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December 2022

# HIGHER EDUCATION

## Department of Education Should Improve Enforcement Procedures Regarding Substantial Misrepresentation by Colleges

# GAO Highlights

Highlights of [GAO-23-104832](#), a report to the Chairman, Committee on Education and Labor, House of Representatives

## Why GAO Did This Study

If colleges provide inaccurate or misleading information about, for example, their students' ability to transfer course credits to another college or qualify for a specific certification after graduation, students may have difficulty completing their degree, finding a job in their field, or paying back their student loans. Education is responsible for enforcing a prohibition against colleges making these types of statements, when it determines they meet the definition of "substantial misrepresentation."

GAO was asked to review Education's oversight and enforcement of this prohibition. This report examines (1) how Education has organized its oversight activities and enforced this prohibition since the agency created its Student Aid Enforcement Unit in 2016, and (2) the extent to which Education has complete and updated written procedures for enforcing this prohibition. GAO reviewed relevant federal laws, regulations, and Education documents; analyzed Education data for fiscal years 2016 through 2021; and interviewed Education officials.

## What GAO Recommends

GAO recommends that Education (1) complete written procedures for substantial misrepresentation investigations, including for selecting colleges and conducting investigations; and (2) update written procedures for imposing penalties, as appropriate, on colleges that engaged in substantial misrepresentation. Education agreed with GAO's recommendations.

View [GAO-23-104832](#). For more information, contact Melissa Emrey-Arras at (617) 788-0534 or [emreyarrasm@gao.gov](mailto:emreyarrasm@gao.gov).

December 2022

## HIGHER EDUCATION

### Department of Education Should Improve Enforcement Procedures Regarding Substantial Misrepresentation by Colleges

## What GAO Found

In 2016, the Department of Education created its Student Aid Enforcement Unit, which included a new Investigations Group. Since then, the agency has made several changes to the way it enforces the prohibition against colleges engaging in substantial misrepresentation. Substantial misrepresentation occurs when a college makes certain false or misleading statements—or omissions—about its programs, costs, or graduate employment, that students or others could rely on to their detriment. Since 2016, the structure and operations of the enforcement unit have changed with shifts in agency management priorities, according to Education officials.

In 2017, Education placed open investigations on hold at one point, and diverted the Investigation Group's staff to other offices. As a result, Education opened fewer new investigations from 2018 through 2020. The Investigations Group experienced leadership turnover, with nine different directors in about 6 years. It also experienced staff attrition, with the number of staff declining from nine in 2017 to a low of two staff in 2019, according to Education officials and GAO's analysis of agency data. Since the start of 2021, Education has hired five new staff for the Investigations Group, as well as a new director, and has opened six new investigations, according to agency data and officials.

GAO analysis showed that Education imposed penalties for substantial misrepresentation on 13 colleges from fiscal years 2016 through 2021. Penalties included ending their participation in federal student aid programs or levying fines.

Education has not completed written procedures for investigating colleges and has not updated its written procedures for imposing penalties for substantial misrepresentation. Although the agency has begun drafting key documents, it has not yet completed comprehensive instructions on when and how to select colleges for investigations and how to conduct those investigations. Also, penalty procedures have not been updated to include the new maximum fine amount. Education has lacked complete investigative procedures and updated penalty procedures since 2016, although a 2019 internal review recommended the agency complete and update them. Having complete and updated written procedures will help Education investigate the highest-risk colleges and impose appropriate penalties on those the agency finds to have engaged in substantial misrepresentation.

#### Status of Education's Written Procedures for Overseeing and Enforcing the Prohibition against Substantial Misrepresentation



Source: GAO analysis of Department of Education documents and interviews with officials. | [GAO-23-104832](#)

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Figure 4: Status of Education’s Written Procedures for Overseeing  
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Misrepresentation

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**Abbreviations**

AAASG	Administrative Actions and Appeals Service Group
FSA	Office of Federal Student Aid
HEA	Higher Education Act of 1965, as amended
IPEDS	Integrated Postsecondary Education Data System
PEPS	Postsecondary Education Participants System

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December 13, 2022

The Honorable Bobby Scott  
Chairman  
Committee on Education and Labor  
House of Representatives

Dear Mr. Chairman:

College students need accurate information to make informed decisions about which college to attend and what area of study to pursue.<sup>1</sup> Colleges themselves are a key source of information on which students base their decisions, but if colleges provide information that is inaccurate or misleading they risk harming students. For example, if a college misrepresents information about whether course credits earned at the college will transfer to other colleges or will qualify a student to take an examination for a specific certification or license, students may have difficulty completing their degree or finding a job in their field, leading to financial hardship. In addition to the potentially harmful effects on students, colleges that provide misleading information pose risks to federal taxpayers if students are unable to repay federal student loans.<sup>2</sup>

The Department of Education is responsible for oversight in this area by enforcing a prohibition against colleges substantially misrepresenting information—which includes omitting information in such a way as to make a statement false or misleading—about the nature of their educational programs, their financial charges, or the employability of their graduates. If a college misrepresents information to individuals who then reasonably rely on the information to their detriment, or could be expected to do so, then the college has engaged in substantial misrepresentation. Education can impose penalties on colleges engaging in substantial

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<sup>1</sup>For purposes of our reporting objectives, “college” includes colleges, universities, vocational schools, and other postsecondary institutions.

<sup>2</sup>Additionally, the Department of Education may discharge federal student loan balances in certain situations, which may occur at a cost to taxpayers. This includes borrower defense to repayment, which is loan discharge based on the Department of Education’s determination that the borrower’s college engaged in certain acts or omissions. Education plans to seek recoupment of such discharged loans from colleges that are still operating, but if colleges are closed or Education is not able to recoup all of the funds, borrower defense becomes a direct cost to the taxpayer.

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misrepresentation.<sup>3</sup> In 2016, Education created a Student Aid Enforcement Unit, including a new Investigations Group, to strengthen its oversight of substantial misrepresentation and other misconduct by colleges participating in federal student aid programs.

You asked us to review Education’s oversight and enforcement of substantial misrepresentation by colleges. This report examines (1) how Education has organized its oversight activities and enforced the prohibition against substantial misrepresentation by colleges since the agency created its Student Aid Enforcement Unit in 2016, and (2) the extent to which Education has complete and updated written procedures for enforcing the prohibition against substantial misrepresentation.

To describe how Education organized its oversight activities and enforced the prohibition against substantial misrepresentation by colleges, we reviewed Education documents and interviewed Education officials concerning the reorganizations of key Education oversight offices, including the Investigations Group; oversight processes and activities; staffing levels; and related topics. We also analyzed information provided by the Investigations Group on its investigations of colleges, from August 2016, when Education created the Investigations Group as part of the Student Aid Enforcement Unit, through June 2022, the most recent information available during the course of our audit. We analyzed the number and start date of investigations and matched the investigated colleges with Education’s Integrated Postsecondary Education Data System (IPEDS) data to analyze college type and sector. We also analyzed Education human resources data for fiscal years 2016 through 2021 to describe the number of staff in the Investigations Group.<sup>4</sup> This included analyzing staffing trends as well as whether staff left to work in other Education offices. We assessed the reliability of the IPEDS and human resources data by reviewing documents and interviewing officials and determined them to be reliable for our reporting purposes.

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<sup>3</sup>For the purposes of our reporting objectives, we use the term “penalties” to refer to various responses Education may take when a college has violated Education’s substantial misrepresentation regulations. Education collectively refers to these responses as adverse actions, according to officials. Education refers to some of these adverse actions, such as fines, as administrative actions. Other adverse actions include denying a college’s recertification to continue participating in federal student aid programs.

<sup>4</sup>2021 was the most recent full fiscal year of data available at the time of our review.

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For oversight activities other than investigations—college program reviews and the imposition of penalties—we analyzed Education’s Postsecondary Education Participants System (PEPS) data for fiscal years 2016 through 2021.<sup>5</sup> Using these data, we determined the number of colleges Education found through program reviews to be engaging in substantial misrepresentation, and the number and type of penalties Education imposed on colleges for substantial misrepresentation. We matched the colleges in PEPS that Education found to have engaged in substantial misrepresentation with IPEDS data to describe the colleges’ types (e.g., 2-year versus 4-year) and sectors (public, nonprofit, for-profit). We assessed the reliability of PEPS data by interviewing knowledgeable officials and reviewing relevant documents and determined them to be reliable for our reporting purposes.

To examine the extent to which Education has complete and updated written procedures for enforcing the substantial misrepresentation prohibition, we reviewed agency documents and interviewed officials regarding their development and use of written procedures, and related topics. We assessed this information against recommendations Education issued related to these procedures in an internal review it finalized in July 2019. We also assessed the information on Education’s written procedures against federal standards for internal control regarding control activities, which state that agencies should develop and document procedures and periodically review and update them.<sup>6</sup> See appendix I for more information on our objectives, scope, and methodology.

