

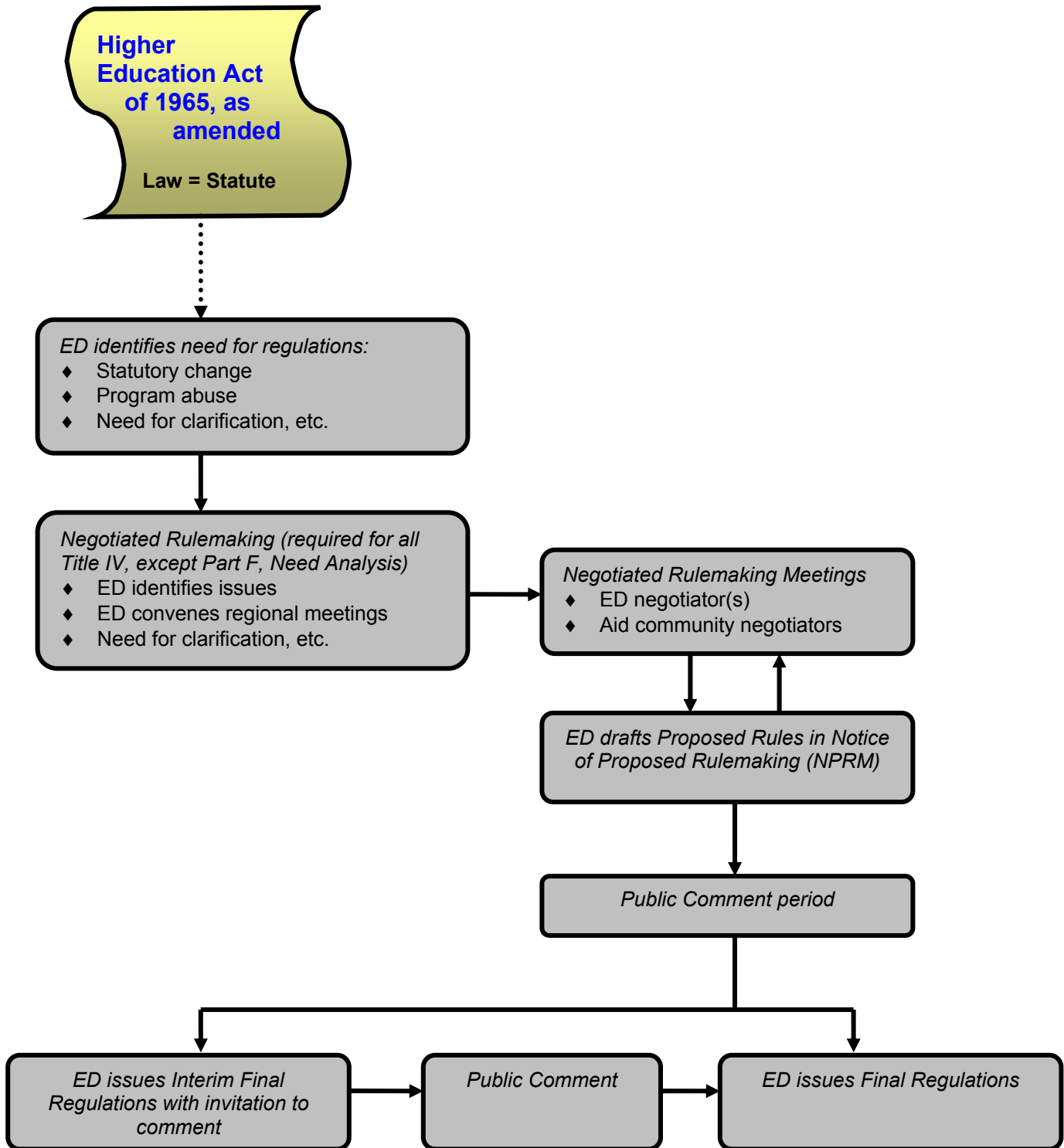
NASFAA



POLICIES & PROCEDURES
TOOLS

**Reading & Interpreting
Regulation & Statute**

The Regulatory Process at a Glance



The Relationship of Law to Regulations

The federal student aid programs were created as a result of laws enacted by Congress. Laws (also called statutes) that create programs are categorized as **authorizing legislation**. Authorized programs carry expiration dates to ensure that Congress reexamines the programs on a regular basis, generally every 5 or 6 years. Once a program has been created, it must be reauthorized prior to its expiration. During the **reauthorization** process, Congress may amend the program to respond to the needs of society or to resolve misunderstanding, misuse, or abuse.

