BREAKOUT SESSION #8

Why is FSA Enforcement Contacting Me and What is Expected?

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U.S. Department of Education

2023 FSA Training Conference for Financial Aid Professionals

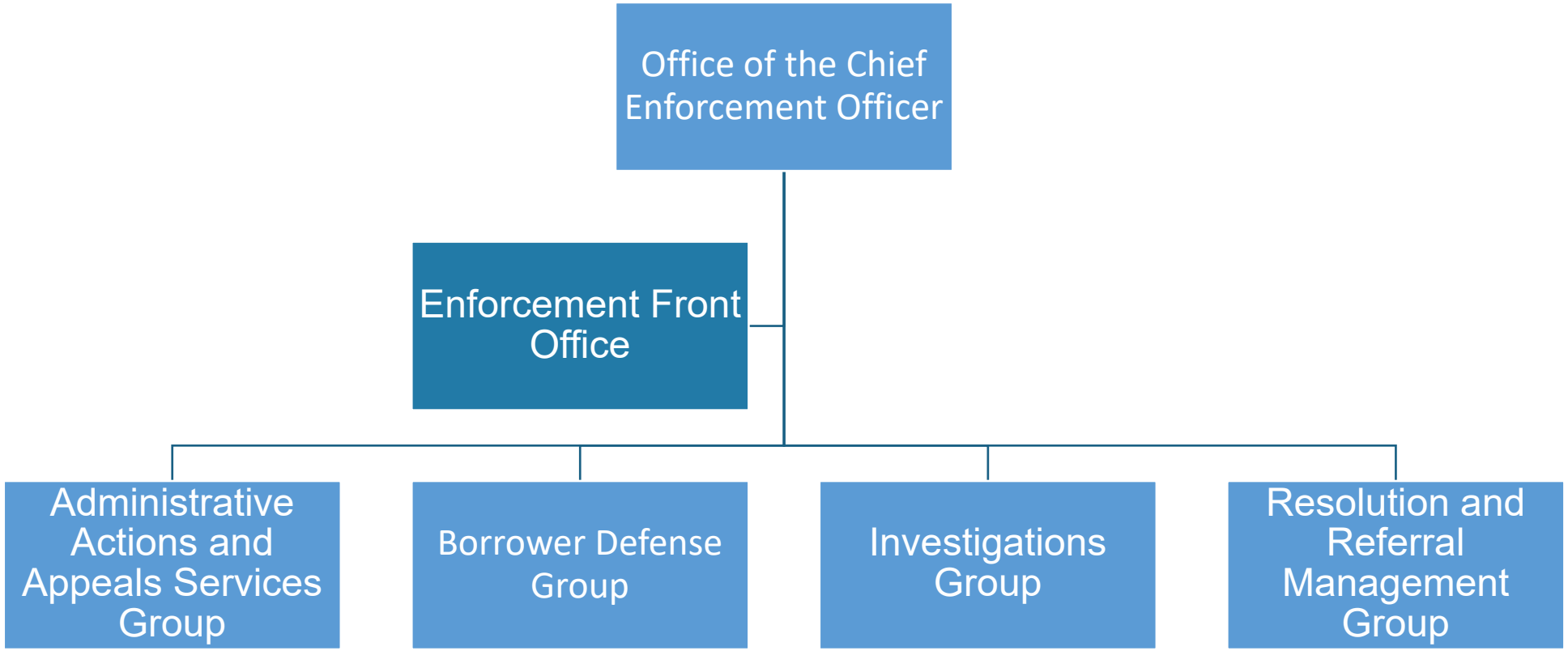
AGENDA

1. Introduction
2. Resolution and Referral Management Group
3. Investigations Group
4. Borrower Defense Group

INTRODUCTION

Kristen Donoghue
Chief Enforcement Officer

ENFORCEMENT OFFICE



RESOLUTION AND REFERRAL MANAGEMENT GROUP

Maria Rodriguez
Director

FSA FEEDBACK CENTER

- On July 1, 2016, FSA launched the FSA Feedback Center to give students and borrowers a simple and straightforward way to file complaints and provide feedback about federal student loan lenders, servicers, collection agencies, and institutions of higher education.

- Students and borrowers can access the FSA Feedback Center at StudentAid.gov/feedback.

- **RRMG** is responsible for the tracking, research and resolution of Title IV Compliance Complaints, Referrals, Suspicious Activity, and/or allegations concerning institutions that participate in the Title IV, Higher Education Act (HEA) Programs.

- Title IV Compliance Cases are primarily received through the FSA Feedback Center, however, they are also referred to RRMG by the Office of the Inspector General, the Office of Civil Rights, the Department of Defense, the Veteran's Administration and the Consumer Financial Protection Bureau, as well as other oversight partners.

OUTREACH TO SCHOOLS

- RRMG's requests to institutions for information to resolve Title IV compliance cases fall under the Secretary's authority pursuant to 34 C.F.R. § 668.14(b)(4)(i).

- Requests are sent when there is a need of information and/or records maintained by the school that are not otherwise available to the Department.

- Requests for information related to Title IV compliance cases are sent from the **Federal Student Aid Information Center (customerservice@studentaid.gov)** to the School Official listed on the Institution's E-APP.

- Institutions are required to provide:
  - A narrative response
  - All the pertinent documentation that supports their institution's response

- Failure to respond to requests for information and/or records related to the resolution of Title IV compliance cases may result in additional oversight activities.

