

# Process for Taking Administrative Actions, Including Assessing Penalties, on Institutions

The Department of Education has authority to take administrative action with respect to institutions that violate Title IV of the Higher Education Act of 1965 (Higher Education Act or HEA) and its implementing regulations (referred to collectively as “HEA violations”), including actions limiting or ending an institution’s Title IV participation or assessing a fine, in the appropriate circumstances. This memo identifies the administrative actions that can be utilized to address HEA violations. It also identifies the offices at the Department of Education (ED) and Federal Student Aid (FSA) whose incumbents play a role in the administrative action process, and defines their roles and responsibilities

## I. Types of Actions

The Higher Education Act and its implementing regulations empower ED and FSA to take administrative action when HEA violations are identified. The actions that may be taken for institutions include:

- **Fine (also called a civil penalty)** [34 C.F.R. §§ 668.84, 668.93]: The Department may impose a fine when a participating institution violates any statutory or regulatory provision applicable to Title IV of the HEA, or violated any condition or limitation to its participation; or made a substantial misrepresentation as defined by the regulations. The amount of a fine is determined based upon the gravity of the offense and the size of institution. The maximum fine amount allowed per individual violation or misrepresentation is established by statute [20 U.S.C. § 1094(c)(3)(B)(i)]. A fine may be issued in combination with another action, such as a termination or limitation action. In addition to a fine, the Department may also identify liabilities, or funds required to be returned to the Department, for the same conduct.
- **Revocation of provisional Program Participation Agreement (PPPA)** [34 C.F.R. §§ 668.13(d), 600.20]: The Department may revoke a PPPA when it is determined that an institution is unable to meet its responsibilities under its program participation agreement.
- **Denial of Recertification application** [34 C.F.R. § 668.13(b)]: The Department may deny an institution’s application for recertification if it determines that the institution has failed to continue to meet the requirements of the regulations applicable to Title IV-eligible institutions, including 34 C.F.R. Part 668.
- **Termination and Limitation, which can include an accompanying emergency action** [34 C.F.R. §§ 668.86, 668.95, 668.97 (Termination); 34 C.F.R. §§ 668.86, 668.94, 668.98 (Limitation); 34 C.F.R. §§ 668.83 (Emergency)]: The Department may

terminate or limit an institution's participation if it determines that the institution has violated the HEA, its implementing regulations, or any condition of participation, or if the institution has committed substantial misrepresentation as defined by the regulations [34 C.F.R. § 668.86(a)].

If the Department determines that there is an immediate need to suspend or limit an institution's access to Title IV funds while a termination action is pending, the termination or limitation action also may be accompanied by an emergency action [34 C.F.R. § 668.83]. An emergency action is appropriate in cases where the likelihood of loss to the Title IV programs resulting from the alleged misuse of Title IV funds by the institution outweighs the importance of waiting until the completion of the associated termination or limitation action that was issued [34 C.F.R. § 668.83(c)(1)].

- **Suspension** [34 C.F.R. § 668.85]: The Department may suspend an institution's participation if it determines that the institution has violated the HEA, its implementing regulations, or any condition of participation, or if the institution has committed substantial misrepresentation as defined by the regulations [34 C.F.R. § 668.85(a)]. A suspension action may not exceed 60 days unless a termination or limitation proceeding is initiated, or, if the institution has not requested a hearing, the Department and institution agree to an extension of the suspension [34 C.F.R. § 668.86(a)(3)].

## II. Offices Involved

The following offices do or may play a role in taking administrative action in response to HEA violations.

- Chief Operating Officer (COO) – the “designated department official” who determines whether to take administrative action, the type of action to take and any other specific details regarding that administrative action. **See Delegation.** AAASG implements administrative actions that are approved by the COO.
- Office of General Counsel (OGC) – an office at ED, OGC reviews any proposed administrative action to confirm that the designated department official is acting within his/her legal authority, including to ensure the sufficiency of the evidence.
- Administrative Actions and Appeals Service Group (AAASG) – an FSA office within the Office of Enforcement, AAASG implements administrative actions that are approved by the COO. AAASG also works with the School Eligibility and Oversight Service Group (SEOSG), the Clery Group, and the Investigations Group and provides substantive input in making recommendations to the COO for administrative action.
- SEOSG, Clery Group, and Investigations Group – FSA offices that conduct oversight and investigatory work that may identify HEA violations and may lead to a referral to AAASG to develop a recommendation for administrative action for approval by the COO.

### III. Process for Determining Violations and Taking Administrative Actions

#### Referral of Oversight or Investigative Activity

Three groups within FSA conduct oversight and investigations of institutions of higher education and their third-party service providers: SEOSG, the Clery Group, and the Investigations Group. The work of these teams may lead to recommendations that (1) a HEA violation has occurred; and (2) administrative action should be pursued as a result.

**SEOSG and Clery Group:** SEOSG and the Clery Group typically conduct their fact-gathering through program reviews or other types of focused reviews. If a review or other SEOSG activity such as Audit Resolution, Eligibility and Certification reviews, Financial Analysis, or Method of Payment issue results in a proposed determination that a violation has occurred and that administrative action should result, these offices work with AAASG and OGC to develop and validate the factual record, and to ensure that the evidence and legal analysis are sufficient to support the recommended administrative action under the HEA. AAASG's work to implement these actions includes providing input to the recommendation to provide consistency in the process and expertise in Title IV violations concerning the breadth and depth of evidence that has proven successful in supporting administrative actions taken by the Department.

