

(vi) Follow up past due payments with a series of at least four documented and reasonably spaced attempts to contact the borrower, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective; and

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary.

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the Federal Government will absorb the Federal share of the loss by permitting the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

(Approved by the Office of Management and Budget under control number 0915-0094.)

4. Section 57.215 is amended by revising paragraph (a), adding paragraph (e), and adding the OMB control number at the end of the section to read as follows:

**§57.215 Records, reports, inspection, and audit.**

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds

as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period. A school which fails to submit a required report for its Federal capital contribution fund within 45 days of the close of the reporting period:

(1) Shall be prohibited from receiving new Federal capital contributions;

(2) Must place the revolving fund and all subsequent collections into an insured interest-bearing account; and

(3) May make no new loan disbursements.

The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement. A school that fails to submit a complete report within 6 months of the close of the reporting period will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for this reason may reapply for participation in the program once it has submitted the overdue report. The school must also comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

(e) Institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control number 0915-0094.)

[FR Doc. 85-20125 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-15-M

#### 42 CFR Part 57

#### Health Professions Student Loan Program

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulations.

**SUMMARY:** This rule amends existing regulations governing the Health Professions Student Loan (HPSL) program. This amendment modifies the procedures for determining whether or not a school is in compliance with the 5 percent performance standard.

**EFFECTIVE DATE:** The amendments made by this rule are effective on June 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301-443-4540.

**SUPPLEMENTARY INFORMATION:** On June 3, 1983, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the Federal Register (48 FR 25071) A Notice of Proposed Rulemaking (NPRM) for the HPSL program which addressed the formula for calculating a school's delinquency rate for purposes of determining compliance with the 5 percent performance standard set forth in 42 CFR 57.216a of the HPSL regulations. The June 3, 1983 NPRM proposed a change the HPSL regulations published on the same day in the Federal Register (48 FR 25064), which required that each school participating in the program maintain a delinquency rate of not more than 5 percent based upon either the number of delinquent borrowers (borrower delinquency rate) or the amount of unpaid principal on delinquent loans (dollar delinquency rate). The NPRM proposed to eliminate a school's option to use either the borrower or the dollar delinquency rate to meet the 5 percent performance standard, and instead proposed that only the dollar delinquency rate be used to determine compliance.

The Secretary invited interested persons to submit comments to the proposed rule on or before July 5, 1983. In response to the proposed rule, the Department received 38 comments from school officials and professional associations. A discussion of the comments, the Department's responses, and the regulatory changes follow:

Thirty-six respondents opposed the proposal to eliminate the option of using the borrower delinquency rate to determine compliance with the performance standard. Of these, 13 considered the Department's rationale inadequate, noting that the Department provided no evidence that the use of the dollar delinquency rate would produce the best management of the HPSL program. Five indicated that this proposed change would not increase the amount of dollars collected because the incentive to maximize collections already exists. Four stated that schools need to emphasize small accounts as well as large ones because they are easier to collect and yield significant dollars. In addition, four mentioned that

the concept of concentrating collection efforts on large delinquent accounts is in sharp contrast with the concept of due diligence, which requires that maximum effort be used to collect each loan regardless of its size. They also indicated that the best program management occurs when the school has systematic collection procedures that treat all delinquent loans with equal aggressiveness.

The Department agrees that a school must aggressively pursue the collection of each loan, regardless of size, in order to comply with the requirement to exercise due diligence in the collection of HPSL funds. Nevertheless, eliminating the borrower delinquency rate option will help to assure that, in any collection efforts that go beyond routine activities, a school does not focus undue attention on its smaller delinquent accounts (with the intent of reducing the borrower rate), and thereby devote less effort towards collecting its larger delinquent accounts.

Twelve respondents felt that the 5 percent performance standard is so stringent that achievement of the standard using either the borrower or dollar delinquency rate should be acceptable. In response, the Department notes that although the 5 percent standard may seem stringent, the characteristics of HPSL borrowers (e.g., level of education, employability, and income potential) set them apart from the types of borrowers assisted under other Federal student loan programs which focus primarily on undergraduate students in non-specialized training. In view of these differences, the Department believes it is reasonable to require schools to attain a 5 percent standard for the HPSL program using the dollar delinquent rate. The fact that most HPSL schools have been able to meet this standard, and that borrower delinquency has been a factor in only a few instances of meeting the standard, underscores this point.

Eleven respondents pointed out that because the Department of Education (ED) loan programs differ from the HPSL program in many respects (e.g., the performance standard, delinquency rate formula, definition of delinquent account), it was inappropriate to eliminate the borrower delinquency rate in order to make this one area of program administration consistent with ED. The Department acknowledges that there are many provisions in ED's loan programs which differ from the HPSL program, and that consistency with ED is not in itself an adequate reason for eliminating the borrower delinquency rate option. However, the fact that ED uses a dollar delinquency rate, when

considered in conjunction with other reasons which favor eliminating the borrower delinquency rate option, further indicates that the dollar rate is a preferred method for measuring levels of delinquency.

Eleven respondents felt that the proposal unfairly penalizes schools with only a few borrowers in repayment status and may also penalize a substantial number of future students because of the delinquency of a few individuals with high levels of indebtedness. Seven pointed out that normally, before schools can resolve large delinquent accounts, they must devote considerable effort, and that in the interim, for them, the borrower option may be necessary to be able to comply with the performance standard. One suggested that the Department develop a more sensitive system that is responsive to the unique features of different institutions, especially for newer schools.

In response to these comments, the Department notes that although schools with a small number of borrowers in repayment status or several large delinquent accounts could have higher delinquency rates than other schools, the performance standard provision should provide enough leeway to allow these schools to comply, even in the absence of the borrower delinquency rate option. The provision requires a review for compliance with the performance standard on an annual basis, and provides a 6-month probationary period for schools that do not meet the standard at the time of the annual review. This 6-month probationary period, along with the aggressive collection procedures that have been recommended during recent years, should make it possible for a school to reduce its dollar delinquency rate to an acceptable level before penalties would be imposed.

Eleven respondents felt that the proposal unfairly penalizes schools with large numbers of disadvantaged students, and ten commented that it discriminates against disadvantaged students by making them the primary focus of any collection efforts. These comments were founded on the belief that students with large loan amounts may have been the most disadvantaged and may not have completed the degree program, and thus may have the most difficulty repaying. The Department notes that when a school has documentation of circumstances that make it impossible for a borrower to comply with the repayment schedule, the school may renegotiate the schedule or grant forbearance (so long as the

period of time does not exceed the original 10-year repayment period), and in doing so may remove the account from delinquent status. In addition, the school can request approval to write off uncollectible loans. When the Department grants write-off approval, the dollar amount of the loan written off is removed from the delinquency rate formula.

Seven respondents insisted that the borrower delinquency rate option is necessary because the formula for calculating the dollar delinquency rate is too stringent. Two noted that including in the numerator the total unpaid principal balance on delinquent loans, rather than just the past due installments, results in an inflated dollar delinquency rate that does not accurately reflect the effectiveness of the school's collection efforts. One commented that the denominator should include the total amount loaned to all borrowers. The Department clarifies that the denominator includes only loans currently in repayment because the formula is designed to measure the effectiveness of a school's current collection efforts. Further, the Department believes that the outstanding principal balance of any loan that becomes more than 60 days past due must be viewed as a potential loss to the fund; thus, an accurate measure of delinquent dollars requires that the school include in the numerator the total unpaid principal balance on these loans.

Nine respondents noted that during the 2-year period before the proposed rule was published schools achieved a substantial reduction in their delinquency rates, and suggested that the Department first determine the extent to which these efforts had been successful before making additional changes in the regulations. The Department agreed that changes in this regulatory provision were inadvisable until there was a better indication of the effectiveness and reasonableness of the existing provision. Accordingly, the Department delayed publication of changes in this provision for 24 months to provide further time to study the impact of the existing regulations.

Data as of December 31, 1984, indicates that 290 of the 313 schools participating in the HPSL program have succeeded in either complying with the 5 percent standard or making the necessary reductions to avoid being placed in suspended status. Further, only 17 schools have needed the borrower delinquency rate to comply with the performance standard provision, and in all but one case, the

dollar delinquency rates for these schools have been within a few percentage points of 5 percent. Therefore, since the majority of health professions schools have succeeded in complying with the performance standard, and the number of schools that have needed the borrower delinquency rate to comply with the 5 percent standard has been small, the Department is implementing its proposal to require that schools use the dollar delinquency rate to comply with the performance standard, effective June 30, 1986.

#### Regulatory Flexibility Act and Executive Order 12291

One respondent noted that the Department did not adequately explain why a regulatory flexibility analysis was not required. The following statement addresses that concern.

The Department certifies that these regulations will not have a significant economic impact on a substantial number of small entities and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. These regulations implement modified procedures for determining compliance with the 5 percent performance standard. The small entities affected are health professions schools. The effect of the modified procedures will be to eliminate the borrower delinquency rate formula, the borrower delinquency rate formula, an option for measuring a schools' HPSL delinquency rate which, as indicated by the data set forth above, has been of little significance under the existing regulations. Therefore, the regulations will not have an adverse economic impact on these institutions.

These regulations have been reviewed in accordance with Executive Order 12291. The Department has determined that these regulations are not major regulations because they do not meet the criteria for major regulations established in the order and, therefore, a regulatory impact analysis is not required.

#### Paperwork Reduction Act

The Department has determined that this amendment to the regulations does

not affect the existing reporting and recordkeeping requirements of the program approved by OMB (numbers 0915-0044, 0915-0046, and 0915-0047) under the Paperwork Reduction Act of 1980.

#### List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart C of 42 CFR Part 57 is amended as set forth below.

Dated: June 5, 1985.

**James F. Dickson**

*Acting Assistant Secretary for Health.*

Approved: August 2, 1985.

**Margaret M. Heckler,**

*Secretary.*

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

#### PART 57—[AMENDED]

**Authority:** Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 740-744 of the Public Health Service Act, 77 Stat. 170-173, 90 Stat. 2266-2268, 91 Stat. 390-391, 95 Stat. 920 (42 U.S.C. 294m-q).

