

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-59150; File No. S7-33-08]

Records Services, Fee Schedule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting comments on a proposed amendment to its regulation governing the fees for records services. The Commission's schedule of fees for records services will be updated using a formula for the calculation of fees under the Freedom of Information Act ("FOIA") and language that directs FOIA requesters to the Commission's Web site. Using a formula, instead of set rates, will allow the Commission to charge fees that reflect its allowable direct costs.

DATES: Comments should be received on or before January 30, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-33-08 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number S7-33-08. This file number should be included on the subject line if e-mail is used. To help us process and

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Melinda Hardy, Assistant General Counsel, Office of the General Counsel, (202) 551-5149; Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9612.

SUPPLEMENTARY INFORMATION:

I. Discussion

The fees the Commission charges for searching, reviewing, and duplicating records pursuant to FOIA requests are set forth in 17 CFR 200.80e [Schedule of fees for records services]. The Commission believes it is appropriate to update its fee schedule for searching and reviewing records to comply with guidelines promulgated by the Office of Management and Budget, Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10,012, 10,018 (Mar. 27, 1987) ("OMB Guidance"), which instructs agencies to charge fees that recoup the full allowable direct costs that they incur. The OMB Guidance states that agencies may charge the average basic pay rate of employees routinely performing these services plus 16% to cover associated benefits. *Id.* Also, "agencies may establish an average rate for the range of grades typically involved." *Id.*

The current regulation contains set rates for FOIA request search and review activities: \$16/hour for grade 11 and below; and \$28/hour for grade 12 and above. The Commission is proposing to revise the regulation to provide the formula contained in the OMB Guidance rather than a set price. Moreover, the proposed regulation provides that the Commission will establish an average rate for each of the three different groups of grades typically involved: Personnel in grades SK 8 or

below; personnel in grades SK 9 to 13; and personnel in grades SK 14 or above.¹ The Commission's Web site will contain current rates for search and review fees for each class. The rates will be updated when salaries change and will be determined by using the formula in the regulation and averaging the hourly rate of the different groups of grades of staff who routinely perform these duties. For the current calendar year, the fees would be assessed as follows: SK 8 or below: \$26/hour; SK 9 to 13: \$40/hour; and SK 14 or above: \$70/hour. The cost of the average fee collection activity is \$20; therefore, no fee will be charged of \$20 or less. *See* 5 U.S.C. 552(a)(4)(A)(iv) (providing that no fee may be charged if fee exceeds costs of collecting and processing fee).

II. Statutory Basis

The Commission is proposing amendments to 17 CFR part 200 pursuant to 5 U.S.C. 552 and 15 U.S.C. 78d-1.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Organization and functions.

III. Text of Proposed Amendments

For the reasons set forth in the preamble, Title 17 Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

1. The general authority citation for Part 200, subpart D, is revised to read as follows:

Authority: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a-37, 80a-44(a), 80a-44(b), 80b-10(a), 80b-11.

* * * * *

2. Section 200.80e, first paragraph, is revised to read as follows:

§ 200.80e Appendix E—Schedule of fees for records services.

Search and review services: The average salary rates (*i.e.*, basic pay plus

¹ Fees for searches of computerized records will continue to be based on the actual cost to the Commission which includes machine and operator time. 17 CFR 200.80(e)(9)(i).

16%) of employees performing these services. The hourly rates are listed on the Commission's Web site at <http://www.sec.gov/foia/feesche.htm>.

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By the Commission.

Dated: December 23, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-31127 Filed 12-30-08; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Office of Postsecondary Education; Notice of Negotiated Rulemaking for Programs Authorized Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice of establishment of negotiated rulemaking committees.

SUMMARY: We announce our intention to establish five negotiated rulemaking committees to prepare proposed regulations under Title IV of the Higher Education Act of 1965, as amended (HEA). Each committee will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We request nominations for individual negotiators who represent key stakeholder constituencies that are involved in the student financial assistance and grant programs authorized under Title IV of the HEA to serve on these committees.

