February 18-20, 2009 meeting:

The draft proposed regulations include revisions to the selection criteria related to "objectives" for all programs and changes to the applicant and community support selection criteria for Talent Search and Upward Bound, and revisions to the Plan of Operation section of the Talent Search regulations**.** However, no changes have been made to the Plan of Operation criteria for the UB, EOC, SSS and McNair. The statutory changes from the 1998 amendments can be evaluated using existing selection criteria for McNair and SSS, so there is no requirement at this time to make any changes to the selection criteria for these programs.

With regard to the Department's proposed changes to the selection criteria for the Objectives for all programs, the Department believes that peer reviewers should only evaluate the programs' outcome objectives based on whether they were ambitious as

related to the need data and attainable based on the applicant's plan of operation, budget, and other resources.

For the SSS program, conforming changes to the allowable and unallowable costs would be made to address Grant Aid and temporary housing for homeless and foster care youth.

The Department also proposes to remove the regulatory requirement of a minimum numbers of participants to be served in Talent Search, EOC, and Upward Bound. The Department believes the number of participants a project is expected to serve each year of the grant cycle is better addressed through the Notice Inviting Applications for the competition than through regulations. The current regulations for the Student Support Services and McNair programs do not have a similar requirement.

For the TRIO Training program regulations, the Department is proposing to make changes to reflect the amendments to the HEA and to reflect current practices regarding the Need selection criteria, the process for ranking applications by priority, the use of prior experience points in the ranking of applications for funding, and the number of prior experience points an applicant may earn. Since the Training grants are for two-years, the Department is proposing to evaluate prior experience of an applicant on its performance only for the first project year of the expiring grant.

Issue Paper

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Proposed Regulatory Language
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Origin: **HEOA Sec. 403(a)**

Issue: **Review Process for Unsuccessful TRIO Applicants**

Statutory cites: **HEA Sec. 402A**

Regulatory cites: 34 CFR 642 (Training); 643 (TS); 644 (EOC);; 646 (SSS); 647 (McNair) **Subpart C – How Does the Secretary Make a Grant?** 34 CFR 645 (UB) **Subpart D -- How Does the Secretary Make a Grant?**

Summary of issue: The HEOA established a process for unsuccessful applicants to request a review of the scoring or processing of their applications. Applicants that have evidence that their scores were affected by a specific administrative, technical, or scoring error may request a review by the Secretary. If the Secretary determines that a technical or administrative error was made, the Secretary will arrange for the application to be reconsidered in the peer review process. If the Secretary determines that a scoring error was made, the Secretary may adjust the prior experience points or final score of the application as appropriate. If the Secretary determines that there was an error in the peer review process, the Secretary will refer the application to a second review panel of experienced readers who participated in the field reading but did not read the application in question. The new score from the secondary review would be used instead of the original score. Applications with revised scores in the fundable range will be funded to the extent feasible based on the availability of appropriations.

Updated information since February 18-20, 2009 meeting:

Background: Prior to enactment of the HEOA there was not a formal process for considering requests submitted by applicants in regards to alleged mishandling of an application by Department staff, its contractors or the peer reviewer. The practice has been that upon notification of an alleged administrative or scoring error, TRIO staff reviewed the calculation of prior experience points and/or the peer reviewer scoring; if an error or errors were found, the application score was adjusted accordingly. If the adjustment resulted in the application scoring within funding range, the applicant was award a grant.

Adjustments in a score, due to either a mathematical or reader error, usually resulted in a score adjustment of only one or two points. Historically, the adjustments in scores have led to only one or two applicants receiving awards each competition as a result of the errors, which is a fraction of one percent of the applications received.

New HEOA requirements: With the passage of the HEOA, the Department is now required to establish a formal process for reviewing unsuccessful applications. The review process as stated by the HEOA requires modifications to the grant award process that could significantly delay the awarding of grants, since the review of unsuccessful applications should be completed prior to the end of the fiscal year in which the competition is held to avoid any disruption in funding for existing grantees. Thus, the Department would need to notify all applicants of their funding status earlier than normal to allow time for a second review of unsuccessful applications. The HEOA requires the Secretary to "adjust the prior experience or final score of the application appropriately and quickly, so as not to interfere with the timely awarding of grants for the applicable grant competition."