#### Subpart C—Health Professions Student Loans

1. The authority citation for Part 57 continues to read as follows:

27. Effective on June 30, 1986, § 57.216a of Title 42, CFR, is revised to read as follows:

#### § 57.216a Performance Standard.

On June 30, 1986, and on each June 30 thereafter, except as provided in paragraph (b) of this section, each school must have a delinquency rate (as calculated under paragraph (a) of this section) of not more than 5 percent. All accounts overdue by more than 60 days must be considered delinquent.

(a) The delinquency rate for each school must be calculated by dividing the sum of the total amount of principal outstanding on all loans delinquent by the total principal amount loaned for all loans in repayment status.

(b) Any school that has a delinquency rate greater than 5 percent on June 30 of any year will be required to:

(1) Reduce its delinquency rate by 50 percent (or a school with a delinquency rate below 10 percent must reduce its rate to 5 percent) by the close of the following 6-month period; and

(2) By the end of each succeeding 6-month period, reduce its delinquency rate to 50 percent of the required rate for the previous 6-month period, until it reaches 5 percent.

(c) Any school subject to the provisions of paragraph (b) of this section which fails to comply with those requirements will receive no new HPSL funds and will be required to:

(1) Place the revolving fund monies and all subsequent collections into an insured interest-bearing account;

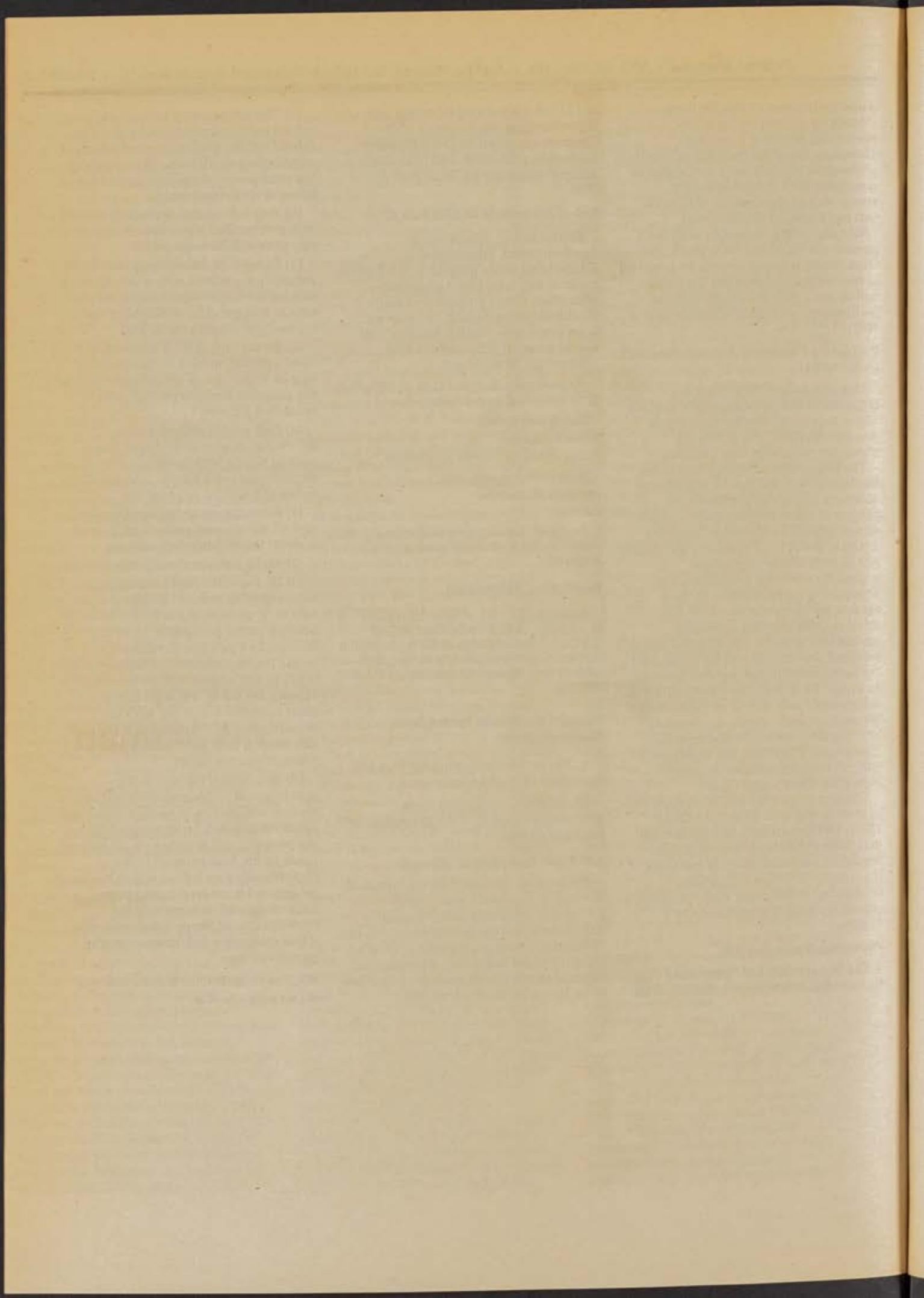
(2) Make no loan disbursements; and

(3) By the end of the succeeding 6-month period, reduce its delinquency rate to 50 percent of the rate it failed to achieve under paragraph (b) of this section, or 5 percent. A school that meets the requirements of subparagraph (c)(3) of this section will be permitted to resume the use of its HPSL funds, but must continue to comply with the requirements of subparagraph (b)(2) of this section if its delinquency rate is still greater than 5 percent.

(d) Any school subject to the provisions of subparagraph (c)(3) of this section which fails to comply with those requirements will be terminated from the program and must return all Federal funds in the loan account to the Department. Any school which has been terminated must continue to pursue collections and may reapply for participation in the program only when it has attained a delinquency rate of 5 percent or less.

[FR Doc. 85-20127 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-15-M



# **federal register**

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Friday  
August 23, 1985

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## **Part VI**

### **Department of Health and Human Services**

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**Public Health Service**

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**42 CFR Part 57  
Nursing Student Loan Program; Final  
Regulations**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 42 CFR Part 57

## Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

**SUMMARY:** This rule amends existing regulations governing the Nursing Student Loan (NSL) program set forth in Subpart D of 42 CFR Part 57. These revisions: (1) Reflect legislative amendments made to sections 835-841 of the Public Health Service Act (the Act) since the existing regulations were published in the *Federal Register* on May 9, 1974; (2) simplify the existing regulations so that they are written in clear, concise language; (3) strengthen the regulations regarding recordkeeping and collection procedures; (4) impose more detailed requirements concerning the exercise of due diligence by schools in loan collections; and (5) establish a performance standard against which a nursing school's delinquency rate will be measured.

**EFFECTIVE DATE:** These regulations are effective September 23, 1985.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-4540.

**SUPPLEMENTARY INFORMATION:** In response to concerns expressed about the manner in which schools and the Federal Government administer the NSL program, the Department published in the *Federal Register* of June 3, 1983 (48 FR 25072) and September 6, 1984 (49 FR 35328), two Notices of Proposed Rulemaking (NPRMs). These proposed rules were designed to strengthen the regulations regarding recordkeeping and collection procedures, specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement in the collection of loans, and establish a performance standard against which a nursing school's delinquency rate would be measured.

The proposed regulations of June 3, 1983, also incorporated legislative amendments made to sections 835-841 of the Act since the existing regulations were published in the *Federal Register* on May 9, 1974. Even though these legislative amendments have not been reflected in published regulations until

now, they have been applicable to the administration of the NSL program as of their statutory effective dates. The amendments are as follows:

(1) The Nurse Training Act of 1975, Pub. L. 94-63, enacted on July 29, 1975, repealed the Federal Capital Loan (FCL) Fund except to honor existing commitments and added training to be a nurse anesthetist as an eligible deferral activity;

(2) The Nurse Training Amendments of 1979, Pub. L. 96-76, enacted on September 29, 1979, repealed the cancellation benefits for loans made on or after September 29, 1979; and

(3) The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, enacted on August 13, 1981, repealed the prohibition against the receipt of concurrent National Direct Student Loan (NDSL) funds and NSL funds and increased the NSL interest rate from 3 to 6 percent per year.

Other changes proposed in the June 3, 1983 NPRM were intended to simplify the existing regulations so that they are written in clear, concise language, revise the index to reflect these changes, and incorporate minor technical and editorial changes.

The Secretary invited interested persons to submit comments on the proposed rules and received 117 comments from students, school officials, and professional and student organizations. A discussion of the comments, the Department's responses, and the regulatory changes follows.

#### Discussion of Comments, Responses and Regulatory Changes

##### Section 57.305 Nursing student loan funds.

Seven respondents supported the proposed amendment to § 57.305(a)(1)(iii), which would allow schools to charge to the NSL fund the costs associated with membership in credit bureaus. Accordingly, the Department has implemented this provision as proposed.

##### Section 57.306 Eligibility and selection of nursing student loan applicants.

Section 57.306(a)(2): Thirteen of 15 respondents supported § 57.306(a)(2), which would require NSL applicants who previously have attended an institution of higher education to submit a financial aid transcript. Two respondents objected to the requirement to collect information on prior grants as part of the financial aid transcript. They were concerned that this would conflict with Department of Education (ED) requirements, require a separate financial aid transcript form, and create

unnecessary paperwork. One suggested that the Department coordinate with ED so that a single form would satisfy all Federal loan programs.

In response to these comments, the Department believes that information on a debtor's previous financial aid and indebtedness, including refunds owed on grants, would be useful in the administration of the NSL program, and has therefore retained the provision as proposed. The financial aid transcript provision does not preclude schools from using the same form that is currently used for ED programs since information on grants can be collected on this form.

One respondent suggested that the Department limit the financial aid transcript requirement to those borrowers who have attended other educational institutions within 5 years prior to application. Another was concerned that information would not be available if the record retention period had lapsed. The Department does not believe that a time limit is necessary or advisable since a borrower who has been away from school for more than 5 years could still have delinquent loans. If the record retention period has lapsed, this requirement would be satisfied by certification of that fact by the institution which the borrower previously attended.

One respondent encouraged the Department to allow schools flexibility in awarding funds if the financial aid transcript was not readily forthcoming. Specifically, it was suggested that the cutoff date for submission should be the time of disbursement of loan funds rather than the time of application. The Department has made no change since the regulations do not specify a cutoff date for submission of the transcript. Because the regulations are silent regarding this issue, each school will be responsible for determining the date by which an NSL applicant who previously attended an institution of higher education must submit a financial aid transcript.

