Sunshine Act Meetings

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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Thursday, May 15, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Citizens State Bank of St. Francis, St. Francis, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, May 15, 1986; (2) accept the bid for the transaction submitted by St. Francis State Bank and Trust Company, St. Francis, Kansas, a newly-chartered State nonmember bank; (3) approve the applications of St. Francis State Bank and Trust Company, St. Francis, Kansas, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in The Citizens State Bank of St. Francis, St. Francis, Kansas, and for consent to exercise full trust powers; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 2:08 p.m., and at 7:45 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted: (1) A resolution (a) making funds available for the payment of insured deposits made in Saddleback National Bank, Laguna Hills, California, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, May 15, 1986; (b) accepting the bid of Landmark Bank, La Habra, California, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank; (c) designating Landmark Bank as the agent for the Corporation for the payment of the insured and fully secured or preferred deposits of the closed bank; (d) making funds available for an advance payment to uninsured depositors and other general creditors of the closed bank equal to 65 percent of their uninsured claims; and (2) an Order approving the application of Landmark Bank, La Habra, California, for consent to purchase certain assets of and to assume the liability to pay certain deposits made in Saddleback National Bank, Laguna Hills, California, and for consent to establish the sole office of Saddleback National Bank as a branch of Landmark Bank.

In reconvening the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 19, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-11544 Filed 5-19-86; 2:44 pm]

BILLING CODE 6714-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-21]

TIME AND DATE: Tuesday, May 27, 1986, at 10:00 a.m.

PLACE: ROOM 117, 701 E. STREET, NW., WASHINGTON, DC. 20436.

STATUS: OPEN TO THE PUBLIC.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   a. Certain Non-Contract Laser Precision Dimensional Measuring Devies and Components Thereof (Docket Number 1312).
5. Investigation 731-TA-270 [Final] (64K Dynamic random access memory components from Japan)—briefing and vote.
6. Investigation 701-TA-255 [Final] and 731-TA-275/277 [Final] (Oil country tubular goods from Argentina, Canada, and Taiwan)—briefing and vote
7. Items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, (202) 523-0161.

Kenneth R. Mason,

Secretary.

May 16, 1986.

[FR Doc. 86-11472 Filed 5-19-86; 8:45am]

BILLING CODE 7020-02-M

3

NATIONAL CREDIT UNION ADMINISTRATION

Previously Held Emergency Meeting

TIME AND DATE: 2:15 p.m., Thursday, May 15, 1986.

PLACE: 1776 G Street, NW., Washington, DC 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Delegation of Authority.

The Board unanimously voted that the Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board unanimously voted to close the meeting under exemptions (8) and (9)(A)(ii). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady

Secretary of the Board.

[FR Doc. 86–11524 Filed 5–19–86; 8:45 am]

BILLING CODE 1535-01-M

4

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.-5:00 p.m., Tuesday, June 3, 1986.

PLACE: National Courts Building, Room 309 (Courtroom 9), 717 Madison Place NW., Washington, DC 20005.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Coce).

AGENDA (TENTATIVE): Meeting of Board of Directors convened. Matters to be considered: (1) Report on Irish Peace Institute conference; (2) personnel matters; (3) preliminary procedures for the submission, selection, and management of proposals for funding; and (4) essay contest.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: May 14, 1986.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 86–11536 Filed 5–19–86; 8:45 am]

BILLING CODE 6820-PA-M

federal register

Wednesday
May 21, 1986

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

[PHS-1476]

Health Education Assistance Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise existing regulations governing the Health Education Assistance Loan (HEAL) program, authorized by the Public Health Service Act (the Act). These proposed revisions would improve the procedures at schools and lending institutions for making, servicing, and collecting HEAL loans and would clarify the rights and responsibilities of lenders, schools, borrowers, and the Federal Government.

DATE: As discussed below, comments are invited. To be considered, comments must be received by July 21, 1986.

ADDRESSES: Written comments should be addressed to Mr. Thomas D. Hatch, Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7-74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, BHPr; telephone: 301 443-4540.

SUPPLEMENTARY INFORMATION: On August 26, 1983, the Department published final regulations amending 42 CFR Part 60, which governs the HEAL program. The final regulations incorporated a number of technical changes resulting from the enactment of Pub. L. 97-35, as well as responding to public comments received on the interim-final regulations published on August 13, 1978.

Recent reviews and assessments of the HEAL program by the Department have identified a number of problems in the program's administration. For example, because of the high cost of borrowing under the HEAL program and the large loan amounts that students receive, some HEAL borrowers following graduation may face large debt burdens that they may not be able to repay. In addition to their HEAL indebtedness, many students who receive HEAL loans also receive Health Professions Student Loans, as well as loans under programs administered by the Department of Education. Although a certain level of indebtedness is generally expected for health professions students to complete their education, it has been found the some students borrow in excess of what is required to cover their educational expenses. The proposed regulations would increase each HEAL school's authority and responsibility to limit loan amounts, as school officials would be required to compare the full financial assets of each HEAL applicant with the estimated cost of attendance at the school.

This proposed rule would also impose additional responsibilities on HEAL schools to better prepare students for their responsibilities as HEAL borrowers. HEAL lenders and borrowers are frequently located in different geographic areas and, therefore, many lenders do not conduct personal interviews with HEAL loan applicants. However, since each HEAL loan applicant must be enrolled or accepted for enrollment at a school before applying for a HEAL loan, school officials are able to meet face-to-face with the students. Accordingly, the proposed revisions to the regulations would further enlarge the school's role in the loan-making process and the loan servicing procedures.

The Department has found that some of the loan servicing and collection activities currently employed by lenders have not been effective. Thus, this proposed rule would broaden the debt management responsibilities of the lenders to encourage practices which would more effectively prevent default of HEAL loans and require that each lender follow procedures as stringent as it follows when it makes loans which are not guaranteed.

The Secretary believes that these changes will significantly strengthen the working relationship and cooperation that exists among the borrowers, lenders, schools, and the Department by requiring more active relationships. The Secretary invites public comments on these proposed revisions to the regulations and welcomes suggestions of any additional revisions to strengthen the lenders' debt management and loan collection practices, the schools' role in the program administration, and discourage HEAL borrowers from defaulting on their loans.

This notice of proposed rulemaking does not include the modifications required by Pub. L. 99-129, enacted on October 22, 1985, because the Department intends to publish other regulations to implement those statutory changes.

In addition to the proposed revisions discussed below, the Secretary is considering a proposal to set-aside a percentage of the total insurance authority to be used to provide contracts for lenders with low default rates. There are several methods by which each lender's default rate might be calculated and the set-aside distributed. For example, the average default rate of all lenders might be determined, or the average rate of comprehensive and standard lenders might be calculated separately and set-aside authority distributed to the lenders with default rates below the average. The Secretary believes that this set-aside would be an incentive to every lender to use debt management procedures which would result in the lowest possible default rate. The Secretary invites comments on the set-aside proposal, on the method of calculation of each lender's default rate, and the appropriate percentage of the total authority which should be set-aside for this purpose.

The proposed revisions are summarized below according to the section numbers and titles of the regulations.

Section 60.1 What is the HEAL program?

Paragraph (c) of this section generally discusses the Secretary's role in the HEAL program. This notice proposes to revise that paragraph to indicate that the Secretary will report HEAL loan defaulters to consumer credit reporting agencies and, where appropriate, to the Internal Revenue Service or to the Department of Justice for litigation when pursuing collections on loans assigned to the United States.

Paragraph (d) is proposed to be added as a general penalty warning statement concerning possible consequencies of illegal actions.

Section 60.5 Who is an eligible student borrower?

Section 731(a)(1)(A) of the Act states that a student must agree that all funds received under a HEAL loan must be used solely for tuition, other reasonable educational expenses, including fees, books, and laboratory expenses, and reasonable living expenses. Section 60.5(g), which implements this statutory provision, has been misinterpreted as allowing the use of loan funds for vacation trips and other personal expenses not necessary to attend the school. The Department intends to prevent such abuse of loan funds by simplifying paragraph (g) to stress the test of reasonableness of education and living expenses, and through other regulatory revisions discussed below. The Department, however, does not wish to prohibit the use of HEAL funds for supplies and equipment which the school considers necessary for all students, and are included as reasonable educational expenses.

Section 60.5(g) is being further amended to delete the provision that a student may receive a HEAL loan to pay interest on HEAL loans. This revision is based on the Department's interpretation of section 731(a)(1)(B) of the statute as indicating that HEAL loans for the payment of interest on HEAL loans are intended for nonstudents who received HEAL loans prior to August 13, 1981, as provided in § 60.6

To ensure that HEAL borrowers do not receive more loan money than is actually needed for education and related expenses, the Secretary proposes that, to be eligible to receive a HEAL loan, a student must demonstrate a financial need. This regulation proposes to require school officials to determine the maximum loan amount by calculating the difference between the costs of the education and all financial assets of the applicant, including student aid or other financial assistance (including income of the applicant, the applicant's spouse, and the applicant's family) that the applicant has received or will receive during the period of the loan. The HEAL program is not limited specifically to students who can qualify for need-based scholarships, nor is it a loan program with interest subsidies. However, sound debt management and the HEAL statute dictate that HEAL funds be used only for educational costs, reasonable living expenses, directly related to the education. This notice would add a new paragraph (h) to this section to indicate this eligibility criterion to be implemented by the HEAL school.

Section 60.7 The loan application process.

Although students applying for HEAL loans are generally considered to be independent, it is recognized that many have spouses who work and many other receive some parental support—either as loans or outright gifts. Thus, in calculating the student's need for a HEAL loan, it is important to consider any student's income that is or can be derived from all sources, including family contributions. The Secretary proposes to insert new paragraphs (a)(2) and (c)(2) to state that each time the applicant seeks a loan, the applicant will be informed of the Federal debt collection activities and must sign a certification statement attesting that he or she has been notified of the actions the lender or the Federal Government can take in the event that the applicant fails to meet the schedule payments. This statement is to be kept by the lender. Paragraphs (a)(4) and (c)(5) are proposed to require that the applicant certify on the application that information provided reflects the applicant's total assets and indebtness. The Secretary proposes to revise paragraph (a)(3)(iii) to provide information on other student assistance which is required in the HEAL application to determine the financial assets of the applicant.

Section 60.8 What are the borrower's major rights and responsibilities?

Currently, the holder is required to notify the borrower of the sale of a loan or the identity of a servicing party other than the lender only if the borrower is required to direct loan payments or other correspondence on loan matters to a new address. The Secretary proposes to revise paragraph (a)(5) of this section to indicate that the borrower must be informed in all cases where the HEAL loan is sold or where the loan is serviced by a party other than the lender. This proposed revision is more fully described in § 60.38 of this preamble.

A second revision to this section involves the borrower's right to forbearance of his or her loan payments. The Secretary believes that the judicious use of forbearance can encourage and assist a borrower to remain in good standing regarding the loan rather than having little choice other than to default. Currently, most lenders and assignees do grant forbearance for situations described in § 60.37, but a few lenders do not. To promote the use of forbearance as a mechanism to avoid default, the Secretary is proposing to require a lender to grant forbearance in some instances. This change is reflected in paragraph (a)(11) of this section and more fully described in § 60.37 of this preamble.

This notice also proposes to revise paragraph (b)(5) of this section to clarify the 5-year prohibition against the discharge of a HEAL loan in bankruptcy contained in section 733(g) of the Act. There has been some confusion in the interpretation of the current regulations since the provision does not specifically prohibit discharge in bankruptcies filed under Chapter 7 or Chapter 13 of the Bankruptcy Act. The Secretary has revised the provision to indicate that the prohibition applies to bankruptcy under any chapter of the Bankruptcy Act.

Section 60.10 How much can be borrowed?

The Secretary believes that permitting a borrower to receive in one lump sum the maximum loan amount for 1 academic year, up to $20,000 for some students, places an unnecessary burden on the student to manage those funds over an entire year and to incur interest unnecessarily. This notice proposes to revise paragraph (a) to allow the borrower to receive under each loan only that amount which is needed over a maximum period of 6 months, reducing the current maximum HEAL loan period of 1 academic year. This change allows the school to verify more frequently the student's continued eligibiity for a HEAL program loan and the student's financial status. The Secretary chooses to specify 6 months rather than a portion of the academic year, such as a semester or quarter, because of the wide variety of academic calendars with which the HEAL program must deal.

Section 60.11 Terms of repayment.

Although the existing regulations permit lenders to establish repayment schedules requiring monthly or less frequent installments, most HEAL lenders have traditionally established repayment schedules requiring monthly installments. The Secretary believes that this practice of establishing monthly repayment schedules is useful in preventing defaults. Therefore, the Secretary proposes to revise paragraph (e) of this section to require monthly repayment schedules.

Paragraph (e) is also revised to specify that the borrower must contact the lender between 30 and 60 days before the commencement of the repayment period. Current regulations state only that this contact occur during the grace period. Another revision proposed allows the lender to establish a monthly repayment schedule with substantially equal installment payments if the borrower does not respond to the contact.

Section 60.14 The insurance premium.

Section 732(c) of the Act authorizes the Secretary to charge each lender an insurance premium for insurance against the default, death, disability of the borrower, or in the event that the loan is discharged in bankruptcy. The lender may pass the cost of the insurance on to the borrower. The Secretary is proposing to continue the current insurance premium and to clarify that it is due to the Secretary on the date of disburesment of the loan and in all cases must be received by the Secretary within 60 days of disbursement to establish the guarantee of the Federal government, thereby avoiding the withholding of insurance coverage from the lender. For premiums not received within 30 days but received within 60 days of disbursement, the Secretary will charge the lender a late fee on a daily basis at the same rate as the interest rate that the lender charges for the HEAL loan for which the insurance premium is past due. The lender must pay this charge and may not pass it on to the borrower.

The Secretary is proposing to eliminate the requirement in the current regulations for quarterly notifications published in the **Federal Register** when the insurance premium rate remains unchanged by modifying the regulation to state that the rate of the insurance premium shall not exceed the statutory maximum.

Section 60.15 Other charges to the borrower.

In an effort to encourage borrowers to make each installment payment when due, this section is revised to require lenders to charge a late charge when the borrower fails to pay the installment payment within 10 days after its due date. Current regulations state that the lender may charge a late charge. Further, the Secretary has deleted the reference to State law to facilitate program management and to maintain a consistent policy regarding late charges throughout the United States.

