

(c)(1) In a fine, limitation, or termination proceeding, the hearing official's initial decision automatically becomes the Secretary's final decision 30 days after the initial decision is issued and received by both parties unless, within that 30-day period, the institution or servicer, as applicable, or the designated department official appeals the initial decision to the Secretary.

(2)(i) A party may appeal the hearing official's initial decision by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(iii) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after the opposing party receives the appellant's brief or written statement.

(iv) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(A) The evidence introduced into the record at the hearing;

(B) Stipulations of the parties if the hearing consisted of written submissions; or

(C) Matters that may be judicially noticed.

(v) Neither party may introduce new evidence on appeal.

(vi) The initial decision of the hearing official imposing a fine or limiting or terminating the institution's participation or servicer's eligibility does not take effect pending the appeal.

(vii) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (c)(2)(vii) through (ix) of this section.

(viii) In rendering a final decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted only of written submissions and matters that may be judicially noticed.

(ix) If the hearing official finds that a termination is warranted pursuant to paragraph (a)(3) of this section, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

(Approved by the Office of Management and Budget under control number 1840-0537)

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

[59 FR 22448, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 60 FR 61774, Dec. 1, 1995; 65 FR 65637, Nov. 1, 2000]

§ 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

(a) *Filing of request for hearing, show-cause opportunity, or appeal.* (1)(i) A request by an institution or third-party servicer for a hearing or show-cause opportunity, or other material submitted by an institution or third-party servicer in response to a notice of proposed action under this subpart, must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(ii) An appeal to the Secretary by a party must be filed with the designated department official by hand-delivery, mail, facsimile transmission, or by use of the Office of Hearings and Appeals Electronic Filing System (OES).

(2) Documents filed by facsimile transmission must be transmitted to the designated department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing a document by facsimile transmission must confirm that a complete and legible copy of the document was received by the Department of Education, and may be required by the designated department official to provide a hard copy of the document.

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(3) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4)(i) A party may file an appeal to the Secretary, and any other pleading or other document submitted in a proceeding under this subpart, by use of the Office of Hearings and Appeals Electronic Filing System (OES), by hand-delivery, by mail, or by facsimile transmission.

(ii) A party must serve a copy on the other party of any pleading or other document it files, including an appeal to the Secretary, in a proceeding under this subpart. A party must do so by certified mail, return receipt requested; by hand-delivery; or, if agreed upon by the parties, service may also be made by use of the OES or any other means agreed to by the parties.

(iii) A party who agrees to receive a document by any means other than service by certified mail, return receipt requested or hand-delivery may limit that agreement to one or more particular documents.

(iv) A party who agrees to service of a document through the OES thereby agrees that the notice of such filing provided to the party by the OES suffices to meet any obligation of the filing party under these regulations to provide a copy of that document.

(5) Documents filed using the OES must be transmitted to the designated department official identified in instructions provided by the hearing official as the individual responsible to receive them. A party filing a document using the OES must ensure that the party has received an electronic confirmation that the document was accepted and approved for filing by the OES, and may be required by the designated department official to provide a hard copy of the document.

(6) Electronic documents must be formatted in Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at www.adobe.com.

(b) *Confirmation of mailing and receipt dates.* (1) The mailing date of a notice from a designated department official initiating an action under this subpart is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is received is, as applicable—

(i) The date of receipt evidenced on the original receipt for a document sent by certified mail.

(ii) The date following the date recorded by the delivery service as the date material was sent for a document sent by next-day delivery service.

(iii) The date a document sent by regular mail is recorded, according to the regular business practice of the office receiving the document, as received.

(iv) The date a document sent by facsimile transmission is recorded as received by the facsimile equipment that receives the transmission.

(v) The date a document sent electronically via the OES is recorded as received by the OES as indicated in the confirmation of receipt email for E-filing.

(c) *Refusals.* If an institution or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution or servicer refuses to accept the notice.

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

[51 FR 43325, Dec. 1, 1986, as amended at 58 FR 13345, Mar. 10, 1993; 59 FR 22450, Apr. 29, 1994; 78 FR 48050, Aug. 7, 2013]

§ 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, hearing official, and Secretary take into account—

(1) (i) The gravity of an institution's or third-party servicer's violation or failure to carry out the relevant statutory provision, regulatory provision, special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) The gravity of the institution's or servicer's misrepresentation;

(2) The size of the institution;

(3) The size of the servicer's business, including the number of institutions and students served by the servicer;

(4) In the case of a violation by a third-party servicer, the extent to