We conducted this performance audit from February 2021 to December 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>5</sup>Education conducts program reviews to confirm that a college meets federal student aid requirements for institutional eligibility, financial responsibility, and administrative capability. Penalties may include fining colleges or revoking their participation in federal student aid programs.

<sup>6</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

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## Background

### Prohibition against Substantial Misrepresentation

Under the Higher Education Act of 1965, as amended (HEA), Education is responsible for overseeing colleges that participate in federal student aid programs to ensure their compliance with laws, regulations, and policies.<sup>7</sup> The HEA and Education's regulations include a prohibition against colleges substantially misrepresenting themselves by making false or misleading statements about the nature of their educational programs, their financial charges, or the employability of their graduates. For example, if a college promotes a degree program to students based on untrue information about the number of graduates who were able to find jobs in their field, Education may find that the college engaged in substantial misrepresentation (see text box).<sup>8</sup> In such cases, the HEA allows for the Secretary of Education to impose penalties on colleges, including fining colleges or ending their participation in federal student aid programs.

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<sup>7</sup>Pub. L. No. 89-329, 79 Stat. 1219, as amended (codified as amended at 20 U.S.C. § 1001 et seq.).

<sup>8</sup>Education amended the substantial misrepresentation regulations on November 1, 2022, and those changes will take effect July 1, 2023. 87 Fed. Reg. 65,904 (Nov. 1, 2022). The changes would not affect the analyses we conducted for this report.



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## Definition and Examples of Substantial Misrepresentation

The Higher Education Act of 1965, as amended (HEA), allows for the Secretary of Education to take action against colleges that engage in substantial misrepresentation. The prohibited behavior is defined in the Department of Education's regulations implementing the relevant provisions of the HEA.

**Misrepresentation** is any false, erroneous, or misleading statement made directly or indirectly by a college or its representatives, among other entities, to a student, prospective student, any member of the public, an accrediting agency, a state agency, or Education. Misrepresentation also includes statements that omit information in such a way as to make the statement false, erroneous, or misleading.

**Substantial misrepresentation** is any misrepresentation on which the person to whom it was made reasonably relies, or could reasonably be expected to rely, to that person's detriment.

The Secretary of Education has the authority to take action against colleges that substantially misrepresent information about the nature of their educational programs, their financial charges, or the employability of their graduates. Below are selected topics, identified in Education's regulations, about which colleges cannot make false, erroneous, or misleading statements.

**Nature of Educational Program.** Statements concerning:

- The college's size, location, or facilities
- Whether credits will be accepted when transferring to another college
- Whether completion of a program will qualify a student for professional certification

**Nature of Financial Charges.** Statements concerning:

- The college's refund policy if the student does not complete the program
- The student's right to reject any particular type of financial assistance

**Employability of Graduates.** Statements concerning:

- The college's relationship with employment agencies
- The college's plans to maintain a placement service for graduates or provide other assistance to obtain employment
- Government job market statistics in relation to the potential placement of the college's graduates

Source: GAO analysis of 20 U.S.C. § 1094(c)(3) and 34 C.F.R. §§ 668.71 - 668.74. | GAO-23-104832

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## Relevant Education Offices

Education implements federal student aid programs, including oversight of participating colleges, in part through its Office of Federal Student Aid (FSA). Within FSA, offices relevant to the oversight of substantial misrepresentation include the Investigations Group, the Administrative Actions and Appeals Service Group (AAASG), the School Eligibility and Oversight Service Group (including its regional offices), and the Borrower Defense Group. Education's Office of the General Counsel also provides legal support to FSA in carrying out its substantial misrepresentation oversight.

**Investigations Group.** The Investigations Group is responsible for conducting investigations of colleges alleged to be making substantial misrepresentations to student loan borrowers, potential borrowers, or

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Education. This group's activities include recommending colleges for investigation and proactively identifying colleges at risk of such behavior in collaboration with other Education offices, such as the Office of the General Counsel, and outside agencies, such as the Federal Trade Commission.<sup>9</sup>

**Administrative Actions and Appeals Service Group.** AAASG's enforcement responsibilities include initiating and imposing penalties, such as ending participation in federal student aid programs and levying fines against colleges that engage in substantial misrepresentation. The group also implements negotiated agreements that the department has reached with colleges on alleged misconduct.

**School Eligibility and Oversight Service Group.** The School Eligibility and Oversight Service Group oversees a college's participation in federal student aid programs, with a focus on minimizing risk of federal funds being misspent. The School Eligibility and Oversight Service Group works through its eight regional offices, and assigns oversight of colleges to the regional offices based on geographic location.<sup>10</sup> This group is part of FSA's Partner Eligibility and Oversight Service Directorate, which is separate from FSA's enforcement offices.

The regional offices conduct program reviews to monitor colleges for early signs of compliance problems and assess whether federal funds were misspent. During a program review, the regional office evaluates a college's compliance with HEA requirements and Education regulations, and identifies actions the college must take to correct any problems. The HEA requires Education to conduct program reviews on a systematic basis across the more than 5,000 colleges participating in federal student aid programs. The HEA also identifies a number of risk factors that Education must use to prioritize reviews, such as high rates of student loan default by a college's graduates. The School Eligibility and Oversight Service Group conducts an annual risk assessment to select colleges for program reviews.

**Borrower Defense Group.** The Borrower Defense Group adjudicates claims for borrower defense to repayment, which is loan discharge based on Education's determination that the borrower's college engaged in

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<sup>9</sup>See appendix II for more information about other federal agencies' roles in overseeing college misrepresentation.

<sup>10</sup>There is also an office for colleges that are not located in a single region or which are outside the United States.

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certain misrepresentation or other actions. This group's activities include conducting research and analysis to determine whether a borrower is entitled to loan discharge. The Borrower Defense Group also consults with the Investigations Group as needed and refers colleges for investigation when claims for borrower defense indicate a possible pattern of misconduct.

**Office of the General Counsel.** The Office of the General Counsel is responsible for providing legal advice and representation to Education. The Investigations Group and AAASG consult with this office when needed. The Office of the General Counsel also works with AAASG when Education seeks to impose penalties, including when negotiating agreements with colleges concerning alleged misconduct.

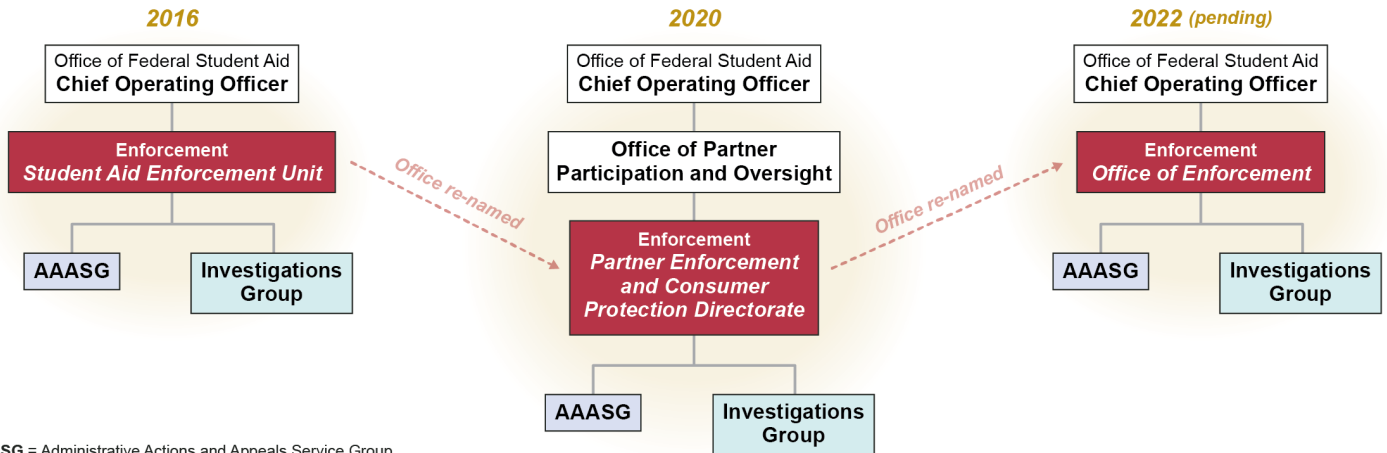
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## Education Has Changed Its Substantial Misrepresentation Enforcement Structure Multiple Times since 2016 and Reduced the Number of Investigations

Since 2016, Education Has Created a New Enforcement Unit and Reorganized It Twice

In February 2016, Education announced the creation of a new unit within FSA dedicated to enforcement of student aid regulations, including the prohibition against substantial misrepresentation. The new enforcement unit reported directly to the head of FSA, but a reorganization in 2020 moved it to a lower level in FSA's organization. As of September 2022, Education was undergoing a second reorganization to elevate the unit so that it again reports directly to the head of FSA, which the agency said will strengthen its oversight of colleges. Figure 1 shows the reporting relationship of key enforcement offices under each of the structures.