PROTECTION OF INFORMATION

- Personally Identifiable Information(PII) must be encrypted when it is being transmitted electronically from and to the Department.
- When securing files the minimum security requirements include using 256-bit Advanced Encryption Standard (AES) encryption and using a password with 12 or more characters that include at least one uppercase and special character.
- An institution's administrative capability includes ensuring Information Technology (IT) systems can receive, open, and send e-mails and password protected documents containing PII via secure methods.
- The Department's approved encryption method is WinZip file (.zip file extension).
- WinZip can be downloaded at: https://www.winzip.com/win/en/.
- We encourage Financial Aid offices to work with their school's IT to ensure firewall rules allow incoming e-mails ending in @ed.gov and @studentaid.gov.

INVESTIGATIONS GROUP

Sarah Angilello
Supervisory Attorney

WHAT DOES INVESTIGATIONS DO?

- The Investigations Group's job is to evaluate indicators of potential misconduct or high-risk conduct by postsecondary institutions and third-party servicers, and investigate institutions' compliance with federal laws, regulations, and the terms of program participation agreement.

- Our goal is to proactively identify and address major problems across institutions that pose widespread risks to students and taxpayers.

WHY WOULD INVESTIGATIONS CONTACT ME?

- Many people ask how Investigations is different than the School Eligibility and Oversight Service Group (SEOSG). SEOSG conducts oversight across all Title IV institutions, including evaluating PPA applications and status, and conducting Program Reviews. The Investigations Group looks at a smaller number of schools where there is some red flag or reason to believe that there might be non-compliance that could have significant impact on students, taxpayers, or the Title IV program.

- Investigations works closely with SEOSG on a risk-based approach to oversight and compliance.

REQUEST FOR INFORMATION (RFI)

- During the course of an investigation, our team may request information from the subject of an investigation and/or a third party with knowledge the of practices, conduct, or services under investigation.

- Investigations authority for requesting information:
  - For institutions and/or their third-party servicer, pursuant to 34 C.F.R. § 668.24(f).
  - For institutions with a Program Participation Agreement, pursuant to 34 C.F.R. § 668.14(b)(4)(i).
  - For accrediting agencies, pursuant to 34 C.F.R. § 602.27(a)(6).

SUBPOENA

- The Department also has authority to subpoena information in connection with an investigation of violations of the Higher Education Act.

- See Section 490A of the Higher Education Act of 1965, as amended, 20 U.S.C. 1097a.

SITE VISITS

- Investigations may conduct site visits.

- Similar to a Program Review, Investigations may:
  - Interview staff and students;
  - Request access to systems; and
  - Request documents.

- Pursuant to §668.24, schools are required to cooperate with investigations and provide reasonable access to personnel and documents.

BORROWER DEFENSE GROUP

Jeremy Kim
Attorney

The Borrower Defense School Notification Process



Why the 2016 Regulation?

- *Sweet v. Cardona* Settlement
  - Requires that ED adjudicate applications received from June 23, 2022 to November 15, 2022 under the 2016 Regulation.
- ED is currently prioritizing sending applications from this period.
- FSA Knowledge Center: https://fsapartners.ed.gov/knowledge-center

Applicable Regulatory Text

- The 2016 Regulation requires ED to
  - notify the school of the borrower defense applications filed by its former or current students and provide an optional opportunity for the school to respond before adjudication; and
  - consider any response or submission by the school.
- Cite: 34 CFR § 685.222(e)(3)(i)

Notification Timing

- Most schools will receive only one batch of notifications from applications received by ED from the June 23 to Nov. 15, 2022 period.
- For the small number of schools with over 500 applications, ED will reach out and explain how it will pace notifications.
- Barring unforeseen circumstances, ED anticipates completing the initial notification to all schools by approximately April 2024.

Adjudication

- After the Fact-Finding process is complete, of which school notification is a part, ED adjudicates applications.
- Substantial misrepresentations are the most common type of alleged misconduct.
- For substantial misrepresentations, ED must have evidence that demonstrates that a borrower's school made a substantial misrepresentation that the borrower reasonably relied on to their detriment
- Cite: 34 C.F.R. § 685.222

Recoupment

- Only relevant if ED approves applications and decides to recover the costs of the discharge.
- Recoupment is a proceeding that is separate and different from ED's adjudication decision.
- Schools will have an opportunity to contest any recoupment action before a hearing officer if they choose to do so.

FAQ's

Substantive review before sending notice?	No. The 2016 Regulation requires fact-finding before adjudication.
What if application is vague?	You should review the application and consider how best to respond, if at all, to the information in the application. If you conclude that an application is vague or doesn't have a clear allegation against your school, you may include that conclusion in your response to ED, should you decide to respond.

FAQ's

Response Deadline?	ED's policy is to give schools 60 days to respond.
Extensions?	Strongly disfavored and only granted in exceptional circumstances.
Contents of Notice?	Borrower's application form and a notification email.
Affidavit Required?	Requested by not required.
What Information Should Schools Provide?	You should review the application and consider how best to respond, if at all, to the information in the application.

ADDITIONAL HELP

- If you need help logging into COD Web and navigating to the Borrower Defense Case portal for your school, contact the COD School Relations enter at CODSupport@ed.gov or 1-800-848-0978.

- If you have questions regarding the specific Borrower Defense Case, reach out to Borrower Defense Customer Support at 1-855-279-6207. For additional information regarding the borrower defense to loan repayment process and applicable regulations, visit StudentAid.gov/borrower-defense.

