

(iii) Informs the institution or servicer that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the limitation or termination should not take place; and

(iv) In the case of a limitation or termination proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

- (i) The proposed action is dismissed;
- (ii) Limitations are effective as of a specified date; or
- (iii) The termination is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. The limitation or termination does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceeding.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

[59 FR 22447, Apr. 29, 1994, as amended at 60 FR 61774, Dec. 1, 1995; 65 FR 65637, Nov. 1, 2000]

§ 668.87 Prehearing conference.

(a) A hearing official may convene a prehearing conference if he or she thinks that the conference would be useful, or if the conference is requested by—

(1) The designated department official who brought a proceeding against an institution or third-party servicer under this subpart; or

(2) The institution or servicer, as applicable.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute.

(c) If the hearing official, the designated department official, and the institution, or servicer, as applicable, agree, a prehearing conference may consist of—

- (1) A conference telephone call;
- (2) An informal meeting; or
- (3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

[59 FR 22448, Apr. 29, 1994]

§ 668.88 Hearing.

(a) A hearing is an orderly presentation of arguments and evidence conducted by a hearing official.

(b) If the hearing official, the designated department official who brought a proceeding against an institution or third-party servicer under this subpart, and the institution or servicer, as applicable, agree, the hearing process may be expedited. Procedures to expedite the hearing process may include, but are not limited to, the following—

- (1) A restriction on the number or length of submissions;
- (2) The conduct of the hearing by telephone conference call;
- (3) A stipulation by the parties to facts and legal authorities not in dispute; or
- (4) A review limited to the written record.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissible.

(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

(3) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.

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(4) The hearing official accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(d) The designated department official makes a transcribed record of the proceeding and makes one copy of the record available to the institution or servicer.

(Authority: 20 U.S.C. 1094)

[51 FR 43325, Dec. 1, 1986, as amended at 57 FR 47753, 47754, Oct. 19, 1992; 57 FR 60034, Dec. 17, 1992; 59 FR 22448, Apr. 29, 1994]

§ 668.89 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of a hearing and the conduct of the parties during the hearing. The hearing official takes all necessary steps to conduct a fair and impartial hearing.

(b)(1) The hearing official is not authorized to issue subpoenas.

(2) If requested by the hearing official, the parties to a hearing shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The hearing official takes whatever measures are appropriate to expedite a hearing. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

[51 FR 43325, Dec. 1, 1986, as amended at 57 FR 47753, Oct. 19, 1992; 59 FR 22448, Apr. 29, 1994]

§ 668.90 Initial and final decisions.

(a)(1)(i) A hearing official issues a written initial decision in a hearing by certified mail, return receipt requested to—

(A) The designated department official who began a proceeding against an institution or third-party servicer;

(B) The institution or servicer, as applicable; and

(C) In the case of a proceeding against a third-party servicer, each institution that contracts with the servicer.

(ii) The hearing official may also transmit the notice by other, more expeditious means if practical.

(iii) The hearing official issues the decision within the latest of the following dates:

(A) The 30th day after the last submission is filed with the hearing official.

(B) The 60th day after the last submission is filed with the hearing official if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(C) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

(2) The hearing official's initial decision states whether the imposition of the fine, limitation, suspension, or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution or servicer, the hearing official may, if appropriate, issue an initial decision to fine the institution or servicer, as applicable, or, rather than terminating the institution's participation or servicer's eligibility, as applicable, impose one or more limitations on the institution's participation or servicer's eligibility.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of § 668.14(b)(18), the hearing official also finds that termination of the institution's participation is warranted;

(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of