What are federal regulations or rules? How are they different from legislation?

Congress, as the Legislative branch of the U.S. Government, passes laws that govern the United States, but putting those laws into practice is the responsibility of the Executive branch. Most laws are assigned to the Executive agency that has jurisdiction over the content area of the law. The Executive agency is responsible for providing guidelines for how the law is implemented and how it applies, on a day-to-day practical level, to individuals, businesses, and state or local governments. Regulations represent the federal government's official interpretation of what a law means in a more detailed, practical sense. When agencies create regulations, they may be required to present their interpretation of the law for public comment prior to implementing it.

What is a notice and comment period?

The notice and comment period comprises the initial steps in the federal regulatory or rulemaking process for either the creation of a new rule or the reform of an existing rule. An administrative agency, for example the Department of Education (ED), will issue a Notice of Proposed Rulemaking (NPRM) which will include a call for comment. The NPRM includes the proposed rule which the agency has created to interpret and implement existing policy; for instance, ED might issue and NPRM relating to the Title IX provisions in the Education Amendments of 1972. The corresponding call for comment allows the general public to submit comments on the proposed rule, noting areas of the rule they find challenging or appealing, and offering suggestions for making the rule more effective for accomplishing the purpose of the underlying legislation. The comment period usually lasts between 30 to 90 days following the release of the proposed rule and starts when the NPRM is published in the Federal Register. This is the only time for the public to comment on the proposed rule.

Who can submit comments?

Anyone. Comments may be submitted by individuals, institutions, or organizations and associations. When there is a proposed rule germane to our work as higher education student affairs professionals, NASPA works to provide as detailed comments as possible, representative of our members; however, we encourage anyone interested in submitting comments to do so. Student affairs professionals are often in positions to see how proposed regulations will affect a broad group of students and that sort of expertise is valuable in helping Executive agencies create effective and fair regulations. Please see below for additional for tips on submitting an effective comment.

Why does submitting a comment matter?

Submitting public comments is important in taking part of our representative democracy:

• Federal regulations interpret how legislation will be operationalized on the ground. Regulations have the force and effect of the law. Public participation in the rulemaking process is a chance for the community to enable workable, well-crafted regulations that are in keeping with the intent of the underlying law without taking a side on a particular issue.

• The administrative agency that releases a NRPM is responsible for reading all comments and responding to all comments of substance, so this is truly a chance to submit your feedback, no matter whether you're addressing the overarching intent of a regulation or just one small portion of it.

• The administrative agency may be subject to legal objections should it not properly respond to public comments, which further emphasizes the power of the public in this process.

• Submitting comments is a great way to start researching how legislation will actually play out on the ground and is an important educational opportunity.
Where can I find the NPRM and how can I submit my comments?

The proposed rule and NPRM will be published in the Federal Register and regulations.gov. You will be able to submit comments on regulations.gov, either as a .pdf file or within the comments box offered on the website. The two websites have slightly different looks, but both allow for the submission of comments on proposed regulation.

What are the elements of an effective comment?

Effective comments provide unique, detailed information to the administrative agency, using as specific information as possible. This is important because the agency issuing the NPRM is required to respond to comments of substance.

- Detail is key, and commenters should feel free to offer alternative suggestions or solutions and address potential legal ramifications if they find certain provisions likely to be problematic. This provides considerations for the agency in revising their proposed rule, and will also require a response.
- An effective comment also includes supplemental data and evidence where possible. The administrative agency is required to explain why it chose not to make changes if supported by submitted data, so pointing to available evidence and case examples, is especially valuable.
- Structurally, comments should be clear, easy to read, and organized in a way in which the most salient information is highlighted. Since this level of detail requires time, capacity, and thorough revision, collaborating with other individuals or associations may be helpful to pull together key points for substantial comments.
- Individual institutions should submit, where ever possible, their own comments, even if they build from a collaborative set of key points. Adding information about how the proposed rule would affect different types of institutions will help the agency create rules that are more likely to be success across different institutions and student bodies.

What happens after the notice and comment period?

After the call for comment period closes, the agency will review all submitted comments, make any necessary changes to the proposed rule based on the comments received, and publish a final rule. The final rule will also include a preamble that will detail responses to any comments of significance and explanations of substantial revisions that have been made to the rule. Once the final rule is released it will not be enforceable until its effective date, which will be listed publicly, to allow time for institutions to make any necessary changes to ensure compliance.

The effective date, typically at least 30 days after the release of the final rule, is also a time when legal objections to the rule may be filed. Advocacy groups that focus on the area of the rule may file lawsuits challenging whether or not the administrative agency effectively addresses concerns from the call for comment in the preamble or objecting to the substance of the rule as interpreted by the agency. If a federal court issues an injunction before the effective date, the rule may be blocked from going into effect and may have to reenter the rulemaking process.