Section 60.19 Forms.

This section currently states that all HEAL forms are provided by the Secretary. Several lenders and assignees, particularly the Student Loan Marketing Association, have expressed the desire to print certain HEAL forms for their own use. The Secretary proposes to accept the proposal and to revise this section accordingly.

The Secretary is also proposing to include language which state that any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudulently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

Section 60.20 The Secretary's collection efforts after payment of a default claim.

The Secretary is proposing to revise this section to incorporate the current reference to the Federal Claims Collection Standards, the OMB Circular A-129, issued May 9, 1985, and the Department's proposed Claims Collection Regulation, published on May 2, 1985 (50 FR 18694).

Section 60.31 The application to be a HEAL lender.

To be a HEAL lender, an eligible organization must submit an application to the Secretary. In addition to the existing requirements, the Secretary is proposing to require each applicant to submit written procedures for approving, servicing and collecting HEAL loans. These procedures must be at least as stringent as the procedures set out in §§ 60.33 through 60.35; however, lenders must use procedures which are as stringent or more stringent than those included in the regulations if the lender has demonstrated the effectiveness of such procedures and if the lender uses those procedures on loans for which the lender has no Federal, State, or other third party guarantee.

Section 60.32 The HEAL lender insurance contract.

This notice proposes to clarify paragraph (a)(2) of this section to specify that HEAL insurance is conditioned on compliance by holders of the loan with the HEAL statute, regulations, and administrative policies established by the Secretary and each lender's own loan management procedures, as submitted to the Secretary under § 60.31. It would also require that the lender's loan management procedures for HEAL program loans be at least as stringent as the procedures used for managing similar loans for which the lender has no Federal, State, or other third party guarantee. This paragraph of the existing regulations references only the requirement for compliance with the regulations.

Paragraph (c)(2) has been added to clarify to lenders that the Secretary will revoke the comprehensive contract of any lender who utilizes procedures inconsistent with HEAL statute, regulations, policies, or its own loan management procedures submitted to the Secretary under § 60.31. However, the Secretary does not wish to penalize those schools and borrowers who rely on the lender for HEAL loans. Consequently, the Secretary may allow the lender to continue to disburse loans, but only under a standard contract until the lender's procedures are in compliance. This paragraph in no way negates any provisions of § 60.43, entitled "*Limitation, suspension, or termination of the eligibility of a HEAL lender.*"

The Secretary also proposes to add new paragraphs (c)(3) (i) and (ii) to this section which would permit the Secretary to set aside a percentage from the total insurance authority to be used to provide contracts for lenders who will make HEAL loans at a rate of interest at least one-half percentage point below the maximum permitted under § 60.13. The amount set aside would be announced in the **Federal Register** and would remain available until March 31 of each fiscal year or until it became exhausted, whichever occurred first. After this date, any amount remaining in the set-aside would be available to any eligible applicant. The Secretary normally acts on lender applications within a week of receipt. In taking action on applications received within this time-frame, the Secretary proposes to approve an application from a reduced rate lender in preference to one from a full-rate lender if there is insufficient authority to approve both.

An insurance contract made to a lender who agreed to make loans at least one-half percentage point below the maximum rate would be in effect only so long as that lender did not exceed this interest rate, and otherwise complied with the terms of its contract with the Secretary. Further, the Secretary believes that it would be helpful to make borrowers and schools aware of the lower interest rate agreed to by the lender and the Secretary so that students could seek HEAL loans from the lender with the lowest interest rates. Thus, lenders would be required to inform the student and the school at the time of application as to the current interest rate ceiling agreed to by the lender and the Secretary.

Section 60.33 Making a HEAL loan.

Current regulations allow the lender to rely in good faith upon statements in the application papers. Proposed revisions in the regulations would limit this reliance to statements which are not in conflict with the report of the applicant's credit history, financial aid transcript(s), or other information available to the lender. Thus, the lender would be required to exercise sound business judgment in its loan-making decisions, including the use of procedures which are at least as stringent as those used for similar loans for which the lender has no Federal, State, or other third party guarantee.

The Secretary proposes to further revise this section to require lenders to determine the applicant's credit worthiness prior to making the HEAL loan. The Secretary proposes to require that HEAL lenders obtain a report of the applicant's credit history from a national consumer credit reporting agency and a copy of a student applicant's financial aid transcript(s) for use in making this determination. The lender would not be permitted to determine that an applicant is credit worthy if the applicant is currently in default on any loan (commercial, consumer, or educational) or if the applicant is delinquent on any Federal debt(s) until the delinquent account is made current or satisfactory arrangements are made between the affected lender(s) or agency (agencies) and the debtor. The lender must receive a letter from the authorized official(s) of the affected lender(s) or agency (agencies) stating that the borrower has taken satisfactory actions to bring the account into good standing. It is the responsibility of the loan applicant to assure that the lender has received each such letter.

Although existing regulations allow the lender to make the check payable to the student borrower alone, virtually all lenders require that the borrower authorize joint payment of the proceeds. The Department believes that this is proper management of loan funds. Thus, the Secretary also proposes to revise this section to require that the lender disburse the HEAL loan proceeds only by means of a check payable jointly to the student borrower and the HEAL school.

Section 60.34 HEAL loan account servicing.

The Secretary proposes to eliminate late conversion of loans to repayment status. The proposed regulation, therefore, would require lenders to contact borrowers 30 to 60 days before the commencement of the repayment period to establish the terms of repayment, and would provide that lenders may not charge borrowers for the additional interest, penalties, charges, or fees that accrue when a lender does not contact the borrower within this time period and a late conversion results.

To encourage payment of some of the accrued debt or interest at an early stage, the Secretary proposes to add a new paragraph (c) to this section to require lenders to notify the borrower every 6 months of the balance owed for the HEAL loan. The purpose of this notice is to: (1) Make borrowers aware of the significant amount of debt that continues at accrue as interest is compounded; (2) encourage borrowers to make payments prior to the onset of the repayment period; and (3) remind them of the option to pay all or part of the loan at any time without penalty.

Section 60.35 HEAL loan collection.

The Secretary proposes to make a number of changes in the regulations to strengthen the due diligence procedures required of lenders in the collection of loans. These revisions are intended to reduce default claims by increasing efforts to locate and contact delinquent borrowers. Some of these methods have been used successfully by the Secretary in obtaining payment from the borrower during the preclaim assistance and after the Federal Government has paid a default claim to the lender. Therefore, the Secretary proposes that these methods should be instituted by the lender before the claim is filed.

The Secretary proposes to revise § 60.35 to require that lenders contact the borrower who is late in payment and any endorser in writing, as part of each of the four follow-up notices that are now required during the 120-day period of delinquency following the first missed payment of the 120-day period. The second demand notice for a delinquent account shall inform the borrower that the account will be referred to consumer credit reporting agencies if payment is not made. The last contact must also consist of a telephone or personal contact. Currently, § 60.35(a) requires lenders to "attempt to contact" the borrower and endorser.

The Secretary believes that some lenders are not using effective skip-tracing techniques since preclaim assistance has been successful in locating borowers which the lenders claimed were "lost". This revision proposes to require that the lenders use skip-tracing activities which are at least as stringent or more stringent as those used by commercial lenders to locate borrowers delinquent in the repayment of loans for which the lender has no Federal, State, or other third party guarantee. Lenders would be required to use several skip-tracing procedures, such as contacting any school attended by the borrower and checking lists of members of professional associations. The Secretary believes that the borrower is more likely to be located under the proposed procedures.

Further, paragraph (b) is revised to require lenders to request preclaim assistance when a borrower is 90 days delinquent in making a payment. Existing regulations require the lender to make this request when the borrower is 60 days delinquent. The Secretary believes that by allowing the lenders the extra 30 days for their skip-tracing and loan collection activities, many requests for preclaim assistance will be averted.

The Secretary proposes that lenders use collection practices that are as extensive and as effective as those used in the collection of other loans by commercial lenders. The Secretary proposes that lenders: (1) Use collection agents; (2) institute legal proceedings, where possible, against borrowers before filing a default claim; and (3) notify a national consumer credit reporting agency of accounts overdue by more than 60 days.

Section 60.37 Forbearance.

The existing regulations provide that a lender may grant forbearance whenever unemployment, health, other personal problems, or study that is ineligible for deferment temporarily affects the borrower's ability to make scheduled payments on a HEAL loan. The Secretary proposes to revise this section to require that a lender must grant forbearance: (1) Whenever the borrower is temporarily unable to make scheduled payments on a HEAL loan; and (2) whenever the borrower continues to repay the loan in an amount commensurate with his or her ability to repay the loan. The Secretary believes that this proposed revision may prevent a borrower from defaulting on his or her loan because of temporary financial hardship, e.g., a borrower may fully intend to repay the loan, but may be able to make no or only partial payments on the loan during a specific short period of time.

A lender would not be required to grant forbearance, however, if the lender determined that default of the borrower is inevitable and that forbearance would be ineffective in preventing default. In this case, the lender would submit a claim to the Secretary. If the Secretary is not in agreement with the lender, the claim will be returned to the lender as disapproved and the lender would be required to grant forbearance.

Paragraph (b) is proposed to be revised to eliminate the provision that forbearance must be exercised in accordance with the minimum annual payment requirement described in § 60.11(d). Section 60.11(d) provides that the borrower must pay at least the amount of interest that accrues during the year on all of his or her outstanding HEAL loans. In the early years of a typical HEAL loan, the annual repayment requirement consists almost entirely of interest that accrues during the year. As described above, the purpose of forbearance is to temporarily relieve the borrower of a repayment requirement that both the borrower and the lender agree is excessive given the borrower's circumstances at the time. To maintain the current minimum annual payment requirement would effectively negate the purpose of forbearance; consequently, the Secretary proposes to eliminate it.

Under the proposed regulation, each period of forbearance granted by the lender to any borrower must not exceed 6 months and the total period must not exceed 2 years. However, when the borrower and the lender believe that there are bona fide reasons why this period should be extended, the lender may request a reasonable extension beyond the 2-year period from the Secretary. This request must document the reasons why the extension should be granted. The lender may grant the extension for the approved time period if the Secretary approves the extension request.

Section 60.38 Assignment of a HEAL loan.

The Secretary proposes to revise paragraph (a) of this section to change the buyer's notification requirements. The existing regulations require that the buyer notify: (1) The Secretary of the assignment of a loan within 30 days of the transaction; and (2) the borrower, if the assignment results in the borrower being required to make payments or direct other matters connected with the loan to a party other than the seller.

The Secretary is proposing to expand this notification process by requiring that the buyer notify the following parties in all instances of the assignment within 15 days of the transaction: (1) The Secretary; (2) the borrower; (3) the borrower's school, if the borrower is enrolled in school; and (4) other schools, if known, that the borrower attended while receiving the HEAL loan(s) from the lender.

The Secretary believes that 15 days is sufficient for the buyer to notify the parties. Further, this revision is proposed to make the provision consistent with § 60.7, setting forth the borrower's right to notification of an assignment, and to assist in keeping all interested parties informed of the loan's current status.

Section 60.40 Procedures for filing claims.

Existing regulations provide that insurance claims must be accompanied by the promissory note, the HEAL application, and a history of all payments, and that failure to submit the required documentation may result in the insurance claim not being honored. The proposed revisions would require that the lender comply with the HEAL statute, regulations, and policies. This is consistent with other similar revisions discussed previously under § 60.32.

The Secretary is proposing revisions of paragraphs (c)(1) (i) and (ii) of this section to clarify when the Secretary determines a default claim is eligible for payment and to list the documents minimally required by the Secretary for default claims.

Currently paragraphs (c)(1)(i), (c)(2), and (c)(3) of this section state that the lender has 60 days after the appropriate determination has been made to file a default claim, death claim, or disability claim. The Secretary, however, believes that 10 days is sufficient time to allow the lender to file the claim.

If the lender files a default claim and subsequently receives a notice of the first meeting of creditors, the existing paragraph (c)(1)(iii) of this section does not allow the lender to file a proof of claim with the bankruptcy court. The Secretary believes, however, that it is appropriate for the lender to file both a proof of claim and an objection to the discharge or compromise of the loan if the insurance claim has not been paid when the lender receives the notice. Further, the lender should forward this notice to the Secretary within 10 days. If the Secretary has paid the claim, the Secretary believes that the lender should file a statement to that effect with the court. The Secretary is, therefore, proposing to revise paragraph (c)(1)(iii), accordingly.

A revision proposed to paragraph (c)(2) would require that the lender submit an official copy of the Death Certificate with the death claim. A revision proposed to paragraph (c)(3) would require that the lender submit evidence of the Secretary's determination that the borrower is totally and permanently disabled with the disability claim.

Other revisions are proposed to paragraph (c)(4) of this section which affect the bankruptcy claim. To allow the Secretary sufficient time to initiate appropriate activities, the proposal states that the bankruptcy claim must be filed with the Secretary within 10 days after the lender receives a notice of the first meeting of creditors. Current regulations allow each lender 60 days in which to file the claim, but the Secretary believes 10 days to be sufficient. Further, the existing regulations require the lender to file proof of claim with the bankruptcy court; the Secretary is, however, proposing to require that the lender also file an objection to the discharge or compromise of the HEAL loan.

Section 60.42 Records, reports, and inspection requirements for HEAL lenders.

Paragraph (a)(1) is proposed to be revised to require that lenders maintain easily retrievable records of HEAL borrowers, similar to a requirement which currently exists for records maintained by schools.

As discussed above in § 60.33, the Secretary is proposing to require that, prior to making a loan, the lender determine the credit worthiness of the applicant based on the applicant's credit report and the student applicant s financial aid transcript(s) obtained from the student's school(s). The Secretary is, therefore, proposing to revise paragraph (a)(1) of this section to require that lenders keep records of the evidence of the borrower's credit worthiness, including the borrower's credit report and a copy of the student borrower's financial aid transcript(s).

The Secretary is also proposing that each lender comply with the Department's biennial audit requirements of section 705 of the Act.

Further, the Secretary is proposing that any lender who has information which indicates potential or actual commission of fraud or other offenses against the United States involving these loan funds must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

Section 60.50 Which schools are eligible to be HEAL schools?