**Figure 1: Organization Charts for Selected Education Enforcement Offices in 2016, 2020, and 2022**



AAASG = Administrative Actions and Appeals Service Group

Source: GAO analysis of Department of Education documents and interviews with officials. | GAO-23-104832

Note: Only selected Education enforcement offices are shown. All offices except the lowest-level groups have additional components not shown. Education announced the 2022 structure in October 2021. However, the structure is described as pending because Education was still formalizing the reorganization as of September 2022, according to Education officials.

**2016 enforcement structure.** Education first created the Student Aid Enforcement Unit in 2016 and it remained in that form until 2020. The unit included the newly created Investigations Group and the existing AAASG.<sup>11</sup> The Student Aid Enforcement Unit was headed by a Chief Enforcement Officer, who reported directly to the Chief Operating Officer of FSA. According to Education, this structure would enable the agency to respond more quickly and efficiently to allegations of wrongdoing by colleges.<sup>12</sup>

**2020 enforcement structure.** Education reorganized its enforcement offices in 2020 and the new structure remained in place until the 2022 reorganization. As part of this reorganization, Education reconstituted the

<sup>11</sup>The newly created Borrower Defense Group and the existing Clery Group, which oversees colleges' campus safety reporting requirements, were also part of the Student Aid Enforcement Unit. Though the School Eligibility and Oversight Service Group is involved in substantial misrepresentation oversight, it has never been part of the enforcement structure.

<sup>12</sup>Education, "Student Aid Enforcement Unit Formed to Protect Students, Borrowers, Taxpayers" (Washington, D.C: February 8, 2016), accessed March 25, 2021, <https://www.ed.gov/news/press-releases/student-aid-enforcement-unit-fomed-protect-students-borrowers-taxpayers> (site discontinued).

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Student Aid Enforcement Unit as a lower-level unit that no longer reported directly to the FSA Chief Operating Officer, and the unit's director no longer held the title of Chief Enforcement Officer.<sup>13</sup> All of the groups that had been part of the Student Aid Enforcement Unit remained part of this new unit.<sup>14</sup> Officials said this reorganization resulted from changes in Education's leadership priorities regarding enforcement and investigations starting in 2017.

**2022 enforcement structure.** Education announced a second reorganization in October 2021, still in progress as of September 2022, to reestablish an enforcement unit that reports directly to FSA's Chief Operating Officer. This new structure will be similar to the 2016 structure and Education intends for this change to reprioritize the unit after it was reorganized under the 2020 structure, according to the agency.<sup>15</sup> Specifically, Education plans to have an Office of Enforcement—headed by a Chief Enforcement Officer—which will comprise most of the same constituent groups as the preceding offices, including the Investigations Group.<sup>16</sup> As of September 2022, FSA was still formalizing this reorganization, according to agency officials. However, the new Chief Enforcement Officer has been in this position since October 2021 and is reporting directly to the FSA Chief Operating Officer, officials said. Education has also hired several staff to support the new unit, including a Deputy Chief Enforcement Officer, a Director of Borrower Defense, a Director of Investigations, a Senior Advisor for Policies and Oversight, and a Senior Advisor for Strategy.

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<sup>13</sup>Specifically, the Student Aid Enforcement Unit became the Partner Enforcement and Consumer Protection Directorate, within the Office of Federal Student Aid's (FSA) Office of Partner Participation and Oversight.

<sup>14</sup>Education also added a group from elsewhere in FSA into this unit, which became the Resolution and Referral Management Group. This group does not have a key role in substantial misrepresentation enforcement.

<sup>15</sup>Education, "U.S. Department of Education to Establish an Enforcement Office Within Federal Student Aid" (Washington, D.C: October 8, 2021), accessed October 12, 2021, <https://www.ed.gov/news/press-releases/us-department-education-establish-enforcement-office-within-federal-student-aid>.

<sup>16</sup>In addition to the Investigations Group, the Office of Enforcement will include the Administrative Actions and Appeals Service Group (AAASG), the Borrower Defense Group, and the Resolution and Referral Management Group. It will not include the Clery Group—responsible for oversight of campus safety reporting—which was part of the 2020 structure.

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## Change in Agency Management Priorities in 2017 Led to A Decreased Number of Investigations, Followed by Leadership Turnover and Staff Attrition

### Management Priorities and Investigations

In response to management priorities, Education made changes to the operation of the Investigations Group in 2017, which affected the number of investigations conducted through 2020.<sup>17</sup> Officials said that in August 2017—roughly 1 year after creating the Investigations Group within the Student Aid Enforcement Unit—senior management directed the Investigations Group to put all four open investigations on hold, three of which were related to possible substantial misrepresentation. Officials we spoke to were not able to explain the reason or provide documentation for the decision to place investigations on hold, but said their understanding was that management priorities had shifted away from conducting investigations.<sup>18</sup> Based on this decision, officials said that the Investigations Group stopped almost all of its investigations work. Along with putting investigations on hold, Education assigned Investigations Group staff to work in other areas. Investigations Group staff mainly worked in support of other FSA oversight offices, such as the Borrower Defense Group, and served as a resource when those offices identified potential fraud, officials said.

Because of changes in management priorities and the assignment of investigations staff to other work, Education opened fewer new substantial misrepresentation investigations from 2018 through 2020 than it had in 2017, according to Education documents and officials. Although Education was not able to provide full documentation of its investigative activities for this time period, Education documents and officials indicated that the agency opened three substantial misrepresentation investigations in 2017, which were among the investigations put on hold. Education then

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<sup>17</sup>Education officials said their definition of a formal investigation changed in December 2021. For more information about how we determined the number of formal investigations, see appendix I.

<sup>18</sup>Officials said they were unsure whether officials at the departmental or FSA level directed the change in priorities.

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opened one more substantial misrepresentation investigation over the next 3 years (i.e., from 2018 through 2020).<sup>19</sup>

Of the four investigations related to substantial misrepresentation—three that opened in 2017 and one that opened during 2018 through 2020—Education found that two colleges had engaged in substantial misrepresentation. These colleges included a public research university and a for-profit associate’s degree-level college, according to our analysis of Education data. Education found that one college misrepresented the employability of its graduates and the other college misrepresented the nature of its educational program. In both of these investigations, the Investigations Group referred the colleges to AAASG and the Office of the General Counsel for further action, resulting in negotiated agreements under which the colleges paid fines. Officials said the other two investigations did not find substantial misrepresentation.

Under the enforcement reorganization in progress as of September 2022, officials said that providing oversight of colleges engaging in possible substantial misrepresentation would be a priority. Since the start of 2021, Education has opened six new investigations into possible substantial misrepresentation.<sup>20</sup> One investigation is no longer active and did not find substantial misrepresentation; the other five were ongoing as of August 2022. Officials also said that they have started opening investigations with a signed memo from the Chief Enforcement Officer. Once the Chief Enforcement Officer signs this memo, the Investigations Group may notify the college of the investigation and request relevant information. Officials said that having the signed memos will allow better tracking of the status of investigations (i.e., whether investigations are active, on hold, or closed) as well as differentiate between a formal investigation and preliminary research into possible misconduct.<sup>21</sup>

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<sup>19</sup>The Investigations Group also opened nine investigations for possible misconduct other than substantial misrepresentation, from 2017 through 2020, according to officials.

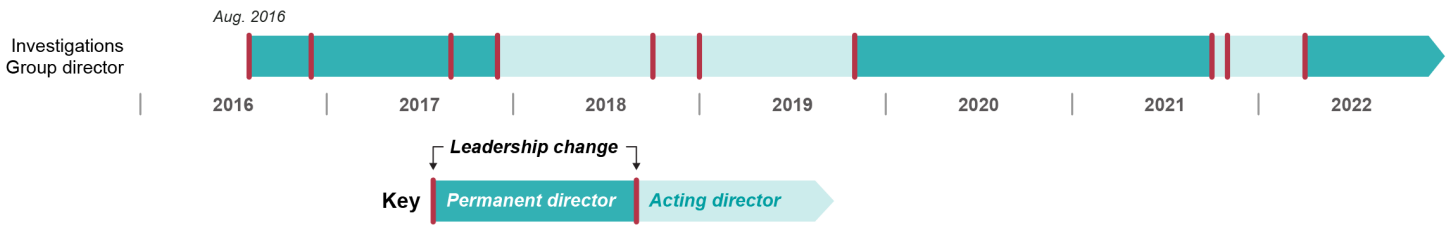
<sup>20</sup>Since the start of 2021, the Investigations Group also opened one additional investigation, but it was not related to substantial misrepresentation, according to Education documents and officials.

