



UNITED STATES DEPARTMENT OF EDUCATION  
WASHINGTON, D.C. 20202

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In the Matter of

**NATIONAL STUDENT AID SERVICES, INC.  
(OK)**

Respondent

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**Docket No. 17-62-EA**

Federal Student Aid Proceeding

Emergency Action

PRCN: 201520799990

Appearances: Arthur Heavener, President, for National Student Aid Services, Inc.

Denise Morelli, Esq. Office of the General Counsel, U.S. Department of  
Education, Washington, D.C., for the Office of Federal Student Aid.

Before: Judge Robert G. Layton

**DECISION AFFIRMING EMERGENCY ACTION**

National Student Aid Services, Inc. (National) is a third party servicer, responsible for overseeing and administering for schools participating in the programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). On October 30, 2017, the undersigned received a written Request for a Show Cause Hearing and Request for Review in the above-styled proceeding. The Requests were filed by Arthur Thomas Heavener Jr., President of National. National challenges the emergency action by the Department of Education, Federal Student Aid (FSA) and also challenges its termination from participation in programs authorized under Title IV. The termination proceeding shall be addressed separately in Docket Number 17-63-ST. An Order Governing Proceedings has already been issued in that matter.

The emergency action was taken under the authority of 20 U.S.C. § 1094(c)(1)(I), and was carried out pursuant to the procedures for emergency action set forth in the Student Assistance General Provisions regulations at 34 C.F.R. § 668.83. In the case of an emergency action involving a third party servicer such as National, after the emergency action becomes effective, National may not administer any aspect of any institution's participation in any Title IV, unless a particular procedure was provided for in the initiation of the emergency action. 34 C.F.R. § 668.83(d)(1)(iv).<sup>1</sup> Under the authority of 34 C.F.R. § 668.83(a), in this Emergency

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<sup>1</sup> Under 34 C.F.R. § 668.83(b)(1), the initiating official is also directed to send initial notice of the emergency action to each institution that contracts with the servicer. Under 34 C.F.R. § 668.83(e)(6), the undersigned show-cause

Action, the Department withholds Title IV funds from National, withdraws the authority of National to commit, disburse, deliver, or cause the commitment, disbursement or delivery of Title IV funds, and withdraws the authority of National to administer any aspect of any institution's participation in any Title IV program. The action was taken based on findings under 34 C.F.R. § 668.83(c)(i)(ii) and (iii). National is exercising its right to show cause why the emergency action is unwarranted. 20 U.S.C. § 1094(c)(1)(G).

National's right to show cause consisted of an opportunity to present evidence and argument to the undersigned show-cause official. 34 C.F.R. § 668.83(e)(2). As a servicer, National has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified. 34 C.F.R. § 668.83(e)(4).<sup>2</sup> The argument and evidence submission was completed on November 27, 2017.

After considering the argument and evidence presented by National and FSA, the undersigned show-cause official is responsible for promptly continuing, modifying or revoking the emergency action. 34 C.F.R. § 668.83(e)(5). The undersigned show-cause official is also responsible for notifying the third party servicer and each institution that contracts with the servicer of the determination decision. 34 C.F.R. § 668.83(e)(6).

Until a final decision is issued by the Secretary in the related termination proceeding, any action affecting this emergency action is at the sole discretion of the show-cause official. 34 C.F.R. § 668.83(f)(2).

When National provided its current address and contact information in its Program Participation Agreement, National identified a residence at 501 Sage Avenue, Poteau, Oklahoma as its address. National identified its contact person for FSA as Lisa Heavener, who is Arthur Heavener's wife and lives at the same address as him. National argues it did not receive notices during 2016 and 2017. National states the UPS driver "drops them at the front door and walks off, even the letter dated October 20, 2017, if we had not seen the UPS truck we would not have known this package was at the front door."

National also argues it could not afford the CPA fees required, and that it had previously been required to submit information for a 2012 program review.

FSA states the current action resulted from an on-site review in February, 2015. After that review, FSA reviewed the programs at six institutions that National was administering for the Title IV program. Based on that review, in a September 12, 2016 Program Review Report, FSA issued 13 detailed Findings. Those findings included significant violations, including that National failed to report potential fraud to the Department's Office of Inspector General for investigation. These 13 Findings and National's protracted refusal to cooperate and submit the required responsive file reviews have established that National is in violation of the provisions of 20 U.S.C. § 1094. This decision determines those violations were significant and would result in

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official is responsible for notifying the third party servicer and each institution that contracts with the servicer of this determination decision on the emergency action show cause proceeding.

<sup>2</sup> In the separate termination proceeding, 17-63-ST, FSA has the burden of proving that National's eligibility to participate in Title IV should be terminated.

a misuse of federal funds, and determines that the likelihood of loss outweighs the importance of the non-emergency procedures prescribed under subparagraph (D) for limitation, termination or suspension. 20 U.S.C. § 1094(c)(1)(G).

This decision rejects National's argument on lack of notice. The contention that a UPS driver may not leave delivered items at the front door is without merit, and FSA has demonstrated repeated contact with National by phone and email on an ongoing basis that establishes notice for the action. The cost incurred for CPA fees is the responsibility of any Title IV participant. National has a fiduciary responsibility to account for funds disbursed under Title IV. National is also required to submit responsive file reviews as a condition to its continued participation in the Title IV program.

### **ORDER**

National has failed to meet its burden of persuasion that the emergency action imposed is unwarranted or should be modified. The Emergency Action that was instituted by FSA against National Student Aid Services, Inc. complied with the above-reference statutes and regulations, and is **AFFIRMED**. It is further **ORDERED** that the Emergency Action shall **CONTINUE WITHOUT MODIFICATION** and remains in force during the pendency of the Termination Action, Docket No. 17-63-ST. **Consistent with this order and the initial Emergency Action, National may not administer any aspect of any institution's participation in any Title IV, unless a particular procedure was provided for in the initiation of the emergency action. 34 C.F.R. § 668.83(d)(1)(iv). The Department's action withholding Title IV funds and withdrawing the authority of National to commit, disburse, deliver, or cause the commitment, disbursement or delivery of Title IV funds also continues without modification.**

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Robert G. Layton  
Judge

**Dated: November 29, 2017**

## SERVICE

This decision and order has been sent via US Postal registered mail and email, with confirmation delivery receipt, to:

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And via email scan to:

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This decision and order has also been sent via email, with confirmation delivery receipt, to:

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