The Secretary is proposing to modify the list of approved accrediting agencies to reflect the change in the name of the Council of Podiatry Education to the Council of Podiatric Medical Education.

Section 60.51 The student loan application.

The Secretary believes that because of the school's close proximity to the student, as compared with the lender's often distant location, the school is more capable than the lender of assuring that the student fully understands his or her responsibilities under the HEAL program. Consequently, the Secretary is proposing to enlarge the school's role in the loan-making process to require that the school conduct an entrance interview with the student in which information regarding the HEAL loan would be discussed with the student. Where feasible, this interview should be conducted face-to-face, but interview by telephone is permissible. The Secretary proposes to further revise § 60.51 to require that the school: (1) Obtain comprehensive financial aid transcript(s) on each HEAL applicant and forward a copy of each to the HEAL lender (new paragraph (d)); and (2) attest that it has no reason to believe that the borrower will not, or may not be able to, comply with the repayment requirements of the HEAL loan (new paragraph (e)). The latter requirement would provide the school with an opportunity to indicate to the lender its reservations regarding the likelihood that the borrower will repay, in cases where the school has reason to believe, based on its knowledge of the borrower and his or her circumstances, that the borrower may become a collection problem for the lender.

Also included in this section is the proposed new requirement, as referenced in § 60.5, that the HEAL loan is necessary for the borrower to pursue his or her education at the school 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 (new paragraph (f)). The Secretary believes that some borrowers may consider the program a source of discretionary money which may be used for any expense. Some borrowers may create a debt burden which is far too great for their future incomes and may then default on these loans when payments become due. Requiring the school to determine the maximum loan amount approvable for each borrower will assist in assuring that each student borrows only what is minimally necessary to pay educational expenses.

Section 60.52 The student's loan check.

The Secretary is proposing to delete the instructions to the school for dealing with checks payable only to the student to be consistent with the changes proposed in § 60.33 which require joint payment of the check. Currently, when a school receives a check payable jointly to the school and the student, the school is allowed to endorse the instrument and transmit it to the student. The Secretary believes that this does not encourage borrowers to use the HEAL money only for educational expenses. Thus, the Secretary is proposing to require that the student endorse the instrument, allow the school to collect money due to it directly, and then give the remaining funds to the student.

Section 60.53 Notification to lender of change in enrollment status.

Currently, this section states that each school must notify the holder of the loan note within 60 days following a change in the student's enrollment status. The Secretary believes, however, that 15 days is sufficient time to allow the school to notify the holder. Also, the Secretary believes that the notice should include the student's full name under which the loan was received, the current name (if different), and other necessary information. The notice, therefore, proposes to revise this section accordingly.

Section 60.56 Records.

As discussed previously, the Secretary is proposing to require a school to maintain complete and accurate records which document its increased activity and responsibility relating to each loan. This notice, therefore, proposes to revise this section accordingly.

The Secretary is also proposing to add a paragraph (c) which would require that the school must comply with the Department's biennial audit requirements of section 705 of the Act.

Section 60.60 Limitation, suspension, or termination of the eligibility of a HEAL school.

Paragraph (c)(1) of this section which referred to § 60.61, a section which did not exist, is deleted.

Section 60.61 Responsibilities of a HEAL school.

As previously discussed, the Secretary is proposing a much broader role with greater responsibilities for each HEAL school. The Secretary proposes to require schools to: (1) Conduct and document an entrance interview with the applicant student to provide information about the HEAL loan; (2) conduct and document an exit interview with the student to assure that the student is informed of all his or her responsibilities as a borrower under the HEAL program; (3) verify the accuracy and completeness of information on the HEAL application by comparing information provided by the student on the HEAL application with information which the student provided on other forms used by the school; (4) develop and utilize procedures for the receipt and disbursement of HEAL loan checks which promote the security of HEAL funds; (5) maintain and safeguard HEAL records; (6) maintain a standard student budget system to be used in the determination of the maximum loan amount approvable; and (7) notify the HEAL lender of changes in student borrower information.

Further, the Secretary is proposing that any school which has information which indicates potential or actual commission of fraud or other offenses against the United States involving these loan funds must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed new requirements in these regulations to improve debt management practices and due diligence procedures for making, servicing, and collecting HEAL loans are minimal in comparison to the overall resources of the lenders and the schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders and schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the proposed rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

Section 60.56(a) contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980 and assigned control number 0915–0054.

Sections 60.7, 60.8(a)(5) and (b)(3), 60.11(e), 60.14(a)(2), 60.31(c), 60.32(b), 60.32(c)(3)(ii), 60.33(c), (e) and (g), 60.34(b) and (c), 60.35(a)(1) and (2), 60.35(c)(3), 60.37(a), 60.38(a), 60.40(a) and (c)(1), (2), (3) and (4), 60.42(a)(1), (d) and (e), 60.51, 60.51(d) and (f)(2), 60.52(a)(1), 60.53, 60.56(a) and (c), and 60.61(a) and (b) contain information collection requirements which are subject to review by OMB under section 3504(h) of the Paperwork Reduction Act of 1980. We have submitted a copy of this proposed rule to OMB for its review of these information collections. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs—education, Loan programs—health, Medical and dental schools, Reporting requirements, Student aid.

Accordingly, 42 CFR Part 60 is proposed to be revised as follow:

(*Catalog of Federal Domestic Assistance*, No. 13.108, Health Education Assistance Loan Program)

Dated: January 27, 1986.

Donald Ian Macdonald,

Assistant Secretary for Health.

Approved: March 5, 1986.

Otis R. Bowen,

Secretary.

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The table of contents is revised to read as follows:

Subpart A—General Program Description

Subpart B—The Borrower

Subpart C—The Loan

Subpart D—The Lender

Subpart E—The School

2. The authority citation for Part 60 continues to read as follows:

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739 of the Public Health Service Act, 93 Stat. 582 (41 U.S.C. 294–294*l*).

3. In § 60.1, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 60.1 What is the HEAL program?

* * * * *

(c) The Secretary insures each lender for the losses it may incur in the event that a borrower dies, becomes disabled, files bankruptcy, or defaults on his or her loan. If a borrower defaults on a loan and the lender has complied with all HEAL statutes, regulations, and administrative policies and the Secretary pays the amount of loss to the lender, the borrower's loan is then assigned to the Secretary. Only at that time, the United States Government becomes the borrower's direct creditor and will actively pursue the borrower for repayment of the debt, including reporting the borrower's default on the loan to national consumer credit reporting agencies or to the Internal Revenue Service for purposes of locating such taxpayer or for income tax refund offset, and referral to the Department of Justice for litigation.

(d) Any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudlently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

4. In § 60.5, paragraph (g) is revised and a new paragraph (h) is added to read as follows:

§ 60.5 Who is an eligible student borrower?

* * * * *

(g) He or she must agree that all funds received under the proposed loan will be used solely for tuition, other reasonable educational expenses, including fees, books, and laboratory expenses, reasonable living expenses, and the HEAL insurance premium.

(h) He or she must require the loan to pursue the course of study at the school. This determination of the maximum amount of the loan will be made by the school, applying the considerations in § 60.51(f).

5. In § 60.7, paragraphs (a)(2), (a)(4), (c)(2) and (c)(5) are added and existing paragraphs (a)(2), (c)(2) and (c)(3) are redesignated as (a)(3), (c)(3) and (c)(4), respectively, and paragraph (a)(3)(iii) is revised, as follows:

§ 60.7 The loan applicant process.

(a) * * *

(2) The student applicant must be informed of the Federal debt collection policies and procedures in accordance with the Department's proposed Claims Collection Regulation (45 CFR Part 30) prior to the student receiving the loan. The applicant must sign a certification statement attesting that the applicant has been notified of the actions the Federal Government can take in the event that the applicant fails to meet the scheduled payments. This signed statement will be forwarded by the school to the lender and maintained by the lender as part of the borrower's official file.

(3) * * *

(iii) All financial assets of the applicant, including any student aid, familial, spousal, or personal income or financial assistance of which the school or the applicant is aware that would legally or contractually be available to the applicant or that the applicant has received or will receive during the period covered by the proposed HEAL loan.

(4) The student applicant must certify on the application that the information provided reflects the applicant's total assets and indebtedness and that the applicant has no other financial resources that are legally or contractually available to the applicant or that the applicant will receive for the period covered by the proposed HEAL loan.

* * * * *

(c) * * *

(2) The nonstudent applicant must be informed of the Federal debt collection policies and procedures in accordance with the Department's proposed Claims Collection Regulation (45 CFR Part 30) prior to the nonstudent receiving the loan. The applicant must sign a certification statement attesting that the applicant has been notified of the actions the Federal Government and the lender can take in the event that the applicant fails to meet the scheduled payments. This signed statement will be maintained by the lender as part of the borrower's official file.

* * * * *

(5) The nonstudent applicant must certify on the application that the information provided reflects the applicant's total assets and indebtedness.

6. In § 60.8, paragraphs (a)(3), (a)(5), (a)(11), (b)(3) introductory text, and (b)(5) are revised to read as follows:

§ 60.8 What are the borrower's major rights and responsibilities?

(a) * * *

(3) A lender must disburse HEAL loan proceeds as described in § 60.33(f).

* * * * *

(5) If the loan is sold from one lender to another lender, or if the loan is serviced by a party other than the lender, the holder must notify the borrower within 15 days of the transaction.

* * * * *

(11) To assist the borrower in avoiding default, the lender may grant the borrower forbearance. Forbearance, including circumstances in which the lender must grant forbearance, is more fully described in § 60.37.

(b) * * *

(3) The borrower must immediately notify the lender in writing in the event of:

* * * * *

(5) A borrower may not have a HEAL loan discharged in bankruptcy during the first 5 years of the repayment period. This prohibition against the discharge of a HEAL loan applies to bankruptcy under *any* chapter of the Bankruptcy Act, including Chapter 13. A borrower may have a HEAL loan discharged in bankruptcy after the first 5 years of the repayment period only upon a finding by the Bankruptcy Court that the non-discharge of such debt would be unconscionable and upon the condition that the Secretary shall not have waived his or her rights to reduce any Federal reimbursements or Federal payments for health services under any Federal law in amounts up to the balance of the loan.

* * * * *

7. In § 60.10, paragraph (a) introductory text is revised to read as follows:

§ 60.10 How much can be borrowed?

(a) *Student Borrower.* An eligible student may borrow an amount to be used solely for expenses, as described in § 60.5(g) incurred or to be incurred over a period of up to 6 months. The maximum amount he or she may receive for that period shall be determined by the school in accordance with § 60.51 within the following limitations:

* * * * *

8. In § 60.11, paragraph (e) is revised to read as follows:

§ 60.11 Terms of repayment.

* * * * *

(e) *Repayment schedule agreement.* At least 30 and not more than 60 days before the commencement of the repayment period, a borrower must contact the holder of the loan to establish the precise terms of repayment. The borrower may select a monthly repayment schedule with substantially equal installment payments or a monthly repayment schedule with graduated installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than five times greater than any other installment. If the borrower does not contact the lender and does not respond to contacts from the lender, the lender may establish a monthly repayment schedule with substantially equal installment payments, subject to the terms of the borrower's HEAL note.

* * * * *

9. Section 60.14 is amended by revising paragraphs (a)(1), (a)(2), and (b), redesignating (a)(3) and (a)(4) as (a)(4) and (a)(5), respectively, and adding new paragraph (a)(3) to read as follows:

§ 60.14 The insurance premium.

(a) *General.* (1) The Secretary insures each lender of a HEAL loan against losses it may suffer if the borrower defaults on the loan, dies, or becomes totally or permanently disabled, or the loan is discharged in bankruptcy. For this insurance, the Secretary will charge the lender an insurance premium, in an amount to be determined by the Secretary, for the period of time represented by the borrower's combined in-school (exclusive of deferments) and grace period. The insurance premium is due to the Secretary on the date of disbursement of the HEAL loan.

(2) The lender may charge the borrower an amount equal to the cost of the insurance premium. The cost of the insurance premium may be charged to the borrower by the lender in the form of a one-time special charge with no subsequent adjustments required. The lender may bill the borrower separately for the insurance premium or may deduct an amount attributable to it from the loan proceeds before the loan is disbursed. In either case, the lender must clearly identify to the borrower the amount of the insurance premium and the method of calculation.

(3) If the lender does not pay the insurance premium on or before 30 days after disbursement of the loan, a late fee will be charged on a daily basis at the same rate as the interest rate that the lender charges for the HEAL loan for which the insurance premium is past due. The lender may not pass on this late fee to the borrower.

* * * * *

(b) *Rate.* The rate of the insurance premium shall not exceed the statutory maximum.

* * * * *

10. Section 60.15 is amended by revising paragraph (a) to read as follows:

§ 60.15 Other charges to the borrower.

(a) *Late charges.* The lender will require that the borrower pay a late charge if the borrower fails to pay all of a required installment payment within 10 days after it due date or fails to provide written evidence that verifies eligibility for the deferment of the payment. A late charge must be equal to 5 percent of the payment due.

* * * * *

11. Section 60.19 is revised to read as follows:

§ 60.19 Forms.

All HEAL forms are approved by the Secretary and may not be changed without prior approval by the Secretary. HEAL forms shall not be signed in blank by a borrower, a school, a lender, or an agent of any of these. The Secretary may prescribe who must complete the forms, and when and to whom the forms must be sent. All HEAL forms must contain a statement that any person who knowingly makes a false statement or misrepresentation in a HEAL loan transaction, bribes or attempts to bribe a Federal official, fraudulently obtains a HEAL loan, or commits any other illegal action in connection with a HEAL loan is subject to possible fine and imprisonment under Federal statute.

12. The introductory paragraph in § 60.20 is revised to read as follows:

§ 60.20 The Secretary's collection efforts after payments of a default claim.

After paying a default claim on a HEAL loan, the Secretary attempts to collect from the borrower and any valid endorser in accordance with the Federal Claims Collection Standards (4 CFR Parts 101–105), the Office of Management and Budget Circular A–129, issued May 9, 1985, and the Department's proposed Claims Collection Regulation, published on May 2, 1985 (50 FR 18694). The Secretary attempts collection of all unpaid principal, interest, penalties, administrative costs, and other charges or fees, except in the following situations:

* * * * *

13. Section 60.31 is amended by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

§ 60.31 The application to be a HEAL lender.