Programs authorized by Congress are administered by the appropriate agency of the Executive Branch of government. Most of the federal student aid programs are administered by the U.S. Department of Education (ED), primarily by promulgating regulations that govern the actions of program participants. Thus, while Congress writes the law to give general direction, ED writes regulations to provide detailed procedural guidance—within statutory parameters—for the management of the federal student aid programs by schools, lenders, guaranty agencies, and others. Schools may best achieve compliance with regulations by establishing a set of policies and procedures.

Once they become effective, regulations have the “force of law.” They are not, in and of themselves, the law; ED cannot enact law, only Congress can. However, failure to comply with regulations can result in financial liabilities and/or fines against the school or elimination of the school from Title IV program participation. A complete and up-to-date policies and procedures manual helps ensure compliance.

Required policies can be either statutory in nature (i.e., when the law specifically calls for a policy) or regulatory (i.e., when ED interprets the law as requiring certain actions). In most cases, policies specifically mandated by statutory language will be incorporated directly into regulation. Understanding how to read and interpret statutory and regulatory language is essential to the development of institutional policies and procedures.

Proposed Regulations, Final Rules, and Interim Final Regulations

The law requires most federal student aid regulations to undergo a developmental process called **negotiated rulemaking**. Under this process, ED convenes regional meetings to obtain public involvement in identifying issues that require regulation. Negotiators are then selected to participate in developing proposed regulations. Negotiators include individuals and representatives of groups involved in the Title IV programs, such as students, legal assistance organizations that represent students, institutions of higher education and the various associations to which they belong, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies.

ED then publishes the results of the negotiations as a **notice of proposed rulemaking (NPRM)** in a government publication called the *Federal Register*. An NPRM includes background information, proposed changes to current regulations, and the address and closing (due) date for receiving comments from the public. The comment period is usually between 30 and 120

days. ED reviews the comments from the public and financial aid community, incorporates any needed changes, and publishes final regulations.

Final regulations are published in the *Federal Register* as **final rules**. A final rule includes a preamble that contains a summary of comments ED received on the NPRM, and ED's responses to them. Any changes that resulted from the comments are noted. If ED did not make changes to the final rules as recommended in the comments, ED will explain its reasons. Final regulations become part of the body of governing precepts known as the Code of Federal Regulations (CFR).

In limited cases, regulations are not preceded by an NPRM, but are published directly as a final rule. This may occur when the changes are technical corrections to previously published final rules, or when the Secretary of Education finds that solicitation of public comment would be impracticable and contrary to the public interest.

On occasion, ED will publish **interim final regulations**. ED may issue interim final regulations when proposed rules have been controversial or have generated a large number of comments. These comments may have differing viewpoints or suggested alternatives not considered while developing the proposed regulations. **Interim final regulations are final rules**. They become effective on the date(s) specified and, like any other final rules, they remain in effect until superseded by new final rules or statutory changes. The "interim final" designation merely demonstrates ED's intent to invite and consider further comment on certain issues. Additional comments may reflect further changes in subsequent final rules to be published in the future.

Format of a Final Rule or Notice of Proposed Rulemaking

The **preamble** of both final rules and NPRMs contains useful information about the contents of the regulation and the intent of the regulatory changes. Information in the preamble is sectioned as follows:

- ◆ **Basic identifying information** identifies the regulatory parts and programs affected, the originating agency, and the action being taken (e.g., proposed rules, final rules).

