

Enforcement Investigations

This procedure governs the opening, conducting, and closing of investigations by the Investigations Group in the Office of Enforcement at Federal Student Aid (FSA). This procedure is designed to promote vigorous enforcement to the extent possible given resource constraints.

I. Opening an Investigation

Investigations are opened based on information that an institution, entity, or individual is potentially noncompliant with Title VI of the Higher Education Act of 1965 (Higher Education Act or HEA) and its implementing regulations (referred to generally as violations of the HEA).

The decision to conduct an investigation must be carefully considered in light of its impact on:

- Students;
- The specific institution/entity;
- General and specific deterrence;
- Enforcement and FSA resources;
- Other FSA and Department work; and
- Other Law enforcement (e.g., federal regulators, state Attorneys General).

Research Matter Overview

The Assistant Director/Director of the Investigations Group approves the opening of research matters. When submitting a recommendation to open a research matter, staff should follow the procedures described below.

While not necessary in every instance, conducting a research matter prior to deciding whether to open an investigation permits staff to gather basic information and preliminarily evaluate the potential for successful enforcement of suspected violations of the HEA while minimizing the disruptions and resource usage associated with contacting institutions or individuals during an investigation.

Research matters should be opened primarily to evaluate nascent ideas for enforcement investigations and to determine if an investigation may be warranted.

The primary purpose of a research matter is to collect and analyze easily obtainable information in order to:

- Determine whether the relevant conduct potentially violates the HEA and the applicable regulations, and whether the Department has authority over the potential subject of the investigation;

- Determine whether other law enforcement agencies or other Department offices are investigating the matter or should be advised of the Investigation Group's interest in the matter if the matter turned into an investigation; and
- Evaluate whether an investigation is in the best interests of the Department and would be an effective use of the Investigation Group's resources.

Opening a Research Matter

Any member of the Investigations Group may propose, or may perform, pursuant to the direction of a supervisor, a research matter according to the below process. To propose a research matter, staff should follow the process for research matters and submit a recommendation to the Assistant Director/Director of the Investigations Group. A recommendation should include the following:

- The name of the institution(s), entity(ies), or individual(s) that may be engaging in the conduct;
- The basis for the recommendation (i.e., a tip, student or borrower complaint(s), a media report, concern from an accreditor, a third-party tip, or an investigation or lawsuit by another regulator);
- What conduct relating to the Higher Education Act may be taking place;
- What provision of the Higher Education Act, its implementing regulations, or a Program Participation Agreement might be violated by the conduct if it is in fact occurring.

The Assistant Director/Director of the Investigations Group determines whether to open research matters. Research matters are logged and tracked by the team.

Limiting External Contact for Research Matters

During research matters, evidence gathering should be generally limited to non-identifiable internet searching, review of complaints, media sources, legal research, and, where appropriate, confidential discussions with other law enforcement agencies. Staff should avoid any direct interaction with potential investigation subjects, their known agents, or third-party witnesses (other than complainants such as individuals who call the tip line and potential or actual borrowers).

Closing a Research Matter

Research matters should generally be open no more than three months, during which period, staff should spend a limited amount of time determining whether the issues that were identified warrant a recommendation for further work by the Investigations Group, such as a secret shopping operation or an investigation. After the research matter is complete, the Assistant Director/Director of the Investigations Group will make a determination about whether the research matter should form the basis of a recommendation to open an investigation or a secret shopping operation, be referred to another part of the Department or another state or federal agency, be closed with no further action, or initiate other steps.

With a decision to close the research matter, staff document the closure. Staff may bring a second research matter related to the same issue if the underlying facts change and merit reconsideration.

Investigation Overview and Considerations

The Chief Enforcement Officer must approve the opening of any new investigation. When submitting a recommendation to open an investigation, staff should follow the procedures described below.

An investigation should be recommended when research provides:

- A plausible set of facts that, if proven, would amount to violation of one or more regulations or laws related to the Title IV, Higher Education Act;
- Reason to believe that one or more specific institutions, entities, or individuals are engaging in the conduct described in those facts;
- Evidence of sufficient harm to recipients of Title IV funds or the Title IV program that justifies investment of the enforcement office resources; and
- That there are sufficient enforcement office resources available to properly investigate the matter in a timely way.

Before drafting a recommendation to open an investigation, staff should discuss the matter with their supervisor and consider the following factors:

- Whether there is a need for immediate action to protect students or borrowers;
- Whether there exists a sufficiently credible source of information or sets of facts to evidence a violation of the Higher Education Act;
- The risk posed to students and taxpayers, including as reflected in FSA risk model(s);
- How the investigation relates to the actions of other non-Department law enforcement agencies or other Department efforts;
- Whether the conduct involves a possibly widespread and/or emerging industry practice;
- The egregiousness of the potential violation;
- The magnitude of potential harm to current students, prospective students, former students, and/or borrowers;
- The magnitude of potential harm to taxpayers and the Title IV program;
- Whether the conduct is ongoing;
- Whether the institution/entity or its leadership are recidivists;
- Whether the conduct could be investigated efficiently such that any administrative action, if appropriate, could be conducted within any appropriate statute of limitations period;
- Whether it might be more appropriate for other groups at the Department to address the conduct;
- Whether other authorities, including federal and state agencies or regulators, are already investigating the conduct;

- Whether the matter presents an opportunity for strategic cooperation with other civil agencies including law enforcement partners; and
- Whether opening an investigation would be an appropriate use of Department resources.