(c) The applicant must submit to the Secretary its written procedures for making, servicing and collecting HEAL loans. In place of one or more of the procedures outlined in §§ 60.33, 60.34, and 60.35, the applicant must substitute procedures that the applicant considers as stringent or more stringent as those the applicant uses for loans on which it has no Federal, State, or other third party guarantee, but only after the applicant has demonstrated the effectiveness of each procedure and obtained written approval from the Secretary.

* * * * *

14. Section 60.32 is amended by revising paragraph (a)(2), redesignating paragraph (c) as (c)(1), and adding new paragraphs (c)(2) and (c)(3) to read as follows:

§ 60.32 The HEAL lender insurance contract.

(a) * * *

(2) HEAL insurance, however, is not unconditional. The Secretary issues HEAL insurance on the implied representations of the lender that all the requirements for the initial insurability of the loan have been met. HEAL insurance is further conditioned upon compliance by the holder of the loan with the HEAL statute, regulations, and administrative policies and its own loan management procedures submitted to the Secretary under § 60.31. The contract may contain a limit on the duration of the contract and the number or amount of HEAL loans a lender may make or hold. Each HEAL lender has either a standard insurance contract or a comprehensive insurance contract with the Secretary, as described below.

* * * * *

(c) *Comprehensive insurance contract.* (1) * * *

(2) The Secretary will revoke the comprehensive contract of any lender who utilizes procedure which are inconsistent with the statute, regulations, or administrative policies of the HEAL program and require that such lenders disburse HEAL loans only under a standard contract. When the Secretary determines that the lender is in compliance with the HEAL statute, regulations, administrative policies, and its own loan management procedures submitted to the Secretary under § 60.31, the lender may reapply for a comprehensive contract.

(3)(i) From the total insurance authority for any fiscal year the Secretary will set aside a percentage to be used to provide comprehensive contracts to lenders who will make HEAL loans at a rate of interest at least one-half percentage point below the maximum permitted under § 60.13. The Secretary will announce the amount set aside for this purpose by a notice published in the **Federal Register** at or near the beginning of the Federal fiscal year. The amount set aside will remain available for this purpose until March 31 of the announced fiscal year or until it is exhausted, whichever occurs first. Any portion of this amount not used for this purpose by March 31 will be made generally available after March 31. If at any time during the fiscal year, the Secretary receives an application during the same week from a lender who will make a HEAL loan at a rate of interest at least one-half percentage point below the maximum permitted rate and from lender who will make loans at the maximum rate, and there is authority sufficient to enter into only one of the two proposed contracts, the former applicant will receive a contract. A comprehensive contract made with a lender who agrees to make loans at an interest rate at least one-half percentage point below the maximum permissible rate will except from insurance coverage any loan made at a higher interest rate.

(ii) Lenders receiving contracts under paragraph (c)(3)(i) of this section must notify loan applicants and schools at the time of application that they are making HEAL loans at a rate of interest at least one-half percentage point below the maximum permissible.

15. Section 60.33 is amended by revising the introductory paragraph, redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively, adding new paragraphs (c) and (g), and revising newly designated paragraphs (e)(1) and (f)(1)(i) to read as follows:

§ 60.33 Making a HEAL loan.

The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, determination of a borrower's credit worthiness, the determination of the loan amount (not to exceed the amount approved by the school), the explanation to a borrower of his or her responsibilities under the loan, the execution of the promissory note, and the disbursement of the loan proceeds. A lender may rely in good faith upon statements of an applicant and the HEAL school contained in the loan application papers, except where those statements are in conflict with information obtained from the report on the applicant's credit history, financial aid transcript(s), or other information available to the lender. Except where the statements are in conflict with information obtained from the applicant's credit history or other information available to the lender, a lender making loans to nonstudent borrowers may rely in good faith upon statements by the borrower and authorizing officials of internship, residency, or other programs for which a borrower may receive a deferment.

* * * * *

(c) *Lender determination of the borrower's credit worthiness.* The lender may make HEAL loans only to borrowers that the lender has determined to be credit worthy. The lender must determine the applicant's credit worthiness using procedures at least as stringent as the procedures normally used by financial institutions in determining whether to make similar loans for which the lender has no Federal, State, or other third party guarantee. The lender may not determine that an applicant is credit worthy if the applicant is currently in default on any loan (commercial, consumer, or educational) until the delinquent account is made current or satisfactory arrangements are made between the affected lender(s) and the debtor. The lender must receive a letter from the authorized official(s) of the affected lender(s) stating that the borrower has taken satisfactory actions to bring the account into good standing. It is the responsibility of the loan applicant to assure that the lender has received each such letter. No loan may be made to an applicant who is delinquent on any Federal debt(s) until the delinquent account is made current or satisfactory arrangements are made between the affected agency (agencies) and the debtor. The lender must receive a letter from the authorized Federal official(s) of the affected Federal agency (agencies) stating that the borrower has taken satisfactory actions to bring the account into good standing. It is the responsibility of the loan applicant to assure that the lender has received each such letter. The absence of any previous credit, however, is not an indication that the applicant is not credit worthy and is not to be used as a reason to deny the status of credit worthy to an applicant.

The lender must determine the credit worthiness of the applicant using, at a minimum, the following:

(1) A report of the applicant's credit history obtained from a national consumer credit reporting agency;

(2) For student applicants only, financial aid transcript(s) described in § 60.51(d) obtained from an applicant's school(s); and

(3) For student applicants only, the certification made by the applicant's school under § 60.51(e).

* * * * *

(e) *Promissory note.* (1) Each loan must be evidenced by a promissory note approved by the Secretary. A lender must obtain the Secretary's prior approval of the note form before it makes a HEAL loan evidenced by a promissory note containing any deviation from the provisions of the form most currently approved by the Secretary. The lender must give the borrower a copy of each executed note.

* * * * *

(f) * * *

(1) * * *

(i) To a student borrower, by means of a check or draft payable jointly to the student borrower and the HEAL school. Except where a lender is also a school, a lender must mail the check or draft to the school. A lender may not disburse the loan proceeds earlier than is reasonably necessary to meet the cost of education for the period for which the loan is made.

* * * * *

(g) If the lender determines that the applicant is not credit worthy, pursuant to paragraph (c) of this section, the lender must not approve the HEAL loan request. If the applicant is a student, the lender must notify the applicant and the applicant's school named on the application form of the denial of a HEAL loan.

16. Section 60.34 is amended by revising the section title, and paragraph (b)(1), and adding a new introductory paragraph and new paragraphs (c) and (d) to read as follows:

§ 60.34 HEAL loan account servicing.

HEAL loan account servicing involves the proper maintenance of files, and the proper review and management of accounts. Generally accepted account servicing standards ensure that collections are received and accounted for, delinquent accounts are identified promptly, and reports are produced comparing actual results to previously established objectives.

* * * * *

(b) *Conversion of loan to repayment status.* (1) At least 30 and not more than 60 days before the commencement of the repayment period, the lender must contact the borrower in writing to establish the terms of repayment. Lenders may not charge borrowers for the additional interest or other charges, penalties, or fees that accrue when a lender does not contact the borrower within this time period and a late conversion results.

* * * * *

(c) *Borrower contacts.* The lender must notify each borrower by a letter, which has an address correction request on the envelope, of the balance owed for principal, interest, insurance premiums, and any other charges or fees owed to the lender, every 6 months from the time the loan is disbursed. The lender must use this notice to remind the borrower of the option, without penalty, to pay all or part of the principal and accrued interest at any time.

(d) *Skip-tracing.* If, at any time, the lender is unable to locate a borrower, the lender must initiate skip-tracing procedures as described in § 60.35(a)(2).

17. Section 60.35 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (e) as paragraphs (e) and (f), respectively, adding a new paragraph (c), and revising paragraph (d) to read as follows:

§ 60.35 HEAL loan collection.

* * * * *

(a)(1) When a borrower is delinquent in making a payment, the lender must remind the borrower within 15 days of the date the payment was due by means of a letter. If payments do not resume, the lender must contact both the borrower and any endorser at least 3 more times at regular intervals during the 120-day delinquent period following the first missed payment of that 120-day period. The second demand notice for a deliquent account shall inform the borrower that the account shall be referred to consumer credit reporting agencies if payment is not made. Each of the required four contacts must consist of at least a letter which has an address correction request on the envelope. The last contact must consist of a telephone or other personal contact, in addition to the required letter. A record must be made of each attempt to contact and each actual contact, and that record must be placed in the borrower's file. Each contact must become progressively firmer in tone. If the lender is unable to locate the borrower and the endorser at any time during this period when the borrower is delinquent, the lender must initiate the skip-tracing procedures described in paragraph (a)(2) of this section.

(2) If the lender is unable to locate either the borrower or the endorser at any time, the lender must initiate and use skip-tracing activities which are at least as extensive and effective as those used by commercial lenders to locate borrowers delinquent in the repayment of loans for which the lender has no Federal, State, or other third party guarantee. To determine the correct address of the borrower, these skip-tracing procedures should include, but need not be limited to, contacting any other individual named on the borrower's HEAL application or promissory note, using such sources as telephone directories, city directories, postmasters, drivers license records in State and local government agencies, records of members of professional associations, consumer credit reporting agencies, skip locator services, and records at any school attended by the borrower. All skip-tracing activities used must be documented. This documentation must consist of a written record of the action taken and its date and must be presented to the Secretary when requesting preclaim assistance or when filing a default claim for HEAL insurance.

(b) When a borrower is 90 days delinquent in making a payment, the lender must immediately request preclaim assistance from the Public Health Service. The Secretary does not pay a default claim if the lender fails to request preclaim assistance.

(c) Prior to the filing of a default claim, a lender must use, at a minimum, written collection practices that are at least as extensive and effective as those used by commercial lenders in the collection of other loans. These practices must include, but need not be limited to:

(1) Using collection agents, who may be internal collection agents;

(2) Instituting legal proceedings against borrowers after collection attempts have failed and before filing a default claim, provided that such litigation is appropriate; and

(3) Immediately notifying a national consumer credit reporting agency regarding accounts overdue by more than 60 days.

(d) If the Public Health Service preclaim assistance locates the borrower, the lender must implement the loan collection procedures described in this section. When the Public Health Service preclaim assistance is unable to locate the borrower, a default claim may be filed by the lender (described in § 60.40). The Secretary does not pay a default claim if the lender has not complied with the HEAL statutes, regulations, and policies.

* * * * *

18. In § 60.37, paragraphs (a) and (b) are revised and a new paragraph (c)(4) is added to read as follows:

§ 60.37 Forbearance.

(a) "Forbearance" means an extension of time for making loan payments or the acceptance of smaller payments than were previously scheduled to prevent a borrower from defaulting on his or her payment obligations. A lender must notify each borrower of the right to request forbearance.

(1) Except as provided in paragraph (a)(2) of this section, a lender must grant forbearance whenever the borrower is temporarily unable to make scheduled payments on a HEAL loan and the borrower continues to repay the loan in an amount commensurate with his or her ability to repay the loan. Any circumstance which affects the borrower's ability to repay the loan must be fully documented.

(2) If the lender determines that the default of the borrower is inevitable and that forbearance will be ineffective in preventing default, the lender may submit a claim to the Secretary rather than grant forbearance. If the Secretary is not in agreement with the determination of the lender, the claim will be returned to the lender as disapproved and forbearance must be granted.

(b) A lender must exercise forbearance in accordance with terms that are consistent with the 25- and 33-year limitations on the length of repayment (described in § 60.11) if the lender and borrower agree in writing to the new terms. Each forbearance period may not exceed 6 months.

(c) * * *

(4) The total period of forbearance (with or without interruption) granted by the lender to any borrower must not exceed 2 years. However, when the borrower and the lender believe that there are bona fide reasons why this period should be extended, the lender may request a reasonable extension beyond the 2-year period from the Secretary. This request must document the reasons why the extension should be granted. The lender may grant the extension for the approved time period if the Secretary approves the extension request.

19. In §60.38, paragraph (a) is revised to read as follows:

§ 60.38 Assignment of a HEAL loan.

* * * * *

(a) *Procedure.* A HEAL note assigned from one lender to another must be subject to a blanket endorsement together with other HEAL notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the HEAL note must be signed and dated by an authorized official of the seller. Within 15 days of the transaction, the buyer must notify the following parties of the assignment.

(1) The Secretary;

(2) The borrower. The notice to the borrower must contain a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller subsequent to receipt of the notice;

(3) The borrower's school, as shown on the application form supporting the loan purchased by the buyer, if the borrower is enrolled in school; and

(4) Other schools, if known, that the borrower attended while receiving the HEAL loan(s) from the lender.

* * * * *

20. In § 60.40, paragraphs (a) and (c) are revised to read as follows:

§ 60.40 Procedures for filing claims.

(a) A lender must file an insurance claim on a form approved by the Secretary. The lender must attach to the claim all documentation necessary to litigate a default, including any documents required to be submitted by the Federal Claims Collection Standards, and which the Secretary may require. Failure to submit the required documentation and to comply with the HEAL statute, regulations, and policies will result in a claim not being honored. The Secretary may deny a claim that is not filed within the period specified in this section. The Secretary requires for all claims at least the following documentation:

(1) The original promissory note;

(2) An assignment to the United States of America of all right, title, and interest of the lender in the note;

(3) The loan application;

(4) The history of the loan activities from the date of loan disbursement through the date of claim, including any payments made; and

(5) A Borrower Status Form (HRSA-508), documenting each deferment granted under § 60.12 or a written statement from an appropriate official attesting that the borrower is engaged in an activity for which he or she is entitled to receive a deferment.

* * * * *

(c) In addition, the lender must comply with the following requirements for the filing of default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) If a lender determines that it is not appropriate to file suit against a defaulted borrower pursuant to § 60.35(c)(2), it must file a default claim with the Secretary within 10 days after a loan has been determined to be in default. "Default" means the persistent failure of the borrower to make a payment when due or to comply with other terms of the note or other written agreement evidencing a loan under circumstances where the Secretary finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay the loan. In case of a loan repayable (or on which interest is payable) in monthly installments, this failure must have persisted for 120 days. In the case of a loan repayable (or on which interest is payable) in less frequent installments, this failure must have persisted for 180 days.