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682 and 685

RIN 1845-AA12

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Notice of proposed rulemaking

- ◆ A **SUMMARY** statement identifies the purpose of the regulation. Note that the summary statement is usually the quickest place to identify the topics covered by the regulation. In the example below, taken from an NRPM, the Summary specifically identifies the purpose and topic as "amending the regulations to strengthen and improve the processes for granting loan discharges based on a borrower's death or disability," while the title of the regulation is

simply " Federal Perkins Loan Program, Federal Family Education Loan Program, and the William D. Ford Direct Loan Programs."

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations governing the Federal Perkins (Perkins) Loan Program, Federal Family Education Loan (FFEL) Program, and the William D. Ford Direct Loan (Direct Loan) Programs regulations in order to strengthen and improve the processes for granting loan discharges based on a borrower's death or total and permanent disability.

- ◆ Information in the section labeled **DATES** depends on the type of action. If the publication is an NPRM, the due date for public comments is given.

DATES: We must receive your comments on or before September 18, 2000.

If the publication is a final rule, the effective date is given. A final rule may also have implementation dates that differ from effective dates, if ED has decided to allow schools the option of instituting a change earlier than its mandatory effective date. Regulations must be published in final form by November 1 in order to be effective for the next award year. For instance, a regulation would have to be published by November 1, 2003, to be effective for the 2003-04 award year.

DATES: Effective July 1, 2002, except the following provisions of these regulations are effective July 1, 2001: 674.9(h)(3), 674.51(s)....

For additional information see the discussion of effective dates under the Analysis of Comments and Changes section that follows.

- ◆ For an NPRM, an **ADDRESSES** section identifies the person to whom all comments should be sent; usually both regular mail and e-mail addresses are given.

ADDRESSES: Address all comments about these proposed regulations to Ms. Shirley Regwriter, P.O. Box 23272, Washington, DC 20026-3272. If you prefer to send your comments through the Internet, use this address: Shirley.Regwriter@ed.gov.

- ◆ For both NPRMs and final rules, a section labeled **FOR FURTHER INFORMATION CONTACT** provides an address and telephone number for a contact person who can answer questions.

FOR FURTHER INFORMATION CONTACT: For the FFEL and Perkins Loan Programs, Ms. Shirley Regwriter, or for the Direct Loan Program, Mr. Jon Regwriter; U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202-5345. Telephone: (202) 000-0000. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service, (FIRS) at 1-800-000-0000.

- ◆ **SUPPLEMENTARY INFORMATION** also varies according to the type of action.

For an NPRM, this section usually includes the following subsections:

- **Invitation to Comment** which gives advice about how to make effective comments;
- **Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record** which provides a telephone number for assistance;
- **Negotiated Rulemaking** which explains the negotiated rulemaking procedures and the participating members of a particular proposed regulation; and
- **Significant proposed regulations** which describes any relevant statutory provisions, the current regulation, the proposed regulation, and the reason for the proposed change.

For a final rule, this section tells the reader when the *Federal Register* published the NPRM upon which the final rules are based. It also lists the major topics and where in the NPRM they are found. In some cases, a subsection on the **Implementation Date of These Regulations** explains the school's options for applying designated provisions of the final regulations earlier than the mandatory effective date.

The **Analysis of Comments and Changes** also appears under this segment of the preamble, in which ED responds to comments it received about the NPRM. Note that this analysis usually does not address proposed changes for which no comments were received. For an explanation of changes that were adopted without comment and modification from the proposed rules, you must refer to the preamble of the NPRM.

Comment: Many commenters responded to our request on whether a later effective date should be considered for these regulations...

Discussion: We agree that the operational changes needed to implement some of the conditional discharge provisions of the regulations support a delay in the effective date...

Change: As suggested by some of the commenters, the provisions that govern death discharges... will become effective on July 1, 2001.

The **actual regulations** (proposed or final) follow the preamble. Normally, the *Federal Register* does not contain the entire text of an existing regulation. Instead, only a description of the change or the language that is being changed will be printed, with the appropriate section references to indicate where the change is being made. Ellipses indicate where there is intervening text that is not being changed. To make sure that you understand the effect of these changes, you must compare the changes with the complete text of the regulation that is being amended, as found in the Code of Federal Regulations (CFR).

An example of a change where only a part of the regulation is changed is shown below.