<sup>21</sup>For this analysis, we determined the opening date of an investigation in one of two ways depending on the process used by Education at the time. Prior to December 2021, we used the date when the Investigations Group sent a request for information to the college. From December 2021 forward, we used the date when the Chief Enforcement Officer approved the opening of an investigation through a signed memorandum. For more information on how we defined a formal investigation, see appendix I.

## Leadership Turnover

In addition to shifting management priorities, the Investigations Group had nine different directors in the roughly 6 years from August 2016 through June 2022, according to information provided by Education.<sup>22</sup> This included four leadership changes in 2 years between December 2017 and November 2019. Four of the directors served in an acting capacity while concurrently leading another enforcement office, such as the Borrower Defense Group or the overall enforcement unit (see fig. 2). In addition, one of the permanent directors also served concurrently as an acting director for the Clery Group, which handles campus safety issues.

**Figure 2: Tenures of Education’s Investigations Group Directors, August 2016 through June 2022**



Source: GAO analysis of Department of Education documents and interviews with officials. | GAO-23-104832

Note: One official served twice as acting director, from December 2017 to October 2018 and from October 2021 to November 2021. As a result, there have been nine different directors but 10 director tenures.

According to Education officials, the agency assigned acting directors partly because management determined this approach was an efficient use of staff from 2017 through 2018 when the Investigations Group was mostly supporting other offices. For example, the official who served as acting director from December 2017 to October 2018 served concurrently as director of the Borrower Defense Group, which the Investigations Group was supporting. Most recently, the new FSA Chief Enforcement Officer served concurrently as acting director of the Investigations Group from November 2021 to April 2022, when Education officials hired a permanent director of the group.

## Staff Attrition

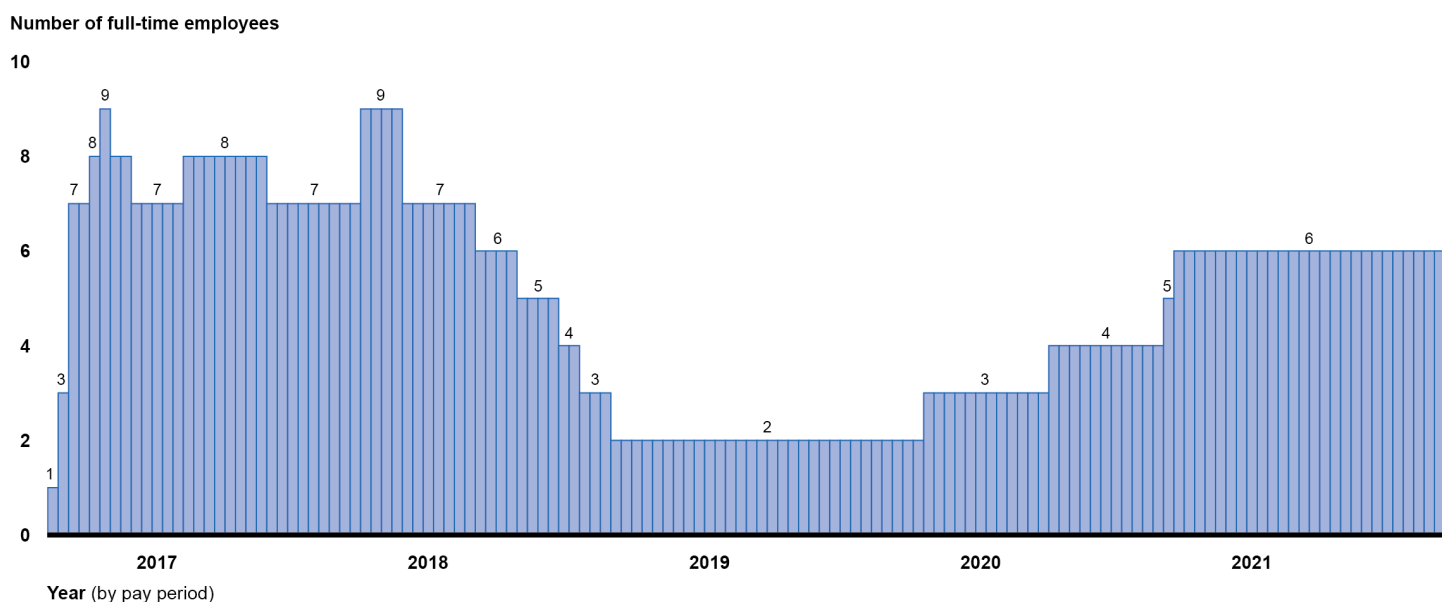
Following the agency’s decrease in the number of investigations and diversion of staff to non-investigative activities, the Investigations Group experienced staff attrition. Our analysis of the agency’s human resources data for fiscal years 2016 through 2021 showed that after the number of

<sup>22</sup>Officials stated that the first Director for the newly created Investigations Group began in August 2016. One official served twice as acting director, from December 2017 to October 2018 and from October 2021 to November 2021, for a total of 10 director tenures.



investigations decreased in August 2017, the number of staff in the Investigations Group also decreased from nine staff in 2017 to two in 2019 (see fig. 3).<sup>23</sup> One official said that this attrition may have occurred because staff were dissatisfied with the lower level of investigative activity and diversion of staff to other activities.<sup>24</sup>

**Figure 3: Education’s Investigations Group Staffing Levels by Pay Period, August 2016 to October 2021**



Source: GAO analysis of Department of Education data. | GAO-23-104832

Education gradually increased Investigations Group staffing levels starting in 2020, around the time of the second FSA enforcement reorganization, according to our data analysis. Since the start of 2021,

<sup>23</sup>Our work has shown that FSA as a whole has been understaffed relative to its workload, since fiscal year 2010, and that Education has begun to address this challenge. For example, Education conducted a 2021 internal study of staffing levels and workloads in different parts of FSA, in order to inform hiring plans. GAO, *Higher Education: Office of Federal Student Aid Is Beginning to Identify and Address Its Workforce Needs*, GAO-21-542R (Washington, D.C.: Aug. 19, 2021). Education’s 2021 study, which is not publicly available, found that the lack of staff in the Investigations Group created risks for Education, such as not successfully identifying instances of colleges committing fraud and misusing federal funds. According to the report, this could subsequently put more federal funds at risk if colleges believe that such actions will not be identified and addressed by Education.

<sup>24</sup>According to Education’s human resources data, the staff who left the Investigations Group during this period left FSA, and in most cases Education, rather than moving to another position within the agency.

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Education has hired five new staff for the Investigations Group, as well as a new director, according to agency data and officials. As of June 2022, Education also had an open advertisement for additional Investigations Group staff.

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**Most Penalties for Substantial Misrepresentation Resulted from the Oversight Activities of Offices Other than the Investigations Group**

Education offices other than the Investigations Group were the source of most substantial misrepresentation oversight and subsequent penalties from fiscal years 2016 through 2021. Specifically, officials said that the FSA regional offices, within the School Eligibility and Oversight Service Group, were the main source of such oversight during the years when Education conducted fewer investigations. The regional offices can acquire information about potential substantial misrepresentation by colleges through ongoing oversight activities such as program reviews.<sup>25</sup> For example, one official who conducts program reviews said that if a college's advertising claims seem implausible during the official's initial review, then this official further assesses the claims for possible misrepresentation. However, while program reviews can identify substantial misrepresentation, officials said their main purpose is to identify other compliance issues and monetary liabilities, such as instances where colleges need to repay financial aid funds to Education.<sup>26</sup> In addition to the regional offices, the Office of the General Counsel may also be involved in identifying cases of possible substantial misrepresentation and making referrals to AAASG.

When regional offices detect possible substantial misrepresentation, they coordinate with AAASG to confirm whether it occurred and determine the appropriate penalty, if any, according to officials. For example, if a regional office detects possible substantial misrepresentation, it might refer the matter directly to AAASG for a possible penalty, such as fining the college or ending its participation in federal student aid programs. Or, depending on the circumstances, a regional office may continue to examine the information as part of a program review, with assistance and guidance from AAASG and the Office of the General Counsel.

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<sup>25</sup>The regional offices also receive and review mandatory audits of colleges conducted by third-party auditors. Education officials said that it is very unusual for a third-party audit to identify substantial misrepresentation, and according to Education data there were no such instances from fiscal years 2016 through 2021.

<sup>26</sup>For example, a college might have to return aid funds that were for particular borrowers who turned out to not be eligible, or it might have to repay all aid funds for a specific program that was not accredited as required. Education refers to these repayments as monetary liabilities, which are treated separately from fines imposed as penalties.

