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Understanding Rulemaking and the Regulatory Process



Sonja Trainor

NSBA, Managing Director, Legal Advocacy

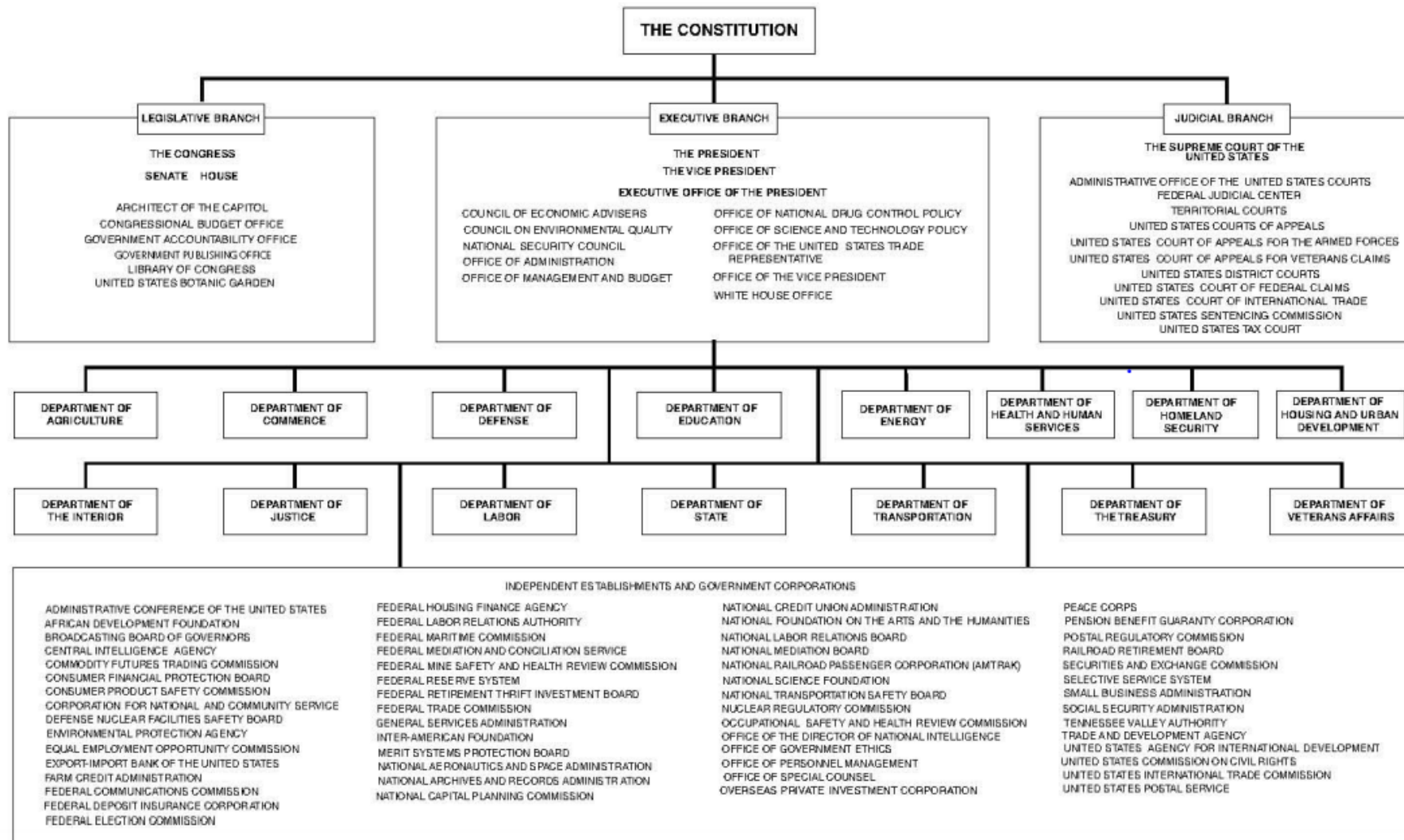