Section 57.306(b)(2)(i): Eleven respondents supported § 57.306(b)(2)(i), which would require schools to use one of the national needs analysis systems or any other procedure approved by the Secretary of Education set forth in 34 CFR 674.13 for use in determining the financial needs of an applicant. Accordingly, the Department has implemented this provision as proposed.

##### Section 57.308 Nursing student loan promissory note.

Section 57.308(a): One respondent objected to the proposed amendment to

§ 57.308(a), which would require that the promissory note be in a form approved by the Secretary, and suggested that the promissory note form be subject to State requirements rather than Federal regulations. The Department clarifies that the existing regulations require the Secretary's approval of the promissory note to assure that the note contains those terms and conditions required by the NSL statute and regulations. However, State requirements would apply to any promissory note provisions which are not addressed in the NSL statute or regulations.

*Section 57.308(a)(2):* Thirteen respondents supported § 57.308(a)(2), which would require that promissory notes contain a clause permitting the acceleration of delinquent loans at the school's option. However, five respondents were concerned that the Department not impose the acceleration clause retroactively on existing signed promissory notes. The Department notes that the acceleration clause will be required as part of any promissory note signed on or after the effective date of these regulations, but cannot be added to notes signed prior to that date without the borrower's agreement.

One respondent suggested that acceleration only be exercised as a last resort. The Department has made no change since the provision as proposed allows the school to determine when to accelerate a loan. The Department expects that school officials will use their professional judgment to determine when acceleration is appropriate.

One respondent suggested that the language of the acceleration clause should be similar to the NDSL program language. The Department will be using the language from the Health Professions Student Loan (HPSL) promissory note, which is similar to the NDSL language.

*Section 57.308(b):* Four respondents supported the amendment to § 57.308(b), which would require that, where State law permits individuals to void contracts entered during minority, schools must obtain security or endorsement on promissory notes with minors. Since there was no opposition the Department has implemented this provision as proposed.

*Section 57.310 Repayment and collection of nursing student loans.*

*Section 57.310(a)(2):* Nine respondents opposed § 57.310(a)(2), which would require that any borrower whose repayment becomes more than 60 days past due must establish a monthly repayment schedule with the school. Six noted that this provision would be burdensome for institutions which do

not use outside billing agents and have limited staff. They also felt that the cost would exceed the benefit of revising the schedule and that the time required to comply with this requirement would detract from time that could be devoted to other collection activities, resulting in less effective due diligence procedures. Three suggested that placing delinquent borrowers on monthly schedules be optional rather than required. Others were concerned that this requirement was overly stringent, arbitrary, and unwarranted, was not in the best interests of the program, and did not allow enough time to exercise due diligence prior to revising the schedule.

In response to these comments, the Department has retained this provision because placing delinquent borrowers on monthly schedules will assure frequent contact and more management payment amounts. The Department also expects that as borrowers become aware of this requirement it will serve to prevent delinquencies and thus will not create a substantial amount of additional work for loan collection staff.

Several respondents were concerned that this requirement would violate State law and therefore suggested that the new provision be applied only to borrowers who graduate or receive loans after the amended regulations take effect. The Department notes that borrowers who become delinquent forfeit their rights to any previously established repayment agreement. Accordingly, it is legally supportable to impose this requirement on any borrowers who are delinquent on or after the effective date of these regulations, regardless of when they graduated or received their loans.

One respondent suggested that the Department require monthly payments for all borrowers (non-delinquent as well as delinquent) and automatically accelerate loans in default. The Department has not adopted this suggestion because requiring monthly payments for all borrowers may not be warranted. Further, since acceleration of defaulted loans is not always appropriate, school officials are expected to use their professional judgment to determine when the option to accelerate a delinquent loan should be exercised.

One respondent was concerned that the language of this provision should be changed to clarify that it is the school's responsibility to bill delinquent borrowers on a monthly basis rather than the borrower's responsibility to establish a monthly schedule with the school. In response, the Department has revised § 57.310(a)(2) to state that the

school must place delinquent borrowers on monthly repayment schedules.

*Section 57.310(a)(3):* Sixteen of 18 respondents supported § 57.310(a)(3), which would permit schools to grant forbearance when extraordinary circumstances such as unemployment, poor health, or other personal problems affect the borrower's ability to make payments. Two expressed concern that the regulations did not provide sufficient guidance regarding the length of forbearance periods or criteria for granting forbearance and anticipated that this provision could allow schools to artificially reduce their delinquency rates. Another felt that borrowers with high indebtedness and low incomes should qualify for forbearance.

In response to these comments, the Department has not changed the language of the forbearance provision since including more specific criteria in the regulations may unduly restrict schools in granting forbearance. The provision as implemented will allow school officials to use their professional judgment to determine when a borrower's situation warrants a temporary suspension of his or her scheduled payments.

*Section 57.310(b)(1)(i):* Seven respondents opposed § 57.310(b)(1)(i) which would require the school to conduct and document an entrance interview with the borrower. These respondents stated that most schools would find it difficult if not impossible to have an entrance interview with each loan recipient due to staff and time and that it was unnecessary, since carrying out all of the other due diligence steps should result in timely repayment of student loans. Four respondents disagreed with the Department's statement that conducting entrance interviews is a common practice among institutions.

As alternatives to the proposed entrance interview requirement, these respondents recommended the following: (1) That the promissory note be regarded as sufficient notification to the borrower of his or her repayment responsibilities; (2) that the Department permit group entrance interviews; (3) that the Department permit schools to conduct the entrance interview by mail; (4) that the language in the NDSL regulations (34 CFR Part 674.16), which specifies information which the borrower must receive and permits the school to mail the information to borrowers, be adopted in place of this requirement; and (5) that the entrance interview be suggested but not required. Four respondents also requested that, if implemented, the requirement be

explained in greater detail and phased in over 2 years to allow schools time to allocate sufficient money and personnel for its implementation.

In developing the proposed entrance interview provision, the Department purposely chose language that did not specify the manner in which the entrance interview must be conducted so that each institution would have the flexibility to develop entrance interview procedures that are practical, given its level of staff and financial resources. The Department views the term "entrance interview" to mean a meeting (individually or in groups) during which the school informs the borrower of the rights and responsibilities associated with the loan and obtains personal information from the borrower that would assist in the loan collection process.

Since the public comments expressed both opposition and uncertainty regarding the proposed requirement of an entrance interview, the Department has modified the provision. The provision as modified requires that before disbursing NSL funds to a borrower in a given academic year, the school must have documentation which indicates that the borrower is aware of the rights and responsibilities associated with NSL funds, and must obtain personal information that would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. Although the Department would prefer that entrance interviews be conducted in person (individually or in groups), it is possible for the requirements of the provision, as modified, to be met through an exchange of information by mail when a face-to-face meeting is impracticable. However, the Department encourages schools to use the entrance interview as an opportunity to provide borrowers with comprehensive debt management counseling in order to prevent delinquency.

*Section 57.310(b)(1)(ii):* Six of eight respondents supported § 57.310(b)(1)(ii), which would require schools to conduct and document exit interviews with borrowers. Both opponents requested that the Department clarify the information that schools must collect during the exit interview so that schools could be assured that they are in compliance with this requirement. In response to these comments, the Department has modified the provision to require that, during the exit interview, the school must inform each borrower of the terms of repayment, remind the borrower of his or her rights and responsibilities, and update the personal

information collected during the entrance interview which would assist in locating the borrower if he or she fails to notify the school of an address change.

*Sections 57.310(b)(1)(iii) and (iv):* Four of six respondents supported §§ 57.310(b)(1)(iii) and (iv), which would require that the school notify the borrower in writing of the impending repayment obligation at least twice during the grace period and once prior to the end of an approved period of deferment. One opponent indicated that these provisions were unnecessarily restrictive and suggested that the specific requirements (e.g., two grace period notifications) be removed to provide greater flexibility. The other opponent stated that these were excellent guidelines but objected to them as requirements which, if not met, would automatically result in denial of a write-off request (regardless of the extensiveness of a school's collection efforts as a whole) for loans covered by these regulations.

The Department developed these proposals in response to schools' requests for a series of specific regulatory procedures that would clarify the due diligence requirement for purposes of requesting approval to write off uncollectable loans. Therefore, the Department has implemented them as proposed, except that the time frame during which the notification to a borrower in deferment must occur has been changed to 1 to 3 months prior to the expiration of the approved deferment period to provide schools with more flexibility in complying with this provision.

*Section 57.310(b)(1)(v):* Four of seven respondents supported § 57.310(b)(1)(v), which would require that schools perform regular billing. Opposition to this requirement was based on its being unnecessarily restrictive, and acceptable as a guideline but not as a requirement. One respondent noted that during the past 4 years his school has adopted all of the Department's other suggestions and has succeeded in reducing its delinquency rate from 37.7 percent to less than 10 percent without performing regular billing. He explained that borrowers are given a repayment schedule and that the school has a strict follow-up plan for past due payments. Based on the cost estimates for implementing a regular billing practice, as compared with the total dollars collected annually, he felt that the additional expense for regular billing could not be justified. Since the school's decreased delinquency rate indicated that existing collection practices were

working, the respondent felt that this requirement was unfair and would result in increased administrative costs that would have to be passed on to the students.

In response to this comment, the Department believes that regular billing is an essential part of normal due diligence practices, but also notes that the statement at the end of § 57.310(b)(1) allowing alternative practices with departmental approval would provide for consideration of unusual circumstances such as the one described above. Therefore, this provision has been implemented as proposed.

*Section 57.310(b)(1)(vi):* Nine respondents opposed § 57.310(b)(1)(vi), which would require at least five attempts to contact past due borrowers prior to their payments becoming 120 days past due. These respondents indicated that five written contacts were excessive, costly, and unnecessarily restrictive, and could cause confusion when letters demanding payment crossed in the mail with payments from borrowers. One respondent also noted there are no data to show that the cost-benefit ratio of five contacts is greater than that of three or four contacts, two felt that the return was not commensurate with the cost of a fifth letter, and one felt that the burden of implementing this requirement would be greater than 18.4 hours.