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**Referrals to the Administrative Actions and Appeals Service Group for penalties.** Referrals to AAASG resulted in Education imposing penalties on 13 colleges at least partly for substantial misrepresentation from fiscal year 2016 through fiscal year 2021, according to our analysis of Education data.<sup>27</sup> Nine of these were referrals from the regional offices, three came from the Office of the General Counsel, and one came directly from the Student Aid Enforcement Unit, according to the Education data. Two of the 13 referrals occurred after the Investigations Group found substantial misrepresentation. Ten of the 13 colleges were private for-profit, two were private nonprofit, and one was public, according to our analysis of Education data.

The most common penalty for substantial misrepresentation was ending a college's participation in federal student aid programs, an action Education took in eight of the 13 cases, according to our analysis of Education data.<sup>28</sup> When Education does not end a college's participation, it can instead impose fines for substantial misrepresentation, officials said. According to Education data, Education imposed fines in four of the 13 substantial misrepresentation cases, in amounts ranging from \$27,500 to \$3.4 million.<sup>29</sup> The remaining penalty recorded in Education's data involved a negotiated agreement that did not include a fine.

**Program reviews.** The regional offices can continue to examine potential substantial misrepresentation themselves through program reviews, but this has occurred less frequently than referring the case to AAASG. Specifically, four out of the more than 1,300 program reviews Education

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<sup>27</sup>Education's data cited substantial misrepresentation as at least one of the reasons for these penalties. Where Education cited more than one reason, the data do not allow us to determine the extent to which the eventual penalty was based on substantial misrepresentation specifically. Seven of the 13 colleges that Education had penalized for substantial misrepresentation from fiscal years 2016 through 2021 had closed as of September 12, 2022, according to Education data. We did not determine the specific reasons for their closures.

<sup>28</sup>According to Education data, the agency denied colleges' recertification to participate in federal student aid programs in seven of these instances and terminated the college's participation in one instance. When denying recertification, Education decides not to continue a college's participation in federal student aid at the time the college is required to apply for recertification. Certification can last for up to 6 years. Education can also deny recertification while a college has a provisional participation agreement. When terminating a college's participation in federal student aid programs, Education ends the college's participation outside of the regular recertification cycle.

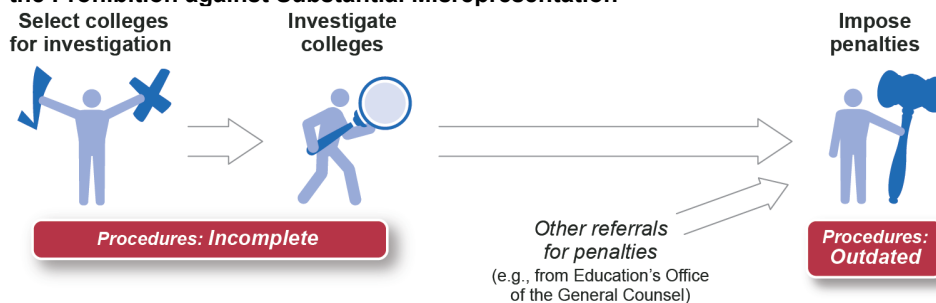
<sup>29</sup>According to Education data, three of these fines were part of negotiated agreements between Education and the colleges; the fourth fine was imposed outside of a negotiated agreement. According to Education officials, all four fines were paid in full by the colleges.

finalized in fiscal years 2016 through 2021 included findings of substantial misrepresentation, according to information provided by Education. One of the four findings of substantial misrepresentation led to penalties against the college, which was among the 13 colleges described above. For the other three colleges, according to officials and Education documents, two resolved the issue after the program review or through a negotiated agreement with Education, and one went into bankruptcy proceedings so Education suspended its action.

## Education Has Not Completed Written Investigation Procedures or Updated Penalty Procedures for Enforcing the Prohibition against Substantial Misrepresentation

Substantial misrepresentation oversight will be a priority for the Investigations Group under the new Office of Enforcement, Education officials said, but the agency has not completed some written procedures and has not updated others. Education has not completed written procedures for selecting colleges for investigation of possible substantial misrepresentation or for conducting investigations. The agency also has not updated written procedures for AAASG to impose penalties, such as fines, on colleges found to be engaging in substantial misrepresentation (see fig. 4).

**Figure 4: Status of Education’s Written Procedures for Overseeing and Enforcing the Prohibition against Substantial Misrepresentation**



Source: GAO analysis of Department of Education documents and interviews with officials. | GAO-23-104832

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## Education Has Not Completed Written Procedures for Selecting and Investigating Colleges



Source: GAO | GAO-23-104832

Education has not completed written procedures for selecting and investigating colleges for possible substantial misrepresentation.

- Education has not completed written procedures that it will use to select colleges for investigation of possible substantial misrepresentation. Instead, Education officials said in April 2022 they had begun to use a draft risk assessment to guide one part of their process to select colleges. However, Education has not yet incorporated the draft risk assessment, along with other steps in the selection process, into written procedures outlining how the agency will use the draft risk assessment and what other steps it will take to determine which colleges to investigate.

The draft risk assessment provides guidance for collecting information about colleges and using the information to assess the overall risk that a college may be engaging in substantial misrepresentation or related forms of college misconduct. For example, the draft risk assessment suggests collecting information from Education internal data on some college characteristics, as well as information from other federal and state government agencies about legal actions, investigations, and complaints of college misconduct. (See appendix II for a description of Education’s agreements with other federal and state agencies to gather information about possible college misconduct.) However, the draft risk assessment does not include written procedures to guide how often officials should collect the information indicated in the assessment, or how they will decide which colleges to assess.

In addition, the draft risk assessment does not include all the steps officials said they take in order to select colleges. For example, in April 2022 officials said they considered other information—such as estimating the amount of departmental resources needed to gather evidence—to select the colleges they were investigating at the time. However, Education does not have written procedures to guide investigators in collecting this other information or analyzing it together with the draft risk assessment results to select colleges for investigation.

- Education officials have also not completed written procedures for conducting investigations once they select colleges, although the Investigations Group began operations in 2016. In January and June 2022, Education provided GAO templates it had developed to help investigators formalize certain actions, such as initiating preliminary research about a college and obtaining management approval to open

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a formal investigation.<sup>30</sup> However, Education does not have written procedures to guide when and how investigators should use these templates during the course of an investigation. For example, officials said that as of December 2021 the Chief Enforcement Officer began formally approving the opening of an investigation. Officials said this new step represents a change from the process the Investigations Group has used since 2016 and is to distinguish preliminary research about a college from a formal investigation. However, Education does not have written procedures guiding the steps needed to conduct preliminary research or formal investigations, such as identifying the types of information sources investigators should consult for each activity, or describing when preliminary research should transition into a formal investigation.

Education also does not have written procedures to guide the additional steps that officials said investigators take to conduct investigations beyond completing the templates. For example, Education officials said they may conduct interviews as part of an investigation. However, Education has not completed written procedures to guide the steps investigators should take to conduct interviews (e.g., to decide when conducting an interview would be appropriate, determine whom to interview, prepare questions, and document information collected).

Education has never had complete written procedures for selecting and investigating colleges because changes in agency priorities and reduced staffing levels affected sustained focus on completing procedures, officials said. They said the Investigations Group initially started developing procedures when Education created the group in 2016, but this effort stalled in 2017 when the department reassigned all the Investigations Group staff to assist with borrower defense efforts and several of the staff subsequently left the group.

In July 2019, Education's Review and Validation Group conducted an internal review and found that the Investigations Group did not have written procedures, which, according to the review's report, reduced the effectiveness of its investigations due to the use of inconsistent processes

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<sup>30</sup>Education also provided templates to help investigators draft communications to (1) request information from a college under investigation; (2) initiate increased monitoring on a college during the course of an investigation, when warranted; and (3) formally close an investigation in cases when the investigator determined no violation had occurred.

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and a high level of independent judgment calls made by investigators.<sup>31</sup> The report from Education’s 2019 internal review stated that written procedures for selecting and investigating colleges would help ensure that the agency could meet its objective to investigate colleges that engage in misconduct that harms students and taxpayers. The report recommended the group complete written procedures for (1) selecting colleges for investigation, based on potential misconduct or high-risk activity and (2) conducting investigations. Federal internal control standards also state that agencies should develop and document procedures and periodically review and update them.<sup>32</sup> Following this report, the Investigations Group restarted efforts to develop written procedures in late 2019, according to officials. However, the group did not finish developing procedures before October 2021 when Education announced it was reorganizing the enforcement unit, including the Investigations Group, into the Office of Enforcement.