PART 682—Federal Family Education Loan (FFEL) Program--

5. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

6. In §682.200(b) the definition of “Totally and permanently disabled” is revised as follows:

§682.200 Definitions

* * * * *

(b) * * *

Totally and permanently disabled. The condition of any individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

Resources to Help Understand Regulations

Reading through a regulation is sometimes a formidable endeavor. Cross-references, stilted terminology, and convoluted grammatical construction all contribute to the difficulty. However, there are various sources of clarification that can help you decipher the meaning of regulations.

Chief among these resources is the annual *Federal Student Aid Handbook (FSA Handbook)*. This ED publication attempts to explain the rules in plain English, and frequently provides examples demonstrating the application of the rules. ED also disseminates information via other guides such as *The Blue Book*, *ISIR Guide*, *NSLDS User’s Guide*, and *The Audit Guide*.

Another source of information that describes changes to regulations that may require immediate attention are the Dear Colleague/Partner Letters published by ED. These publications are designated by topic in the following manner:

- ◆ “ANN” for Training Announcements;
- ◆ “CB” for the Campus-Based Programs;
- ◆ “DLB” for Direct Loan Bulletins;
- ◆ “G” for Guarantors;
- ◆ “GEN” for General Distribution;
- ◆ “L” for Lenders in the FFEL Program;
- ◆ “LEAP” for the Leveraging Educational Assistance Partnership (LEAP) Program; and
- ◆ “P” for the Federal Pell Grant Program

NASFAA also provides resources for student financial aid professionals. The NASFAA web site (www.nasfaa.org) provides links to ED publications, resources, and the *Compilation of Student Financial Aid Regulations* to assist schools. The NASFAA *Encyclopedia* is an excellent resource for financial aid administrators. NASFAA's web site also provides additional financial aid management guidance and tools to assist financial aid administrators.

Distribution of the Regulations and Other Guidance

Because many resources are no longer mailed to schools, it is important that the financial aid office have a procedure to ensure it is keeping up with the latest changes to federal regulations. One means of keeping current is to sign up via ED's **Schools Portal** web site to receive e-mail notices when new documents, such as *Federal Registers*, Dear Colleague/Partner Letters, etc. are posted for the financial aid community. To sign up for this subscription service, go to (<http://fsa4schools.ed.gov/SCHOOLSWebApp/index.jsp>) and click on Listserves/Mailing Lists. There is a series of steps that you are guided through to become a subscriber. Once you sign up, you will receive weekly updates to recent statutory and regulatory changes.

NASFAA alerts the financial aid community to statutory and regulatory changes via its daily newsletter, *Today's News*, and its weekly newsletter, *The NASFAA Newsletter*. These newsletter services also provide legislative and regulatory analysis related to federal student aid programs. Financial aid administrators may obtain access to NASFAA's services by visiting the NASFAA web site at www.nasfaa.org.

Numbering Structure for the Law

A law begins as a bill that is introduced into either the House of Representatives or the Senate. Once a bill passes through the Congressional legislative process and is signed into law by the President, it is assigned a Public Law number. The Public Law number is a two-part number that shows when a law was enacted. For example, P.L. 105-244 is the 244th law to be enacted by the 105th Congress. Most of the federal student assistance legislation administered by the Department of Education (ED) is found in Title IV of the Higher Education Act (HEA). Originally enacted in 1965, the HEA has been amended numerous times by subsequent laws and reauthorizations.

A particular section of law is designated with Arabic numerals, letters, and Roman numerals [for example: 428(b)(1)(A)(i)(IV)]. The numbering structure for divisions of the law is as follows:

Title: Upper-case Roman numerals [e.g., **Title IV** (most of the Federal student financial aid programs other than those for health professions are authorized under **Title IV** of the Higher Education Act of 1965, as amended)].

Part: Upper-case letters (e.g., **Part A**, which contains the grant programs, and **Part B**, which authorizes the Federal Family Education Loan Program, FFELP).

Subpart: Arabic numerals, occurring fairly infrequently (e.g., **Subpart 1 of Part A** authorizes the Federal Pell Grant Program).