One respondent suggested that since regular billing will continue during this time, three notices in addition to the regular billing should suffice. Two suggested that this provision of the NSL regulations should be consistent with the Department of Education's (ED) proposed modification to the NDSL regulations, which would require three written notices within 60 days of delinquency. Others recommended that three contacts should be adequate, that 30-day intervals between contacts would be more cost-effective, and the greater flexibility was necessary. One suggested that this provision be recommended but not required.

In response to these comments, the Department has modified this provision to require a minimum of four documented and reasonably spaced contacts, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower. These revisions will permit each school to use follow-up procedures for collecting NSL funds which are consistent with its NDSL collection procedures and will provide the option of using personal or telephone contacts

as part of its follow-up procedures. Personal of telephone contacts, if used, must be documented as to the date of contact, the person(s) contacted, and a short summary of the substance of the conversation. The requirement that the contacts be reasonably spaced will permit each school to establish intervals which will be most effective in its collection efforts but will also assure that a school does not make four contacts in a single week and claim to be in compliance with the provision. Further, the revised provision makes allowance for those cases in which a school does not have a current address for the borrower and thus cannot make four contacts in the 120-day period following the payment due date. The Department reminds schools that this provision sets forth minimum requirements, and strongly encourages schools to include additional written, telephone, or personal contacts in their follow-up procedures as necessary to maximize the effectiveness of their loan collection efforts.

*Section 57.310(b)(1)(vii):* Four of five respondents supported § 57.310(b)(1)(vii), which would require schools to perform address searches when necessary. One respondent objected that the regulations do not specify when an address search would be necessary and indicated that this requirement could be more time consuming, costly, and burdensome to loan officers than the Department intended, as described under the regulatory impact section.

The Department clarifies that an address search would be necessary when the school's current address for the borrower is not correct. Although address searches may be time consuming and costly in some cases, this requirement is an essential part of sound due diligence procedures, and thus has been implemented as proposed.

*Section 57.310(b)(1)(viii):* Ten of 13 respondents supported § 57.310(b)(1)(viii), which would require the use of collection agents as part of the due diligence procedures. Two respondents felt that the use of collection agents should be at the discretion of the institution and one questioned how a school using an internal collection agent can be assured that its efforts meet this requirement. The Department clarifies that as long as the internal collection agent is performing basically the same functions as an external collection agent the school would be in compliance with this requirement. Since this is an essential part of normal due diligence procedures,

the Department has implemented the provision as proposed.

One respondent requested that the Department allow the costs of in-house collection agents to be charged to the fund. The Department notes that § 57.305(a)(1) of these regulations permits schools to charge to the fund, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of NSL funds. Under this provision, the Secretary permits schools to charge the costs of a collection agent (commercial or in-house) to the NSL fund as long as the school is exercising due diligence in its collection efforts. Further guidance regarding the actual in-house collection agent costs that can be charged to the fund is provided in program policy documents.

*Section 57.310(b)(1)(ix):* Six of 11 respondents supported § 57.310(b)(1)(ix), which would require that schools institute litigation to collect delinquent loans after all other collection efforts have failed, provided that litigation is appropriate. The opposition focused on the lack of criteria to be followed in determining whether to litigate. There was concern that litigation might present a financial problem for nursing schools, and that if the cost of litigation exceeded the balance of the loan litigation might be appropriate but would not be in the best interest of the school. The respondents requested that determinations of when to litigate either be left solely to the discretion of the institution or be specifically defined by the Department so that a write-off request could not be denied if the Department disagreed with the school's criteria for deciding when to litigate. One suggested that litigation be optional.

In response to these comments, the Department clarifies that a school should not litigate a delinquent loan when such action would not be cost-effective, but considers litigation an essential part of sound due diligence procedures in any other cases. Accordingly, the Department has modified this provision to require litigation unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective.

*Section 57.310(b)(1)(x):* Fourteen of 27 respondents supported § 57.310(b)(1)(x), which would require each school to become a member of a credit bureau and notify the credit bureau of accounts overdue more than 120 days, when appropriate.

Five respondents felt that the use of credit bureaus should be optional. Others considered this an unreasonable, time-consuming, and costly administrative burden for schools that were effectively collecting their loans without using credit bureaus. Several questioned its effectiveness for improving loan collections and one suggested that schools with delinquency rates under 5 percent not be required to bear the expense of using a credit bureau.

The Department considers credit bureaus to be valuable collection tools, regardless of a school's delinquency rate, that warrant the additional burden associated with their use. Since most borrowers are interested in maintaining a good credit rating, the Department expects that this requirement will serve primarily to prevent loans from becoming seriously delinquent, and thus the administrative burden should be minimal. Also, schools may charge the costs associated with membership in a credit bureau to the loan fund since those costs may reasonably be considered "costs of collection" within the meaning of section 835(b)(3) of the Act.

Two respondents suggested that schools not be required to use credit bureaus until all other collection efforts have proven unsuccessful, and one commented that the requirement to report loans 120 days past due could preclude a delinquent borrower from securing a commercial loan to repay the NSL loan and would thus inhibit rather than aid the collection process. Two also requested that the Department clarify those circumstances when it would be inappropriate for schools to use a credit bureau.

The Department expects that this provision, by requiring schools to report only those loans more than 120 days past due to credit bureaus, will provide schools with adequate opportunity to exhaust less stringent collection efforts before having to take this step. Although there could be occasional instances where disclosure of a borrower's delinquent status to a credit bureau would make it more difficult for the borrower to repay, many schools have indicated that reporting to a credit bureau is more often an effective collection technique which augments rather than impedes their collection efforts. Therefore, the Department has maintained the provision and has clarified it by deleting the reference to "when appropriate." This revision will require that a school apply the credit bureau provision uniformly. The Department also clarifies that if a school

encounters situations in which it believes that a credit bureau should not be used, it may request an exception as permitted under § 57.210(b)(1).

One respondent stated that this provision would be of little or no value for selecting borrowers. The Department clarifies that this requirement does not pertain to the selection of borrowers but rather to the school's efforts to collect from delinquent borrowers.

Five respondents commented that the Department should not apply the requirements to use collection agents, litigation, and credit bureaus retroactively. The Department will require these three steps as part of each school's due diligence procedures as of the effective date of these regulations. Henceforth, schools will have to apply these requirements in the collection of any delinquent loans since it is reasonable for a school to use these procedures regardless of when the loan was awarded.

*Section 57.310(b)(1):* Three of five respondents supported the last sentence of § 57.310(b)(1), which would permit schools to substitute other collection techniques in place of those outlined in the regulations, provided that they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary. One respondent commented that the requirement to demonstrate the effectiveness of a technique would be burdensome. In response to this comment, the Department believes it can permit the substitution of an alternative procedure only if it is clear that the regulatory due diligence requirement is still met.

One respondent suggested that the Department amend the provision to specify that when the Secretary grants written approval of alternative practices the school would be notified that the ten provisions for due diligence no longer apply to that institution. The Department clarifies that the Secretary's written approval of alternative practices would state that the school no longer would be required to comply with whichever of the ten steps would be affected by the alternative practice, but that the school still would be required to comply with any of the steps which would not be so affected.

*Section 57.310(b)(4):* Nine respondents opposed § 57.310(b)(4), which would clarify the write-off procedures. Four respondents objected to the requirement that a school must reimburse the NSL fund for uncollectible loans on which it failed to exercise due diligence and felt that this provision should not apply to old loans. The Department points out that there has been a longstanding

regulatory requirement to exercise due diligence in the collection of NSL funds, and that the means by which that requirement has been enforced has been to require reimbursement of the fund for uncollectible loans for which there is insufficient evidence of due diligence. This enforcement tool is necessary to assure proper stewardship of Federal funds and to maintain the solvency of the NSL funds; therefore, it will continue to apply to all loans.

One respondent felt that this provision would discourage the use of the write-off process since it requires schools to reimburse the fund for loans that are disapproved. The Department clarifies that although schools are responsible for reimbursing the NSL fund for disapproved write-off requests there is no required time frame within which reimbursement must occur. Accordingly, if a write-off request is disapproved, the school may reimburse the fund out of institutional monies at any time prior to the distribution of assets.

Another respondent felt that the issue in reviewing a write-off request should be whether the institution's inaction contributed to a loan's uncollectibility, not whether the institution can document that it completed each step of the due diligence procedure. The Department believes that failure to perform any of these steps would be an important factor in contributing to the uncollectibility of a loan and therefore would be proper grounds for denying write-off.

Two respondents were concerned that the Department would apply the due diligence procedures in § 57.310(b)(1) (i) through (x) retroactively, rather than prospectively, in reviewing write-off requests. The Department clarifies that the series of procedures outlined in (i) through (x) are required steps of the due diligence process as of the effective date of these regulations. For any loan made on or after that date a school must follow each of the steps (i) through (x) (unless it has requested and received written approval of alternate techniques) to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of these regulations, a school must apply the new due diligence requirements prospectively to the extent that it is possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the effective date of these regulations must be in conformance with "generally accepted collection practices," as required by the previously existing regulations, and the procedures

followed after the effective date of these regulations must include any steps of the new requirements that can be followed prospectively (unless alternate techniques have been approved).

*Section 57.313a Loan cancellation reimbursement.*

Two respondents commented on the provision for reimbursing schools for their share of loans canceled for service, death, or disability in the event insufficient funds are available to pay all schools in a given fiscal year. One respondent felt that this would encourage schools to refuse cancellation requests. The Department notes that a school cannot deny cancellation benefits to borrowers who are eligible for cancellation and who notify the school of their eligibility in a timely manner.

One respondent stated that the Federal Government was obligated to fulfill this contractual obligation on time and that failure to do so would deprive new students of NSL funds. The Department notes that although section 836(c) of the Act provides for the reimbursement of canceled loans, it does not indicate when such reimbursement should occur. Further, cancellation reimbursements are institutional funds and do not go back into the NSL fund unless the school chooses to deposit them in the fund as part of the institutional contribution.

*Section 57.315 Records, reports, inspection, and audit.*

*Section 57.315(a)(1):* Three respondents opposed § 57.315(a)(1), which would state that required reports must be submitted to the Secretary within 45 days of the close of the reporting period. Two suggested that the time frame be changed to 60 days after the close of the reporting period, believing that 45 days did not allow sufficient time to conduct a complete reconciliation and prepare an auditable document. Another suggested that schools be granted 90 days to complete and submit required reports. The Department has not changed this provision since the 45-day reporting deadline is critical for assuring that Federal monitoring activities, such as reviewing school's delinquency rates and complying with Federal reporting requirements, can be conducted on a timely basis.

