



LEGISLATION AND REGULATION

THE ART OF FEDERAL POLICYMAKING



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WHO'S RESPONSIBLE?



Congress

- Creation and Modification of Programs
- Need Analysis Formula
- Maximum Grant and Loan Amounts
- Amount of Funding
- Priorities in Awarding Aid
- Tax Benefits

Executive Branch

- Disbursement of Funds
- Audit Criteria
- Enforcement (L, S & T)
- FAFSA Design
- Reporting Requirements
- Tax Forms

LEGISLATION VS. REGULATION

- Legislation

- Congress adopts with Presidential signature or after overriding a veto
- Amends the U.S. Code -- the “statute” (e.g., Higher Education Act)
- Public Laws (112-XX)

- Regulation

- Promulgated by appropriate federal agency
 - ★ U.S. Department of Education for higher education programs
 - ★ Reviewed by Office of Management and Budget (OMB)
- Interprets and adds detail to statute
- Amends Code of Federal Regulations (C.F.R.)

AUTHORIZATION VS. APPROPRIATION

- *Authorizing* Legislation

- Amends or creates a federal statute
- Makes “permanent” change to statute

- *Appropriations* Legislation

- Sets annual funding levels for federal programs
- Sometimes includes substantive amendments
- In force for one year

LEGISLATIVE PROCESS

(In a Nutshell)

- Subcommittee & Full Committee
 - Conduct public hearings
 - “Mark-Up” bills
 - Legislation “Reported”
- “Floor” Action
 - Passage
 - Rejection
 - Recommitted to Committee
 - Rules of Debate
 - ★ House: Rules Committee
 - ★ Senate: No rules



LEGISLATIVE PROCESS

(It Takes Two To Tango!)

- Other Chamber (House or Senate) Must Act -
 - Two Options:
 - Considers *similar* legislation at its own pace
 - ★ Passes a bill that can be matched up with one passed by the other chamber
 - ★ Differences must be reconciled before enactment is possible
 - Receives legislation after other chamber acts
 - ★ May approve identical bill or make amendments
 - ★ “Back & forth” process, until identical bill is approved

LEGISLATIVE PROCESS

(Final Action)

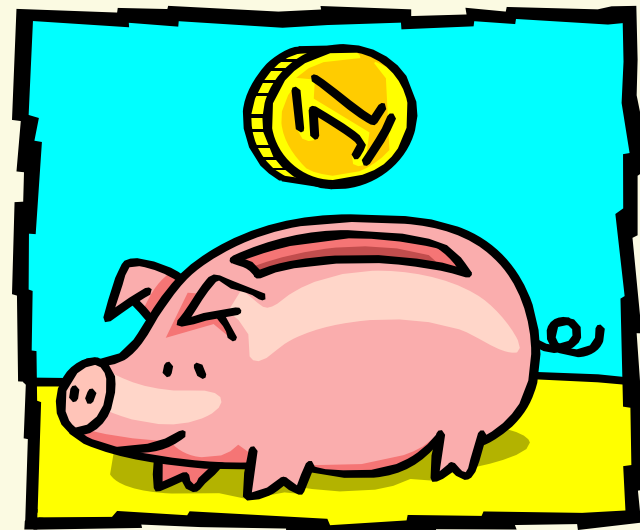


- Conference Committee

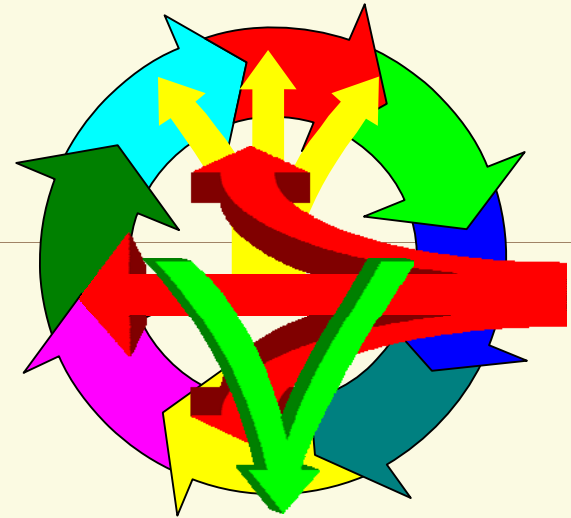
- Attempts to resolve differences between House and Senate-passed bills
- Result is a “Conference Report” -- includes explanatory language and recommendations
- Identical Conference Report must be approved by House and Senate before it can be sent to the President