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim at least the following:

(A) Repayment schedule(s);

(B) A collection history, if any;

(C) A final demand letter;

(D) The original or a copy of all correspondence relevant to the HEAL loan to or from the borrower (whether received by the original lender, a subsequent holder, or an independent servicing agent); and

(E) A claims collection litigation report.

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the borrower's bankruptcy, the lender must forward within 10 days that notice to the Secretary. If the Secretary has not paid the claim at the time the lender receives that notice, upon receipt of the notice, the lender must file with the bankruptcy court a proof of claim and an objection to the discharge or compromise of the HEAL loan. If the Secretary has paid the claim, the lender must file a statement to that effect with the court.

(2) *Death claims.* A lender must file a death claim with the Secretary within 10 days after the lender obtains documentation that a borrower is dead. In addition to the documentation required for all claims, the lender must submit with its death claim those documents which verify the death, including an official copy of the Death Certificate.

(3) *Disability claims.* A lender must file a disability claim with the Secretary within 10 days after it has been notified that the Secretary has determined a borrower to be totally and permanently disabled. In addition to the documentation required for all claims, the lender must submit with its claim evidence of the Secretary's determination that the borrower is totally and permanently disabled.

(4) *Bankruptcy claims.* A lender must file a bankruptcy claim with the Secretary within 10 days after the lender receives a notice of the first meeting of creditors in a borrower's bankruptcy proceeding. The lender must file with the bankruptcy court a proof of claim and an objection to the discharge or compromise of the HEAL loan. In addition to the documentation required for all claims, with its claim the lender must submit to the Secretary at least the following:

(i) Repayment schedule(s);

(ii) A collection history, if any;

(iii) A proof of claim;

(iv) An assignment to the United States of America of its proof of claim;

(v) All pertinent documents sent to or received from the bankruptcy court; and

(vi) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge.

21. In § 60.42, paragraph (a)(1) introductory text and (a)(i)(viii) and (ix) are revised, paragraph (a)(1)(x), paragraphs (a)(4), (d) and (e) are added to read as follows:

§ 60.42 Records, reports and inspection requirements for HEAL lenders

(a) *Records.* (1) A lender must keep complete and accurate records of each HEAL loan which it holds. The records must be organized in a way that permits them to be easily retrievable and allows the ready identification of the current status of each loan. The required records include:

* * * * *

(viii) The documents required for the exercise of forbearance;

(ix) Documentation of the assignment of the loan; and

(x) Evidence of a borrower's credit worthiness, including the borrower's credit report and a copy of the student borrower's financial aid transcript(s).

* * * * *

(4) The lender must maintain accurate and complete records on each HEAL borrower and related school activities required by the HEAL program. All HEAL records shall be maintained under security and protected from fire, flood, water leakage, other environmental threats, electronic data system failures or power fluctuations, unauthorized intrusion for use, and theft.

* * * * *

(d) The lender must comply with the Department's biennial audit requirements of section 705 of the Act.

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

22. In § 60.50, paragraph (a)(2)(ii)(F) is revised to read as follows:

§ 60.50 Which schools are eligible to be HEAL schools?

(a) * * *

(2) * * *

(ii) * * *

(F) Council on Podiatric Medical Education.

* * * * *

23. Section 60.51 is revised to read as follows:

§ 60.51 The student loan application.

Prior to certifying a student's HEAL application, the school must conduct an entrance interview which provides the student information about the HEAL loan, including an explanation about the borrower's rights and responsibilities. When the student completes his or her portion of the student loan application and submits it to the school, the school must do the following:

(a) Accurately and completely fill out its portion of the HEAL application;

(b) Verify, to the best of its ability, the information provided by the student on the HEAL application, including, but not limited to, citizenship status by using a notarized copy of the applicant's birth certificate or the applicant's I–151 or I–551, if the applicant is required to possess such identification by the United States, and social security number by using the applicant's original Social Security card or copy issued by the Federal Government;

(c) Certify that the student is eligible to receive a HEAL loan, according to the requirements of § 60.5;

(d) Obtain from the student and forward to the lender a copy of the financial aid transcript(s) which include(s) at least the following data:

(1) Student's name:

(2) Amounts and sources of all educational loans and grants, including Federal and non-Federal, previously received by the student for study at an institution of higher education;

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

(4) The outstanding principal of these loans; *

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

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

(e) Attest that it has no reason to believe that the borrower will not, or may not be able to, comply with any requirements, including the repayment requirements, of the Heal loan;

(f) Make reasonable determinations of the maximum loan amount approvable, based on the student's circumstances. The student applicant determines the amount he or she wishes to borrow, up to this maximum amount. Only then may the school certify an eligible application. In determining the maximum loan amount approvable, the school will calculate the difference between:

(1) All financial assets of the applicant, including any student aid, familial, spousal, or personal income or financial assistance of which the school or the applicant is aware that is legally or contractually available to the applicant or that the applicant has received or will receive for the period covered by the proposed HEAL loan, in addition to other information which the school has obtained regarding the student's financial status 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; and

(2) The costs reasonably necessary for each student to pursue the same or similar curriculum or program within the same class year at the school by using a standard student budget system. Educational expenses or other costs which could legally be paid by money obtained through a HEAL loan, but which have already been paid must not be used in the calculation. The school must maintain in the student's record the criteria used for determining the reasonable costs.

(g) Comply with the requirements of § 60.61.

24. In § 60.52, paragraph (a) is removed paragraphs (b) and (c) are redesignated as (a) and (b), respectively, and newly designated paragraph (a)(1) is revised to read as follows:

§ 60.52 The student's loan check.

(a) * * *

(1) If the school receives the instrument after the student is enrolled, obtain the student's endorsement, retain that portion of funds due the school, and

disburse the remaining funds to the student.

* * * * *

25. Section 60.53 is revised to read as follows:

§ 60.53 Notification to lender of change in enrollment status.

Each school must notify the holder of a HEAL loan of any change in the student's enrollment status within 15 days following the change in status. Each notice must contain the student's full name under which the loan was received, the student's current name (if different), the date of the student's graduation, formal withdrawal, or failure to enroll as scheduled for any academic period as a full-time student, the student's latest known permanent and temporary addresses, and other information which the school decides is necessary to identify or locate the student. If the school does not know the identity of the current holder of the HEAL loan, it must notify the HEAL Program Office of a change in the student's enrollment status.

26. Section 60.56 is amended by revising paragraphs (a) introductory text and (a)(4), by redesignating paragraphs (a)(9) and (a)(10) as (a)(17) and (a)(18), respectively, and adding new paragraphs (a)(9) through (a)(16) and (c) and by revising newly designated (a)(18) to read as follows:

§ 60.56 Records.

(a) In addition to complying with the requirements of section 739(b) of the Act, each school must maintain an accurate, complete, and easily retrievable record with respect to each student who has a HEAL loan. The record must contain all of the following information:

* * * * *

(4) Amount and source of other financial assistance received by the student during the period for which the HEAL loan was made:

* * * * *

(9) Written procedures followed by the school for the receipt, verification of amount, and disbursement of HEAL checks or drafts;

(10) List(s) of all items discussed during each entrance interview, the date(s) of the entrance interview(s), the signature of the borrower indicating that the entrance interview(s) was (were) conducted;

(11) List(s) of all items discussed during the exist interview, the date of the exit interview, the signature of the borrower indicating that the exit interview was conducted;

(12) Notarized copy of the borrower's birth certificate or a photocopy made by the school of the borrower's I–151 or I–551, if the borrower is required to possess such identification by the United States, and a photocopy made by the school of the borrower's original Social Security card or copy issued by the Federal Government;

(13) Documentation of the calculations made which compare the financial resources of the applicant with the cost of his or her education at the school;

(14) Copy(s) of the financial aid transcript(s) which was (were) sent to the lender(s);

(15) Documentation of the criteria used to prepare the cost of attendance which reflect costs reasonably necessary for the student to pursue his or her education at the school (see § 60.51);

(16) Copies of all correspondence between the school and the borrower or between the school and the lender or its assignee regarding the loan;

* * * * *

(18) Postgraduate destination of borrower.

* * * * *

(c) The school must comply with the Department's biennial audit requirements of section 705 of the Act.

27. In § 60.60, paragraph (c) is revised to read as follows:

§ 60.60 Limitation, suspension, or termination of the eligibility of a HEAL school.

* * * * *

(c) This section does not apply to administrative action by the Department of Health and Human Services based on any alleged violation of The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended), as governed by 34 CFR Part 99.

28. A new § 60.61 is added to read as follows:

§ 60.61 Responsibilities of a HEAL School.

(a) A HEAL school is required to carry out the following activities for each HEAL applicant or borrower:

(1) Conduct an entrance interview with each student applying for a HEAL loan, regardless of whether the student has had a previous HEAL loan, and maintain a list of all items discussed during each entrance interview, the date of each entrance interview, and the signature of the borrower for each entrace interview indicating that each entrance interview was conducted. The school must inform the student during the entrance interview of his or her rights and responsibilities under a HEAL loan, including the consequences for noncompliance with those responsibilities.

(2) Conduct an exit interview with each HEAL loan recipient within 60 days before the student's anticipated graduation date or other date for the student's departure from the school and maintain a list of all items discussed during the exit interview, the date of the exit interview, and the signature of the borrower indicating that the exit interview was conducted. The school must inform the borrower in the exit interview of his or her rights and responsibilities under each HEAL loan, including the consequences for noncompliance with those responsibilities. A copy of the documentation of the exit interview and any other information required by the Secretary regarding the exit interview must be sent to the lender of each HEAL loan within 15 days of the exit interview. If the borrower departs from the school prior to the anticipated date and does not receive an exit interview, the exit interview information must be mailed to the borrower by the school. In this event, the lender(s) must be so notified within 15 days of the school's knowledge of the departure.

(3) Verify the accuracy and completeness of information provided by each student on the HEAL loan application, particularly in regard to the HEAL eligibility requirements, by comparing the information with previous loan applications or other records or information provided by the student to the school. Notify the potential lender of any discrepancies which were not resolved between the school and the student.

(4) Develop and implement procedures relating to check receipt and release which keep these functions separate from the application preparation and approval process and assure that the amount of the HEAL loan check(s) does(do) not exceed the approved total amount of the loan and the statutory maximums. Checks must not be cashed without the borrower's personal endorsement. Documentation of these procedures and their usage shall be maintained by the school.

(5) Maintain accurate and complete records on each HEAL borrower and related school activities required by the HEAL program. All HEAL records shall be maintained under security and protected from fire, flood, water leakage, other environmental threats, electronic data system failures or power fluctuations, unauthorized intrusion for use, and theft.

(6) Maintain a standard student budget system and maintain in each HEAL borrower's record a copy of the budgetary calculations which were actually used in the determination of the maximum loan amount approvable for the student, as described in § 60.51.

(7) Notify the lender or its assignee of any changes in the student's name, address, status, or other information pertinent to the HEAL loan not more than 15 days after receiving information indicating such a change.

(b) Any school which has information which indicates potential or actual commission of fraud or other offenses against the United States involving these loan funds must promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(c) The school will be considered responsible and the Secretary may seek reimbursement from any school for the amount of a loan in default on which the Secretary has paid an insurance claim, if the Secretary finds that the school did not comply with the applicable HEAL statute, regulations and policies.

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 276, 279, and 286

Food Stamp Program; the Food Security Act of 1985; Nondiscretionary Provisions; Final Rule and Correction

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 274, 276, 279 and 285

[Amdt. No. 274]

Food Stamp Program; The Food Security Act of 1985—Nondiscretionary Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule and correction.

SUMMARY: The Food Security Act of 1985 includes numerous provisions which amend the Food Stamp Program. This final rule implements those nondiscretionary provisions pertaining to: (1) Mandatory monthly reporting/retrospective budgeting (MRRB); (2) standard utility allowances and the treatment of indirect energy assistance payments; (3) eligibility for the homeless; (4) annualizing self-employment income; (5) eligibility of participants in the Job Training Partnership Act; (6) the definition of the disabled; (7) certification of information (perjury statement); (8) the Puerto Rico block grant; (9) overissuance liability of all household members; and (10) the administrative and judicial reviews for State agencies and retailer/wholesalers.

This rule also includes statutory waiver provisions pertaining to the MRRB rules which resulted from the Omnibus Budget Reconciliation Act of 1981, the Omnibus Budget Reconciliation Act of 1982 and the Food Stamp Amendments of 1983.

In addition, this rule contains a technical amendment to correct errors which appeared in a final rule published on March 28, 1986, entitled *Food Stamp Program: Eligibility, Certification and Notice Provisions and Technical Amendments of 1985.* This rule also corrects a final rule published on April 1, 1986 entitled *Food Stamp Program: Provisions on Earned Income, Shelter and Dependent Care Deductions, Resource Limits and Sales Tax on Food Stamp Purchases.* This correction is being made to include a conforming amendment to the resource provisions of that rule which was inadvertently overlooked.

DATES: The provisions at § 276.7(j) and § 279.10(d) from the Food Security Act of 1985 are retroactive to December 23, 1985. The provisions from the Food Security Act of 1985 at § 273.18, § 285.2 and § 285.3 are effective June 20, 1986. The provisions from the Food Security Act of 1985 which reflect current policy at § 273.2(f)(1)vi), § 273.2(i)(4)(i), 272.3, § 273.11(a)(1)(i) and § 274.1(a) are effective May 21, 1986. All other provisions from the Food Security Act of 1985 reflected in this rulemaking are effective June 20, 1986 to be implemented no earlier than the effective date and no later than August 1, 1986. The remaining provisions in this rulemaking pertain to statutory waiver authority and have been in effect since the enactment of the applicable law. Therefore, the provisions at § 273.21(a)(4)(i)(A) and the second sentence at § 273.10(f)(7) are effective retroactive to August 31, 1981. Section 273.21(a)(4)(ii)(A) and the first two sentences of § 273.21(a)(4)(ii)(B) are retroactive to September 8, 1982. The provisions at § 272.3, § 273.21(a)(4)(i)(B), § 273.21(a), § 273.21(a)(3), the third sentence at § 273.10(f)(7) and the last two sentences of § 273.21(a)(4)(ii)(B) are effective retroactive to December 2, 1983.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria Virginia, 22302, (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this final rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The rule will affect the economy by less than $100 million a year. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified the rule as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. *10.551.* For the reasons set forth in the Final rule related Notice to 7 CFR 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that some small entities will be affected by the provision concerning stays of administrative action by FNS against retailers and wholesalers. While the economic impact on some of these small stores could be significant, there will not be a substantial economic impact on a large number of small entities. All other provisions in the rulemaking will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp recipients and the State and local agencies which administer the Program.

