

Laws, Regulations, and Dear Colleague Letters: How are they different?

Financial aid administrators often use the terms “law, “regulation,” and “guidance” interchangeably, when in fact they are very different. Understanding the differences will greatly enhance your ability to administer the Federal Student Aid programs, as well as to counsel students and parents.

Congress writes laws that authorize and fund federal student aid

Department of Education(ED) writes regulations that implement the laws written by Congress

ED provides guidance (Dear Colleague Letters, Electronic Announcements, Handbooks and other guidance that assists schools with their understanding of the laws and regulations

Laws are written by Congress.

The legal basis for each Federal Student Aid program is legislation enacted by Congress. When Congress passed the Higher Education Act of 1965 (HEA), it significantly expanded federal student aid to postsecondary students having financial need. The HEA is broken into sections, or titles. Title IV of the HEA is the section of the law where Congress defines, sustains, modifies, and adds Federal Student Aid programs. Thus, the Federal Student Aid programs are often referred to as Title IV aid or Title IV programs.

There are two types of legislation:

Authorizing Legislation

A law passed by the Congress that establishes or continues a program

Appropriating Legislation

A law passed by the Congress that provides authority for federal agencies to obligate funds for specified purposes

Authorizing Legislation

The law requires that the HEA be reviewed and amended as necessary every five years. This process is called “reauthorization.” The most recent reauthorization was 1998. The Congress has continuously extended the HEA without a complete reauthorization since September 2003. This has allowed the Federal Student Aid programs to remain active although Congress has not completed reauthorization. During the time between reauthorizations the Congress may write and pass additional laws that become part of the HEA. A recent example is shown below. Public Law 110-84, titled the “College Cost Reduction and Access Act” enacted September 27, 2007 made significant changes to the Federal Student Aid programs and created a new grant program (TEACH Grant.) This law amended the HEA.

Public Law 110–84 110th Congress	
An Act	
Sept. 27, 2007 [H.R. 2669]	To provide for reconciliation pursuant to section 601 of the concurrent resolution on the budget for fiscal year 2008.
College Cost Reduction and Access Act. 20 USC 1001 note.	<i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</i>
	SECTION 1. SHORT TITLE; REFERENCES.
	(a) SHORT TITLE. —This Act may be cited as the “College Cost Reduction and Access Act”.
	(b) REFERENCES. —Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).
20 USC 1070a note.	(c) EFFECTIVE DATE. —Except as otherwise expressly provided, the amendments made by this Act shall be effective on October 1, 2007.

Appropriating Legislation

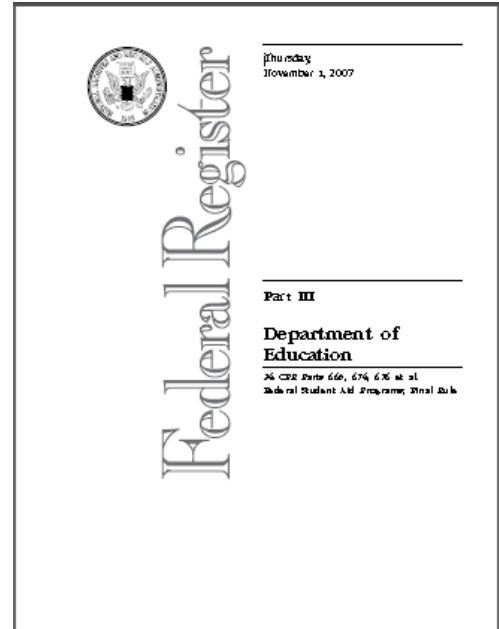
During the budget process each year, Congress designates specific dollar amounts in the federal budget to fund federal programs and federal agencies. This is the process that determines the maximum amount of the Pell Grant each year - and how much money each Federal Student Aid program will be allocated for the government’s fiscal year (which is October 1 through September 30.)

Regulations are written by the Department of Education.

