

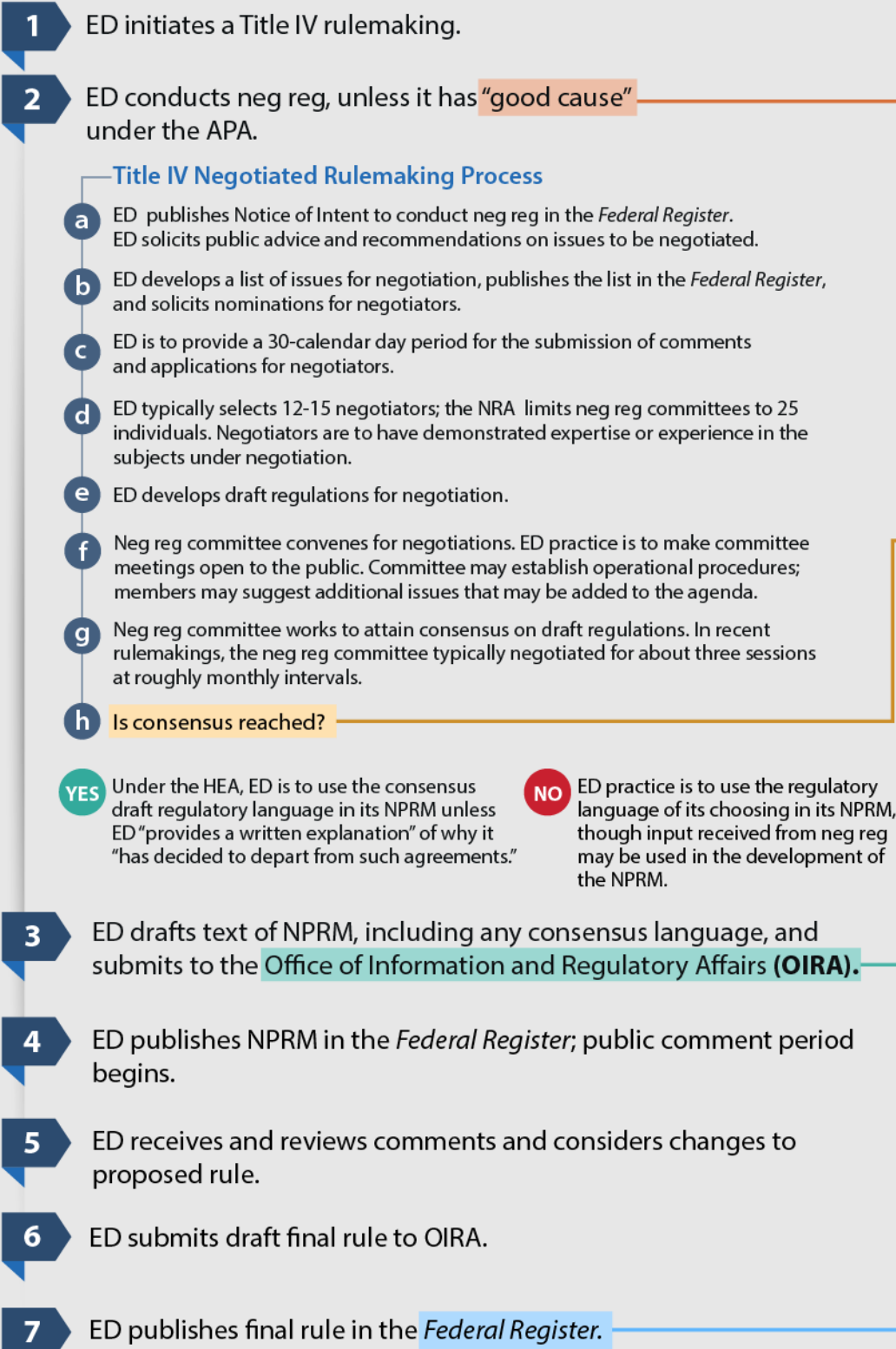
The Rulemaking Process for the Higher Education Act's Title IV Regulations

Title IV of the Higher Education Act (HEA) authorizes an array of programs and provisions to assist students and their families in accessing and financing a postsecondary education. These include the Pell Grant, Direct Loan student loan, campus-based aid, and TRIO programs. HEA Section 492 generally requires the Department of Education (ED) to use a negotiated rulemaking (neg reg) process to develop proposed regulations pertaining to HEA Title IV. In neg reg, an agency convenes a committee of stakeholders with the goal of reaching a consensus outcome on the text of a proposed rule. ED's HEA Title IV rulemaking process is guided by statutory provisions in the HEA, the [Negotiated Rulemaking Act \(NRA\)](#), and the [Administrative Procedure Act \(APA\)](#), as well as ED practice.

What is the APA? The APA provides the major steps of the rulemaking process, generally requiring agencies to publish a notice of proposed rulemaking (NPRM), hold a public comment period, publish a final rule in the *Federal Register*, and wait at least 30 days before a rule may take effect. The APA contains some exceptions to these requirements, including the "good cause" exception discussed below.

What is the NRA? The NRA of 1990 established a procedural framework for agencies to follow when conducting neg reg. Statutes like the HEA sometimes provide additional steps for agencies to follow in neg reg. If the HEA is silent on an aspect of the process, the NRA would apply by default.

Steps in ED's Title IV Rulemaking Process



What is "Good Cause"?

Under the APA, an agency can forgo notice and comment if undergoing those procedures would be "impracticable, unnecessary, or contrary to the public interest," and the agency may proceed directly to a final or interim final rule. The HEA contains this same exception for the neg reg process.

What is Consensus?

The NRA defines consensus as "unanimous concurrence" unless the neg reg committee agrees to another definition. Historically, for HEA Title IV, neg reg consensus has been defined as "no dissent by any member of the negotiating committee.... The absence or silence of a member... is equivalent to not dissenting."

What is OIRA?

OIRA is an agency within the Office of Management and Budget that reviews regulations to ensure they are consistent with the President's policy priorities. OIRA also coordinates an inter-agency review of regulations and reviews any required economic analysis. OIRA review is governed by Executive Order 12866.

When Do Title IV Final Rules Go Into Effect?

HEA Section 482(c) generally requires that Title IV final rules published after November 1 of a given year may not become effective until July 1 of the second award year thereafter. For example, if a Title IV final rule were published on December 1, 2025, it could not go into effect until July 1, 2027. The Secretary may designate a Title IV regulatory provision for early implementation by "an entity subject to the provision...in the entity's discretion."

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