Jordan Cooper

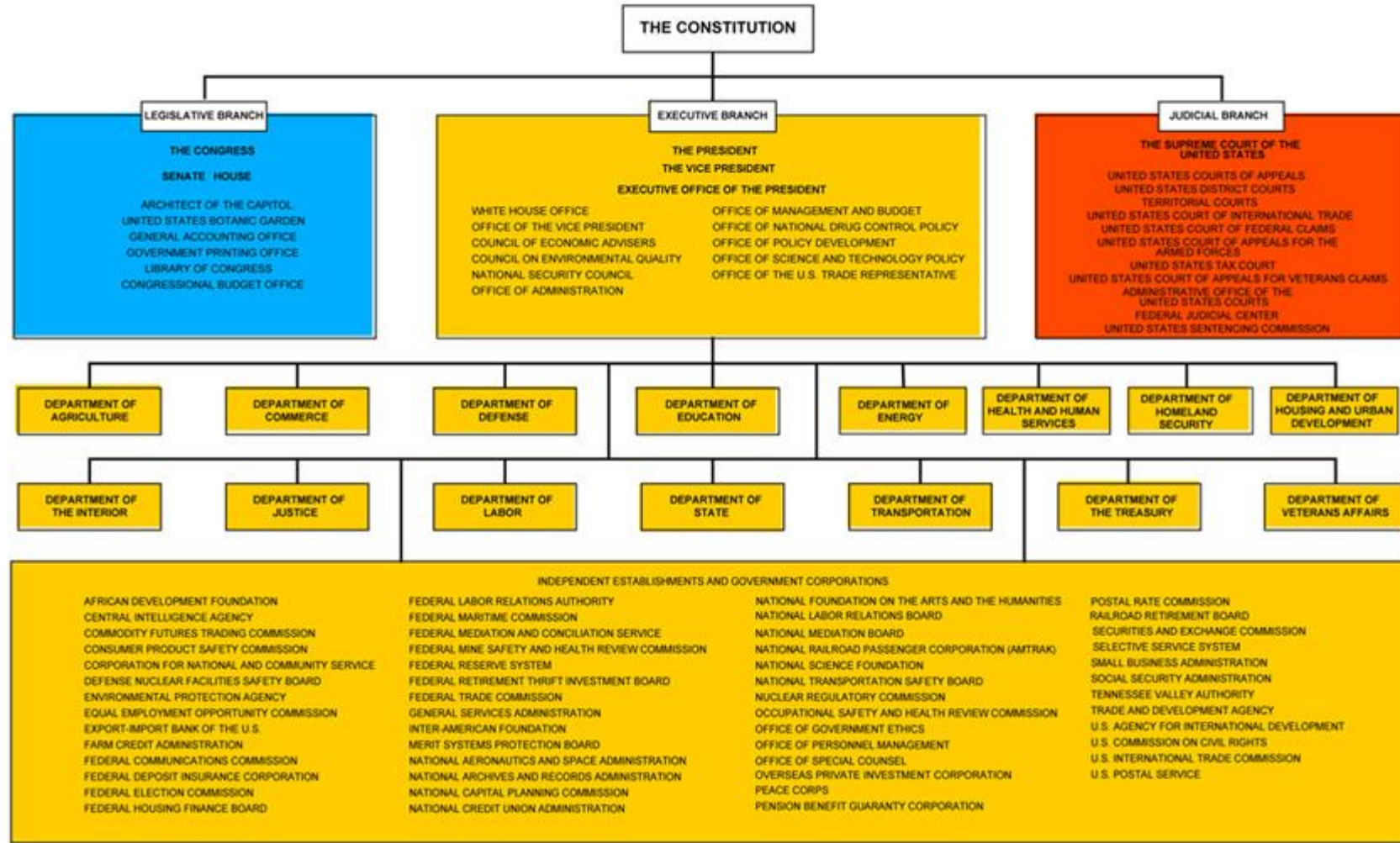
NSBA, Senior Staff Attorney

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Federal Agencies with Direct Effects on Public Schools



What is Rulemaking?

