BREAKOUT SESSION #9

Enforcement Actions: What Should I Know?

Susan Crim and Christopher Madaio

U.S. Department of Education

2023 FSA Training Conference for Financial Aid Professionals

Federal Student Aid

An OFFICE of the U.S. DEPARTMENT of EDUCATION

AGENDA

1. Enforcement Office Overview
2. Work and Tools of Investigations
3. Actions that Enforcement Takes Through the Administrative Actions and Appeals Service Group (AAASG)

FSA'S OFFICE OF ENFORCEMENT

WHAT IS OUR GOAL?

Mission Statement

To protect, empower, and seek justice for Title IV students and their families while safeguarding public investment in higher education.

WHAT DO WE DO?

- Enforces the Higher Education Act (HEA) and the Department's regulations as they apply to Institutions of Higher Education (IHE).
- Works to protect students, borrowers, and taxpayers by enforcing compliance with laws and regulations governing student financial assistance programs administered by FSA.
- Takes (or collaborates with other business units to take) the following administrative actions: imposing fines on an IHE for violations of Title IV requirements; debarring or suspending individuals; terminating, suspending, or limiting the participation of an IHE in the Title IV programs; and requiring a party to pay for losses incurred by the Department on account of the acts or omissions of the IHE.

ENFORCEMENT LEADERSHIP

OFFICE LEADERS

Kristen Donoghue, Chief Enforcement Officer

Colleen Nevin, Deputy Chief Enforcement Officer

DIRECTORATE LEADERS

Administrative Actions and Appeals Service Group, Susan Crim

Borrower Defense Group, Nina Schichor

Investigations, Christopher Madaio

Resolution Referral Management Group, Maria Rodriguez

WHAT TO KNOW ABOUT INVESTIGATIONS

WHAT IS THE INVESTIGATIONS GROUP AND WHY WOULD THEY CONTACT MY SCHOOL?

- Breakout Session #8 – Why is FSA Enforcement Contacting Me?
- Separate from the School Eligibility and Oversight Service Group (SEOSG).

WHAT ARE SOME OF THE TOOLS THAT THE INVESTIGATIONS GROUP USES TO INVESTIGATE SCHOOLS?

- Contacts school using tools such as Requests for Information, Subpoenas, Site Visits.
- Secret Shopper Program
- FSA Tip Line - ed.gov/fsatips

WHAT BULLETINS HAVE BEEN ISSUED?

- Deceptive recruiting and enrollment practices against veterans, servicemembers, and their families.
- The use of Non-Disclosure Agreements
- Disbursement of Title IV funds to ineligible programs
- Suspensions and Debarments
- Compliance and Responsible Conduct

WHAT HAPPENS WHEN THE INVESTIGATIONS GROUP HAS CONCERNS THAT A VIOLATION MAY HAVE OCCURRED?

WHAT HAPPENS WHEN THE INVESTIGATIONS GROUP HAS CONCLUDED ITS INVESTIGATION??

1

Take No Action

2

Refer to another agency or accreditor, and/or

3

Refer to AAASG for FSA Adverse Administrative Action

WHY WOULD I HEAR FROM AAASG?

AAASG

Takes actions and processes appeals from matters received by referral from our partners

- School Participation Divisions (SPDs) and the *Clery* Group within FSA's Program Participation and Oversight (PPO)
- Other Directorates Within Enforcement
- Office of Inspector General
- Accrediting Agencies and State Authorizing Agencies
- Other Law Enforcement Partners

FINE ACTION

WHAT ARE FINES?

- Purpose: Punish and deter from committing future violations
  - Maximum fine amount currently $67,544 per violation
  - Based on gravity of violation/misrepresentation, size of institution
- Notice:
  - Intent to fine
  - Fine amount
  - Alleged violations forming basis of the action
  - Proposed Effective Date – at least 20 days from mail date
- Basis: Any Title IV legal violation, including:
  - Institutional Postsecondary Education Data Surveys (IPEDS), *Clery* Act, Drug-Free Schools and Communities Act Amendments of 1989 (*DFSCA*), Substantial Misrepresentations
- Consequence: Imposed on effective date unless institution requests hearing or review of written material
- Authority: 34 C.F.R. §§ 668.84, 668.93

LIMITATION ACTION

WHAT IS A LIMITATION?

