



Legislative Guide

Chapter3: Regulatory Process

Southern Association of Student Financial Aid Administrators

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FEDERAL REGULATORY PROCESS

What Are NPRMs?

Notices of Proposed Rulemaking or NPRMs are draft policy guidelines or proposed regulations developed by the Department of Education. NPRMs are published in the Federal Register to provide the general public with an opportunity to comment on the content or impact of the proposed regulations. The length of time between the publication of an NPRM and the publication of a final rule varies, but is rarely less than 45 days.

All references to the Federal Register should be in the form: “(volume) CFR (section or page number)”; for example, 34 CFR 690 is the citation for the Pell Grant rules.

Why Should I Respond to an NPRM?

The regulatory function of the Department of Education has as significant an impact on your students and schools as the legislative role of Congress. Accordingly, it is critical to advise officials at the Department of Education on the potential impact of their policymaking activities. Communicating regularly with the Department on NPRMs and final rules is one way to guarantee that your views are known.

How Do I Respond to an NPRM?

Write to the agency official listed in the NPRM on your personal or business letterhead and sign your name above your typed signature.

- Be sure your return address and phone number are accurately recorded.
- Identify the subject matter in the opening of the letter, using the title and citation as listed in the Federal Register.
- Provide both positive and negative comments on specific sections or subsections of the regulations.
- Provide suggested modification or changes to the existing language.
- Include any charts, statistics, or examples that support your point of view or bolster your suggestions.
- Suggest that the agency official contact you for further clarification or discussion.
- Express your gratitude for the opportunity to comment.

Negotiated Rulemaking

Some sections of the Higher Education Act require that the Department of Education enter into a process known as Negotiated Rulemaking before issuing an NPRM. This is a process that involves the ED working with community representatives (usually representatives of major higher education associations, and student groups although any interested party can request to be "at the table") to come to consensus on the various regulations. If consensus is reached by all involved parties, the ED is required to publish

the NPRM with the consensus language and the community parties to the negotiation agree not to comment negatively on the NPRM during the public comment period.

If consensus cannot be reached, ED is free to promulgate whatever regulatory policies it deems appropriate and the community is free to comment negatively and encourage their constituents to do the same.

When Is the Final Rule Issued, and When Does It Become Effective?

Once the Department of Education receives and analyzes comments on an NPRM, the final rule is constructed. Changes to the NPRM may be made for the final rule based on comments submitted to the Department. This is why it is so important to clearly state what provisions you support and oppose, and why. The final rule is then published in the Federal Register.

The effective date of a final rule is determined by the Department of Education and is printed in the text of the rule when it is published in the Federal Register. The length of time between the publication of a final rule and the date it becomes effective is determined on a case-by-case basis.

Is It Possible to Change a Final Rule Once It has Been Issued?

Comments may be submitted on a final rule. However, it is unlikely for the Department of Education to make any additional modifications to a final rule that implement provisions of law. Changes may be made through additional legislation passed by Congress. Thus, when the Department produces a final rule with which you are dissatisfied, the solution is to work with your Senators and Representatives so they can pass legislation that will correct the problem.