

(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 presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender or third-party servicer and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender or third-party servicer rather than terminating the lender's or servicer's eligibility.

(7) In a termination action against a lender or third-party servicer based on a debarment under Executive Order 12549 or 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 debarment constitutes prima facie evidence that cause for debarment and termination under this subpart exists.

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

(9) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender or servicer and the Secretary or designated Departmental official.

(10) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender, servicer, or designated Departmental official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer or third-party servicer or servicer's owner or officer, respectively, is convicted of or pled *nolo contendere* or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL program funds, that conviction or guilty plea is grounds for terminating the lender's or

servicer's eligibility, respectively, to participate in the FFEL programs.

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

[59 FR 22458, Apr. 29, 1994, as amended at 60 FR 33058, June 25, 1995]

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender, third-party servicer, or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(10)—

(1) An appeal is made to the Secretary by submitting to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's or servicer's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.

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

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22458, Apr. 29, 1994; 66 FR 34765, June 29, 2001]

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be substantiated by the original receipts from the U.S. Postal Service.

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(b) If a lender 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 lender or servicer refuses to accept the notice.

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

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22459, Apr. 29, 1994]

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender or third-party servicer to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender, or, in the case of a third-party servicer, the servicer or the lender that has a contract with a third-party servicer, improperly received, withheld, disbursed, or caused to be disbursed. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(c) If a final decision requires a lender, a lender that has a contract with a third-party servicer, or a third-party servicer to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender, the lender that has a contract with the third-party servicer, or the third-party servicer. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

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

[59 FR 22459, Apr. 29, 1994]

§ 682.710 Removal of limitation.

(a) A lender or third-party servicer may request removal of a limitation imposed by the Secretary in accordance with the regulations in this sub-

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part at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender or servicer has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender or servicer, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender or third-party servicer may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

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

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22459, Apr. 29, 1994]

§ 682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the procedures of this subpart may request reinstatement of its eligibility after the later of—

(1) Eighteen months from the effective date of the termination; or

(2) The expiration of the period of debarment under Executive Order 12459 or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4.

(b) The request must be in writing and must show that—

(1) The lender or servicer has corrected any violations on which the termination was based; and

(2) The lender or servicer meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR part 668 may not be considered for reinstatement as a lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.