Purpose: Limits a fully certified institution's participation or servicer's ability to contract with an institution to administer Title IV

- Violates any statutory or regulatory provisions applicable to Title IV or any special arrangement, agreement or limitation agreed to under the authority of Title IV

Notice:

- Intent to Limit
- Consequences of the intended action
- Alleged violations forming basis of the action
- Proposed Effective Date – at least 20 days from mail date

Outcome: May impose conditions the Department deems reasonable and appropriate

Consequence: Imposed on effective date unless institution requests hearing or review of written material

Authority: 34 C.F.R. §§ 668.86, 668.94, 668.97

LOSS OF ELIGIBILITY ACTIONS

DENIAL OF RECERTIFICATION APPLICATION

WHAT IS A RECERTIFICATION DENIAL?

- Purpose: Denies the institution's application for continued certification to participate in the Title IV programs
- Notice: States the basis for denying the institution's further participation
- Effect: Title IV participation ends on last day of the month in which the denial notice is issued.
- Consequence: Cannot be reinstated until the issues resulting the denial have been corrected
- Authority: 34 C.F.R. § 668.13(b)

REVOCATION OF A PROVISIONAL PROGRAM PARTICIPATION APPLICATION (PPA)

WHAT IS A REVOCATION ACTION?

- Context: Terms of a provisional PPA require revocation in order to end Title IV participation
- Notice: States the basis for which the institution is unable to meet its PPA responsibilities
- Effect: Participation ends on date of the Notice.
- Consequence: Institution may not apply for reinstatement for at least 18 months.
- Authority: 34 C.F.R. § 668.13(d)

TERMINATION ACTION

WHAT IS A TERMINATION ACTION?

Purpose: Ends a fully certified institution's participation or servicer's ability to contract with an institution to administer Title IV

- Violates any statutory or regulatory provisions applicable to Title IV or any special arrangement, agreement or limitation agreed to under the authority of Title IV

Notice:

- Intent to Terminate
- Consequences of the intended action
- Alleged violations forming basis of the action
- Proposed Effective Date – at least 20 days from mail date

Outcome: Imposed on effective date unless requests hearing or review of written material.

Consequence: May not apply for reinstatement for at least 18 months from the effective date the termination is imposed.

Authority: 34 C.F.R. §§ 668.86, 668.95, 668.97

EMERGENCY ACTION

WHAT IS AN EMERGENCY ACTION?

- Purpose: Immediately suspends institution's or servicer's authority to award, receive, or disburse, or administer Title IV funds
  - Based on violation of any statutory or regulatory provisions applicable to Title IV or any special arrangement, agreement or limitation agreed to under the authority of Title IV
  - Immediate Action necessary to prevent misuse of Title IV funds
  - Likelihood that loss from misuse outweighs importance of awaiting completion of Termination Action or other proceeding
- Notice:
  - Grounds forming basis of the Action
  - Consequences of Emergency Action
  - Opportunity to show cause why the Emergency Action is unwarranted
- Consequence: Action Takes Effect on Date Notice Mailed to Institution
- Authority: 34 C.F.R. § 668.83

REQUEST FOR HEARING OR RECONSIDERATION

HEARINGS BEFORE OFFICE OF HEARINGS AND APPEALS (OHA)

Applies to Fines, Limitations, and Termination Actions

- Requests a hearing on the action by deadline in the Action Notice (typically 20 days from mailing)

After hearing, OHA official issues an initial decision

Initial decision may be appealed to the Secretary.

- If not appealed to Secretary within 30 days, the initial decision is the final decision of the Department.
- If appealed, Secretary's decision is the final decision of the Department.