The Opening Investigation Recommendation Memo and Opening Decision Memo

To propose an investigation, staff should follow the process for opening an investigation and draft a recommendation memo for the Director of the Investigations Group and an opening decision memo for the Chief Enforcement Officer.

The recommendation need not explicitly address every factor listed above. The following information should be included in every opening investigation recommendation memo:

- The name of the institution/entity being investigated and its Program Participation status, if applicable;
- The origin(s) or source(s) of the investigation;
- The institution's status relative to any FSA risk models consulted;
- A brief description of the background facts;
- The Department's jurisdiction and the potential legal violations;
- Potential violators and other relevant parties; and
- The statement of purpose of the investigation.

The Director of the Investigations Group will make the final determination about whether to approve the recommendation and advance it, along with the opening decision memo, to the Chief Enforcement Officer. The Chief Enforcement Officer determines whether to open the investigation.

Following approval, the Director of the Investigations Group or designee should share the approved opening decision memo with all relevant stakeholders at the Department including but not limited to the Office of General Counsel, the relevant School Participation Division(s) in FSA, the Office of Inspector General, and the Director of each group within Enforcement.

Investigations are logged and tracked by the team, and a case file is created for each open investigation.

II. Conducting an Investigation

When conducting an investigation, staff should follow the procedures described below.

Investigations will be conducted by attorneys and/or investigators. Prior to commencing an investigation, assigned staff must have been cleared by the Office of General Counsel to ensure that no conflict(s) of interest exist. Assigned staff, in consultation with Investigation Group Leadership, should follow the process for conducting an investigation to consider the investigative tools available and initiate the investigation.

Seeking Information

Once an investigation is open, staff may seek information from institutions/entities and certain other parties in support of the investigation. Information may be gathered using one or more of the following tools:

- Request For Information – A written request by the Director of the Investigations Group for documentary material, reports, or answers to written questions.
- Oral Interviews – Staff may interview individuals in person or by audio or video call.
- Subpoenas – Subpoenas can be issued by the Chief Operating Officer to require the production of information, documents, reports, answers, records, accounts, papers, and other documentary evidence pertaining to participation in Title IV programs.
- Information Sharing with Other Law Enforcement Entities – FSA and other regulators may share nonpublic information in furtherance of investigations if appropriate information sharing agreements signed by the Chief Operating Officer are in place.
- Secret Shopping – When warranted and approved by the Chief Enforcement Officer, trained staff may conduct Secret Shopping Operations.

During the course of the investigation, staff may also continue to obtain and analyze other available information, including but not limited to consumer complaints (from sources including FSA's Feedback Center, Borrower Defense applications, and the Federal Trade Commission's Consumer Sentinel database); information from knowledgeable insiders submitted to the FSA Tip Line; and relevant media articles.

Status with Opportunity to Respond Letter to the Subject of the Investigation

If staff believes that the investigation has uncovered sufficient evidence to consider a referral for potential enforcement action, they should review the evidence with Investigations Group Leadership.

The Director of the Investigations Group should determine whether a letter stating the investigation's status and providing an opportunity to respond (Status Letter) should be sent to the subject(s) of the investigation. A Status Letter provides an opportunity for the subject(s) to present their position to FSA in writing before a final decision is made regarding whether or not to pursue potential enforcement action.

Generally, a Status Letter should be used in most cases where the institution/entity is being considered for a referral of potential enforcement action. However, the Status Letter is a discretionary process that may be bypassed if there is a valid reason to do so. Reasons to forego the Status Letter include risks such as potential destruction of records, dissipation of assets, or imminent harm to students or the Title IV program.

When a Status Letter is warranted, staff should follow the process for recommending a Status Letter and draft a Status Letter for the Director of the Investigations Group. The Status Letter should include the following:

- The name of the institution/entity;
- Notification that the institution/entity is under investigation, if prior notice was not provided.
- A summary of the evidence gathered to date, potential violation(s), applicable law(s), and a description of the supporting evidence for each potential violation;
- A reasonable return date for a written response (Generally, the timeline for response is 15 calendar days. Reasonable requests for additional time to respond will be decided by the Director of the Investigations Group.); and
- A description of how the Department may use the information contained in any submitted written response.

