

§ 668.112

final audit determination or a final program review determination; or

(2) An institution fails to qualify for certification to participate in the title IV, HEA programs because it does not meet the fiscal and administrative standards set forth in subpart B of this part, except to the extent that such a determination forms the basis of a final audit determination or a program review determination.

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 59 FR 22452, Apr. 29, 1994]

§ 668.112 Definitions.

The following definitions apply to this subpart:

(a) *Final audit determination* means the written notice of a determination issued by a designated department official based on an audit of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any or all of the Title IV, HEA programs.

(b) *Final program review determination* means the written notice of a determination issued by a designated department official and resulting from a program compliance review of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

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

[59 FR 22452, Apr. 29, 1994]

§ 668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer shall file its request for review and any records or materials admissible under the terms of § 668.116(e) and (f), no later than 45 days from the date that the in-

stitution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

(d)(1) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

(2) If the institution is charged with a liability as a result of an error described in paragraph (d)(1) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

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

(Authority: 20 U.S.C. 1094 and 1099c-1)

[59 FR 22452, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 64 FR 58619, Oct. 29, 1999]

§ 668.114 Notification of hearing.

(a) Upon receipt of an institution's or third-party servicer's request for review, the designated department official arranges for a hearing before a hearing official.

(b) Within 30 days of the designated department official's receipt of an institution's or third-party servicer's request for review, the hearing official notifies the designated department official and the parties to the proceeding of the schedule for the submission of briefs by both the designated department official and, as applicable, the institution or servicer.

(c) The hearing official schedules the submission of briefs and of accompanying evidence admissible under the

terms of § 668.116 (e) and (f) to occur no later than 120 days from the date that the hearing official notifies the institution or servicer.

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

[59 FR 22452, Apr. 29, 1994]

§ 668.115 Prehearing conference.

(a) In the event that the hearing official considers a prehearing conference necessary, he may convene a prehearing conference.

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

(1) A telephone conference call;

(2) An informal meeting of the parties with the hearing official; or

(3) The submission and exchange of written materials by the parties.

(c) All prehearing conferences requiring appearances by the parties shall take place in the Washington, D.C. metropolitan area.

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992]

§ 668.116 Hearing.

(a) A hearing is a process conducted by the hearing official whereby an orderly presentation of arguments and evidence is made by the parties.

(b) The hearing process consists of the submission of written briefs to the hearing official by the institution or third-party servicer, as applicable, and by the designated department official, unless the hearing official determines, under paragraph (g) of this section, that an oral hearing is also necessary.

(c) Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the hearing official.

(d) An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:

(1) That expenditures questioned or disallowed were proper.

(2) That the institution or servicer complied with program requirements.

(e)(1) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(i) Department of Education audit reports and audit work papers for audits performed by the department's Office of Inspector General.

(ii) In the case of an institution, institutional audit work papers, records, and other materials, if the institution provided those work papers, records, or materials to the Department of Education no later than the date by which the institution was required to file its request for review in accordance with § 668.113.

(iii) In the case of a third-party servicer, the servicer's audit work papers and the records and other materials of the servicer or any institution that contracts with the servicer, if the servicer provided those work papers, records, or materials to the Department of Education no later than the date that the servicer was required to file the request for review under § 668.113.

(iv) Department of Education program review reports and work papers for program reviews.

(v) Institutional or servicer records and other materials (including records and other materials of any institution that contracts with the servicer) provided to the Department of Education in response to a program review, if the records or materials were provided to the Department of Education by the institution or servicer no later than the date by which the institution or servicer was required to file its request for review in accordance with § 668.113.

(vi) Other Department of Education records and materials if the records and materials were provided to the hearing official no later than 30 days after the institution's or servicer's filing of its request for review.

(2) A party desiring to submit as evidence any materials described in paragraph (e)(1) of this section shall submit that evidence with its initial brief.

(f) The hearing official accepts only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and