To meet all the statutory requirements, including the timely awarding of grants under each TRIO grant competition, the Department is proposing to use a two slate process. The Secretary would use the first slate to make new awards in rank order based on the available funds for the competition minus a percentage of the program funds set aside for any applications that qualify after a potential second review. The second slate would be prepared after the re-ranking of applications based on the second review. For each competition, the Secretary would determine what percentage of program funds to reserve for the second review of applications. Based on the Department's recent experience, less than one percent of the funds allocated for a program competition would be needed to correct administrative or scoring errors; however, the Secretary may choose to reserve a higher percentage of funds to help ensure there would be sufficient funds set aside to address all possible score changes because of administrative or scoring errors.

Alleged technical or administrative errors that resulted in an application not being review (refer to the draft proposed regulations for examples of these types of errors) would be addressed prior to the preparation of the first funding slate. An applicant, whose application was not reviewed because of a technical or administrative error, may request a review upon notification that the application was ineligible for consideration for funding. Since the Department will notify applicants determined to be ineligible before the start of the field reading; the Department would receive any requests for a review in time to have the application evaluated by the peer reviewers before funding decisions are announced.

The proposed regulations for the second stage review reflect the following steps:

(1) After the first review of applications, the Secretary would make new awards in rank order as described in the regulations based on the available funds for the competition minus the funds set aside for the second review;
(2) An applicant that was not selected for funding following the first review of applications, may request a second review if the applicant demonstrates that the Department, the Department's agent or a peer reviewer made an administrative or scoring error; and
(3) The final score assigned to the application is within the funding band (refer to information below on how funding band is established).

Draft proposed procedures:

(1) The Secretary would notify an unsuccessful applicant in writing as to the status of its application and the funding band for the second review, and provide copies of the peer reviewers' evaluations of the applicant's application and the applicant's prior experience score, if applicable.

(2) An applicant whose application's final score is within the funding band would have seven (7) calendar days after notification that its application was not funded, in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. Note: It is important that the Department establish a short timeframe and one deadline for all requests for a second review to be able to manage and schedule the additional work and convene a secondary review panel or panels as needed in order to ensure timely notifications to applicants and obligation of remaining program funds.

(3) An applicant's written request for a second review must be received by the Department or submitted electronically to a designed e-mail or Web address by the due date and time established by the Secretary.

(4) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the prior experience points awarded, the Secretary will adjust the applicant's prior experience score. If the adjusted score assigned the application would have resulted in funding of the application during competition and the program has funds available, the Secretary will fund the application prior to the re-ranking of applications based on the second peer review of applications.

(5) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), the Secretary will adjust the applicant's peer reviewers' score(s). If the adjusted score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary will fund the application prior to the re-ranking of applications based on the second peer review of applications.

(6) If the Secretary determines that the peer reviewers made a scoring error, the Secretary will convene a second panel of peer reviewers in accordance with the requirements in Section 402A(c)(8)(C)(iv)(III) of the HEA as amended.

The average of the peer reviewers' scores from the second peer review will be used in the second ranking of applications. The second average score obtained from the secondary peer reviewers is the final peer reviewer score for the application that will be used even if the second review results in a lower score for the application than that obtained in the initial review.

For those applications eligible for a second review based on the established funding band, following the second peer review, the Secretary would fund the applications in this band based on adjusted scores and fund in rank order using the available funds that had been set aside for the second review of applications. The peer reviewers' scores received as a result of the secondary review would be the scores used even if the score is less than the peer reviewers' score from the first review of the application.

Notes: It is possible that the secondary review process will result in some applicants that would have been funded on the first slate if all the program funds had been used for the first slate to not be successful after the re-ranking of applications based on the secondary peer review. In addition, it is possible that applicants that did not submit a request for secondary review will be successful if their original total score is within the funding range for the supplemental slate after the re-ranking following the second review. Thus, applications in this category would be funded.

Process for Establishing Funding Band

(1) Under the draft proposed regulations, for each competition the Secretary would establish a funding band for the second review of applications.

(2) The funding band would include at least 50 percent more applications than could be funded with the funds set aside for the second review of applications for the competition.

Refer to examples.

Second Review of Applications Scoring Below the Funding Band

(1) After the end of the competition, the Secretary would consider an applicant's request for a second review, if the Secretary determines that there was an administrative and/or scoring error related to either the awarding of prior experience points or the peer review process.

(2) If the adjusted total score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary will fund the application.