



**UNITED STATES DEPARTMENT OF EDUCATION**  
**THE SECRETARY**

**MEMORANDUM**

**TO:** Director, Office of Hearings and Appeals  
Office of Management

**THROUGH:** The Assistant Secretary ←  
Office of Management

**FROM:** The Secretary

**SUBJECT:** Delegation of Authority for Designation of Administrative Law Judges  
and Hearing Officials

**I. DELEGATION OF AUTHORITY**

A. By the authority vested in me by section 412 of the Department of Education Organization Act, Public Law 96-88, 20 U.S.C. 3472, as amended, I hereby delegate to you, and to anyone serving for you in an acting capacity, the authority to designate, and assign in accordance with 5 U.S.C. 3105 or 20 U.S.C. §§ 1221 & 1234(a)(4), any or all of the Administrative Law Judges of the Department of Education in their individual capacity as Administrative Law Judges to conduct:

1. Proceedings relating to civil rights enforcement under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973.
2. Proceedings relating to appeals of adverse administrative actions under the Impact Aid laws (P.L. 81-815 and P.L. 81-874) referred to in section 8011 of P.L. 103-382, 20 U.S.C. 7711.
3. Proceedings relating to civil prosecutions under the Program Fraud Civil Remedies Act of 1986, P.L. 99-509, Title VI-B, 31 U.S.C. 3801-3812.
4. Proceedings under sections 428(c)(9)(E), (F), and (I) of the Higher Education Act of 1965 to terminate a guaranty agency's agreement for participation in the Federal Family Education Loan Program or to take other action against the agency.

5. Proceedings pursuant to 34 CFR Part 99 regarding enforcement requirements under the Family Educational Rights and Privacy Act.
  6. Proceedings pursuant to 34 CFR Parts 74, 75, 76, and 80 regarding enforcement of program requirements pursuant to Exec. Order Nos. 13198, 13199, and 13279 requiring equal treatment for all program participants, including faith-based and community organizations.
    - a. It is understood that a process of informal dispute resolution shall be applied in each complaint process pursuant to 20 U.S.C. §1234(h).
    - b. It is further understood that if a faith-based applicant or grantee complains that the Department has discriminated against it on the basis of its religious identity in the award or administration of a grant, program staff must refer the matter to the Office of Hearings and Appeals.
- B. By the authority vested in me by section 412 of the Department of Education Organization Act, Public Law 96-88, 20 U.S.C. 3472, I hereby delegate to you the authority to designate any Administrative Law Judge employed by or made available to the Department or any hearing official of the Department to conduct the following proceedings under the Higher Education Act of 1965 (HEA):
1. Civil penalty proceedings under section 432(g), 20 U.S.C. 1082(g), against a lender or guaranty agency participating in the Federal Family Education Loan Program (FFELP).
  2. Review proceedings under section 432(h)(2), 20 U.S.C. 1082(h)(2), regarding sanctions imposed by a guaranty agency on lenders participating in the FFELP.
  3. Review proceedings under section 432(h)(3), 20 U.S.C. 1082(h)(3), regarding sanctions imposed by a guaranty agency on institutions participating in the FFELP.
  4. Proceedings under section 432(j), 20 U.S.C. 1082(j), to take an emergency action against a lender participating in the FFELP.
  5. Proceedings under 34 C.F.R. 682.609(a) to require an educational institution to reimburse the Secretary or another party for FFELP funds paid to another party on account of the act or omission of the institution.
  6. Proceedings under 34 C.F.R. 682.700-682.706 to limit, suspend, or terminate the eligibility of, or take an emergency action against a lender or

third party servicer to participate in, or to contract with a lender with regard to its participation in, the FFELP.

7. Proceedings under 34 C.F.R. 685.206(c)(3) to require an educational institution to pay the Secretary the amount of a Direct Loan not enforceable against the borrower on account of the act or omission of the institution.
8. Proceedings under section 487(b), 20 U.S.C. 1094(b), to review final audit and program review determinations relating to student financial assistance programs under Title IV of the HEA.
9. Proceedings under section 487(c)(1)(F) or (G), 20 U.S.C. 1094(c)(1)(F) or (G), to limit, suspend, or terminate the eligibility of, or take an emergency action against, an institution participating in the student financial assistance programs under Title IV of the HEA.
10. Proceedings under section 487(c)(1)(H) or (I), 20 U.S.C. 1094(c)(1)(H) or (I), to limit, suspend, or terminate the eligibility of a third party servicer to contract with an institution to administer a student assistance program, to impose a civil penalty on a third party servicer, or to take an emergency action against a third party servicer.
11. Proceedings under section 487(c)(3), 20 U.S.C. 1094(c)(3)(B), to fine an institution participating in the student financial assistance programs under Title IV of the HEA.
12. Proceedings under 34 C.F.R. 600.41(a)(1)(ii) to terminate the eligibility of an institution, in whole or in part, to participate in the student financial assistance programs under Title IV of the HEA.

## II. RESERVATIONS

- A. The scope of this delegation does not alter other authority held by officers of the Department regarding the assignment of individual Administrative Law Judges or hearing officials to hear cases under Education Department programs.
- B. It is understood that the law and procedures to be applied to each of the classes of proceedings listed above is determined by the statutes and regulations respectively governing each specific kind of proceeding, or, when applicable, the law and procedures pursuant to section 451(a)(4) of Part E of the General Education Provisions Act, as amended, 20 U.S.C. 1234(a)(4).

III. REDELEGATION

This authority may not be redelegated by the Director of the Office of Hearings and Appeals.

IV. CERTIFICATION AND EFFECTIVE DATE

This delegation is effective upon certification by the Department's Principal Delegations Control Officer and supersedes all previous delegations of this authority. I hereby ratify actions within the scope of this delegation taken by the Director, Office of Hearings and Appeals, prior to the date of certification.

/s/

Arne Duncan

OGC Clearance and Date: /s/ David Berthiaume, 7/2/2009

Certified Date: 7/22/2009

Departmental Delegations Control Officer: /s/ Naty G. Beetle

Control Number: EA/EM/363