Paperwork Reduction Act

This final rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date Justification

This rule implements provisions of Pub. L. 99-198, 97-35, 97-253 and 98-204, which are nondiscretionary. That is to say that the provisions of this rulemaking are specifically prescribed by law and cannot be affected by public comment. For these reasons, the Department has determined, in accordance with 5 U.S.C. 553(b), that notice of proposed rulemaking and public comment are unnecessary and contrary to public interest. Further, since this rulemaking merely implements the cited statutory provisions it constitutes an interpretative rule for which notice and public comment are not required under 5 U.S.C. 553.

This final rulemaking includes several amendments reflecting self-implementing provisions of law which were effective upon the enactment of the statute as specified in the section of this preamble titled "Implementation." The Department is issuing regulations pertaining to these sections in order to provide an overall view of program policy. Therefore, the Department has determined, in accordance with 5 U.S.C. 553(d), that an implementation period for these provisions is unnecessary. All other provisions of this rulemaking are effective no less than 30 days after publication.

Background

The Food Security Act of 1985 (Pub. L. 99-198) was enacted on December 23, 1985. Pub. L. 99-198 made a number of nondiscretionary changes to the Food Stamp Act of 1977, as amended. This final rulemaking contains these nondiscretionary changes and these are discussed below.

State agencies have been able to exercise the statutory waiver provisions authorized through the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97-253) and the Food Stamp Amendments of 1983 (Pub. L. 98-204) since the enactment of the statutes. As will be discussed, this final rulemaking includes language pertaining to the statutory waiver authority.

Definition of Disabled—§ 271.2

Under current regulations, persons defined as disabled receive special treatment in their eligibility and coupon allotment determinations. The special treatment includes: (1) The right to claim allowable medical expenses as a deduction from income; (2) the ability to claim excess shelter costs as a deduction from income without regard to the dollar limit imposed on other households; and (3) an exemption from the food stamp gross income eligibility test.

The current definition of disabled persons contained in section 3(r) of the Food Stamp Act (7 U.S.C. 2012(r)), and reflected in § 271.2 of the food stamp regulations, is limited to those persons who are permanently or totally disabled. Section 1504 of Pub. L. 99-198 adds four additional categories to the definition of disabled persons. These categories are: (1) Recipients of State or federally administered Supplemental Security Income (SSI) payments under section 1616(a) of the Social Security Act (optional State supplementation) provided that eligibility to receive the benefits is based upon the disability or blindness criteria used under title 16 of the Social Security Act or payments under section 212(a) of Pub. L. 93-66 (mandatory minimum State supplementation of SSI benefits); (2) veterans receiving pensions for non-service connected disability; (3) recipients of Federal, State or local public disability retirement pensions who have a disability considered permanent under section 221(i) of the Social Security Act; and (4) Railroad Retirement disability annuitants who either meet the social security disability criteria in order to receive their annuity or who are determined to quality for Medicare by the Railroad Retirement Board.

Accordingly, this rulemaking amends 7 CFR 271.2 to include the four additional categories of disabled persons specified in Section 1504 of Pub. L. 99-198. Section 273.2(f)(1)(viii)(A) of 7 CFR is revised to clarify the mandatory verification requirements the household must complete in the application process. Finally, this rulemaking amends the current definition of "Supplemental Security Income (SSI)" at 7 CFR 271.2 to bring the definition into conformance with the SSI recipients specified above.

Certification of Information—Perjury Statement—§ 273.2

Under current regulations at 7 CFR 273.2(b), the food stamp application form must contain a statement that the information provided by the applicant is subject to verification by Federal, State, and local officials. The form must also state that if any such information is incorrect, food stamps may be denied and the applicant may be subject to criminal prosecution if he or she knowingly provided incorrect information. Finally, the application must include a description of the civil and criminal provisions and penalties for violation of the Food Stamp Act.

This rule implements a provision enacted by Pub. L. 99-198 (section 1525) concerning applicant perjury. This provision requires one adult member in all applicant households to certify in writing, under penalty of perjury, the truth of the information contained in the application for the household's coupon allotment. This perjury statement does not alter any of the required statements which currently appear on the application. The legislative history (Senate Rept. No. 99-145, pg. 256) indicates that the perjury statement is intended to improve program administration and aid in the prosecution of fraudulent participation.

Accordingly, this rulemaking amends 7 CFR 273.2 to require that food stamp applications contain a perjury statement which must be signed by one adult member of the household.

Eligibility of the Homeless—Residency Requirement—§§ 273.2, 273.3, and 274.1

The regulations currently governing food stamp eligibility at 7 CFR 273.3 require that households reside in a project area where an application is submitted unless the State agency makes other arrangements. However, current regulations prohibit the State agencies from imposing a durational, fixed, or permanent residency requirement. Therefore, a household cannot be denied participation in the Food Stamp Program because it lacks a fixed address.

In order to further ensure that food stamp benefits are made available to eligible homeless households, section 1529 of the Food Security Act requires that State agencies provide a method to certify and issue coupons to eligible households that do not reside in a permanent dwelling or have a fixed mailing address. In addition, the legislative history (H. Rept. 99-271, pg. 134) emphasizes that the prohibition against a fixed residency requirement does not relieve the States of their responsibility to protect against program abuse, including multiple participation. Therefore, if applicant households are homeless, State agencies will not be able to monitor duplicate participation through an address as currently permitted by 7 CFR 274.1(d)(1). However, the State agency must continue to ensure that no individual participates in the program more than once a month. The legislation (section 1529) also specifies that the State agency should ensure that participation is limited to eligible households.

Accordingly, this rulemaking amends 7 CFR 273.3 to clarify that States may not require an applicant household to have a fixed mailing address as a condition of eligibility. Section 274.1(a) of 7 CFR is revised to require that a State agency's issuance system provides benefits to individuals who do not reside at a fixed mailing address. Finally, 7 CFR 273.2(f)(1)(vi) and 273.2(i)(4)(i) are amended to clarify that a State agency may not deny an applicant homeless household participation in the program when residency cannot be verified.

Student Eligibility—Job Training Partnership Act Participation—§ 273.5

The current regulations at 7 CFR 273.5(a) define a student as anyone who is: (1) Between the ages of 18 and 60; (2) physically and mentally fit; and (3) enrolled at least half-time in an institution of higher education. In order to be eligible to participate in the Food Stamp Program, a student must meet at least one of the criteria prescribed at 7 CFR 273.5(b)(1). These criteria are: (1) Employment for a minimum of 20 hours per week; (2) participation in a federally financed work study program (e.g., Title IV-C of the Higher Education Act of 1965) during the regular school year; (3) responsibility for the care of a dependent household member under the age of six; (4) responsibility for the care of a dependent household member between the ages of six and eleven for whom the State agency has determined that adequate child care is not available; or (5) receipt of benefits under the Aid to Families with Dependent Children Program.

The Food Security Act of 1985 (section 1516(4)) adds one category of eligibility to § 273.5(b)(1). Under this provision, students who are assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act may be eligible to participate in the Food Stamp Program.

Therefore, this rulemaking amends 7 CFR 273.5(b)(1) of the regulations to include this category of eligible students as specified in section 1516(4) of Pub. L. 99–198.

Standard Utility Allowance (SUA) Energy Assistance Payments—§ 273.9

The Food Security Act of 1985 in section 1511 contains several provisions which affect the treatment of Low Income Home Energy Assistance Act (LIHEAA) or similar energy assistance payments when computing the shelter cost deduction in the food stamp coupon allotment and eligibility determinations. The provisions simplify program administration and ensure that the option to claim a SUA is provided to all households who are eligible to receive the SUA. These provisions are described below.

1. Allowable Expenses.

The Low Income Home Energy Assistance Act of 1981 specifically requires that payments received under the Act cannot be counted as income or resources under any Federal or State law relating to taxation, food stamps, public assistance or welfare programs. Depending on the State's management of LIHEAA payments, a food stamp household may either receive LIHEAA payments directly or have its payments transferred to the energy assistance provider. The latter method is often referred to as an "indirect" or "vendor" payment. Indirect payments are currently excluded as an allowable deduction under regulations at 7 CFR 273.10(d)(1) which prohibit indirect payments as a deductible expense. Therefore, households that receive their LIHEAA or similar energy assistance payments "indirectly" are currently unable to claim any portion of the expenses covered by the LIHEAA payments toward a SUA which includes a heating and/or cooling component.

Section 1511 of Pub. L. 99–198 provides that households which incur out-of-pocket heating or cooling expenses over and above their indirect LIHEAA or similar energy assistance payments in any month are entitled to receive the SUA which includes a heating or cooling cost as prescribed at 7 CFR 273.9(d)(6). Accordingly, this rulemaking revises 7 CFR 273.9(d)(6) to clarify how indirect energy assistance payments pertain to the shelter cost deduction.

2. Proration.

Section 1511 of Pub. L. 99–198 specifies that LIHEAA payments must be prorated on a monthly basis over the entire heating or cooling season for which it was provided. The legislative history (H. Conf. Rept. No. 99–447, 99th Cong., 1st Sess., 562 (1985)) indicates that the intent of this proration is to ensure that the SUA or actual utility costs are handled equitably despite State variations in the distribution of LIHEAA or similar energy assistance payments.

Accordingly, this final rulemaking amend 7 CFR 273.10(d) of the regulations to specify that LIHEAA and other energy assistance payments must be prorated.

3. Developing Standard Utility Allowances.

As previously noted, an SUA must be made available to those households which continue to incur out-of-pocket heating or cooling expenses after their LIHEAA or similar energy assistance payments have been prorated over the entire heating or cooling season. Under current rules relating to the SUA, the State agency may either develop a single SUA which includes the heating and/or cooling component or develop standards for each allowable expense.

Section 1511 of Pub. L. 99–198 provides that State agencies may use a single SUA with an additional option. In order to provide equitable treatment for participating households, State agencies may now elect to develop two SUAs for households incurring heating or cooling expenses—one for households not receiving indirect energy assistance payments and a second which would apply to households receiving indirect energy assistance payments and incurring any out-of-pocket heating or cooling expenses. If the State agency chooses to develop two SUAs for households incurring heating or cooling expenses, the SUA reflecting indirect energy assistance payments must be based on an average of the out-of-pocket heating or cooling expenses incurred by these households. If the State agency does not elect to develop two single SUAs, but continues to use a single SUA, the full amount of the single SUA must be made available to those households which receive indirect LIHEAA or similar energy assistance payments and incur any out-of-pocket heating or cooling expenses.

Accordingly, this final rulemaking amends 7 CFR 273.9(d)(6) to reflect this option.

4. Switching.

Under current regulations prescribed at 7 CFR 273.9(d)(6), the State agency must allow the household to switch between the use of the SUA and actual costs at the time of recertification except in States which use an annualized standard. If the State agency uses the annualized SUA, the household is not allowed to switch between the SUA and actual costs except at twelve-month intervals after the initial certification action.

The Food Security Act of 1985 alters this requirement. Under section 1511 of Pub. L. 99–198, the State agency is required to allow the household to switch between the SUA and actual utility costs at each recertification action and one additional time during each twelve-month period following the initial certification action.

Accordingly, the final rulemaking revises 7 CFR 273.9(d)(6) of the current regulations to clarify when the household may switch between actual costs and the SUA.

Self-employment Income—§ 373.11

The Food Security Act of 1985 in section 1512 includes a provision which mandates that self-employment income be treated in the manner prescribed at 7 CFR 273.11(a)(1)(i) of the current regulations.

Section 273.11(a)(1)(i) of 7 CFR requires that self-employment income be annualized over a 12-month period even if the income is received within a short period of time during the 12 months. In order to arrive at an average monthly income which will be available to a household during the period of its food stamp eligibility, the regulations require that the monthly average be calculated on the basis of either current data or anticipated circumstances. For example, if the household expects to earn approximately the same income in the current year as it earned in the previous year it would be appropriate to use the household's current income (i.e., current data) to determine average monthly income and eligibility. However, if the household has experienced a recent increase or decrease in business, or anticipates such an increase or decrease in income, then the annualized and average monthly income figures must reflect anticipated earnings as opposed to current earnings. The State agency should not base food stamp calculations solely on past income tax returns when the household has experienced a recent substantial change in self-employment earnings. (See Senate Rept. 99–145, pg. 240).

This rulemaking amends 7 CFR 273.11(a)(1)(i) to further clarify the proper treatment of annualized self-employment income.

Liability for Overissuance of Coupons—§ 273.18

State agencies are currently required to initiate collection action for claims for overissued coupons against the household containing the majority of individuals who were members of the original household. If the majority of the original household cannot be located, collection action is initiated against the household currently containing the individual who was head of the household at the time of the overissuance. In the case of overisssuances resulting from intentional program violations, State agencies have the option of initiating collection action against the household containing the disqualified person rather than against the household containing the majority of the original household members. If State agencies do not exercise this option and cannot locate the household with the majority, collection action is initiated against the household currently containing the individual who was head of the household at the time of the overissuance.

This rule implements section 1533 of the Food Security Act of 1985 which makes all adult household members jointly and severally liable for the value of any overissuance of benefits to the household. This is true, regardless of whether the overissuance resulted from an inadvertent error, an administrative error or an intentional program violation. The provision clarifies that any adult member of a household is liable for the overissuance to the entire household. Thus, collection could be pursued from the income or resources of any or all of the adult household members. For example, if a five-person household containing three adult members has a claim against it in the amount of $1,000, the State agency could initiate collection action against any or all three of the adults based on the income and resources of each individual. However, in no event could a State agency collect an amount above the amount of the claim. The provision also permits State agencies to simultaneously pursue claims against several different households which contain adult members of a household which originally obtained an overpayment of benefits, to the extent permitted by the Act. This means that the State agency could recoup payment for a claim for the allotments of several different households at the same time. This rulemaking does not affect any other terms of existing regulations that relate to claims against households. (See 7 CFR 273.18 (a) and (f).)