In June 2022, officials said they had filled key staff positions that would be responsible for creating and updating procedures for the Office of Enforcement, including completing procedures for selecting colleges and conducting investigations. Officials also said they were collaborating with another Federal Student Aid office, called the Enterprise Process and Management Consulting Group, to document current processes and procedures and estimated they would complete the investigations procedures in October 2022.<sup>33</sup> However, in August 2022, officials provided an updated timeline that projected they would complete investigations procedures in March 2023. Then, in October 2022, officials updated the timeline again, estimating completion by June 2023. It remains unclear whether they will meet this new deadline given the various attempts to complete written procedures since 2016. Without

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<sup>31</sup>FSA’s Review and Validation Group—previously called the Review and Validation Team—conducted this review to evaluate the Investigations Group, AAASG, and other enforcement offices’ work activities and to recommend quality control processes to improve the efficiency and effectiveness of operations. The Review and Validation Group produced a report describing its findings and recommendations in July 2019. This report is not publicly available. According to Education’s website, the Review and Validation Group provides independent, objective reviews and quality assurance services across FSA. See <https://www2.ed.gov/about/offices/or/fs/fsa/meas-outcomes.html>, accessed Sept. 9, 2022.

<sup>32</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

<sup>33</sup>The Enterprise Process and Management Consulting Group works with other FSA offices to improve organizational performance and solve complex problems, according to Education. See <https://www2.ed.gov/about/offices/or/fs/fsa/meas-outcomes.html>, accessed Sept. 19, 2022.

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complete written procedures for selecting colleges for investigation and conducting investigations, particularly in an environment of high staff turnover, Education may not select the highest-risk colleges. In addition, investigators—even highly qualified ones—might use inconsistent practices when conducting investigations. Moreover, given that the agency is currently opening and conducting investigations, it will be important for Education to complete these procedures as soon as possible.

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## Education Has Not Updated Written Procedures for Imposing Penalties



Source: GAO. | GAO-23-104832

Since Education's 2016 reorganization of enforcement offices, the agency has not updated its written procedures for imposing penalties against colleges, such as levying fines and ending colleges' participation in federal student aid programs. Education's Review and Validation Group's 2019 internal review recommended that AAASG update its procedures to help ensure the agency meets its objectives of administering the Secretary's authority to impose penalties on colleges. Additionally, federal internal control standards state that agencies should develop and document procedures and periodically review and update them.<sup>34</sup> Education officials said that even without updated procedures they correctly imposed penalties on colleges, including levying correct fine amounts, by referring to Education's publicly available guidance concerning misrepresentation.<sup>35</sup> However, these sources do not include written procedures to guide AAASG staff through the entire process of imposing a penalty, such as communicating with colleges or documenting steps taken.

While Education's 2019 internal review found that AAASG's procedures for levying fines and for imposing other penalties had been outdated since at least 2016, officials said there are several reasons why they have not updated their procedures. They said that while relevant office names have changed due to Federal Student Aid reorganizations, the procedures substantively reflect current work activities and responsibilities. However, the 2019 internal review found that information about work activities, not just office names, were outdated. In addition, officials told us that in the spring of 2021 a staff member was tasked with drafting procedures to document workflows, but the staff member did not finalize these draft procedures due to other work demands. For example,

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<sup>34</sup>GAO-14-704G.

<sup>35</sup>Specifically, officials said they refer to information available in Federal Register notices and Education's questions and answers webpage on misrepresentation. See Education, *Program Integrity Questions and Answers – Misrepresentation*, accessed Oct. 20, 2021, <https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/misrep.html>.



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officials said that AAASG was focused on preparing to move to a new data system rather than updating documents on work processes.

Education has set deadlines for updating AAASG's procedures, but has not always met them. For example, in November 2021 officials provided written procedures for determining the appropriate monetary amount to fine a college, with this amount varying depending on the type and number of specific violations. However, the procedures that officials provided were in draft form and did not reflect a maximum fine amount increase that officials said had occurred earlier in 2021. Officials said the monetary amounts of the fines the department has levied since the maximum fine increase have reflected the current maximum fine amount even though they had not updated the amount in the procedures. Officials also said that they planned to update the procedures specific to levying fines no later than December 2021. However, in March 2022 officials said they were waiting for an inflation adjustment to the maximum fine amount to be posted in the Federal Register before updating the procedures. This adjustment to the maximum fine amount was published in the Federal Register in April 2022.<sup>36</sup> However, in August 2022, officials provided a timeline indicating they would update fine procedures at the same time as other penalty procedures.

Officials have also provided a series of different timelines for updating AAASG's written procedures for imposing penalties other than fines. In November 2021 officials said they planned to update these procedures by January 2022, but then later said they were waiting for key staff to be hired who would complete the procedures. In June 2022, Education enforcement officials said they had begun collaborating with FSA's Enterprise Process and Management Consulting Group to update written penalty procedures and they expected to complete the updates to these procedures by July 2022. However, in July 2022 officials stated that the newly hired Senior Advisor for Policies and Oversight would lead the development of key documents, which they would use to develop and update penalty procedures. In August 2022, officials estimated they would update the procedures by the end of November 2022. Then, in October 2022, officials said they planned to finish the updates by the end of December 2022. This most recent estimate occurs in the near future, but it remains unclear whether they will meet this deadline given their challenges meeting previous deadlines. Having updated written procedures for imposing all penalties, including information identifying the

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<sup>36</sup>87 Fed. Reg. 23,450 (Apr. 20, 2022).

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correct range of fines for each category of violation, would help Education effectively administer the Secretary's authority to impose penalties, such as by imposing appropriate fine amounts.

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## Conclusions

Education is responsible for protecting students and taxpayers by enforcing the prohibition against colleges engaging in substantial misrepresentation. Students who enroll in colleges based on false or inaccurate information may find themselves unable to secure a job or pay back their educational loans, which can shift the financial burden to taxpayers.

However, Education's Investigations Group has experienced challenges in providing oversight of substantial misrepresentation because of several reorganizations, high staff and leadership turnover, and shifting priorities. While Education has recently taken steps to strengthen its Investigations Group, it has not completed work vital to improving oversight of colleges and enforcing the prohibition against substantial misrepresentation.

Specifically, Education has not completed and updated procedures for selecting colleges for investigations, conducting investigations, and imposing penalties on colleges that are found to be engaging in substantial misrepresentation. Education has lacked these complete and updated procedures for at least 6 years—even after it was noted by an internal Education review—and has repeatedly missed its own deadlines to update them. By completing procedures for selecting colleges to investigate and for conducting investigations, Education can help ensure that it is selecting the highest-risk colleges and using consistent investigative practices, regardless of staff experience or turnover. In addition, updating Education's penalty procedures for substantial misrepresentation will help the agency impose appropriate penalties to hold colleges accountable. With sustained leadership focus on completing and updating both investigative and penalty procedures, Education can more effectively provide oversight to protect students from being misled and provide better stewardship of tax dollars.

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## Recommendations for Executive Action

We are making the following two recommendations to Education:

The Chief Operating Officer of the Office of Federal Student Aid should complete written procedures for selecting colleges for investigation of possible substantial misrepresentation and for conducting investigations. (Recommendation 1)

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The Chief Operating Officer of the Office of Federal Student Aid should update written procedures for imposing penalties, as appropriate, on colleges that are found to have engaged in substantial misrepresentation. (Recommendation 2)

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## Agency Comments

We provided a draft of this report to Education for its review and comment. In its comments, reproduced in appendix III, Education agreed with both our recommendations. Education stated that, as described in this report, work is underway to update and develop clear documented procedures for selecting schools for investigation, conducting investigations, and imposing any appropriate penalties. Education also noted that it recognized the value of having key procedures finalized, in a format that guides staff through end-to-end processes and ensures all staff are using those procedures. Education also provided technical comments, which we incorporated as appropriate.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (617) 788-0534 or [emreyarrasm@gao.gov](mailto:emreyarrasm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

Sincerely yours,



Melissa Emrey-Arras, Director  
Education, Workforce, and Income Security

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# Appendix I: Objectives, Scope and Methodology

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## Overview

This report examines (1) how the Department of Education has organized its oversight activities and enforced the prohibition against substantial misrepresentation by colleges since the agency created its Student Aid Enforcement Unit in 2016, and (2) the extent to which Education has complete and updated written procedures for enforcing the prohibition against substantial misrepresentation. To address both objectives, we reviewed relevant passages of the Higher Education Act of 1965, as amended, and Education regulations.