34 C.F.R. §§ 668.84, 668.86, 668.88-92

HEARINGS BEFORE OFFICE OF HEARINGS AND APPEALS (OHA)

- Applies to Emergency Actions
  - Once requested, it is provided as soon as practicable
- OHA Hearing Official Is Show Cause Official
- Institution must demonstrate that Emergency Action is unwarranted:
  - Grounds in the notice did not, or no longer, exist
  - Grounds in the notice will not cause loss or misuse of Title IV funds
  - Institution/Servicer will use procedures to reliably eliminate risk of loss from misuse
- OHA Official continues, modifies or revokes Emergency Action
- If Emergency Action is continued it remains in place until a final decision is issued in the Termination Action.
  - Termination Action must be filed within 30 days of the Emergency Action.
- 34 C.F.R. § 668.83

SUBMISSION OF WRITTEN MATERIALS TO AAASG DIRECTOR

- Applies to Fines, Limitations, and Termination Actions
- Institution or Servicer does not request a hearing but submits written material to the AAASG Director
- AAASG Director reviews that material and then after consideration notifies the institution or servicer that:
  - Fine will not be imposed
  - Proposed action was dismissed
  - Fine is imposed as of specific date, and in a specified amount
  - Limitations are effective as of a specified date
  - Termination is effective as of a specified date
- 34 CFR §§ 668.84, 668.86

RECERTIFICATION DENIAL AND REVOCATION ACTION

- For a recertification denial, Institution has two weeks from the date of the notice to provide a request for reconsideration to AAASG.
- For a revocation action, Institution has 20 days from receipt of the notice to provide written evidence that the revocation is unwarranted. 34 C.F.R. § 668.13(d)
- The request will be reviewed by FSA, rather than OHA, and the institution will receive a decision that affirms the denial, modifies the denial or reverses the denial.

SUSPENSIONS AND DEBARMENTS

WHAT IS A SUSPENSION?

- Imposed when “immediate action is necessary to protect the public interest” and prohibit a person from conducting business with the federal government for a temporary period.
  - May be imposed based on “an indictment for, or other adequate evidence to suspect, an offense” that would warrant debarment. 2 C.F.R. § 180.700(a).
  - May remain suspended until completion of an agency investigation and related judicial or administrative proceedings. 2 C.F.R. § 180.1015.

- Effective the date of the letter to the individual or entity and continues for the duration of any pending legal proceedings or, if there are no legal proceedings, for 12 months.
  - Often the first step toward a debarment. If a proposed debarment notice is issued during the suspension, the suspension will stay in effect until the conclusion of the debarment proceedings. 2 C.F.R. § 180.760.

WHAT IS A DEBARMENT?

- Serves as a final decision to disqualify a person from conducting business with the federal government for a limited period
  - Based on conviction or civil judgment for a variety of offenses concerning financial crimes, fraud, or offenses showing a lack of business integrity or honesty.
  - 2 C.F.R. § 180.800 (a). Also 2 C.F.R. §§ 180.800(b)-(d).
- AAASG issues a proposed debarment notice to the individual or entity. 2 C.F.R. § 180.615.
- The Department's Deciding Official in OHA determines, through proceedings, whether debarment is warranted and, if it is, the duration of the debarment. 2 C.F.R. § §180.845-180.860.
  - Length based on Deciding Official's determination of the seriousness of the cause.
  - Regulations state debarments generally will not exceed three years but may be imposed for longer if Debarment Official believes it is warranted. 2 C.F.R. §180.865.

LIABILITIES FROM PROGRAM REVIEWS AND AUDITS

PROGRAM REVIEW AND AUDIT LIABILITIES

- FSA issues a Final Program Review Determination (FPRD) or Final Audit Determination (FAD) Letter identifying monetary liabilities owed to the Department
- If Institution or Servicer wishes to request review of some, or all, of these liabilities may submit a request for review to AAASG
  - Must be no later than 45 days from the date Institution or Servicer received FPRD or FAD
- AAASG may be able to resolve; otherwise filed with OHA
- OHA initial decision after briefing completed
  - If not appealed to Secretary within 30 days, the initial decision is the final decision of the Department.
  - If appealed, Secretary's decision is the final decision of the Department.
- 34 C.F.R. §§ 668.111-668.125

CONCLUSION

THANK YOU FOR YOUR TIME AND ATTENTION!