Section: Usually numbered in three-digit Arabic numerals (e.g., **section 428** of Part B establishes interest subsidies for the FFEL Program). Sometimes when Congress amends an existing law by adding a new section, the section is numbered with a three-digit Arabic numeral plus the designation “A”, “B”, etc, to avoid renumbering all subsequent sections of a Part or Subpart. For example: **Sections 428B** and **428H** authorize the PLUS and unsubsidized loan programs respectively, both of which were added to the original legislation by later amendments.

Subsection: Lower-case letters enclosed in parentheses [e.g., (a), (b), (c), etc.]

Paragraph: Arabic numerals enclosed in parentheses [e.g., (1), (2), (3), etc.]

Subparagraph: Upper-case enclosed in parentheses [e.g., (A), (B), (C), etc.]

Division: Lower-case Roman numerals enclosed in parentheses [e.g., (i), (ii), (iii), etc.]

Clause: Upper-case Roman numerals enclosed in parentheses [e.g., (I), (II), (III), etc.]

Numbering Structure for the Regulations

The regulations also have a distinct structure and numbering system, which differs somewhat from that used in the law.

Code of Federal Regulations: The *Federal Register* provides a uniform system for publishing federal documents and numbering federal regulations. The basic component of this system is the Code of Federal Regulations, or CFR.

Titles: The CFR is divided into 50 titles according to subject matter. Federal regulations relating to education are designated as "Title 34 of the Code of Federal Regulations, or "34CFR."

Part: Each title is further divided into **parts**, as illustrated in the chart below. For example, the subject of Part 668 addresses Student Assistance General Provisions regulations.

Part	Subject
86	Drug Free Schools and Campus
99	Family Educational Rights and Privacy
600	Institutional eligibility
602	Secretary's Procedures and Criteria for Recognition of Accrediting Agencies
603	Secretary's Recognition Procedures for State agencies
654	Robert C. Byrd Honors Scholarship Program
668	Student Assistance General Provisions
673	General Provisions for Federal Perkins Loan, Federal Work-Study and Federal Supplemental Educational Opportunity Grant Programs
674	Federal Perkins Loan Program
675	Federal Work-Study Program
676	Federal Supplemental Educational Opportunity Grant Program
682	Federal Family Education Loan Programs
685	William D. Ford Federal Direct Student Loan Program
690	Federal Pell Grant Program
692	Leveraging Educational Assistance Program
694	Gaining Early Awareness and Readiness for Undergraduate Programs

Section: Each part of the regulations is divided into **sections**. For example 668.22 of the final regulations published November 1, 1999, revised the treatment of Title IV, HEA program funds when a student withdraws from an institution. The section is titled "Treatment of Title IV funds when a student withdraws." When referring to this section, it may be cited as "Section 668.22," §668.22," or "34 CFR 668.22."

Subsection: Each section is followed by **subsections** designated by a lower case letter. Subsections may be further divided into clauses and phrases with the following sequential lettering and numbering system: (a), (1), (i), (A), (1). For example, the first citation shown below would be referred to as §668.22(a)(1). The citations in the second box would be referred to as §668.22(a)(2)(i) and §668.22(a)(2)(ii), and so on.

<p>668.22 Treatment of Title IV funds when a student withdraws</p> <p>(a) General. (1) When a recipient of Title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of Title IV grant or loan assistance (not including Federal Work-Study or the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.</p>	<p>§668.22(a)(1)</p>
<p>(2) If the total amount of Title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of Title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—</p> <p>(i) The difference between these amounts must be returned to the Title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and</p> <p>(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.</p>	<p>§668.22(a)(2)</p> <p>§668.22(a)(2)(i)</p> <p>§668.22(a)(2)(ii)</p>
<p>(3) If the total amount of Title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of Title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(4) of this section and Sec. 668.164(g).</p>	<p>§668.22(a)(3)</p>
<p>(4)(i)(A) If outstanding charges exist on the student's account, the institution may credit the student's account in accordance with Sec. 668.164(d)(1), (d)(2), and (d)(3) with all or a portion of the post-withdrawal disbursement described in paragraph (a)(3) of this section, up to the amount of the outstanding charges.</p>	<p>§668.22(a)(4)(i)(A)</p>