To describe how Education organized its oversight and enforced the prohibition against substantial misrepresentation by colleges since 2016 when it created its Student Aid Enforcement Unit:

- We reviewed agency documents, and interviewed officials, regarding the reorganizations of key Office of Federal Student Aid (FSA) enforcement offices, oversight processes and activities, staffing levels, and related topics.
- We analyzed information about investigations that Education’s Investigations Group provided in agency documents, on a spreadsheet template that we developed, and in subsequent email communications. We asked Education to provide this information because the agency does not track its investigations in a data system. The information we requested included the origin of the investigation, such as through a complaint or referral, the date the investigation opened, whether the investigation examined substantial misrepresentation, and what penalties Education imposed, if any.<sup>1</sup> The information Education provided included investigations from the Investigation Group’s creation in August 2016 through June 2022, the most recent information available during the course of our audit. We analyzed the number and status of investigations and matched investigations information with Education’s Integrated Postsecondary Education Data System (IPEDS) data to analyze college type and sector.
- We analyzed FSA human resources data for fiscal year 2016 through fiscal year 2021, the most recent full fiscal year of data available, to describe the number of staff in the Investigations Group. This included

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<sup>1</sup>For the purposes of our reporting objectives, we use the term “penalties” to refer to various responses Education may take when a college has violated Education’s substantial misrepresentation regulations. Education collectively refers to these responses as adverse actions, according to officials. Education refers to some of these adverse actions, such as fines, as administrative actions. Other adverse actions include denying a college’s recertification to continue participating in federal student aid programs.

analyzing the number of staff over time and information describing whether staff left the Investigations Group to work in other offices within FSA or Education.

- We analyzed Education’s Postsecondary Education Participants System data from fiscal year 2016 through fiscal year 2021 to determine the number and type of penalties Education imposed on colleges found to be engaging in substantial misrepresentation, and the number of program reviews that found substantial misrepresentation. We matched colleges that received penalties and program review findings of substantial misrepresentation with IPEDS data to describe the college types (e.g., 2-year versus 4-year) and sectors (public, non-profit, for-profit) involved.

To examine the extent to which Education has complete and updated written procedures for enforcing the prohibition against substantial misrepresentation:

- We reviewed the Investigations Group’s and the Administrative Actions and Appeals Service Group’s (AAASG) draft written procedures and other agency documents. We interviewed officials regarding their development and use of written procedures, oversight processes and activities, agreements with other federal and state agencies, staffing levels in relation to any effect they had on development of procedures, and related information.
- We assessed the extent to which the Investigation Group and AAASG were using written procedures against recommendations Education’s Review and Validation Group issued in an internal review it finalized in July 2019. Education’s recommendations related to the Investigations Group’s and AAASG’s using written procedures for enforcing the substantial misrepresentation prohibition. We also assessed the groups’ use of written procedures against federal standards for internal control regarding control activities, which state that agencies should develop and document procedures and periodically review and update them.<sup>2</sup>

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## Definition of an Investigation

Education officials said their definition of investigations has changed over the time period included in our review. Specifically, officials said that from August 2016 through November 2021, Education did not have a formal process to initiate new investigations. In December 2021, the agency started to distinguish between preliminary research conducted on

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<sup>2</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

colleges alleged to have engaged in misconduct and the opening of a formal investigation that requires a memo signed by the Chief Enforcement Officer.

To make our analysis of the number of substantial misrepresentation investigations before December 2021 comparable to the number conducted after December 2021, we asked Education officials to review documents associated with investigations conducted from August 2016 through November 2021. For these investigations, Education officials identified the ones where they conducted only preliminary research and the ones where they took the further investigative step of sending a notice to the college requesting information. Officials confirmed that including just the investigations where Education sent a request for information would allow us to describe investigations over time. Therefore, for investigations conducted from August 2016 through November 2021, we only included in our analysis the investigations where Education sent a request for information to the college.<sup>3</sup>

For most substantial misrepresentation investigations opened both before and after December 2021, we reviewed relevant Education documents that indicated the investigations' start dates and their focus on substantial misrepresentation. These documents included requests for information sent to colleges for investigations Education started before it implemented its new process in December 2021, and memos signed by the Chief Enforcement Officer for investigations after December 2021. For one substantial misrepresentation investigation that officials said Education opened prior to December 2021, officials were unable to provide the finalized request for information sent to the college, so we supplemented our review of agency documents with additional information from officials for this investigation.

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## Additional Information on Data Analysis

### Education's Postsecondary Education Participants System (PEPS) Data

To quantify relevant Education oversight activities other than investigations—such as penalties and program reviews—we analyzed PEPS data from fiscal year 2016 through fiscal year 2021. PEPS is a data system used by the School Eligibility and Oversight Service Group to track program reviews and AAASG to track penalties. We chose 2016 as

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<sup>3</sup>In some cases, the request for information was sent to an entity that controlled multiple colleges. In our analysis we considered this to constitute a single investigation, which is consistent with the way Education described these cases to us.

the starting year because that was when Education created the Student Aid Enforcement Unit, which was intended to increase Education's capacity to oversee substantial misrepresentation, among other types of college misconduct. Fiscal year 2021 is the most recent full fiscal year of data available.

Specifically, we requested data on the number and type of penalties Education imposed on colleges found to be engaging in substantial misrepresentation, the number of program reviews that found substantial misrepresentation, and the number of third-party audits that Education received which found substantial misrepresentation. We also requested the total number of program reviews conducted and third-party audits received by Education over this period, for context.

We assessed the reliability of PEPS by interviewing knowledgeable officials and reviewing relevant documents. We also conducted manual logic checks of the data—such as checking whether dates were sequential when we expected them to be—and followed-up on apparent anomalies with our own research and additional questions for Education. We determined the PEPS data to be reliable for the purposes of this engagement.

Integrated Postsecondary  
Education Data System  
(IPEDS) Data

To identify college type (e.g., predominantly 2-year versus 4-year programs) and sector (public, non-profit, for-profit) we matched the colleges identified in PEPS and provided by the Investigation Group as having been investigated with data in IPEDS. We used IPEDS because Education officials told us that PEPS data would not be reliable for describing college characteristics and the data on investigated colleges did not include information on characteristics.

IPEDS is a system of interrelated surveys conducted annually by Education's National Center for Education Statistics. IPEDS gathers information from every college, university, and technical and vocational institution that participates in the federal student financial aid programs. IPEDS includes the Carnegie Classification for college type, as well as information about colleges from the IPEDS Institutional Characteristics survey, which is used for colleges not covered by the Carnegie Classification.

We matched the unique Office of Postsecondary Education identification number for each college identified in PEPS and the investigations information to that number in IPEDS.

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Office of Federal Student Aid  
Human Resources Data

We assessed the reliability of IPEDS by interviewing knowledgeable officials and reviewing relevant documents. We found IPEDS to be reliable for the purposes of this engagement.

We analyzed staffing trends (i.e., changes in staffing levels and information describing whether staff left to work in other offices in FSA or Education) in the Investigations Group. To do so, we analyzed anonymized individual-level human resources data from the Federal Payroll and Personnel System Oracle Business Intelligence Enterprise Edition for pay periods in fiscal year 2016 through fiscal year 2021, the most recent full fiscal year of data available. Federal fiscal years 2016–2021 extend from October 1, 2015, through September 30, 2021.

Education officials said that FSA uses payroll schedules from the Department of Interior’s Interior Business Center payroll schedules. These schedules use calendar years rather than fiscal years. According to Department of Interior documents, the schedules generally include 26 two-week pay periods per calendar year, although calendar year 2018 includes 27 periods. We generally defined each fiscal year as starting with pay period 21 of the previous calendar year and continuing through pay period 20. For example, fiscal year 2016 consists of pay period 21 in calendar year 2015 through pay period 20 in calendar year 2016. This equates to September 20, 2015, through September 17, 2016. Fiscal year 2021 consists of pay period 21, calendar year 2020, through pay period 20, calendar year 2021, or September 27, 2020 through September 25, 2021. Therefore, the precise dates of our analysis are September 20, 2015, through September 25, 2021.

We specifically analyzed the staffing patterns for the Investigations Group because Education officials stated that they viewed large changes in Investigations Group staffing levels as related to the number of investigations the group conducted over time and the group’s ability to complete written procedures. We learned that the office that conducts program reviews and AAASG did not undergo the same fluctuations. Therefore, we determined the Investigations Group staffing data were relevant to answering our first objective.

We analyzed the following variables for all employees assigned Investigations Group organizational codes from fiscal year 2016 through fiscal year 2021: anonymized unique employee identification number; work schedule (full-time or part-time); employment status of as of September 30, 2021; separation date, if applicable; and separation reason, if applicable. We used sources such as Education and Office of



Personnel Management documents, as well as interviews with Education officials, to identify and define relevant variables. Education assigns each employee a unique employee identification number that is not reused.

In addition to the permanent, full-time staff in the Investigations Group, Education officials told us that two Education officials worked full-time on temporary details with the Investigations Group during the period of analysis. Education officials confirmed that the agency recorded both detailees under the Investigations Group organizational code for the full duration of their details. Education officials said that in addition to these two detailees, other Education staff temporarily assisted the Investigations Group on a part-time basis as part of a developmental program known as the Office of Policy and Participant Oversight's Collaborative and Rewarding Experience Sharing program. We did not include these temporary developmental staff in our analysis because Education officials said it would not be appropriate to do so.