- Rulemaking is the process that federal agencies use to make rules (or “regulations”).
- Agencies are required to follow a set of procedures prescribed in law and executive order when issuing rules.
- These procedures comprise the federal rulemaking process.
- Rules carry the force and effect of law.

Rules have the power of law, but are...

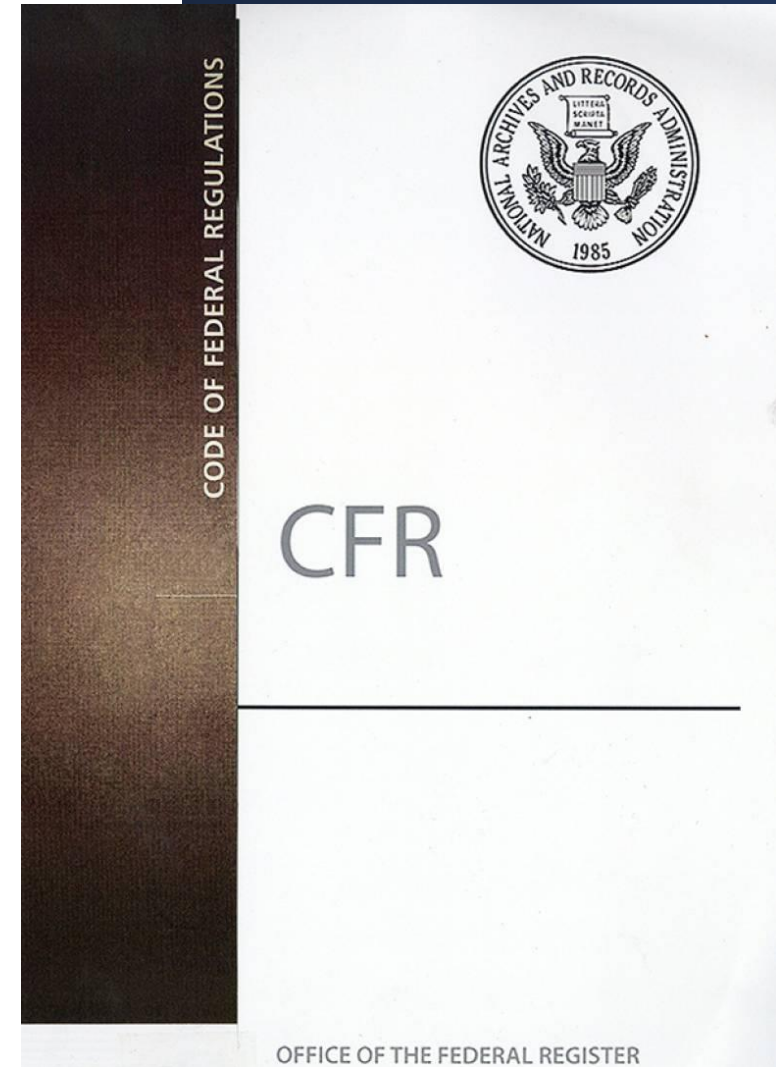
- Less cumbersome
- Easier to change
- Less political (in theory)

...and

- No sign-off by another branch required.

