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

1 EI	D initiates a Title IV rulemaking.		
	D conducts neg reg, unless it has <mark>"good cause"</mark> > nder the APA.	What is "Good Cause"? Under the APA, an agency can forgo notice and comment if undergoing	
	-Title IV Negotiated Rulemaking Process	those procedures would be	
0	ED publishes Notice of Intent to conduct neg reg in the <i>Federal Register.</i> ED solicits public advice and recommendations on issues to be negotiated.	"impracticable, unnecessary, or contrary to the public interest," and the agency may proceed directly to a final or interim	
Þ	ED develops a list of issues for negotiation, publishes the list in the <i>Federal Register</i> , and solicits nominations for negotiators.	final rule. The HEA contains this same exception for the neg reg process.	
G	ED is to provide a 30-calendar day period for the submission of comments and applications for negotiators.		
d	ED typically selects 12-15 negotiators; the NRA limits neg reg committees to 25 individuals. Negotiators are to have demonstrated expertise or experience in the subjects under negotiation.	What is Consensus? The NRA defines consensus as	
e	ED develops draft regulations for negotiation.	"unanimous concurrence" unless the neg reg committee agrees to another	
0	Neg reg committee convenes for negotiations. ED practice is to make committee meetings open to the public. Committee may establish operational procedures; members may suggest additional issues that may be added to the agenda.	definition. Historically, for HEA Title IV, neg reg consensus has been defined as "no dissent by any member of the negotiating committee	
9	Neg reg committee works to attain consensus on draft regulations. In recent rulemakings, the neg reg committee typically negotiated for about three sessions at roughly monthly intervals.	The absence or silence of a member is equivalent to not dissenting."	
6	Is consensus reached?	least a second	
YES	Under the HEA, ED is to use the consensus draft regulatory language in its NPRM unless ED "provides a written explanation" of why it "has decided to depart from such agreements." ED practice is to use the regulatory language of its choosing in its NPRM, though input received from neg reg may be used in the development of the NPRM.	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	
3 E	D drafts text of NPRM, including any consensus language, and	required economic analysis. OIRA review	
s	ubmits to the Office of Information and Regulatory Affairs (OIRA).	is governed by Executive Order 12866.	
	D publishes NPRM in the <i>Federal Register</i> ; public comment period	When Do Title IV Final Rules Go Into Effect?	
5 E	D receives and reviews comments and considers changes to proposed rule.	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	
6 E	D submits draft final rule to OIRA.	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	
7 E	D publishes final rule in the <i>Federal Register</i> .	regulatory provision for early implementation by "an entity subject to the provisionin the entity's discretion."	

Source: 5 U.S.C. § 553, 5 U.S.C. § 561 et seq., 20 U.S.C. § 1098a, and U.S. Department of Education, "Frequently Asked Questions: The Negotiated Rulemaking Process for Title IV Regulations," https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-educationpolicy/frequently-asked-questions-negotiated-rulemaking-process-title-iv-regulations, accessed April 17, 2025. Information as of June 11, 2025. Prepared by Alexandra Hegji, Specialist in Social Policy; Maeve Carey, Specialist in Government Organization and Management; and Brion Long, Visual Information Specialist.



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