We assessed the reliability of Federal Payroll and Personnel System Oracle Business Intelligence Enterprise Edition data by reviewing Education documents and interviewing officials, including human resources data specialists. We also reviewed other relevant agencies' documents describing the human resources data systems Education uses, such as Office of Personnel Management human resources terminology definitions. We conducted manual logic checks, such as searching for missing fields or contradictory data (e.g., comparing employee status and separation reason, date of separation, and pay period dates for when the employee was included in the data set). We used the results of our manual data testing to generate follow-up questions for Education officials. We determined the data to be sufficiently reliable to describe the number of staff in the Investigations Group during our period of study.

We conducted this performance audit from February 2021 to December 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Education’s Coordination with Federal and State Agencies Related to Substantial Misrepresentation

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## Roles of Federal and State Agencies Related to Substantial Misrepresentation

The Department of Education enforces the substantial misrepresentation provisions of the Higher Education Act of 1965, as amended. However, the agency may coordinate its oversight with other federal and state agencies that have authority under other laws to take action against colleges found to be deceiving or misleading students:

**Federal Trade Commission.** The Federal Trade Commission enforces prohibitions on deceptive or unfair trade practices under the Federal Trade Commission Act, including in the education marketplace, according to its website.<sup>1</sup> The commission has previously reached financial settlements with colleges it found to be engaging in deceptive practices, according to agency press releases.<sup>2</sup> Education and the Federal Trade Commission have reported that they have coordinated oversight actions related to misrepresentation by colleges. The Federal Trade Commission also maintains the Consumer Sentinel Network, which allows participating agencies, including Education, to search a database of millions of consumer protection-related reports submitted by agencies, other organizations, and consumers.

**Department of Justice.** The Department of Justice represents Education in federal court, including criminal and civil fraud cases brought as a result of investigations conducted by Education’s Office of Inspector General, according to Education officials. In certain cases, the Department of Justice has also pursued criminal fraud charges against individuals allegedly responsible for colleges’ substantial misrepresentation or related misconduct, according to Department of Justice and Education documents.

**Other federal agencies.** The Consumer Financial Protection Bureau can investigate colleges that extend private loans to students, and has taken action against a college for providing deceptive financial information to

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<sup>1</sup>Federal Trade Commission, “Penalty Offenses Concerning Education,” accessed Aug. 4, 2022, <https://www.ftc.gov/enforcement/penalty-offenses/education>.

<sup>2</sup>In this report, we do not identify any colleges by name. Therefore, we are not citing press releases whose titles refer to specific colleges.

students about private loans, according to agency press releases.<sup>3</sup> In addition, the Securities and Exchange Commission took action against a for-profit college that the commission found to have made misrepresentations to its investors, according to an agency press release.

**State agencies.** State education and law enforcement agencies may have authority under state laws to investigate and act against colleges that engage in misrepresentation, according to Education. This includes state attorneys general and state agencies responsible for authorizing colleges.<sup>4</sup>

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### Education's Information Sharing Agreements with Federal and State Agencies

Education officials said they have recently developed or reestablished written agreements (such as memoranda of understanding) with other federal agencies that collect information about legal actions, investigations, and complaints against colleges for misconduct such as substantial misrepresentation (see table 1). In December 2021, Education developed a template that officials said they have used to facilitate entering into information-sharing agreements with other federal and state agencies for the purposes of college oversight. In addition to formalized written agreements, Education officials said that in April 2021 they began convening recurring collaboration meetings with some state attorneys general to share information. Education officials said they also communicate as needed with officials at the Department of Justice and other agencies regarding substantial misrepresentation and related issues.

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<sup>3</sup>For example, in January 2022, the Consumer Financial Protection Bureau announced that it was issuing updated procedures for its oversight of colleges' private loans, called institutional lending. Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau to Examine Colleges' In-House Lending Practices" (Washington, D.C.: Jan. 20, 2022), accessed August 15, 2022, <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/>.

<sup>4</sup>Colleges must receive approval from the relevant state authorizing agency in order to participate in federal student aid programs.

**Appendix II: Education's Coordination with  
Federal and State Agencies Related to  
Substantial Misrepresentation**

**Table 1: Education Agreements for Gathering Information about Colleges from Other Federal Agencies**

<b>Federal agencies</b>	<b>Type of agreement</b>	<b>Description of agreements</b>
Consumer Financial Protection Bureau, Department of Defense, and Department of Veterans Affairs	Joint Higher Education Memorandum of Understanding	Agreement from 2014 to coordinate activities to help prevent deceptive college marketing—which may in some cases constitute substantial misrepresentation—to recipients of federal, military, and veterans educational benefits, among other purposes. Under the Memorandum of Understanding, these three agencies, along with Education, form a Principles of Excellence Working Group and share information with each other about related complaints and oversight activities. Education officials said that after pausing for about 5 years, in April 2021 officials from each of these agencies started meeting on a monthly basis.
Federal Trade Commission	Approved access to the Consumer Sentinel Network database	Agreement for Education officials to access a database that compiles millions of consumer-protection-related reports, such as complaints of deceptive marketing practices made by consumers to federal and state government agencies, law enforcement agencies, or other organizations. In some cases, colleges using deceptive marketing practices may be engaging in substantial misrepresentation.

Source: GAO analysis of Department of Education and Federal Trade Commission documents and interviews with Education officials. | GAO-23-104832

# Appendix III: Comments from the Department of Education



November 10, 2022

Ms. Melissa Emrey-Arras  
Director, Education, Workforce, and Income Security Issues  
Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Emrey-Arras:

On behalf of the U.S. Department of Education (Department), I write in response to the statements and recommendations made in the draft Government Accountability Office (GAO) report, *Department of Education Should Improve Enforcement Procedures Regarding Substantial Misrepresentation by Colleges (GAO-23-104832)*.

We appreciate the opportunity to respond to this report. The Department takes its oversight role seriously to identify and investigate institutions of higher education that engage in substantial misconduct that harms students. We will continue to take enforcement actions against institutions engaged in serious wrongdoing, including the imposition of fines, limitation actions, termination actions, or other actions ending an institution's participation in the Title IV programs. We strongly believe that holding institutions accountable for significant instances of substantial misrepresentation will help deter misconduct by other schools.

As announced in October 2021, the Department is committed to strengthening our oversight work by rebuilding the Enforcement Office, led by a Chief Enforcement Officer. This key office was first established in 2016 but was deprioritized in the prior administration. The Enforcement Office strengthens the Department's existing school oversight and compliance work by identifying and addressing serious wrongdoing. As we reconstitute that office, we are taking the time necessary to review and implement modernized procedures that govern our work. While the Department had process documentation and templates to support staff work, we recognize the value of having key procedures finalized, in a format that guides staff through end-to-end processes and ensures all staff are using those procedures.

As noted in your report, work is underway in that office to update and develop clear, documented policies and procedures for its work, including in selecting schools to investigate, conducting investigations, and imposing fines or other appropriate adverse actions. We view that work as essential to a well-managed organization equipped to provide the most effective and efficient oversight to protect the investments made by students and taxpayers alike. In fact, since March 2022, the Enforcement Office's hires have included leaders specifically tasked with developing

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**Appendix III: Comments from the Department  
of Education**

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the office's risk model and policies and procedures. The draft GAO report provides important information to consider as that work continues.

The following are GAO's two recommendations from the report and the Department's response for each recommendation:

**Recommendation 1:**

The Chief Operating Officer of the Office of Federal Student Aid should complete written procedures for selecting colleges for investigation of possible substantial misrepresentation and for conducting investigations.

**Response 1:**

The Department concurs with this recommendation and will implement it by developing written policies and procedures for opening investigations and conducting such investigations.

**Recommendation 2:**

The Chief Operating Officer of the Office of Federal Student Aid should update written procedures for imposing penalties, as appropriate, on colleges that are found to have engaged in substantial misrepresentation.

**Response 2:**

The Department concurs with this recommendation and will implement it by developing policies and procedures to guide staff through the process of imposing penalties, as appropriate, on colleges that are found to have engaged in substantial misrepresentation.

Thank you for the chance to respond to the recommendations outlined in this draft GAO report.

Sincerely,



Richard Cordray  
Chief Operating Officer  
Federal Student Aid

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Melissa Emrey-Arras, (617) 788-0534 or [emreyarrasm@gao.gov](mailto:emreyarrasm@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Amy Anderson (Assistant Director), Linda Collins (Analyst-in-Charge), Daniel Dye, and Samantha Sloate made key contributions to this report. Also contributing to this report were Isabella Anderson, Seto Bagdoyan, Rachel Beers, James Bennett, Ramona Burton, Holly Dye, Alex Galuten, Gina Hoover, Philip Reiff, Paras Sharma, Meg Sommerfeld, Almeta Spencer, and Adam Wendel.

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