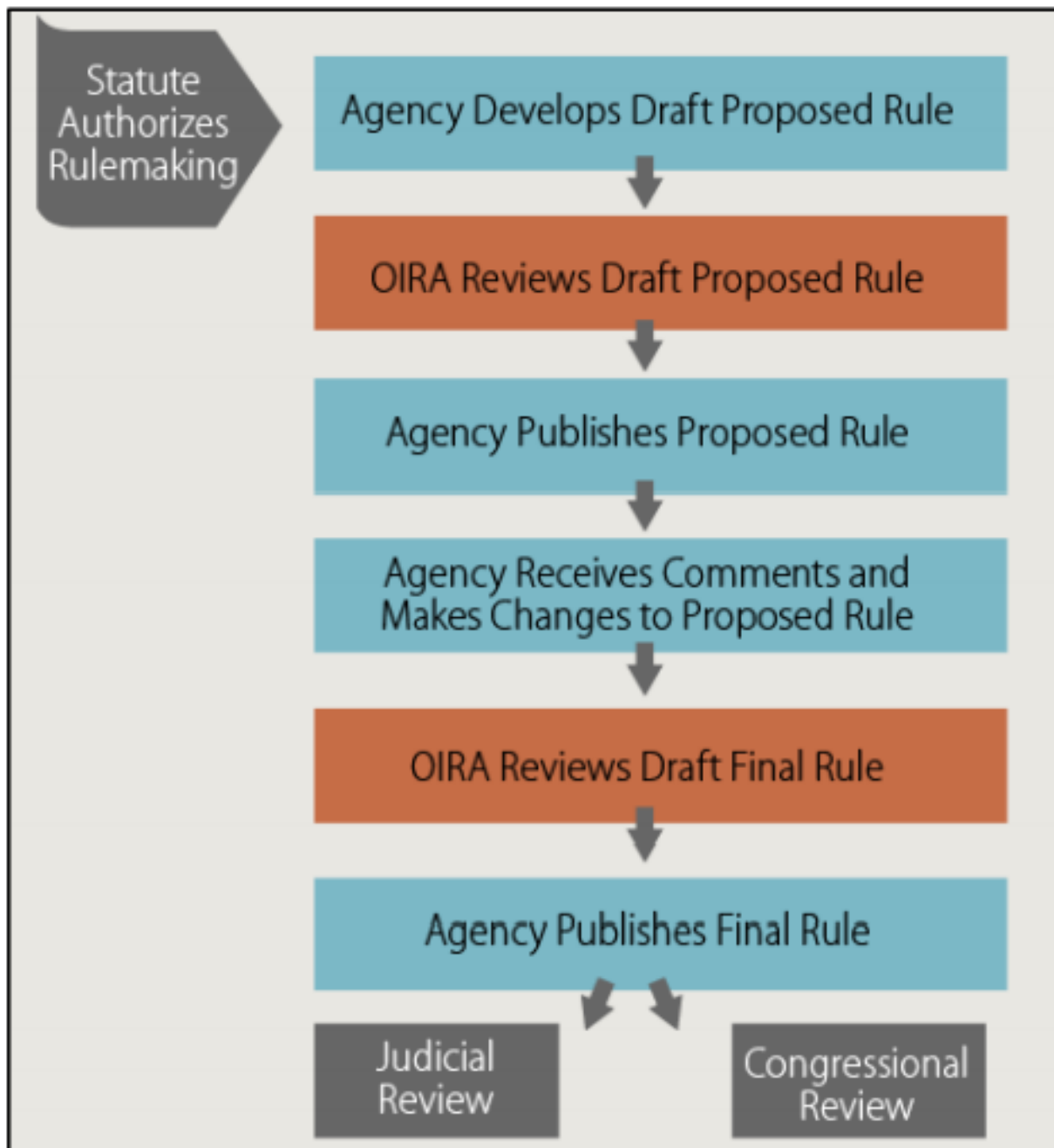
BUT

- Rules must stay within the scope of the statute authorizing them.



Rulemaking – Laws that Provide for the Process

- APA, Administrative Procedure Act (1946)
 - Governs the process by which federal agencies develop and issue regulations.
 - Requires notices of proposed and final rulemaking to be published in the Federal Register.
 - Provides opportunities for the public to comment on notices of proposed rulemaking.
- CRA, Congressional Review Act (1996)
 - Allows Congress to review new federal regulations issued by agencies and to overrule a regulation by passage of a joint resolution.
- Executive Orders
 - Reagan (OIRA), Clinton (“Significant” rules), Trump (1-in, 2-out), Biden (repealed 1-in, 2-out)