Two respondents opposed the requirement that schools submit quarterly reports. Since the performance standard provision requires a biannual review of those schools with delinquency rates greater than 5 percent,

the respondents felt that it would be more appropriate to implement semiannual reports and require the December 31 report only from schools with delinquency rates greater than 5 percent. The Department notes that § 57.315(a)(1) does not specify the frequency of required reports and thus does not preclude the possibility of less frequent reporting requirements in the future if the Department finds that such a change is possible. Currently, however, the quarterly report is necessary for complying with Federal reporting requirements and for monitoring cash balances and other indicators of proper program management.

*Section 57.315(a)(3):* One respondent opposed § 57.315(a)(3), which would require that repayment records be retained for 5 years after a loan has been repaid, and suggested that this proposal be amended to allow for disposal of these records sooner if an audit has been performed. The Department has not changed this provision since it considers the retention of records for this period to be essential for monitoring purposes.

*Section 57.315(b)(2):* Two of three respondents supported § 57.315(b)(2), which would require that an institution receiving NSL funds must have itself audited by non-Federal independent auditors every 2 years. One expressed concern that there was no mention of startup dates or required time frames and suggested that schools be allowed to have the NSL audit performed in conjunction with the audit of the campus-based programs. The need for an audit guide also was mentioned. The Department does not consider it appropriate to include audit dates or time frames in the regulations but will issue guidance in policy documents after publication of these regulations. In addition, the Department notes that the *Student Financial Aid Guidelines* contain an audit section which is to be used in conjunction with ED's audit guide for the campus-based programs in performing the NSL audit. The Department will notify schools of any changes in audit procedures through future policy memoranda.

*Section 57.315(c):* The Department has also included a paragraph (c) in this section to state that institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations. This

language is being added to clarify the role of the HHS Office of Inspector General in investigating actual or suspected acts of fraud, as well as to inform individuals who are party to financial transactions involving these funds of their responsibility to report information regarding such acts to the appropriate Regional Inspector General for Investigations.

#### *Section 57.316a Performance standard.*

*Maximum Level of Delinquency:* Seventy-three respondents opposed the 5 percent performance standard. Of these, 48 felt that it was unreasonable and overly restrictive for nursing schools. Thirty-one objected to the Department's use of delinquency statistics from commercial lending institutions in developing the 5 percent performance standard, feeling that there were too many differences between commercial loans and nursing student loans to make this an appropriate comparison. Nineteen noted that commercial lending institutions consider employment history, income level, and creditworthiness in determining a borrower's eligibility for funds, factors which are not considered in making NSL awards. In addition, they noted that nursing student loans are unsecured and have a different level of risk than commercial loans since borrowers have to demonstrate financial need in order to receive NSL funds. Others mentioned differences in the length and timing of the repayment period, the level of collection experience of the lending institutions, and the borrowers' understanding of repayment responsibilities.

The Department is aware of the different criteria used for granting a commercial loan as compared with a nursing student loan. However, the Department used the delinquency rates for professionals who borrow from commercial lending institutions as a basis for the NSL performance standard because of the similarities between professionals with commercial loans and NSL borrowers at the time of repayment.

Seventeen respondents objected to the adoption of a 5 percent performance standard based on a comparison of NSL and HPSL borrowers, noting that NSL borrowers have lower incomes, less earning power, lower employment rates, different job opportunities, different economic backgrounds, and higher rates of attrition. Five respondents considered the comparison between NSL borrowers and other professionals with loans inappropriate since the income level of nurses does not approach the income level of other professionals. Twelve

indicated that NSL borrowers are often unable to repay because of their high indebtedness and other financial responsibilities which cannot be managed adequately on their low starting salaries. They felt that the 5 percent performance standard failed to recognize the economic situation of most NSL borrowers. Four stated that a standardized measure was not equitable because of regional economic problems that affect the ability of borrowers to repay.

In response to these comments, the Department notes that although NSL borrowers generally have a different income level than HPSL borrowers, those who graduate do have a marketable skill which should make it possible to obtain employment and thus repay their loans. Further, in any situation where economic hardship is preventing the borrower from making his or her scheduled payments, the school may renegotiate the repayment schedule or grant forbearance (as long as the 10-year repayment period is not exceeded), and in doing so may remove the borrower from delinquent status.

Eight respondents indicated that the proposed performance standard is racially discriminatory and penalizes schools which actively recruit low-income and disadvantaged students, since it would force these schools to terminate their participation in the program, and thereby preclude many of the neediest students from receiving NSL funds. The Department expects that the implementation date for the performance standard, as indicated below, along with the methods available for reducing delinquency rates (e.g., write-off, renegotiation, forbearance, and tools for aggressively pursuing delinquent borrowers), should make it possible for all schools, including those with a high percentage of low-income and disadvantaged students, to comply with these regulations.

Twenty-eight respondents suggested that a 10 percent standard would be more realistic. Six suggested that the Department adopt the NDSL criteria, which allows a school to continue using collections regardless of its delinquency rate but uses the delinquency rate to determine eligibility for new Federal capital contributions. Three respondents wanted the Department to consider the effectiveness of each institution in reducing its delinquency rate and recognize good faith efforts made by an institution regardless of its delinquency rate. Two other respondents suggested that the Department determine an acceptable delinquency rate for each school based on the socioeconomic

composition of its student population. Other suggestions included changing the performance standard to 15 percent, lowering the standards for write-off, applying the 5 percent performance standard only to loans made since the recent emphasis on debt collection, establishing an appeals process, and delaying implementation until Congress enacts legislation allowing the use of the Internal Revenue Service (IRS) for skip-tracing. One respondent stated that it was inappropriate to impose a 5 percent performance standard for the NSL program on the basis of a 3.2 percent delinquency rate among professionals who have loans since the delinquency rate formula used by the American Bankers' Association (ABA) is more lenient than the formula proposed by the Department.

In response to these numerous comments, and in order to determine the most appropriate performance standard for the NSL program, the Department considered the following: (1) The improvements in debt management that have occurred at nursing schools since December 1981; (2) the current delinquency rates in the NSL program; (3) a comparison of the average delinquency rates for the HPSL and NSL programs; (4) a comparison of the HPSL and NSL delinquency rates at institutions that participate in both the HPSL and NSL programs; and (5) legislative and programmatic similarities and differences between the HPSL and NSL programs. Based on the above considerations, and because the Department believes that the 5 percent performance standard level provides the most effective way of encouraging schools to reduce their delinquency rates and thereby maximize the level of dollars in their revolving NSL funds, the Department has implemented the provision as proposed.

*Definition of delinquent account:* Twenty-seven respondents opposed the provision to define as delinquent any loan more than 60 days past due. Fourteen noted that the majority of loans 60-120 days past due do not represent bad debts but eventually return to current status and are paid in full. The proposed definition of a delinquent account was therefore considered unreasonable, unrealistic, and unjustified. Nine felt that this was inconsistent with the due diligence procedures since it does not allow adequate time to perform the suggested steps before a loan has to be considered delinquent. Others noted that this contrasts with prior departmental policy and is at variance with the NDSL

program, which uses 120 days as the cutoff point for delinquent accounts.

In response to these comments, the Department clarifies that the 60-day definition of delinquency was proposed to assure that the delinquency rate accurately reflects those accounts which are collection problems for the school. Although borrowers 60-120 days past due may eventually repay in full, collecting their accounts requires extra effort by the school and therefore, the Department believes that they should be reflected as delinquent accounts until they are made current.

*Delinquency rate formula:* Forty-one opposed the formula for calculating a school's delinquency rate. Of these, sixteen indicated that there was no justification for considering the entire outstanding principal balance of a delinquent loan as uncollectible, and nine proposed that the formula include in the numerator only the past due amount on delinquent loans. Others suggested that the Department exclude from the numerator principal not yet due for accounts 60-90 days past due. As indicated above, the Department considers accounts more than 60 days past due to be collection problems for the school which represent potential losses to the fund. Therefore, the Department believes it is appropriate to include in the numerator the principal outstanding on loans more than 60 days past due.

Eleven respondents felt that the denominator should include retired loans. Others suggested that the denominator should include accounts in deferment, and that the formula should exclude accounts in default and accounts on which the school can take no further action. The Department considers it inappropriate to include retired loans or loans in deferment in the denominator since the purpose of the delinquency rate calculation is to measure a school's effectiveness in collecting those loans on which borrowers currently should be making payments. The Department reminds schools that in addition to excluding loans that have been fully repaid by borrowers, the formula also does exclude uncollectible loans that have been written off or reimbursed by the school. When a school has exercised due diligence, uncollectible accounts normally should become eligible for write-off before other accounts that entered repayment status at the same time have been fully repaid by the borrower; thus, the exclusion of fully retired loans should be offset by the exclusion of uncollectible loans.

Six respondents stated that a standard delinquency rate formula cannot provide an accurate assessment of a school's due diligence procedures, and five considered the formula unrealistic and inaccurate. Four noted that the proposed formula was inconsistent with the NDSL formula and two suggested that the Department adopt the NDSL formula. Four others objected to the formula because it fails to consider the level of risk associated with the student population at each institution. One respondent noted that the ABA formula used to calculate the delinquency statistics cited by the Department in the June 3, 1983 NPRM includes in the numerator only the past due amount rather than the total principal outstanding on delinquent loans.

In response to these comments, the Department recognizes that delinquency formulas do vary significantly from one organization to another depending upon what they are designed to measure; therefore, the formula used by one agency or organization is not necessarily appropriate for another agency. After considering these comments and evaluating various alternatives to the proposed formula, the Department has determined that the delinquency formula should not be modified since it provides a conservative measure of the effectiveness of a school's current collection efforts, and thereby assures responsible fiscal management of public funds.

Respondents also suggested that the Department allow any account more than 2 years past due to be written off automatically and thus be excluded from the delinquency rate. The Department has not adopted this suggestion since it would be poor stewardship of Federal funds to permit write-off approval if a school had not exercised due diligence in its collection efforts.

Five respondents suggested that for accounts on which borrowers are making partial payments the Department should include only the amount in arrears in the numerator and five others thought that the Department should consider any accounts with regular payment patterns as current. The Department clarifies that any loan on which the borrower is making partial payments on a regular basis may be eligible for a renegotiated repayment schedule, in which case the borrower would no longer be delinquent if he or she makes payments as required by the revised schedule.

