The National Association of Student Financial Aid Administrators (NASFAA)

Legislation, Regulation and You!
Who Makes the Laws?

- Article I, Section I: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
I’m just a bill.
Yes, I’m only a bill.
And I’m sitting here on Capitol Hill.
Well, it’s a long, long journey
To the capital city.
It’s a long, long wait
While I’m sitting in committee,
But I know I’ll be a law someday
At least I hope and pray that I will,
But today I am still just a bill.
The Relationship of Authorization and Appropriation

• Authorizing Legislation
  – Carry expiration dates
  – Congress must reauthorize prior to expiration

• Appropriation Legislation
  – Funds the authorized programs
  – Generally done through the annual budget/appropriations process
Budget & Appropriations 101

What is *supposed* to happen...

- President releases budget in February
- House & Senate pass Budget Resolution in April
- Appropriations Committees draft bills
- Appropriations bills voted on and passed before Oct. 1
Budget & Appropriations 101

But what *usually* happens…

- Omnibus spending bill—combines all 12 spending bills into one
- Continuing resolution (CR)
Public Law (Pub. L. or P.L.)

- Example: Veterans Educational Assistance Act of 2017 (Public Law No: 115-48)

- Translation = The 48th law to be enacted by the 115th Congress

- Each Congress covers a two year period
Public Law Numbering System

- **Title**: Upper-case Roman numerals
  - Title IV

- **Part**: Upper-case letters
  - Part A, which contains the grant programs

- **Subpart**: Arabic numerals, occurring fairly infrequently
  - Subpart 1 of Part A authorizes the Federal Pell Grant Program

- **Section**: Usually numbered in three-digit Arabic numerals
  - Section 455 of Part D establishes the terms and conditions of Direct Loans
Public Law Numbering System

- **Subsection**: Lower-case letters enclosed in parentheses
  - (a), (b), (c), etc.

- **Paragraph**: Arabic numerals enclosed in parentheses
  - (1), (2), (3), etc.

- **Subparagraph**: Upper-case enclosed in parentheses
  - (A), (B), (C), etc.

- **Division**: Lower-case Roman numerals enclosed in parentheses
  - (i), (ii), (iii), etc.

- **Clause**: Upper-case Roman numerals enclosed in parentheses
  - (I), (II), (III), etc.
Subchapter I—General Provisions > Part A—Definitions
§ 1002. Definition of institution of higher education for purposes of student assistance programs [HEA § 102]

(a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions
   Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
   
   (A) a proprietary institution of higher education (as defined in subsection (b) of this section);
   
   (B) a postsecondary vocational institution (as defined in subsection (c) of this section); and
   
   (C) only for the purposes of part D of subchapter IV of this chapter, an institution outside the United States...1087b (d) of this title.

(2) Institutions outside the United States
Numbering Structure for the U.S. Code

Title 20—Education

Chapter 28—Higher Education Resources and Student Assistance

Subchapter IV—Student Assistance

Part A—Grants to Students in Attendance at Institutions of Higher Education

Subpart 1—Section numbering in the U.S. Code also differs from numbering in a public law. For example, Pell Grants are found under sec. 401 in the Higher Education Act, but at sec. 1070a in the U.S. Code. Otherwise, codified subsections, paragraphs, and so on follow the public law scheme.
Compiled Title IV Legislation

Compiled Title IV Legislation includes each of the major subchapters of the U.S. Code that relate to the student financial assistance programs for higher education. These webpages reflect the codified law under Title 20 (Education), Chapter 28 (Higher Education Resources and Student Assistance) and under Title 42 (The Public Health and Welfare), Chapter 34 (Economic Opportunity Program), and for the most part derive from the Higher Education Act (HEA) of 1965, as amended. The HEA is reauthorized approximately every five or six years, although interim legislation can also alter the authorizing language that details congressional intent with regard to student financial aid. We construct these compiled files by incorporating amendments to the law. We note effective dates if those dates will occur after posting.

For the Department of Education’s regulations that interpret and implement these sections of law, see Compiled Title IV Regulations. For the official version of the law, we recommend visiting uscode.house.gov, maintained by the U.S. House of Representative’s Office of the Law Revision Counsel.