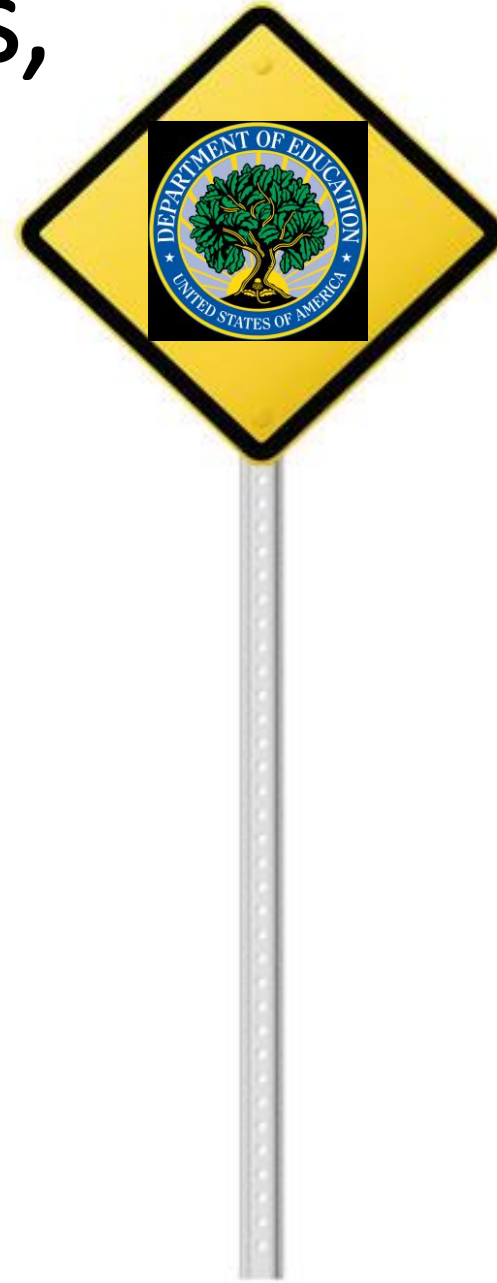


Interim Final Rules

- An interim final rule is a rule published first as a final rule with the opportunity to comment at the time the rule is promulgated, rather than earlier at the “proposed rule” stage.
- Interim final rules are most often used when a statute requires an agency to act within a specified time shortly after the law takes effect or during emergencies.

Side Ramps, Exits, Slow-Downs, Reversals

- Rule revisions, revocations
- Court challenges
- Petitions for rulemaking



Extra-Regulatory Guidance

- Is informative and persuasive but does not carry the power of law
 - Dear Colleague Letters
 - Response letters
 - Q&As
 - Technical Assistance

The School Board Member Voice

You can provide input:

- Informally
 - Call or email the agency.
 - Participate in stakeholder meetings, listening sessions, site visits when an agency offers them.
 - By connecting with your state school boards association.
- Formally
 - Submit comments via the Federal eRulemaking Portal, mail, or hand delivery.

Highlights: NSBA input to federal agencies

Formal Comments

- Dept. of Ed. -- Title IX Regulations addressing sexual harassment procedures
- Dept. of Ed. – Letter re: Equitable Services for Private Schools
- Federal Communications Commission -- Distribution of the Homework Gap funding
- Dept. of Homeland Security – Public Charge regulations
- Federal Trade Commission – COPPA Rule changes

Formal Letters

- Dept. of Ed. – Requests for clarification on
 - Bullying/Harassment guidance
 - Effective Communications guidance
 - Title IX regulations
- Dept. of Ed. – Stakeholder input on
 - Civil Rights enforcement areas including CRDC collection
 - Special education services after pandemic-related closures

Formal Statements at hearings and listening sessions

- U.S. Department of Education Office for Civil Rights
- Federal Commission on School Safety
- Federal Civil Rights Commission

Informal Meetings and Calls

- MANY

Resources

- https://www.federalregister.gov/uploads/2011/01/the_rule_making_process.pdf
- <https://redbus2us.com/wp-content/uploads/2018/11/US-Federal-Rule-Making-Process-Steps-Simple-Regmap.png>
- <https://fas.org/sgp/crs/misc/IF10003.pdf>



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Q & A