Two respondents stated that the Department should exclude dropouts and accounts in litigation from the delinquency formula. The Department notes that dropouts who are unable to make payments due to financial hardship may be eligible for forbearance in which case they are not included in the delinquency calculation. However, the Department does not exclude loans in litigation from the delinquency calculation since these loans are still delinquent and the school can continue to make efforts to collect them during the litigation proceedings.

**Implementation date and phase-in procedures:** Thirty respondents opposed the proposed implementation date and phase-in procedures for the performance standard. Nineteen considered these procedures unrealistic, unreasonable, and illogical. Three felt that December was a bad time of year for determining compliance with the performance standard since it could prohibit schools from fulfilling award commitments made at the beginning of the academic year and is typically a time when mail is slow and many of the borrowers and institutional staff are on vacation. Two noted that a 6-month period for reducing the delinquency rate by 50 percent did not provide adequate time to exhaust the more complex due diligence steps of collection agents and litigation and also request write-off approval. Others stated that these procedures would penalize schools which have been working hard to improve their collection efforts during the past 2 years and are now faced with their more difficult accounts. Several suggested alternative proposals such as allowing schools more time (ranging up to 3 years) to meet the performance standard, reviewing schools annually rather than semiannually, recognizing good faith efforts, reviewing schools for compliance with due diligence rather than compliance with a performance standard, and establishing performance checkpoints based on reductions of 25-33 percent rather than 50 percent.

In response to these comments, the Department has established the implementation date of the performance standard as June 30, 1986. This should provide nursing schools with adequate time to exhaust the more complex due diligence steps for accounts that are currently delinquent and request write-off approval for uncollectible loans before the performance standard is implemented.

**Penalty for noncompliance:** Thirty-four respondents opposed the penalty for noncompliance with the performance standard. Twenty-one felt that it was

inappropriate, would have a harsh impact on needy students, and would deny the opportunity for a nursing education to low-income and disadvantaged individuals. Eight stated that it would result in the termination of the NSL program at most schools. Five felt that it unduly penalizes schools which are exercising due diligence but are unable to meet the performance standard, four considered it inconsistent with the intent of the NSL legislation, and two indicated that it would reduce incentive to continue collections.

Six respondents suggested that the Department should be required to show direct proof of improper program administration before terminating a school's participation in the NSL program. Four suggested that the Department help schools resolve their old accounts before imposing such a penalty; two wanted the Department to allow all schools to continue participation regardless of their delinquency rates; two thought that suspension of new funding would be more appropriate than termination; and two suggested using the NDSL penalty, which reduces the level of new funds awarded to schools with delinquency rates between 10 and 25 percent, and suspends new funding for schools with delinquency rates over 25 percent, but allows any school to continue using its collections, regardless of its delinquency rate.

In response to these comments, the Department expects that implementing the performance standard provision on June 30, 1986, should provide schools with adequate time to reduce their delinquency rates to the required level, and that schools unable to comply with requirements of the provision after that date should not be permitted to continue loaning NSL funds. Therefore, the Department has implemented the penalty for noncompliance as proposed.

#### Additional Comments

Many respondents suggested other changes that would require legislative amendments, including the following: (1) an amendment to allow the use of the IRS skip-tracing service; (2) a provision for assigning uncollectible loans to the Federal Government for further collection efforts; (3) elimination of the set-aside fund; (4) a procedure for withholding the tax refunds of delinquent borrowers; (5) a requirement that all borrowers have a cosigner; (6) a provision to allow cancellation for service in a low-income area; (7) a reduction in the interest rate; (8) modifications to the deferment provisions; (9) authority to extend the repayment period beyond 10 years; (10)

an administrative allowance to be paid from the NSL fund; (11) changes in the minimum monthly payment provisions; and (12) an amendment to make the loan repayment provision for failure to complete studies (§ 57.314) an entitlement. The Department cannot implement any of these suggestions since it lacks statutory authority to do so.

#### Regulatory Flexibility Act and Executive Order 12291

Three respondents believed that these regulations would have a significant economic impact since they expected that the majority of schools would face termination as a result of their implementation as proposed. Some also felt that the response burden was grossly understated by the Department.

One respondent commented that the burden of 18.4 hours per school indicated in the September 6, 1984 NPRM is not realistic, and stated that schools have incurred many more hours of work, including evening time, to implement the ten steps proposed in the NPRM. The Department clarifies that the 18.4 hour average burden per school was determined based on the time required to comply with the reporting and recordkeeping requirements included in that NPRM, but did not address the time required to carry out activities of the proposal apart from the reporting or recordkeeping requirements.

In response to the other comments, the Department expects that the modifications that have been made to the proposed rules will assure that these regulations do not have a significant economic impact on a substantial number of small entities. These regulations prescribe procedures for improving loan collections and a performance standard against which schools' delinquency rates will be measured.

The small entities affected are nursing schools. The amendments to the regulations strengthen loan collections and may result in the termination of some nursing schools' participation in the NSL program. However, each school with an unacceptable level of delinquency will have several opportunities to reduce its delinquency rate prior to termination, and thus will have adequate time to prepare for the loss of funds which will occur as a result of termination. These schools will also be able to resume the use of future collections once they are able to meet the performance standard. Therefore, the regulations will not have a significant economic impact on a substantial number of small entities.

These regulations have been reviewed in accordance with Executive Order 12291. The Department has determined that this rule is not a "major rule" under Executive Order 12291 because it does not meet the criteria for major regulations established in the Order; therefore, a regulatory impact analysis is not required.

#### Paperwork Reduction Act

These final regulations contain the following recordkeeping and reporting requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511): Section 57.306, approval number 0915-0048 (Financial Aid Transcript, Educational Costs); § 57.308, approval number 0915-0095 (Promissory Note); § 57.310, approval number 0915-0095 (Entrance Interview, Exit Interview, Borrower Notifications, Credit Bureau Notification); § 57.312, approval number 0915-0048 (Reporting of Loans for Loan Repayment); and § 57.315, approval number 0915-0047 (Reporting Requirements, Student Records, Repayment Records).

#### List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Grant programs—education, Grant programs—health, Student aid.

42 CFR Part 57, Subpart D is amended as set forth below.

Dated: June 20, 1985.

James O. Mason,  
Assistant Secretary for Health.

Approved: August 2, 1985.

Margaret M. Heckler,  
Secretary.

(Catalog of Federal Domestic Assistance, No. 13.364, Nursing Student Loan Program)

#### PART 57—[AMENDED]

Subpart D of 42 CFR Part 57 is revised to read as follows:

#### Subpart D—Nursing Student Loans

- Sec.
- 57.301 Applicability.
  - 57.302 Definitions.
  - 57.303 Application by school.
  - 57.304 Payment of Federal capital contributions.
  - 57.305 Nursing student loan funds.
  - 57.306 Eligibility and selection of nursing student loan applicants.

- Sec.
- 57.307 Maximum amount of nursing student loans.
  - 57.308 Nursing student loan promissory note.
  - 57.309 Payment of nursing student loans.
  - 57.310 Repayment and collection of nursing student loans.
  - 57.311 Cancellation of nursing student loans for disability or death.
  - 57.312 Repayment of loans for service in a shortage area.
  - 57.313 Loan cancellation for full-time employment as a registered nurse.
  - 57.313a Loan cancellation reimbursement.
  - 57.314 Repayment of loans made after November 17, 1971, for failure to complete a program of study.
  - 57.315 Records, reports, inspection, and audit.
  - 57.316 Nondiscrimination.
  - 57.316a Performance standard.
  - 57.317 Additional conditions.
  - 57.318 Noncompliance.

Authority: Sec. 215 Public Health Service Act, 58 Stat. 690, 67 Stat. 631, (42 U.S.C. 218); sections 835-841 Public Health Service Act, 78 Stat. 913-916, as amended (42 U.S.C. 297a-h).

#### Subpart D—Nursing Student Loans

##### § 57.301 Applicability.

The regulations in this subpart apply to the Federal capital contributions made by the Secretary to public or other nonprofit schools of nursing for the establishment of nursing student loan funds and to loans made to students from these funds.

##### § 57.302 Definitions.

As used in this subpart:  
"Academic year" means the traditional, approximately 9-month September to June annual session. For the purpose of computing academic year equivalents for students who, during a 12-month period, attend for a longer period than the traditional academic year, the academic year will be considered to be of 9 months' duration.  
"Act" means the Public Health Service Act, as amended.

"Date upon which a student ceases to be a full-time or half-time student" means the first day of the month which is nearest to the date upon which an individual ceases to be a full-time or half-time student, as defined in this section.

"Federal capital loan" means a loan made by the Secretary to a school under section 827(a) of the Act, as in effect prior to July 29, 1975, the proceeds of which are to be returned to the Secretary.

"Full-time student" means a student who is enrolled in a school and pursuing a course of study which constitutes a full-time academic workload, as determined by the school, leading to a

diploma in nursing, an associate degree in nursing or an equivalent degree, a baccalaureate degree in nursing or an equivalent degree, or a graduate degree in nursing.

"Good standing" means the eligibility of a student to continue in attendance at the school where he or she is enrolled as a student in accordance with the school's standards and practices.

"Half-time student" means a student who is enrolled in a school and pursuing a course of study which constitutes at least one-half of a full-time academic workload but less than a full-time academic workload, as determined by the school, leading to a diploma in nursing, an associate degree in nursing or an equivalent degree, a baccalaureate degree in nursing or an equivalent degree, or a graduate degree in nursing.

"Institutional capital contribution" means the money provided by a school, in an amount not less than one-ninth of the Federal capital contribution, and deposited in a nursing student loan fund.

"National of the United States" means: (1) A citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"Nursing student loan" means the amount of money advanced to a student by a school from a nursing student loan fund under a properly executed promissory note.

"Registered nurse" means an individual who has been licensed by a State Board of Nursing to practice professional nursing in accordance with State licensing laws requiring as a minimum one of the degrees or diplomas specified in this section.

"School" means a public or other nonprofit school of nursing, as defined in section 853 of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee to whom the authority involved has been delegated.

