

Sunshine Act Meetings

Federal Register

Vol. 53, No. 222

Thursday, November 17, 1988

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).

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board Meeting

TIME AND DATE: 4:00 p.m.—Tuesday, November 22, 1988 (Rescheduled).

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW.-Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE

INFORMATION: Bonnie Nance Frazier, Director of Communications, 376-3224.

AGENDA:

1. Approval of Minutes, August 4, 1988.
2. Executive Director's Activity Report.

3. Treasurer's Report.

4. Appointment of Assistant Secretary.

5. Establishment of CY 1989 Board Meeting Dates.

Carol J. McCabe,

Secretary.

[FR Doc. 88-26650 Filed 11-15-88; 10:49 am]

BILLING CODE 7570-01-M

Corrections

Federal Register

Vol. 53, No. 222

Thursday, November 17, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeowners in Certain Industries; Records To Be Kept by Employers

Correction

In rule document 88-26041 beginning on page 45706 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45707, in the second column, in the first complete paragraph, in the sixth line, remove "the".

2. On page 45708, in the first column, in the 21st line, "certificate" should read "certification".

3. On page 45709, in the third column, in the first complete paragraph, in the eighth line, "assurance" should read "assurances".

4. On page 45711, in the first column, in the second complete paragraph, in the 14th line, "administrator" should read "Administrator".

5. On the same page, in the second column, in the first line, "suites" should read "suits".

6. On the same page, in the same column, in the first complete paragraph, in the 22nd line, "administrator" should read "Administrator".

7. On the same page, in the same column, in the second complete paragraph, in the first line, "administrator's" should read "Administrator's".

8. On page 45713, in the second column, in the 16th line from the bottom of the column, "difference" was misspelled.

9. On page 45714, in the first column, in the first complete paragraph, in the 3rd line, "employers" should read "employees"; and in the 13th line, insert "the" after "least".

10. On the same page, in the second column, in the first complete paragraph, in the second line, "proposed" should read "proposal".

11. On the same page, in the same column, in fourth complete paragraph, in the fourth line, "homeworker" should read "homeworkers"; and in the 10th line "homeworkers" should read "homeworker".

12. On page 45718, in the first column, in the sixth line, "provided" should read "provide".

13. On the same page, in the same column, in the first complete paragraph, in the 15th line, remove "foot".

14. On page 45721, in the first column, in the second complete paragraph, in the eighth line, "certificate" should read "certificates".

15. On the same page, in the second column, in the fourth line, "homeworker" should read "homeworkers".

PART 516—[AMENDED]

16. On page 45726, in the second column, in the authority citation for Part 516, after "211" add ". Section".

BILLING CODE 1505-01-D

Federal Register

Thursday
November 17, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for
Administration

48 CFR Parts 2401 et al.

Acquisition Regulation; Solicitation
Provisions, Contract Clauses, Forms, and
Other Miscellaneous Amendments; Final
Rule and Provisional Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, 2402, 2406, 2409, 2412, 2413, 2414, 2415, 2416, 2417, 2419, 2422, 2424, 2426, 2427, 2432, 2434, 2437, 2442, 2446, 2451, 2452, and 2453

[Docket No. R-88-1351; FR2131]

Acquisition Regulation; Solicitation Provisions, Contract Clauses, Forms, and Other Miscellaneous Amendments

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Final rule and provisional rule with request for comments.

SUMMARY: This final rule adopts, without substantive change, the proposed HUDAR rule of December 8, 1987, that supplemented the Federal Acquisition Regulation (FAR) by adding solicitation provisions, contract clauses, and HUD forms to the HUDAR. In addition, the final rule amends the proposed rule by removing some clauses due to subsequent issuance of FAR coverage; reorganizing the existing text in different sections; and in making minor technical corrections. Comment is being requested on seven provisional clauses which are being considered for Governmentwide application by the FAR councils.

DATES: Effective Date: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule and provisional rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the final rule and provisional rules publication. HUD will publish a notice of the effective date of this final rule and provisional rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this final rule and provisional rule will not become effective until HUD's separate notice is published announcing a specific effective date.