DATES: We must receive your nominations for negotiators to serve on the committees on or before January 23, 2009.

ADDRESSES: Please send your nominations for negotiators to Patty Chase, U.S. Department of Education, 1990 K Street, NW., room 8034, Washington, DC 20006, or by fax at (202) 502-7874. You may also e-mail your nominations to Patty.Chase@ed.gov. Nominees will be notified by letter whether or not they have been selected as negotiators, as soon as the Department's review process is completed.

FOR FURTHER INFORMATION CONTACT: For information about the nomination submission process contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. Telephone: (202) 502-7526. You may also e-mail your questions about the nomination

submission process to:

Wendy.Macias@ed.gov.

For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at <http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>. For further information contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. Telephone: (202) 502-7526. You may also e-mail your questions about negotiated rulemaking to: Wendy.Macias@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting Wendy Macias at the address, telephone number, or e-mail address listed above.

SUPPLEMENTARY INFORMATION: On September 8, 2008, we published a notice in the **Federal Register** (73 FR 51990) announcing our intent to establish negotiated rulemaking committees to develop proposed regulations to implement (1) the changes made to the HEA by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110-315, that affect programs authorized under Title IV of the HEA and, (2) possibly, the provision added to section 207(c) of the HEA by the HEOA that requires the Secretary to submit to a negotiated rulemaking process any regulations the Secretary chooses to develop under amended section 207(b)(2) of the HEA, regarding the prohibition on a teacher preparation program from which the State has withdrawn approval or terminated financial support from accepting or enrolling any student who received Title IV aid. We announced our intent to develop these proposed regulations by following the negotiated rulemaking procedures in section 492 of the HEA. The notice also announced a series of six regional hearings at which interested parties could suggest topics for consideration for action by the negotiating committees. We invited parties to submit topics for consideration in writing, as well. We heard testimony and received written comments from approximately 250 people. Transcripts from the hearings can be found at <http://www.ed.gov/HEOA>.

Regulatory Issues: After consideration of the information received at the

regional hearings and in writing, we have decided to establish the following five negotiating committees:

- Team I—Loans—Lender/General Loan Issues;
- Team II—Loans—School-based Loan Issues;
- Team III—Accreditation;
- Team IV—Discretionary Grants;
- Team V—General and Non-Loan Programmatic Issues.

We list the topics each committee is likely to address elsewhere in this notice under *Committee Topics*.

Because of the large volume of changes made by the HEOA that must be implemented through negotiated rulemaking, not all provisions will be regulated at this time. In particular, the provisions affecting foreign schools (the majority of which are not effective until July 1, 2010) and unfunded programs will be regulated through the negotiated rulemaking process at a later date. For Team III—Accreditation, in addition to the provisions of the HEOA, we have included several issues identified during the 2007 negotiated rulemaking process, which did not result in published regulations.

As we did not receive any requests from the public to negotiate the provision added to section 207(c) of the HEA, and the Secretary has determined that it is not necessary to issue regulations in this area at this time, we will not be negotiating this provision of the HEOA in these negotiated rulemaking sessions. Regulations implementing HEOA changes to other areas of Title II of the HEA, as well as Titles III, V, VI, and VII, and those areas of Title I that do not affect the Title IV programs, will be implemented either through notice-and-comment rulemaking or, where the regulations will merely reflect the changes to the HEA and not expand upon those changes, without notice and comment. The only exception will be in the case of regulations that are needed to implement the initial grant competition under a new or substantially revised program authority; in these situations section 437(d)(1) of the General Education Provisions Act (20 U.S.C. § 1232(d)(1)) permits the Secretary to issue regulations without first soliciting public comment.

We intend to select participants for the negotiated rulemaking committees that represent the interests significantly affected by the proposed regulations. In so doing, we will follow the new requirement in section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or experience in the relevant subjects under negotiation. We will also select