Staff should be aware that sending a Status Letter to the subject of an investigation may raise issues relevant to other FSA or Department of Education offices, and therefore should consider whether to inform those offices prior to sending the letter. Likewise, staff should consider whether sending a Status Letter may create issues for a partner agency and should consider whether to inform any partner agency in advance of sending the letter.

The Chief Enforcement Officer, in consultation with the Director of the Investigations Group, should make a final determination about whether to approve the Status Letter. The Director of the Investigations Group or designee provide the approved Status Letter to the institution/entity.

When a Status Letter is sent, any response should be considered before making a recommendation for potential enforcement action to the Chief Operating Officer of FSA.

The Recommendation to the Chief Operating Officer

If staff believes there is sufficient evidence to support potential enforcement action by FSA, they should review the evidence with Investigations Group Leadership and the Chief Enforcement Officer. The Chief Enforcement Officer should determine whether a recommendation for referral to the Administrative Actions and Appeals Services Group for potential enforcement action should be sent to the Chief Operating Officer. In determining whether to make such a recommendation, and in preparing the recommendation, staff should consult with the Administrative Actions and Appeals Services Group and the Office of General Counsel for advice on (1) whether the facts gathered in the investigation support a determination that a violation has occurred; (2) if so, whether that violation warrants administrative action; and (3) what administrative action(s) might be appropriate.

To propose enforcement action, staff should follow the process for recommending enforcement action of an investigation and draft a recommendation for the Chief Enforcement Officer and a decision memo for the Chief Operating Officer.

Staff should be aware that recommending potential enforcement action may raise issues relevant to other FSA or Department of Education offices, and therefore should consider whether to inform those offices prior to submitting the recommendation. Likewise, staff should consider whether recommending action may create issues for a partner agency and should consider whether to inform any partner agency in advance of submitting the recommendation.

The Chief Enforcement Officer, in consultation with the Director of the Investigations Group, should make a final determination about whether to approve the recommendation and advance it, along with the decision memo, to the Chief Operating Officer. The Chief Operating Officer determines whether to pursue potential enforcement action(s).

III. Closing an Investigation

The Chief Enforcement Officer must approve the closing of any investigation. When submitting a recommendation to close an investigation, staff should follow the procedures described below.

Closure Without Recommending Enforcement Action

Staff should recommend the closing an investigation as soon as it becomes apparent that no enforcement action will be recommended, even if all investigative work has not been completed. Before drafting a recommendation to close an investigation without enforcement action, staff should discuss the matter with their supervisor and consider the following factors:

- Seriousness of the conduct and potential violations;
- Staff resources necessary to pursue available relief;
- Sufficiency and strength of the evidence;
- Extent of potential harm to students, borrowers, or taxpayers if an action is not pursued;
- Expectation that actions will be commenced by other government agencies; and
- Age of the conduct underlying the potential violations.

As soon as a decision is made by the Chief Enforcement Officer or Chief Operating Officer not to pursue an enforcement action, staff should send a closing letter to:

- Any entity or individual who was identified as a potential violator of the HEA in the investigation's opening decision memo and whom staff contacted to make them aware of the investigation, including any entity or individual who received a Request For Information, subpoena, or status letter.
- Any entity or individual that staff otherwise reasonably believe is aware that they are the subject of an ongoing investigation.

The closing letter to an entity or individual includes: (1) the name of the institution/entity and (2) a statement of the investigation's closure.

Staff may recommend not sending a closing letter to entities or individuals in the above categories. The Director of the Investigations Group will make the final determination about whether or not to send a closing letter to an entity or individual. The Director of the Investigations Group or designee provide the approved closing letter to identified entities or individuals.

Closure Following Enforcement Action

Staff should recommend closing an investigation that resulted in the Department taking enforcement action as soon as:

- All actions authorized by the Chief Enforcement Officer or Chief Operating Officer are complete.
- The final action has been issued and/or a settlement in lieu has been finalized.
- Any appeals, including reconsideration requests, are complete.
- A settlement has been finalized.
- The Department is not involved in litigation related to the investigation.

The Closing Investigation Recommendation Memo and Closing Decision Memo

To propose closing an investigation, staff should follow the process for closing an investigation and draft a recommendation memo for the Director of the Investigations Group and a closing decision memo for the Chief Enforcement Officer.

The recommendation need not explicitly address every factor listed above. The following information should be included in every closing investigation recommendation memo: (1) the name of the institution/entity and (2) the reason(s) to close the investigation.

The Director of the Investigations Group should make a final determination about whether to approve the recommendation and advance it, along with the closing decision memo, to the Chief Enforcement Officer. The Chief Enforcement Officer determines whether to close the investigation.

Following approval, the Director of the Investigations Group or designee should share the approved closing decision memo and a copy of the closing letter to any entity or party, if applicable, with all relevant stakeholders at the Department including but not limited to the Office of General Counsel, the relevant School Participation Division(s) in FSA, the Inspector General's Office, the Director of each group within Enforcement. Investigation closures are logged by the team. Staff archive the case file for each investigation.