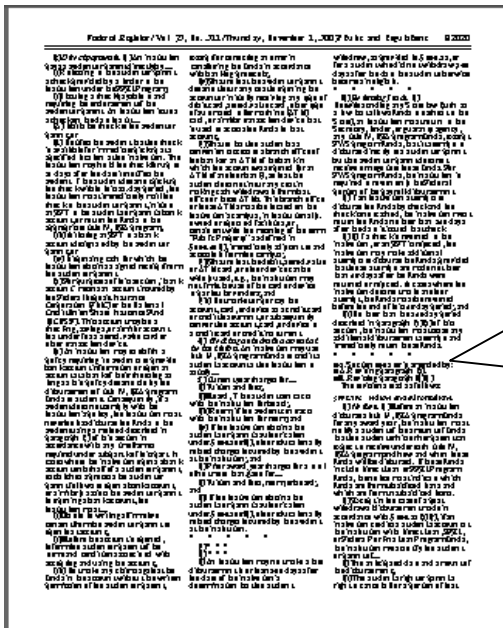
Often Congress passes student aid legislation without including detailed instructions for implementing certain provisions. When this happens, the U.S. Department of Education (ED), in conjunction with the financial aid community (schools, lenders, guaranty agencies, student groups and other related associations) develops regulations that explain how to comply with the law.

Draft regulations are first issued in the Federal Register as a Notice of Proposed Rulemaking. These notices include the draft regulations plus explanations and background information supporting them. A comment period is established to receive feedback from the financial aid community. ED reviews all of the comments and makes appropriate changes to the draft regulations.

Once final, the regulations are again published in the Federal Register and later compiled into the Code of Federal Regulations (CFR).



A sample regulation in a Federal Register



\$ 668.164 Disbursing funds.
* * * * *
(b) *Disbursements by payment period.*
(1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. An institution must disburse title IV, HEA program funds once each payment period unless—
(i) For FFEL and Direct Loan funds, 34 CFR 682.604(c)(6)(ii) or 34 CFR 685.301(b)(3) applies;
(ii) For Federal Perkins Loan, FSEOG,

The CFR is also broken up into sections, called *titles*. Title 34 of the CFR contains regulations about Education.

Title 34 is broken down even further in to sections called *parts*. Each part contains regulations relevant to a specific topic or program. Below is a listing of the regulatory parts that govern federal financial aid.

<u>Part</u>	<u>Subject/Program</u>
86	Drug Free Schools and Campuses
99	Family Educational Rights and Privacy
600	Institutional Eligibility
668	Student Assistance General Provisions
673	General Provisions for Perkins, FWS, FSEOG (Campus-Based Programs)
674	Federal Perkins Loan Program
675	Federal Work-Study Program
676	Federal Supplemental Educational Opportunity Grant Program
682	Federal Family Education Loan Program
685	William D. Ford Federal Direct Student Loan Program
686	TEACH Grant
690	Federal Pell Grant Program
691	ACG and National SMART Grant Programs
692	Leveraging Educational Assistance Partnership Program

Dear Colleague Letters, Electronic Announcements, and other Guidance

Occasionally, regulations need clarification. To provide additional guidance, FSA publishes Dear Colleague Letters, Electronic Announcements, the FSA Handbook, and Technical References.

- "Dear Colleague" letters - also known as "Dear Partner" letters, provide practical details and policy supporting the law and regulations.

- Electronic Announcements disseminate information quickly - often about electronic processing, but sometimes about other topics that don't require a lengthy clearance process
- Program manuals provide "plain language" explanations about the law and regulations (e.g., FSA Handbook, The Blue Book)
- Technical references provide detailed information about the required electronic processes (e.g., ISIR Guide, EDE Technical Reference)

Summary

It is important for financial aid professionals to understand the law as Congress wrote it, the regulation that implements the law, and the guidance that provides the detail for their daily work with the Federal Student Aid programs. All of this vital information is found on IFAP.