The following sections are provisional: 2409.508, 2416.504, 2437.110, 2452.209-71, 2452.209-72, 2452.216-75, 2452.237-71, 2452.237-72, 2452.237-74 and 2452.237-75.

Comments: Comments must be submitted on or before January 17, 1989.

ADDRESS: Send comments to FAR Secretariat, Ms. Margaret Willis, Room 4041, GS Building, Washington, DC, 20405, (202) 523-4755.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Deputy Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5260, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, DC, telephone (202) 755-5294. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 CFR 42102). The FAR was codified in Title 48, Chapter 1 of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696). The HUD Acquisition Regulation (HUDAR) was revised in an interim rule published in the Federal Register of November 8, 1985 (50 FR 46572) to implement the Competition in Contracting Act of 1984.

II. Proposed Rule for the Addition of Parts 2452 and 2453

The proposed HUDAR rule of December 8, 1987, supplemented the FAR by adding solicitation provisions, contract clauses, and HUD forms to the HUDAR. In addition, the proposed rule implemented the Prompt Payment Act (31 U.S.C. 3901-3906) and OMB Circular A-109, "Major Systems Acquisition." Because of the impact of the rule on the public, the Department published these HUDAR changes as proposed rulemaking and provided for a public comment period of 60 days. No public comments were received. However, HUD has determined that several revisions to the proposed rule are necessary in light of recent changes to the FAR and to reflect the Department's current procurement procedures.

III. Revisions to the Proposed Rule

A. Ratification of Unauthorized Commitments

Federal Acquisition Circular (FAC) 84-33 (53 FR 3688), dated February 8, 1988, amended the FAR by adding section 1.602-3, Ratification of Unauthorized Commitments. HUDAR 2401.602-70 is therefore removed and a new 2401.602-3 is added to provide necessary internal procedures. In addition, a paragraph (c)(5) is added to establish that the Contracting Officer or Head of the Contracting Activity authorized payments and, at their discretion, may seek legal concurrence when there is a concern regarding the propriety of the funding source,

appropriateness of the expense, or a legal issue is involved.

B. Prompt Payment Act

FAC 84-33 also implemented the Prompt Payment Act (31 U.S.C. 3901-3906) and OMB Circular A-125, "Prompt Payment." Proposed HUDAR coverage at 2432.900-2432.903 is therefore removed. HUDAR clauses at 2432.232-70, "Payment (Fixed-Price)," and 2432.232-71, "Payment (Cost-Reimbursement)," have been revised and renamed "Payment Schedule and Invoice Submission (Fixed-Price)" and "Voucher Submission (Cost-Reimbursement)," respectively. All duplicative language as reflected in FAR 52.232-25 has been removed. The clauses as now written merely contain instructions on where invoices/vouchers are to be submitted. HUDAR 2452.232-72, "Method of Payment," has been removed in its entirety in light of the FAR coverage.

C. Addition and Modification of Clauses

A prescription at 2422.1408(c) and the related clause at 2452.222-70, "Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities," are added to require that contractors ensure that any meetings, conferences, and seminars conducted under the contract are accessible to disabled persons, per Section 504 of the Rehabilitation Act of 1973, as amended.

HUDAR 2452.237-75, "Clearance of Personnel," has been amended to add the requirement that contractor staff working on-site must have temporary identification/building passes. This reflects current Departmental procedure.

IV. Other HUDAR Revisions

The Office of Housing reorganized in 1986. All references to Chief, Reconditioning and Contracting Branch, Office of Multifamily Housing Management, are therefore revised to Chief, Management Branch, Office of Multifamily Housing Management, to reflect the reorganization.

The definition of "Head of Contracting Activity" at 2402.101 has been revised to add the Regional Director, Office of Housing, for decentralized procurement for acquired properties in co-located Regional/Field Offices.

HUDAR 2419.503 pertaining to small business class set-asides for construction has been revised to state that this set-aside only pertains to contracts awarded under the Acquired Property Program. When the HUDAR was first published, only the Acquired Property Program awarded construction contracts. However, since that time,

HUD has engaged in other construction contracts pertaining to HUD's management and operation of its Headquarters building. Therefore, the clarification is required to reflect the original intent.