When administrative action results from the work of SEOSG or the Clery Group, AAASG typically submits any recommendation for administrative action to the COO (through the Chief Enforcement Officer or Deputy Chief Enforcement Officer). The Recommendation Memo includes (1) a summary of the information reviewed or evidence obtained that supports a recommendation for administrative action and (2) a recommendation for administrative action, including a proposed fine amount, if applicable. The maximum fine amount allowed per individual violation or misrepresentation is increased annually for inflation via the [Federal Register](#). Staff will consult the most recent relevant Federal Register's "Adjustment of Civil Monetary Penalties for Inflation" for the current maximum fine amount.

In preparing a Recommendation Memo, AAASG consults with OGC and SEOSG or the Clery Group, as applicable. OGC reviews the memo to evaluate that the evidence is sufficient to support any recommended administrative action, and that the COO has the legal authority to proceed as recommended. Any actions proposed that result from work by SEOSG or the Clery Group must also be approved through the Program Participation Office's Deputy COO.

**Investigations Group:** The Investigations Group, which includes attorneys on its staff, typically conducts its fact-gathering through tools including Requests for Information and Oral Interviews. Following an investigation, if the Investigations Group believes that a violation has occurred and administrative action is warranted, an attorney from the team drafts a Recommendation Memo for submission to the COO. The memorandum includes (1) the relevant evidence, (2) the legal analysis supporting a violation determination, and (3) a recommendation for administrative action.

In preparing a Recommendation Memo, the Investigations Group consults with AAASG and OGC. AAASG provides input based upon its experience implementing administrative actions for

FSA, including the breadth and depth of evidence that has proven successful in supporting administrative action by the Department in the past, and how the evidence and recommendation compare to other administrative actions taken by FSA. OGC reviews the memo to evaluate that the evidence is sufficient to support any recommended administrative action, and that the COO has the legal authority to proceed as recommended. Following this review, the Investigations Group submits the Recommendation Memo to the COO through the Deputy Chief Enforcement Officer or Chief Enforcement Officer.

### **Factors to Consider When Recommending an Administrative Action**

In determining the type of action to initiate, the parties crafting the recommendation should consider the following:

- The nature and severity of the potential violations;
- The status of the institution's current eligibility and certification status;
- In consultation with OGC, whether the referral includes sufficient supporting evidence to establish a violation;
- What action type is feasible and appropriate, including information on penalties assessed for similar violations at other institutions, and the effect of those penalties;
- The age and date range of the potential violations, including whether a fine action, if contemplated, may be barred by the applicable limitations period;
- The complexity of the action(s) contemplated, the resources needed to pursue the action(s), and the anticipated timeframe to draft and issue an action, if pursued; and
- Whether the institution is closed or imminently closing and, if so, whether that may make an administrative action moot or an ineffective use of AAASG and Department resources.

### **Initiating an Administrative Action**

If the COO approves a recommendation for administrative action, that action is implemented by AAASG, with the Director of AAASG acting as FSA's signatory on administrative actions.

The notice of administrative action to the institution includes (1) the type of administrative action initiated, (2) the violations and supporting evidence, and (3) the applicable reconsideration or appeal process including any deadline to make a reconsideration or appeal request.

Before issuance of the notice, the Director of AAASG or designee, in consultation with the offices involved in developing the notice, should determine if the draft notice should be shared with internal stakeholders or if internal or external stakeholders should be advised prior to issuance of the action.

The Director of AAASG or designee provides the notice to the institution. Once the notice of administrative action is transmitted to the institution, the administrative action has been initiated by the Department and the Director of AAASG or designee should share the notice of administrative action with all relevant stakeholders at the Department including but not limited to OGC, the relevant groups in FSA, and the Director of each group within Enforcement.

### **Reconsideration Request or Appeal of an Administrative Action**

When an administrative action is “imposed” – goes into effect – depends on the type of administrative action. Emergency actions and revocation actions, for example, take effect when the notice of the action is issued. Depending on the type of action initiated, an institution’s response options may include requests for review by the Department of written materials, reconsideration, or a hearing before the OHA. (See 34 CFR Part 668, Subpart G applicable to Fines, Terminations, Limitations, Emergency Actions, and Suspensions and 34 CFR § 668.13 for PPPA Revocation and Recert Denial Actions for a description of the institution’s options and processes.)

If an institution’s request for review, reconsideration, or hearing does not result in a change in the Department’s decision regarding the action or if the appeal or reconsideration deadline lapses without a request by the institution, the action will be imposed or the agency’s initial decision becomes the agency’s final decision.

### **Imposing an Administrative Action**

The Director of AAASG or designee provides the imposition letter to the institution. Once the action is imposed, or otherwise resolved as the final decision of the Department, the Director of AAASG or designee should share the imposition letter or any associated OHA or Secretary decision with all relevant stakeholders at the Department including but not limited to OGC, the relevant groups in FSA, and the Director of each group within Enforcement.