Legislative History of MRRB Waiver Authority

The Food Stamp Act of 1977, as amended, contains several provisions under which MRRB requirements may be waived. Under the provisions of sections 5(f) and 6(c)(5), waivers may be approved for the purpose of achieving consistency between the retrospective budgeting and monthly reporting requirements in the Food Stamp and AFDC Programs. The authority for budgeting waivers was contained in the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). The authority for monthly reporting waivers was provided by the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253). The waiver authorities are currently specified in regulation § 272.3(c). This final rulemaking included language in § 273.21(a)(4) of the regulations which further clarifies the statutory waiver authority.

Pub. L. 97–253 also expanded MRRB waiver authority by amending section 6(c)(1) of the Food Stamp Act to allow State agencies, with prior approval of the Secretary, to select categories of households which may report at less frequent than monthly intervals if monthly reporting would result in unwarranted expenditures. Pub. L. 98–204, enacted on December 2, 1983, further expanded State agency options with respect to households reporting at less frequent than monthly intervals. Under Pub. L. 98–204, the Secretary may permit State agencies to accept as satisfying the requirement that households report at less frequent intervals: recertifications; interviews conducted during the certification period; written reports filed by the household; or other documentation which the Secretary may prescribe. The Secretary may also permit State agencies to waive retrospective budgeting for households who have been waived from the monthly reporting requirement. This waiver authority is currently specified in the regulations at § 272.2(c). Further clarifying language has been added to § 273.21(a)(4) in this final rulemaking.

As will be discussed later in this preamble, the Food Security Act of 1985 retains the statutory waiver authority provided for in Pub. L. 97–253 and 98–204 to exempt categories of households subject to MRRB. The legislative history (Conf. Rept. No. 99–447, pg. 527) indicates that Congress intended that *all* or a part of certain household categories subject to MRRB may be waived if cost-effectiveness is proven.

Pub. L. 98–204 further amended section 6(c)(3) of the Food Stamp Act to require that the monthly report is the sole reporting requirement for information that is required to be reported monthly. As a result, State agencies were given the opportunity to narrow the focus of information required to be reported monthly and to concentrate on those circumstances that may fluctuate. Waivers to exclude required information from the monthly report were authorized under § 272.3(c) of the current regulations.

This final rule further includes language at 7 CFR 273.21 to ensure that State agencies do not subject households to dual reporting requirements as prohibited by section 6(c)(3) of the Food Stamp Act. In other words, a household may report a change on the monthly report as prescribed at 7 CFR 273.21, or through a change report as prescribed at 7 CFR 273.12. However, the State agency may not require the household to report the same change through both reporting methods. As a result of this provision, households that report information monthly may not be required to report any changes prior to the submission of their next monthly report.

This final rulemaking also contains a conforming requirement at 7 CFR 273.21(c) which requires the State agency to explain to the household at the time of certification what information is required to be reported on the monthly report. This should further clarify the household's reporting requirements.

Finally, section 3(c) of the Food Stamp Act was amended by Pub. L. 97–35 to allow waivers of the 12-month certification limit. Section 3(c) of the Food Stamp Act was further amended by Pub. L. 98–204 to allow waivers of the six-month minimum certification period for households subject to monthly reporting. Language to reflect the waiver authority relative to section 3(c) of the Act has been added to 7 CFR 272.3(c), 273.10(f) and 273.21(a)(3) in this final rulemaking.

Monthly Reporting/Retrospective Budgeting (MRRB)—§ 273.21

Under current procedures, all households except migrant farmworker households and households in which all adult members are elderly or disabled and have no earned income are required to submit a monthly report unless a waiver is sought by the State agency and approved. The State agency must also budget the household's monthly allotment retrospectively (i.e., must base the household's allotment on its income and circumstances in a previous month) if the household is subject to monthly reporting. Households in which all adult members are elderly or disabled and have no earned income are subject to retrospective budgeting, even though they are not subject to monthly reporting. Migrant farmworker households, on the other hand, must have their allotments budgeted prospectively (i.e., on anticipated earnings and circumstances in the coming months).

Section 1513 of the Food Security Act of 1985 contains several provisions which modify the MRRB requirements. The first provision limits mandatory MRRB to those households with earnings and a recent work history. These households tend to have the greatest fluctuations in earnings and circumstances. As noted in the legislative history, this provision is intended to increase the effectiveness of existing statutory waiver provisions. Although the statutory waiver system is intended to enhance program integrity and efficiency, experience has shown that many States must spend a great deal of time justifying waivers for households whose income and circumstances do not fluctuate significantly from month to month. Therefore, by limiting mandatory MRRB to those households with the greatest fluctuation in circumstances, the provision effectively targets MRRB and reduces the need for State agencies to submit waiver requests. As previously discussed, the Food Security Act of 1985 retains the statutory waiver authority to exclude categories of households otherwise subject to MRRB.

Limiting mandatory MRRB also increases consistency with the Aid to Families with Dependent Children (AFDC) Program because the AFDC Program limits mandatory MRRB to households with earnings or a recent work history. In order to further enhance consistency between the two programs, this rulemaking establishes that the State agency must adopt the recent work history definition that is used in its AFDC Program for public and non-public assistance households. This requirement reflects Congressional intent to conform the programs and increase State agency flexibility. Accordingly, this rulemaking amends 7 CFR 273.21(b)(1) to incorporate the mandatory MRRB and recent work history requirements.

A second provision of the Food Security Act of 1985 which modifies the MRRB system requires households in which all adult members are elderly or disabled and have no earned income to have their allotment computations budgeted on a prospective basis. This provision clarifies that those households which are excluded by law from monthly reporting are also prohibited from having their allotment computations budgeted retrospectively. This final rulemaking revises the current regulations at 7 CFR 273.21(b)(2) to include this provision.

The last provision of the Food Security Act of 1985 pertaining to MRRB permits State agencies to expand retrospective budgeting, monthly reporting, or both, to all other households which are not statutorily exempt from MRRB. Therefore, certain household categories may, at the discretion of the State agency, be required to report monthly and have their allotments budgeted retrospectively. Furthermore, the State agency may require that the household report changes as prescribed at 7 CFR 273.12 (i.e., within 10 days of becoming aware of the change) but budget the allotment retrospectively. However, the Food Security Act does not change the existing statutory requirement that households required to report monthly must have their allotments budgeted retrospectively.

Judicial Reviews—§ 276.7(j) and § 279.10(d)

This rule also codifies a change in the Food Stamp Act relating to the administrative and judicial review of negative actions taken by FNS against a retail or wholesale firm or a claim levied by FNS against a State agency. Section 14 of the Food Stamp Act, and current regulations, require that retail and wholesale firms whose applications for authorization are denied or withdrawn, who are disqualified or who have civil money penalties levied against them be allowed an administrative review of their case prior to the penalty being put into effect. State agencies that have claims levied aganist them also have the same opportunity for review given to them. Section 14 also provides that any entity aggrieved by the determination of the review may obtain a judicial review of the determination. Should a judicial review be sought, the negative action is to remain in force unless a stay of the action is granted. The amendment to section 14, contained in section 1536 of Pub. L. 99-198, pertains to the granting of such stays.

Prior to the enactment of Pub. L. 99-198, a stay could be granted upon a showing that the determination would result in irreparable injury. The amendment to Section 14 requires that stays be granted only upon a showing that the applicant is likely to prevail on the merits and of irreparable injury.

Puerto Rico Block Grant—§ 285.2 and § 285.3

This rule implements provisions of the Food Security Act of 1985 which amend section 19 of the Food Stamp Act of 1977 to provide increases in block grant funding levels for the Commonwealth of Puerto Rico through Fiscal Year 1990, and permit the Commonwealth to designate more than one agency to administer, or supervise the administration of, the food assistance program in Puerto Rico.

Due to concerns regarding the dislocating effect the massive flow of food coupons may have had on the Puerto Rican economy prior to the block grant program, Congress indicated in legislative history, accompanying the Omnibus Budget Reconciliation Act of 1981, that a portion of the grant could be used for the purpose of agricultural development in Puerto Rico. A small portion of the grant has been used for this purpose and is managed by a different government agency in Puerto Rico from the agency that handles the bulk of the nutrition assistance program. This split responsibility necessitated the modification to the Act with regard to the single agency requirement for supervision of the grant program in Puerto Rico. This rule implements the requirements of the Food Security Act of 1985 using language which permits the Commonwealth to designate more than one govenment agency to supervise programs funded under the nutrition assistance grant. The law mandates that a single plan of operation be submitted by the Commonwealth encompassing all programs funded under the nutrition assistance grant. Final approval authority for this plan of operation rests with the Department's Food and Nutrition Service. Consequently, while the Department acknowledges the Commonwealth's prerogative to designate which agency(ies) of its government should administer the different programs specified in its plan of operation, the Department can foresee situations in which these designations may not always prove to be compatible with Departmental administration and supervision of the nutrition assistance grant. These rules, therefore, permit Puerto Rico to designate the agency(ies) which it feels should administer the various programs funded by the grant while concurrently allowing the Department the prerogative of making the final determination, under its plan of operation approval authority, as to which Commonwealth agency(ies) should administer the various programs and with which agency(ies) of the

Department they are to cooperate in fulfilling the various requirements under the grant.

In an effort to curtail rising program costs in Puerto Rico, Congress instituted a nutrition assistance grant program for the Commonwealth to be funded at a specified capped annual rate. Previous regulations specifically delineated the actual annual dollar amounts of this funding. However, in order to eliminate the necessity of amending the specific dollar amounts contained in the regulations each time Congress amends these amounts through legislation, the Department is amending 7 CFR 285.2 to state that the amount of grant funds provided to Puerto Rico shall not exceed amounts appropriated for this purpose.

The Food Security Act of 1985 also permitted the Commonwealth of Puerto Rico to continue operation of a cash benefit system in providing food assistance under its nutrition assistance grant program. Current regulations in Part 285 do not mandate the type of benefit delivery system which the Commonwealth must employ. There is, therefore, no need to amend the current rules as written.

Implementation

The provisions of this action relating to: (1) The definition of disabled; (2) eligibility for Job Training Partnership Act participants; (3) the treatment of indirect energy assistance payments; and (4) prospective budgeting for households in which all adult members are elderly or disabled and have no earned income shall be implemented no earlier than the effective date of this rule and no later than August 1, 1986 for the current caseload and all new applicants. If, for any reason, a State agency fails to implement these provisions on this date, households shall be provided the lost benefits which they would have received if the State agency had implemented these provisions as required.

The provisions of this action relating to: (1) Mandatory MRRB for households with earnings and a recent work history; (2) optional MRRB for households which are not statutorily exempt from MRRB; (3) the perjury statement included on the application; and (4) the household's option to switch between actual utility costs and the SUA shall also be implemented no earlier than the effective date and no later than August 1, 1986. These provisions do not require an active case file review. However, a case shall be reviewed upon the request of a recipient household to switch between actual utility costs and the SUA.

The provisions of this action pertaining to eligibility and issuance for the homeless at §§ 273.3, 273.2(f)(1)(vi), 273.2(i)(4)(i) and 274.1(a) and annualizing self-employment income at § 273.11(a)(1)(i) reflect current policy and therefore an implementation period is not required. The collection procedures authorized by § 273.18 apply to all claims established for overissuances that occurred after the effective date of this provision. Finally, the provisions relating to the Puerto Rico Block Grant shall be effective June 20, 1986.

The statutory provisions relating to the administrative review process are self-implementing and were effective as of the date the statute was enacted. Accordingly, the provisions at § 276.7(j), and 279.10(d) are effective retroactive to December 23, 1985 when Pub. L. 99–198 was enacted.

The statutory waiver authority pertaining to MRRB was also self-implementing. Accordingly, the provision at § 273.21(a)(4)(i)(A) and the second sentence of § 273.10(f)(7) are effective retroactive to August 31, 1981 when Pub. L. 97–35 was enacted. The provision at § 273.21(a)(4)(ii)(A) and the first two sentences of § 273.21(a)(4)(ii)(B) described in this action are retroactive to September 8, 1982 when Pub. L. 97–253 was enacted. The provisions at § 272.3, 273.21(a)(4)(i)(B), 273.21(a), 273.21(a)(3), the third sentence at § 273.10(f)(7) and the last two sentences of § 273.21(a)(4)(ii)(B) prescribed in this action are effective retroactive to December 2, 1983 when Pub. L. 98–204 was enacted.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedures, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedures, Food stamps, Fraud, Grant programs—Social programs, Penalties.

7 CFR Part 279

Administrative practice and procedures, Food stamps, Groceries—retail groceries, General line—wholesaler.

7 CFR Part 285

Accounting, Food assistance programs, Grant programs—Agriculture, Grant programs—social programs, Intergovernmental relations, Puerto Rico, Technical assistance, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 271, 272, 273, 274, 276, 279 and 285 are amended as follows:

1. The authority citation of parts 271, 272, 273, 274, 276, 279 and 285 continues to read as follows:

Authority: 91 Stat 958 (7 U.S.C. 2011–2029).

PART 271—GENERAL INFORMATION AND REGULATIONS

§ 271.2 [Amended]

2. In § 271.2:

a. The definition of *"Elderly or disabled member"* is amended by redesignating paragraphs (3) through (6) as paragraphs (6) through (9) respectively, and adding new paragraphs (3), (4) and (5)

b. A new paragraph (10) is added to the definition of *"Elderly or disabled member."*

c. Newly redesignated paragraph (6) of the *"Elderly and disabled member"* definition is amended by adding the phrase "or non-service connected" after the word, "service-connected."

d. The definition of *"Supplemental Security Income (SSI)"* is revised. The additions and revisions read as follows:

§ 271.2 Definitions.

* * * * *

"Elderly or disabled member" * * * (3) receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act; (4) receives federally or State-administered supplemental benefits under section 212(a) of Pub. L. 93–66; (5) receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act. * * * (10) receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 *and* is

determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under Title XVI of the Social Security Act.

* * * * *

"Supplemental Security Income (SSI)" means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) section 1616(a) of the Social Security Act; or (3) section 212(a) of Pub. L. 93-66.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1 a new paragraph (g)(76) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

(76) Amendment No. 274. (i) The provisions of this amendment at §§ 271.2, 273.2, 273.5, 273.9, 273.10(d)(6), and 273.21(b) shall be implemented for all new applications and the current caseload no later than August 1, 1986. If, for any reason, a State agency fails to implement these provisions on this date, households shall be provided lost benefits which they would have received if the State agency had implemented these provisions as required.