Part 2470, "Special Programs Affecting Acquisition," has been changed to Part 2426, "Other Socioeconomic Programs." This change was required to implement FAC 84-32 (53 FR 660), dated January 11, 1988, which created FAR Part 26. The text, however, has not been revised.

The prescription at 2427.305-2 for use of the Form HUD 770, "Report of Inventions and Subcontracts," has been modified to state that the Contracting Officer need only send the form if the work conducted under the contract was such that patents or inventions may have been developed.

HUDAR 2432.410 has been removed. This passage stated that the Determination and Findings required by FAR 32.402(c)(1)(iii) regarding advance payments could be issued by the Head of the Contracting Activity (HCA) only if a specific delegation of authority has been issued. However, proposed 2432.402 states that the Director of the Office of Procurement and Contracts (OPC) makes these determinations. Upon reviewing delegations of authority, it was discovered that the Director, OPC, is the only HCA with the specific delegated authority. Therefore, 2432.410 is unnecessary and is hereby removed.

HUDAR 2434.001, which establishes the Department's threshold for a "major system" to \$15,000,000, has been revised to state that the Senior Procurement Executive may waive the requirements of OMB Circular A-109 if an acquisition exceeds the dollar threshold but does not otherwise meet the definition of a major system. In addition, a section 2434.003 has been added to designate the Senior Procurement Executive as the individual responsible for implementation of A-109. This designation is consistent with internal Departmental directives.

V. Provisional Portion of Regulation

The following clauses/provisions have been submitted to the FAR Councils for consideration for FAR coverage:

Clause/Provision	HUD cite
Organizational Conflict of Interest Certification	2452.209-71
Organizational Conflict of Interest Clause	2452.209-72
Unpriced Task Orders	2452.216-75
Reproduction of Reports	2452.237-71
Coordination of Data Collection Activities	2452.237-72

Clause/Provision	HUD cite
Technical Direction	2452.237-74
Clearance of Personnel	2452.237-75

These provisions/clauses are therefore designated as "provisional". Should the FAR Councils adopt a rule based on these provisions/clauses, HUD will rescind the provisional rule in favor of the FAR coverage.

VI. Miscellaneous

This rule would not constitute a "major rule" as the term is defined in section 1(b) of Executive Order 12291. This rule does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The revisions in this rule would involve modifications of various Departmental procedures for HUD procurement activities. These modifications primarily involve the codification of procedures involving certain solicitation provisions, contract clauses, and forms that have been implemented by HUD for many years.

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities because this rule merely codifies current Departmental procedures.

The information collection burdens associated with these procurement procedures have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502-0276, 2535-0306, 2535-0085, and 2535-0091.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item 1050 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42008) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2401, 2402, 2406, 2409, 2412, 2413, 2414, 2415, 2416, 2417, 2419, 2422, 2424, 2426, 2427, 2432, 2434, 2437, 2442, 2446, 2451, 2452, and 2453

Government procurement.

Accordingly, Title 48, Chapter 24 of the Code of Federal Regulations is proposed to be amended as follows:

SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for Part 2401 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2401.403 [Amended]

2. Section 2401.403 is corrected by revising the parenthetical statement "(see 2401.601-1)" to read "(see 2401.601-70)."

3. The Table of Contents for Subpart 2401.6 is revised to read as follows:

Subpart 2401.6—Contracting Authority and Responsibilities

Sec.	
2401.601	General.
2401.601-70	Senior Procurement Executive.
2401.601-71	Office of Procurement and Contracts.
2401.601-72	Acquired Property Program of the Office of Housing.
2401.601-73	Government National Mortgage Association (GNMA).
2401.601-74	Regional Offices.
2401.602	Contracting Officers.
2401.602-3	Ratification of unauthorized commitments.
2401.603	Selection, appointment and termination of appointment.
2401.603-2	Selection.
2401.603-3	Appointment.