"State" means, in addition to the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

##### § 57.303 Application by school.

(a) Each school seeking a Federal capital contribution must submit an application at the time and in the form and manner that the Secretary may require.<sup>1</sup> The application must be signed

<sup>1</sup> Applications and instructions are available from the Division of Student Assistance, Bureau of Health Professions, 5900 Fishers Lane, Parklawn Building, Room 8-44, Rockville, Maryland 20857.

by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and the terms and conditions of the award.

(b) Each application will be reviewed to determine eligibility and the reasonableness of the amount of Federal support requested. The Secretary may require the applicant to submit additional data for this purpose.

(c) An application will not be approved unless an agreement between the Secretary and the applicant school for a Federal capital contribution under section 835 of the Act is reached.

#### § 57.304 Payment of Federal capital contributions.

(a) *Annual payment.* The Secretary will make payments at a time determined by him or her, to each school with which he or she has entered into an agreement under the Act.

(1) For any fiscal year for which "set-aside" funds are available, the Secretary will first make payments in the manner described in (a)(2) of this section of not less than \$1,000,000 of the amount of Federal funds determined by the Secretary at the time of payment to be available for making loans under this subpart. These funds will be paid to schools submitting an application for "set-aside" funds to be used only for the purpose of making loans to individuals qualified to receive loans under this subpart who, on the date they receive the loan, have not been employed on a full-time basis or been enrolled in any educational institution on a full-time basis for at least 7 years. An individual may not receive a loan under this subparagraph that exceeds \$500 for any academic year.

(2) If the total of the amounts requested for any fiscal year by all schools for Federal capital contributions minus the amount received under paragraph (a)(1) of this section exceeds the amount of Federal funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller: (i) The amount requested in the application, or (ii) an amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of payment to be available for that fiscal year for the Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in all participating schools during that year.

(3) Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, but with whatever adjustments that may be necessary to prevent the total paid to any school from exceeding the total requested by it.

(b) *Method of payment.* The payment of Federal capital contributions to a school will be paid in a manner that avoids unnecessary accumulations of money in any nursing student loan fund.

#### § 57.305 Nursing student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain moneys representing the institutional capital contribution.

(1) Except for funds transferred under paragraph (a)(2) of this section, this fund is to be used by the school only for: (i) Nursing student loans to full-time and half-time students; (ii) capital distribution as provided in section 839 of the Act or as agreed to by the school and the Secretary; and (iii) costs of litigation, costs associated with membership in credit bureaus, and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans.

(2) An amount not to exceed 20 percent of the amount paid to a school from the appropriation for any fiscal year for Federal capital contributions may be transferred by the school to be used for scholarship awards under section 845 of the Act. However, if the Secretary finds in a particular case that a school has demonstrated an unusual need for scholarship funds, he or she may approve the transfer of any amount in excess of 20 percent to be used for scholarship awards. In the case of any transfer under this subparagraph, the proportionate amount of the institutional capital contribution (i.e., one-ninth of the amount so transferred) may be withdrawn by the school from the fund.

(b) *Funds established with Federal capital loans.* (1) Each Federal capital loan is subject to the terms of the promissory note executed by an authorized official on behalf of the borrowing school.

(2) The Federal capital loans must be carried in a special account of the school, to be used by the school only for: (i) Repayments of principal and interest on Federal capital loans; and (ii) costs of litigation, costs associated with membership in credit bureaus, and, to

the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans.

#### § 57.306 Eligibility and selection of nursing student loan applicants.

(a) *Determination of eligibility.* (1) Applicants are eligible for consideration for a nursing student loan if they are:

(i) Citizens, nationals, or lawful permanent residents of the United States, permanent residents of the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or American Samoa, or lawful permanent residents of the Commonwealth of Puerto Rico, the Virgin Islands or Guam;

(ii) Enrolled, or accepted for enrollment in the school as full-time or half-time students;

(iii) In need of the amount of the loan to pursue the course of study at the school; and

(iv) Capable, in the opinion of the school, of maintaining good standing in the course of study.

(2) An applicant who has previously attended an institution of higher education must submit a financial aid transcript which includes at least the following data:

(i) Applicant's name and social security number;

(ii) Amounts and sources of loans and grants previously received by the applicant for study at an institution of higher education;

(iii) Whether the applicant is in default on any of these loans, or owes a refund on any grants;

(iv) Certification from each institution previously attended by the applicant that the applicant has received no financial aid, if applicable; and

(v) From each institution previously attended, the signature of an official authorized by the institution to sign such transcripts on behalf of the institution.

(b) *Selection of nursing student loan applicants and determinations of need.* The school will select qualified applicants, make reasonable determinations of need, and determine the amount of student loans.

(1) In selecting nursing student loan applicants the school will give preference to licensed practical nurses.

(2) In determining whether a student is in need of a nursing student loan to pursue a full-time or half-time course of study at the school, the school will take into consideration:

(i) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Secretary of

Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status; and

(ii) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's financial ability to attend the school on a full-time or half-time basis. The school must document the criteria used for determining these costs.

(Approved by the Office of Management and Budget under control number 0915-0048.)

**§ 57.307 Maximum amount of nursing student loans.**

The total of the nursing student loans made from the fund to any student for an academic year may not exceed \$2,500. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9-month academic year may be proportionately increased. The total of all nursing student loans to any student may not exceed \$10,000.

**§ 57.308 Nursing student loan promissory note.**

(a) *Promissory note form.* Each nursing student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 6 percent per year.

(2) Each promissory note must contain an acceleration clause provided by the Secretary, which will permit the acceleration of delinquent loans at the school's option.

(3) A copy of each executed note must be supplied by the school to the student borrower.

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

(Approved by the Office of Management and Budget under control number 0915-0095.)

**§ 57.309 Payment of nursing student loans.**

(a) Nursing student loans from any fund may be paid to or on behalf of student borrowers in installments

considered appropriate by the school except that a school may not pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines the student needs for that period.

(b) No payment may be made from a fund to or on behalf of any student borrower if at the time of the payment the borrower is not a full-time or half-time student.

**§ 57.310 Repayment and collection of nursing student loans.**

(a) Each nursing student loan, including accrued interest, will be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Repayment of a loan must begin 9 months after the student ceases to be a full-time or half-time student, except that if a borrower reenters the same or another school as a full-time or half-time student within the 9-month period, the date upon which interest will accrue and the repayment period will begin will be determined by the date upon which the student last ceases to be a full-time or half-time student at that school.

(1) The following periods will be excluded from the 10-year repayment period: (a) All periods up to a total of 3 years of active duty performed by the borrower as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Corps or the U.S. Public Health Service Commissioned Corps; (ii) all periods up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods up to a total of 5 years during which the borrower is pursuing a full-time course of study at a school leading to a baccalaureate degree in nursing or an equivalent degree, or to a graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist). For purposes of this paragraph, "otherwise pursuing advanced professional training in nursing" shall include only full-time training, beyond the first diploma or degree in nursing received by the particular borrower, of at least 1 academic year which will advance the borrower's knowledge of and strengthen his or her skills in the provision of nursing services.<sup>2</sup>

<sup>2</sup>Individuals who received nursing student loans prior to July 1, 1969, remain subject to the repayment provisions of 42 CFR 57.314(a)(3)(1976) as adopted on February 4, 1974. These provisions can be found at 39 FR 16473 (May 9, 1974), and a copy can be obtained by writing the Division of Student Assistance, Bureau of Health Professions,

(2) Subject to the provisions of paragraph (b)(3) of this section, a borrower must establish a repayment schedule with the school providing for payments not less often than quarterly. Any borrower whose repayment becomes more than 60 days past due must be placed on a monthly repayment schedule by the school. A borrower may at his or her option and without penalty, prepay all or part of the principal and accrued interest at any time.

(3) A school may grant forbearance whenever extraordinary circumstances such as unemployment, poor health or other personal problems temporarily affect the borrower's ability to make scheduled loan repayments.

(b) *Collection of nursing student loans.* (1) Each school at which a fund is established must exercise due diligence in the collection of nursing student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview (individually or in groups) with the borrower prior to disbursing NSL funds in any academic year. During the entrance interview the school must obtain documentation which indicates that the borrower is aware of the rights and responsibilities associated with NSL funds and personal information which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. The requirement of this subparagraph may be met by correspondence if the school determines that a face-to-face meeting (individually or in groups) is impracticable.

(ii) Conduct and document an exit interview (individually or in groups) with the borrower. During the exit interview, the school must provide each borrower with information necessary to carry out the terms of repayment, remind the borrower of the rights and responsibilities associated with NSL funds, and update the personal information collected prior to disbursing NSL funds which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. If the borrower terminates studies without advance notice, the school must document

attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail.

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation 1 to 3 months prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least four documented and reasonably spaced attempts to contact the borrower, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective; and

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary.

(2) With respect to any nursing student loan made after June 30, 1969, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due, and in the case of a borrower who is entitled to a deferment under section 836(b)(2) of the Act, or cancellation or repayment under section 836(b)(3) of the Act, for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed \$1 for the first month or part of a month by which the installment or evidence is late and \$2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt

of the notice of the charge by the borrower.

(3) With respect to any nursing student loan made after June 30, 1969, the school may require the borrower to make payments of at least \$15 per month on all outstanding nursing student loans during the repayment period.

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the Federal Government will absorb the Federal share of the loss by permitting the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

(Approved by the Office of Management and Budget under control number 0915-0095.)

#### § 57.311 Cancellation of nursing students loans for disability or death.

(a) *Permanent and total disability.* The Secretary will cancel a borrower's indebtedness in accordance with section 836(b)(4) of the Act if the borrower is found to be permanently and totally disabled on recommendation of the school and as supported by whatever medical certification the Secretary may require. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Secretary expects to continue for a long time or to result in death.

(b) *Death.* The Secretary will cancel a borrower's indebtedness in accordance with section 836(b)(4) of the Act upon the death of the borrower. The school to which the borrower was indebted must secure a certification of death or whatever official proof is conclusive under State law.