(ii) The provisions of this amendment at §§ 273.18 and 285 shall be implemented June 20, 1986.

(iii) The provisions of this amendment at § 273.21(a)(4)(i)(A) and the second sentence in § 273.10(f)(7) are effective retroactive to August 31, 1981. Section § 273.21(a)(4)(ii)(A) and the first two sentences of § 273.21(a)(4)(ii)(B) described in this amendment are retroactive to September 8, 1982. The provisions of this amendment at §§ 272.3, 273.21(a), 273.21(a)(3), 273.21(a)(4)(i)(B), the third sentence at § 273.10(f)(7), and the last two sentences of § 273(a)(4)(ii)(B) are effective retroactive to December 2, 1983. The provision of this amendment at § 276.7(j) is effective retroactive to December 23, 1985.

4. In § 272.3, paragraph (c) is amended by redesignating paragraphs (c)(5) and (c)(6) as paragraphs (c)(6) and (c)(7), respectively, and adding a new paragraph (c)(5) to read as follows:

§ 272.3 Operating guidelines and forms.

* * * * *

(c) *Waivers* * * *

(5) Notwithstanding the preceding paragraphs, waivers of the certification period timeframes as described in § 273.10(f) may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 3(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.2 [Amended]

5. In § 273.2:

a. Paragraph (b) is amended by adding a new sentence between the third and fourth sentences.

b. The first sentence in paragraph (f)(1)(vi) is revised.

c. Paragraph (f)(1)(viii)(A)(*1*) is amended by replacing the phrase, "paragraph (2)" with the phrase, "paragraphs (2), (3) and (4)".

d. Paragraph (f)(1)(viii)(A)(*2*) is amended by replacing the phrase, "paragraph (3)" with the phrase, "paragraph (6)".

e. Paragraph (f)(1)(viii)(A)(*3*) is amended by replacing the phrase, "paragraphs (4) and (5)" with the phrase, "paragraphs (7) and (8)".

f. Paragraph (f)(1)(viii)(A)(*4*) is amended by replacing the phrase, "paragraph (6)" with the phrase, "paragraphs (5) and (9)" wherever it appears.

g. A new paragraph (f)(1)(viii)(A)(*5*) is added.

h. The first sentence in paragraph (i)(4)(i)(B) is amended by replacing the phrase, "the household's residency," with the phrase, "the household's residency in accordance with § 273.2(f)(1)(vi),".

The additions and revisions read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food stamp application form.* * * * The application shall also contain a statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application. * * *

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(vi) *Residency.* The residency requirements of § 273.3 shall be verified except in unusual cases (such as homeless households, some migrant farmworker households, or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. * * *

* * * * *

(viii) *Disability* (A) * * *

(*5*) For individuals to be considered disabled under paragraph (10) of the definition, the household shall provide proof that the individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board *and* has been determined to quality for Medicare.

* * * * *

6. In § 273.3, the fifth sentence is revised to read as follows:

§ 273.3 Residency.

* * * The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. * * *

7. In § 273.5, paragraph (b)(1) is amended by adding a new paragraph (vi). The paragraph reads as follows:

§ 273.5 Students.

* * * * *

(b) *Eligibility Requirements.*

(1) * * *

(vi) Be assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act.

* * * * *

§ 273.9 [Amended]

8. In § 273.9:

a. Paragraph (d)(6)(i) is amended by removing the second sentence and adding two new sentences after the first sentence.

b. Paragraphs (d)(6)(ii) through (d)(6)(vii) are redesignated as paragraphs (d)(6)(iii) through (d)(6)(viii) respectively

c. Newly amended paragraph (d)(6)(i) is further amended by designating the fifth sentence which begins with the phrase, "The standard utility allowance which includes a heating . . .", and all that follows as paragraph (d)(6)(ii).

d. A new second sentence is added after the first sentence in newly redesignated paragraph (d)(6)(ii).

e. Newly redesignated introductory paragraph (d)(6)(v) is revised.

f. Newly redesignated introductory paragraph (d)(6)(v)(B) is revised.

g. Newly redesignated paragraph (d)(6)(vii) is amended by replacing the reference to "(d)(6)(iv)(C)" with "(d)(6)(v)(C)", the second and third sentences are revised, and the last sentence is removed.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) *Income deductions.* * * *

(6) *Standard utility allowance* (i) * * * The State agency may establish either: (A) a separate standard utility allowance for individual utility expenses defined in paragraph (d)(5)(iii) of this section; (B) a single standard utility allowance which includes a heating or cooling component and which is available to all households which incur out-of-pocket heating or cooling expenses; or (C) two single standard utility allowances which include a heating or cooling component.

If the State agency chooses to develop two standard utility allowances for households which incur heating or cooling expenses, one standard shall be used for those households not receiving indirect energy assistance payments and the second standard shall only be used for those households which receive indirect energy assistance payments (e.g., Low Income Home Energy Assistance Act) and incur out-of-pocket heating or cooling expenses. * * *

(ii) * * * The standard utility allowance shall also be made available to those households receiving indirect energy assistance payments but who continue to incur out-of-pocket heating or cooling expenses during any month covered by the certification period. * * *

* * * * *

(v) The State agency may establish standard utility allowances as prescribed in paragraph (d)(b)(i) of this section.

* * * * *

(B) If the State agency establishes one or two single standard allowances, it shall include the cost of heating and/or cooling, cooking fuel, electricity not used to heat or cool the residence, the basic service fee for one telephone, water, sewerage, and garbage and trash collection. If the State agency elects to develop a single standard for those households which receive indirect energy assistance payments, the standard shall reflect the average out-of-pocket heating or cooling expense for such households.

* * * * *

(vii) * * * The State agency shall further advise the household when it has the right to switch between the use of actual utility costs and the standard utility allowance. The State agency shall permit the household to switch between actual utility costs and the standard utility allowance at the time of recertification and one additional time during each twelve-month period.

* * * * *

§ 273. [Amended]

9. In § 273.10:

a. Paragraph (d) is amended by adding a new paragraph (d)(6).

b. Paragraph (f) is amended by adding a new paragraph (f)(7).

The addition and revision read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions* * * *

(6) *Energy Assistance Payments.* The State agency shall prorate energy assistance payments (e.g., Low Income Home Energy Assistance Act) as provided for in § 273.9(d) over the entire heating or cooling season the payment is intended to cover.

* * * * *

(f) *Certification periods* * * *

(7) Households required to submit monthly reports in accordance with § 273.21(b) shall be certified for not less than six months and not more than 12 months. The limit of 12 months may be waived for these households if the State agency can demonstrate that such a waiver would result in improved administration of the Program. The six-month minimum may be waived for households subject to less frequent than monthly reporting if the State agency can demonstrate that such a waiver would result in improved administration of the Program.

* * * * *

10. In § 273.11, paragraph (a)(1)(i) is amended by adding two new sentences after the second sentence to read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *

(l) *Annualizing self-employment income*

(i) * * * However, if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income on anticipated earnings. The State agency shall not calculate self-employment income on the basis of prior income (e.g. income tax returns) when the household has experienced a substantial increase or decrease in business. * * *

* * * * *

11. In § 273.18, introductory paragraph (a) and paragraph (f) are revised.

The addition and revision read as follows:

§ 273.18 Claims against households.

(a) *Establishing claims against households.* All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

* * * * *

(f) *Change in household composition.* State agencies shall initiate collection action against any or all of the adult members of a household at the time an overissuance occurred. Therefore, if a change in household composition occurs, State agencies may pursue collection action against any household which has a member who was an adult member of the household that received the overissuance. The State agency may also offset amount of the claim against restored benefits owed to any household which contains a member who was an adult member of the original household at the time the overissuance occurred. Under no circumstances may a State agency collect more than the amount of the claim. In pursuing claims, the State agency may use any of the appropriate methods of collecting payments in § 273.18(g).

* * * * *

§ 273.21 [Amended]

12. In § 273.21:

a. Introductory paragraph (a) is amended by adding two new sentences after the third sentence.

b. Paragraph (a)(3) is amended by adding a new sentence to the end of the paragraph.

c. A new paragraph (a)(4) is added.

d. Paragraphs (b)(1) and (b)(2) are revised.

e. Paragraphs (c)(3) through (c)(5) are redesignated as paragraphs (c)(4) through (c)(6) respectively and a new paragraph (c)(3) is added. The additions and revisions read as follows:

§ 273.21 Monthly reporting retrospective budgeting (MRRB).

(a) *System design.* * * * The monthly report shall be the sole reporting requirement for such information included on the monthly report. The State agency shall not require the household to report any changes included on the monthly report prior to the submission of the next monthly report. * * *

* * * * *

(3) * * * These limits may be waived for certain categories of households if the State agency can demonstrate that the waiver will improve the administration of the program.

(4) *Waivers* (i) FNS may approve waivers of the budgeting requirements of this section under the following criteria:

(A) Waivers may be approved to conform budgeting procedures in the AFDC Program.

(B) Waivers from retrospective budgeting may be approved for households waived from monthly reporting under paragraph (a)(4)(ii) of this section upon a showing by the State agency that the waiver will improve the administration of the Program.

(ii) FNS may approve waivers from monthly reporting under the following criteria:

(A) Waivers from monthly reporting may be approved for those categories of PA households which are not subject to monthly reporting in the AFDC Program under Title IV of the Social Security Act, as amended; not subject to monthly reporting under 45 CFR Part 233.36; or waived from monthly reporting in the AFDC Program by the Office of Family Assistance.

(B) FNS may approve proposals by the State agency to select categories of households for less frequent than monthly reporting. Approval is subject to the submission of data by the State agency indicating that the proposal will result in a net cost savings to the Federal Government. Subject to FNS approval, the State agency may designate alternative methods of reporting for households reporting at less frequent than monthly intervals under this paragraph. Such alternative methods include written reports, recertification interviews and interviews during the certification period.

(b) *Included and excluded households.* * * * (1) An MRRB system shall include all households with earnings and a recent work history. The State agency shall use the recent work history definition that is used in its AFDC Program for public and non-public assistance households. The State agency may extend retrospective budgeting, monthly reporting, or both to other categories of households, except where prohibited by paragraph (b)(2) of this section. However, a household required to monthly report shall be subject to retrospective budgeting.

(2) An MRRB system shall exclude migrant farmworker households while they are in the job stream and households in which all adult members are elderly or disabled and have no earned income.

* * * * *

(c) *Information on MRRB* * * *

(3) An explanation that information required to be reported on the monthly report is the only reporting requirement for such information;

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

13. In § 274.1, paragraph (a) is revised to read as follows:

§ 274.1 State Agency Issuance Responsibilities.

(a) *Basic issuance requirements.* Each State agency is responsible for the timely and accurate issuance of benefits to certified households in accordance with these regulations. Households comprised of elderly or disabled members who have difficulty reaching an issuance office to obtain their coupon allotments, and households which do not reside in a permanent dwelling or at a fixed mailing address, shall be given assistance in obtaining their coupons. State agencies shall assist these households by arranging for mail issuance or direct delivery of coupons to them, by assisting the households in finding authorized representatives who can act on their behalf or by using other appropriate means to assure delivery of benefits. The State agency shall establish an issuance and accountability system which will ensure that (1) only certified households receive benefits; (2) all certified households have access to their benefits; (3) benefits are timely distributed in the correct amounts; (4) coupons are accepted and stored with due security after their delivery to receiving points within the State; and (5) coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

14. In § 276.7, the last sentence in paragraph (j) is revised to read as follows:

§ 276.7 Administrative review process.

* * * * *

(j) *Judicial review.* * * * The final determination shall remain in effect during the period the judicial review or any appeal therefrom is pending unless the court temporarily stays such administrative action after a showing that irreparable injury will occur absent a stay and that the State agency is likely to prevail on the merits of the case.

* * * * *

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND WHOLESALERS

15. In § 279.10, paragraph (d) is revised to read as follows:

Subpart C—Judicial Review

§ 279.10 Judicial review.

* * * * *

(d) *Stay of action.* During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case.

16. In § 279.11, the undesignated paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 279.11 Implementation of amendments relating to administrative and judicial review.

* * * * *

(b) *Amendment No. 274.* The program change of *Amendment No. 274* at § 279.10(d) is effective retroactively to December 23, 1985.

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

§ 285.2 [Amended]

17. In § 285.2, paragraph (a) is amended by replacing in the second sentence the phrase, "$825,000,000 for each fiscal year except that the amount payable to Puerto Rico for final quarter of fiscal year 1982 shall be $206,500,000." with the phrase, "amounts appropriated for this purpose for each fiscal year.".

§ 285.3 [Amended]

18. In § 285.3, paragraph (b)(1) is amended by replacing in the first and second lines of the paragraph the phrase, "a single agency which shall be" with the phrase, "the agency or agencies directly".

Corrections

19. In FR Doc. 86-6486, appearing at page 10764, as Part V, in the issue of Friday, March 28, 1986, make the following corrections:

a. On page 10764, in column one, a typographical error is being corrected.

The reference to the date of "October 3, 1981" appearing in the section entitled "DATES", is corrected to Read "October 3, 1984".

§ 273.1 [Corrected]

b. On page 10783, in the third column, § 273.1(c)(1), the phrase "elderly or disabled children" should read "elderly or disabled parents". The provision at § 273.1(a)(2) of the March 28 final rule pertinent to this phrase does not contain a provision relative to children living with elderly or disabled parents.

§ 273.11 [Corrected]

c. On page 10788, in the second column, § 273.11(h)(2)(ii), the regulatory references to "(h)(2)(i)(B) and (h)(2)(i)(C)" should read "(h)(2)(i)(A), and "(h)(2)(i)(B)", respectively. There is no paragraph (h)(2)(i)(C) at 7 CFR 273.11.

20. In FR Doc. 86-7135, appearing at page 11009, in the issue of Tuesday, April 1, 1986, make the following correction:

§ 273.8 [Corrected]

On page 11011, in the third column, amendatory statement number 3(b) appearing under § 273.8 should read: paragraph (i)(4) is amended by replacing the references of "$1,250" and "$1,500" with $1,750" and "$2,000", respectively.

Dated: May 14, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86-11256 Filed 5-20-86; 8:45 am]

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