SHOW ME THE MONEY

- Appropriations and Budget Processes
 - Set annual spending caps for individual programs
 - Discretionary spending
 - ★ Pell Grants
 - ★ Campus Based Programs
 - ★ Trio, GEAR-UP
 - Mandatory spending (Entitlements)
 - ★ ~~FFELP~~
 - ★ FDLP



BUDGET PROCESS



- Budget Resolution
 - Sets framework for spending
 - Establishes totals for discretionary and mandatory spending
 - May include “reconciliation instructions” – impacts mandatory spending & taxes
 - Does NOT require Presidential signature
- Reconciliation Has Been Used Numerous Times on Student Aid Programs

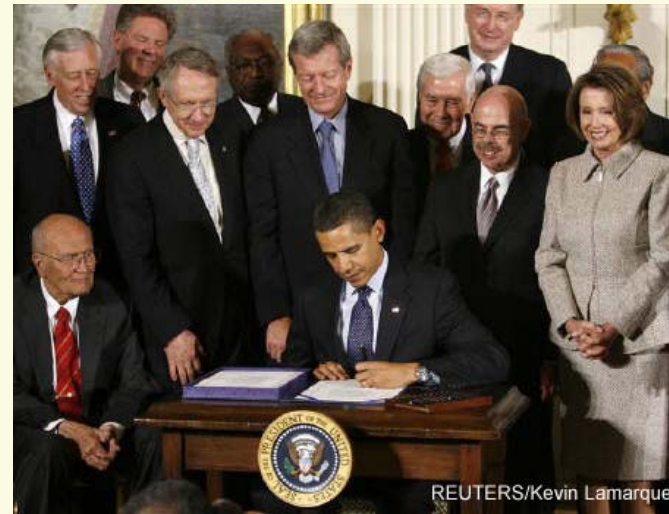
APPROPRIATIONS

- Labor/HHS/ED Subcommittee

- Appropriates funds based on allocations that flow from budget resolution
- Allocates funds for the next fiscal year
 - ★ FY 2011 = October 1, 2010 - September 30, 2011
 - ★ FY 2011 = July 1, 2011 - June 30, 2012 Academic Year
- Pell Grants, Campus Based Programs, TRIO, Gear-Up

HAND-OFF TO THE EXECUTIVE BRANCH

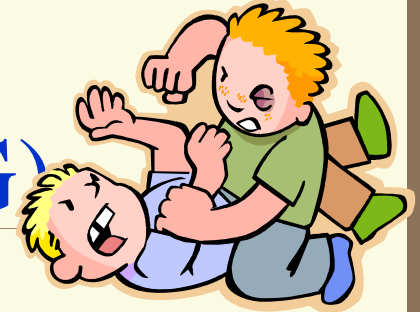
- Presidential Signature Required on All Changes to Statute
 - President becomes an active player in shaping final bill
 - “Date of enactment” is date President signs a bill into law



HAND-OFF TO THE EXECUTIVE BRANCH

- Executive Branch Must Interpret and Enforce Laws
 - Statutory language is often vague
 - Congress may direct that regulations be written or may prohibit regulation
 - Regulations are the primary vehicles that Executive Branch agencies use to interpret and enforce statutes
 - Sub-regulatory guidance includes Dear Partner letters, forms, audit guides, e-mails, conference presentations....

NEGOTIATED RULEMAKING (NEG-REG)



- Mandated by the Higher Education Act
 - All rules implementing changes to the Higher Education Act and revisions to regulations
 - Secretary consults with the “community”
- Secretary Selects Negotiators
 - Representatives of affected communities (e.g., schools, aid administrators, business officers, students, servicers, and more)
 - Professional mediator
 - Negotiators must reach “consensus”
 - Secretary’s representative has veto power

NEGOTIATED RULEMAKING (NEG-REG)

- Result is Notice of Proposed Rulemaking (NPRM) Published in Federal Register
 - Public comment solicited on NPRM (30 - 90 Days)
 - Negotiators who are part of consensus cannot disagree with NPRM
 - Final Rule published, including responses to public comments
- Result (In Theory) Are Better Rules – Reflecting “Realities” of Those Who Must Implement Regs.

MASTER CALENDAR

- For a Rule to Be Effective for an Academic Year, It Must Be Published by the Preceding November 1
 - Rules published by November 1, 2011 will be effective on July 1, 2012
 - Secretary may permit, but not require, earlier implementation
- Originally Recommended by the National Commission on Student Financial Assistance in 1983



LEGISLATION AND REGULATION



NOW YOU'RE A POLICY WONK!!!