#### § 57.312 Repayment of loans for service in a shortage area.<sup>3</sup>

(a) *Service in a shortage area.* Subject to the availability of funds, a person

<sup>3</sup> Effective November 22, 1982, the Secretary stopped accepting applications under § 57.312 because Federal funds are not available for this provision.

who: (1) Has obtained a degree as specified in section 836(h)(1)(A) of the Act; (2) has obtained one or more nursing student loans or any other loans necessary for costs (including tuition, books, fees, equipment, living and other expenses which the Secretary determines were necessary) of attending a school of nursing; and (3) enters into an agreement with the Secretary to serve as a full-time registered nurse for at least 2 consecutive years in a shortage area determined by the Secretary, is entitled to have a portion of these loans repaid by the Secretary in accordance with paragraph (b) of this section. Prior to entering an agreement for repayment of loans, other than nursing student loans, the Secretary will require an individual to provide evidence satisfactory to the Secretary of the existence and reasonableness of the education loans, including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

(b) *Repayment.* Loan repayment will be made by the Secretary to persons who meet the conditions set forth in paragraph (a) of this section. Payment will be as follows:

(1) Upon completion by the borrower of the first year of service as specified in the agreement, the Secretary will pay 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service;

(2) Upon completion by the borrower of the second year of service, the Secretary will pay another 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service;

(3) Upon completion by the borrower of a third year of service, the Secretary will pay another 25 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service; and

(4) No more than 85 percent of the principal of any loan will be paid under this section.

(Approved by the Office of Management and Budget under control number 0915-0048.)

#### § 57.313 Loan cancellation for full-time employment as a registered nurse.

(a) *For loans made after November 18, 1971, and before September 29, 1979.* A person who: (1) Received one or more nursing student loans after November 18, 1971, and before September 29, 1979; (2) is in compliance with the requirements of Title VIII of the Act and

these regulations; and (3) engages in full-time employment as a registered nurse (including teaching in any of the fields of nurse training or service as an administrator, supervisor, or consultant in any of the fields of nursing) in any public or nonprofit private agency, institution, or organization (including neighborhood health centers) is entitled to have a portion of these nursing student loans canceled as follows: 15 percent of the total amount of the loans plus accrued interest on the loan which is unpaid on the first day of his or her service, for each of the first, second, and third year of service; and 20 percent of the total amount of the loan plus accrued interest on the loan for each complete fourth and fifth year of service thereafter, up to 85 percent of the total of the loans, plus accrued interest.

(b) *Continuation of provisions for cancellation of loans made prior to November 18, 1971.* A person who received one or more nursing student loans prior to November 18, 1971, may still receive cancellation of these loans for service under section 836(i) of the Act. The regulations set forth in 42 CFR 57.316 (a) and (b)(6) (1976), as adopted on February 4, 1974, remain applicable to cancellation on this basis. The provisions can be found at 39 FR 16473 (May 9, 1974) and a copy can be obtained by writing to the Division of Student Assistance, Bureau of Health Professions, Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(c) The determination of whether a person is entitled to have any portion of his or her nursing student loan canceled for full-time employment as a registered nurse will be made by the institution to whose fund his or her loan is payable, upon receipt and evaluation of an application for cancellation from that person.

#### § 57.313a Loan cancellation reimbursement.

In the event that insufficient funds are available to the Secretary in any fiscal year to enable him or her to pay to all schools their proportionate shares of all loans and interest canceled under this subpart for full-time employment as a nurse, death, or disability:

(a) Each school will be paid an amount bearing the same ratio to the total of the funds available for that purpose as the principal of loans canceled by that school in that fiscal year bears to the total principal of loans canceled by all schools in that year; and

(b) Any additional amounts to which a school is entitled will be paid by the Secretary at the time of distribution of

the assets of the school's fund under section 839 of the Act.

#### § 57.314 Repayment of loans made after November 17, 1971, for failure to complete a program of study.\*

In the event that the Secretary undertakes to repay educational loans under section 836(j) of the Act, he or she will use the following criteria to make a determination as to each applicant's eligibility:

(a) An applicant will be considered to have failed to complete the course of study in nursing for which an eligible education loan was made upon certification by a school of nursing that the individual ceased to be enrolled in the school subsequent to November 17, 1971:

(b) An applicant will be considered to be in exceptionally needy circumstances if, upon comparison of the income and other financial resources of the applicant with his or her expenses and financial obligations, the Secretary determines that repayment of the loan would constitute a serious economic burden on the applicant. In making this determination, the Secretary will take into consideration the applicant's net financial assets, his or her potential earning capacity, and the relationship of the income available to the applicant to the low-income levels published annually by the Secretary under paragraph (c) of this section;

(c) An applicant will be considered to be from a low-income family if the applicant comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in this program, and the family has no substantial net financial assets. Income levels as adjusted will be published annually by the Secretary in the Federal Register;

(d) An applicant will be considered to be from a disadvantaged family if the individual comes from a family in which the annual income minus unusual expenses which contribute to the economic burdens borne by the family does not exceed the low-income levels published by the Secretary under paragraph (c) of this section and the family has no substantial net financial assets;

(e) An applicant will be considered as not having resumed his or her nursing

studies within 2 years following the date the individual ceased to be a student upon certification so stating from the applicant; and

(f) An applicant will be considered as not reasonably expected to resume his or her nursing studies within 2 years following the date upon which he or she terminated these studies, based upon consideration of the reasons for the applicant's failure to complete these studies, taking into account such factors as academic, medical, or financial difficulties. The Secretary will only repay education loans made after November 17, 1971.

#### § 57.315 Records, reports, inspection, and audit.

(a) *Records and reports.* (1) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its nursing student loan fund that the Secretary may find necessary to carry out the purposes of the Act and these regulations. All required reports must be submitted to the Secretary within 45 days of the close of the reporting period. Any such school which fails to submit any completed required report within 45 days of the close of the reporting period must place the revolving fund and all subsequent collections into an interest bearing account and make no new loans until the Secretary determines that the school is in compliance with the requirement. Any school that remains in noncompliance under this provision for more than 6 months will be terminated from participation in the program and will be required to return all funds to the Department.

(2) The following student records must be retained by the school for 5 years after the individual student ceases to be a full-time or half-time student:

- (i) Approved student applications for nursing student loans;
  - (ii) Documentation of the financial need of applicants; and
  - (iii) Copy of financial aid transcripts.
- (3) The following repayment records for each individual borrower must be retained for at least 5 years from the date of retirement of a loan:
- (i) The amount and date of each loan;
  - (ii) The amount and date of each payment or cancellation;
  - (iii) Records of periods of deferment;
  - (iv) Date, nature, and result of each contract with the borrower or proper endorser in the collection of an overdue loan;

(v) Copies of all correspondence to or from the borrower and endorser;

\* Effective November 26, 1984, the Secretary stopped accepting applications under § 57.314 because Federal funds are not available for this provision.

(vi) Copies of all correspondence with a collection agency related to the individual borrower;

(vii) Copies of all correspondence with a credit bureau related to an individual borrower; and

(viii) Copies of all correspondence relating to uncollectible loans which have been written off by the Federal Government or repaid by the school.

(4) The school must also retain other records as the Secretary may prescribe. In all cases where questions have arisen as a result of a Federal audit, the records must be retained until resolution of all questions.

(b) *Inspection and audit.* (1) Any application for a Federal capital contribution will constitute the consent of the applicant school to inspection and fiscal audit, by the Secretary and the Comptroller General of the United States or any of their duly authorized representatives, of the fiscal and other records of the applicant school which relate to the Federal capital contribution or Federal capital loan.

(2) The school must comply with the audit requirements of the Department of Health and Human Services' Administration of Grants regulations which are set forth in 45 CFR Part 74.

(c) Institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control number 0915-0047.)

#### § 57.316 Nondiscrimination.

Participating schools are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations apply:

(a) Section 855 of the Act (42 U.S.C. 298b-2) and its implementing regulations, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs);

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulations, 45 CFR Part

80 (prohibiting discrimination in federally assisted programs on the grounds of race, color, or national origin);

(c) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and its implementing regulations, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs);

(d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulations, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap); and

(e) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and its implementing regulations, 45 CFR Part 90.

#### § 57.316a Performance standard.

On June 30, 1986, and on each June 30 thereafter, except as provided in paragraph (b) of this section, each school must have a delinquency rate (as calculated in paragraph (a) of this section) of not more than 5 percent. All accounts overdue by more than 60 days must be considered delinquent.

(a) The delinquency rate for each school must be calculated by dividing the sum of the total amount of principal outstanding on all loans delinquent by the total principal amount loaned for all loans in repayment status.

(b) Any school that has a delinquency rate greater than 5 percent on June 30, 1986, or on June 30 of any year thereafter will be required to:

(1) Reduce its delinquency rate by 50 percent (or a school with a delinquency rate below 10 percent must reduce its rate to 5 percent) by the close of the following 6-month period; and

(2) By the end of each succeeding 6-month period, reduce its delinquency rate to 50 percent of the required rate for the previous 6-month period, until it reaches 5 percent.

(c) Any school subject to the provisions of paragraph (b) of this section which fails to comply with those requirements will receive no new NSL funds and will be required to:

(1) Place the revolving fund monies and all subsequent collections into an insured interest-bearing account;

(2) Make no loan disbursements; and

(3) By the end of the succeeding 6-month period, reduce its delinquency rate to 50 percent of the rate it failed to achieve under paragraph (b) of this section, or 5 percent.

A school that meets the requirements of subparagraph (c)(3) of this section will be permitted to resume the use of its NSL funds, but must continue to comply with the requirements of subparagraph (b)(2) of this section if its delinquency rate is still greater than 5 percent.

(d) Any school subject to the provisions of subparagraph (c)(3) of this section which fails to comply with those requirements will be terminated from the program and must return all Federal funds in the loan-account to the Department. Any school which has been terminated must continue to pursue collections and may reapply for participation in the program only when it has attained a delinquency rate of 5 percent or less.

#### § 57.317 Additional conditions.

The Secretary may, with respect to any agreement entered into with any school under § 57.305, impose additional conditions prior to or at the time of any award when in his or her judgment the conditions are necessary to assure or protect advancement of the purposes of the agreement, the interest of the public health, or the conservation of funds awarded.

#### § 57.318 Noncompliance.

Whenever the Secretary finds that a participating school has failed to comply with the applicable provisions of the Act or the regulations of this subpart he or she may, on reasonable notice to the school, withhold further payments of Federal capital contributions and take other action, including the termination of any agreement, as he or she finds necessary to enforce the Act and regulations. In such case no further expenditures shall be made from the nursing student loan fund or funds involved until the Secretary determines that there is no longer any failure of compliance.

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