U.S. Code, Title 20, Chapter 28

Subchapter I - Part A - Definitions
20 U.S.C. §§1001 - 1003

- Contains statutory definitions of eligible institutions of higher education
- Based on Title I of the HEA
- Relates mostly to regulations found in 34 CFR Part 600

Subchapter IV - Part A - Subpart 1 - Federal Pell Grants
20 U.S.C. §§1070 - 1070a-1

- Contains statutory authority for the Federal Pell Grant, Academic Competitiveness Grant (ACG), and National SMART Grant programs
- Based on Title IV, Part A of the HEA
- Relates mostly to regulations found in 34 CFR Part 690
Amendments to Existing Legislation

FROM Consolidated Appropriations Act, 2012

SEC. 309(a). FEDERAL PELL GRANT ELIGIBILITY.

... 

(2) DURATION OF AWARD PERIOD.—Section 401(c)(5) of the HEA (20 U.S.C. 1070a(c)(5)) is amended—

(A) by striking “18” each place it appears and inserting “12”; and

(B) by striking the last sentence.
Amendments to Existing Legislation

HEA CHANGE:

(c) Period of eligibility for grants

... (5) The period during which a student may receive Federal Pell Grants shall not exceed 18 12 semesters, or the equivalent of 18 12 semesters, as determined by the Secretary by regulation. Such regulations shall provide, with respect to a student who received a Federal Pell Grant for a term but was enrolled at a fraction of full-time, that only that same fraction of such semester or equivalent shall count towards such duration limits. The provisions of this paragraph shall apply only to a student who receives a Federal Pell Grant for the first time on or after July 1, 2008.
The Relationship of Law to Regulations

• Regulations have the force of law, but are not the law
  – This difference is important in advocacy: is it a regulatory issue or statutory issue?

• Failure to comply with regulations can result in financial liabilities, fines, and limitations in Title IV participation
Higher Education Act of 1965, as amended
Law = Statute

ED identifies need for regulation
- Statutory change
- Need for clarification
- Misuse of program, etc.

Negotiated Rulemaking (required with limited exceptions, for all of Title IV other than Part F, Need Analysis)
- ED convenes regional meetings
- ED identifies issues

Negotiated Rulemaking Sessions
- ED negotiator(s)
- Aid community negotiators
- Other stakeholders (e.g., States)

No consensus reached

ED drafts Proposed Rules and publishes them as a Notice of Proposed Rulemaking (NPRM) with explanatory introduction

Consensus reached

ED publishes Proposed Rules as agreed to by consensus as a Notice of Proposed Rulemaking (NPRM) with explanatory introduction

Public Comment period

ED issues Interim Final Regulations with invitation to comment (may also occur outside of negotiated rulemaking for limited reasons)

Public Comment

ED issues Final Regulations with responses to public comments
Negotiated Rulemaking: Proposed Regulations and Final Rules

- Negotiated rulemaking consists of:
  - ED public hearing to identify or further refine issues that require regulation
  - *Federal Register* notice announcing intent to conduct negotiations, inviting nominations for negotiators
  - Negotiations
Notice of Proposed Rulemaking (NPRM)

• Result of negotiations, published in the *Federal Register*

• Background information

• Proposed changes to current regulations (or proposed new regulations)

• Closing date for receiving comments from the public, and the procedures by which comments are submitted
  
  – Comment period between 30 and 120 days
Final Rules

- ED reviews the comments from the financial aid community and other members of the public, incorporates any needed changes, and publishes final regulations in the *Federal Register*

- Preamble
  - Summarizes the comments ED received on the NPRM, and ED’s responses to them
  - Any changes that resulted from the comments are noted

- Final regulations become part of the body of governing precepts known as the Code of Federal Regulations (CFR)
Sections of a Final Rule

- **SUMMARY**: identifies the purpose of the regulation and the broad topics covered by the regulation

- **Analysis of Comments and Changes**: ED response to comments it received about the NPRM (Comment, Discussion, Changes)

- **Regulatory language itself**: includes roadmaps and descriptors on where and how to change existing regulations
Numbering Structure for the Regulations

- **Code of Federal Regulations**: a uniform system for numbering federal regulations

- **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 “34 CFR”

- **Part**: Each title is further divided into parts
  - For example, the subject of Part 668 addresses Student Assistance General Provisions regulations
Numbering Structure for the Regulations

• **Section**: Each part is divided into sections
  - For example, sec. 668.22 governs the treatment of Title IV, HEA program funds when a student withdraws from an institution during a payment period

• **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, Arabic numbering, and Roman numeral system: (a), (1), (i), (A), (1)

• NASFAA Compiled Regulations (www.nasfaa.org)