

(ii) Upon the written request of the lender or third-party servicer, the Secretary may provide the lender or servicer with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22457, Apr. 29, 1994]

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs or a third-party servicer's ability to enter into contracts with eligible lenders, and the Secretary does not guarantee or re-insure a new loan made by the lender or new loan serviced by the servicer during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender or servicer and the Secretary agree to an extension of the suspension period, if the lender or third-party servicer has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(3) A suspension described in 34 CFR 85.201(c) lasts for a period of 60 days, beginning on the effective date specified in the notice by the Secretary under 34 CFR 85.201(b), except as provided in paragraph (a)(1)(i) or (ii) of this section.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender or servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to suspend the lender's or servicer's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender or servicer that the suspension will not take effect on the proposed date, except as provided in paragraph (c)(9) of this section, if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender or servicer to correct voluntarily any alleged violations.

(c) *Hearing.* (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender or servicer of the effective date of the suspension.

(2) If the lender or servicer requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision based on findings of fact and conclusions of law that may suspend the lender's or servicer's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, (28 U.S.C. Appendix) is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) In a suspension action against a lender or third-party servicer based on a suspension under Executive Order 12549 or a proposed debarment under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4, that does not meet the standards described in 34 CFR 85.201(c), the presiding official finds that the suspension or proposed debarment constitutes prima facie evidence that cause for suspension under this subpart exists.

(7) The initial decision of the presiding officer is mailed to the lender or servicer.

(8) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender or servicer of the Secretary's decision by mail.

(9) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender or servicer, or on the proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

[59 FR 22457, Apr. 29, 1994, as amended at 60 FR 33058, June 26, 1995; 66 FR 34764, June 29, 2001]

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender or third-party servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to limit or terminate the lender's or servicer's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender or servicer that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender or servicer to correct voluntarily any alleged violations; and

(viii) Notifies the lender or servicer that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender or servicer of the date the limitation or termination becomes effective.

(2) If the lender or servicer requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's or servicer's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.