2401.602-70 [Removed]

4. HUDAR 2401.602-70 is removed.

5. A new HUDAR 2401.602-3 is added, to read as follows:

2401.602-3 Ratification of unauthorized commitments.

(b)(4) A request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request will include an explanation as to the need for the service, the reason why normal procurement procedures were not

followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer and approved by the HCA. When circumstances warrant, the HCA may establish more stringent ratification procedures.

(c)(5) If the amount involved is less than \$1,000, the Contracting Officer shall recommend payment. If the amount involved exceeds \$1,000, the HCA shall recommend payment. In either case, legal concurrence may be requested if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when a legal issue is involved.

PART 2402—DEFINITIONS OF WORDS AND TERMS

6. In section 2402.101 the definition of "Head of Contracting Activity" is revised to read as follows:

2402.101 Definitions.

"Head of Contracting Activity" is defined in accordance with the FAR. The following HUD officials are designated HCAs:

- (1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement and the Consolidated Supply Program;
- (2) The Regional Directors, Offices of Administration for Regional Office procurements;
- (3) The Chief, Management Branch, Office of Multifamily Housing Management, for Headquarters acquired properties operations;
- (4) The Regional Director, Office of Housing, for decentralized procurement for acquired properties in co-located Regional/Field Offices;
- (5) The Managers, HUD Field Offices, for decentralized procurement in Field Offices for acquired properties; and
- (6) The President, Government National Mortgage Association (GNMA), for procurements related to GNMA's programmatic functions.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2406—COMPETITION REQUIREMENTS

7. The authority citation for Part 2406 continues to read as follows:

Authority: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Services

Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2406.304-70 [Amended]

8. The phrase "Chief, Reconditioning and Contracting Branch" in HUDAR 2406.304-70(a)(1) is corrected to read "Chief, Management Branch."

PART 2409—CONTRACTOR QUALIFICATIONS

9. The authority citation for Part 2409 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. The table of contents is amended by adding sections 2409.508, 2409.508-1 and 2409.508-2 to read as follows:

Subpart 2409.5—Organizational Conflicts of Interest

Sec.

- * * * * *
- 2409.508 Solicitation provisions and contract clause.
- 2409.508-1 Solicitation provisions.
- 2409.508-2 Contract clause.

Subpart 2409.5—Organizational Conflicts of Interest

11. Section 2409.504 is amended by revising paragraph (a)(5), removing paragraph (b), redesignating paragraph (c) as (b) and revising the first sentence of newly redesignated paragraph (b)(1), redesignating paragraphs (d) and (e) as (c) and (d) and revising newly redesignated paragraph (d) to read as follows:

2409.504 Contracting Officer responsibilities.

- * * * * *
- (a) * * *
- (5) Refusal to provide the disclosure or representation and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant interest shall disqualify the offeror or contractor for award or provide the rationale for post-award default action if the exercise of due diligence would have disclosed an apparent conflict. This provision applies equally to post-award disclosure requirements contained in the clause required by HUDAR 2409.508-2.
- * * * * *

- (b) * * *
- (1) The disclosure or certification required by HUDAR 2409.508-1 and 2409.508-2 is designed to alert the Contracting Officer to situations or relationships which may constitute either present or anticipated

organizational conflicts of interest with respect to a particular offeror or contractor.

(d) Action in Lieu of Termination. If the Contracting Officer determines that it would not be in the best interest of the Government to terminate a contract as provided in the clause cited at HUDAR 2409.508-2, the Contracting Officer shall take every reasonable action to eliminate, or otherwise neutralize the organizational conflict of interest.

12. Sections 2409.508, 2409.508-1, and 2409.508-2 are added to read as follows:

2409.508 Solicitation provisions and contract clause.

2409.508-1 Solicitation provisions.

The Contracting Officer shall insert the provisions at 2452.209-70, Organizational Conflicts of Interest Notification, and 2452.209-71, Organizational Conflicts of Interest Certification, in all solicitations over the small purchase limitation.

2409.508-2 Contract clause.

The Contracting Officer shall insert the clause at 2452.209-72, Organizational Conflicts of Interest, in all contracts.

13. Part 2412 is added to read as follows:

PART 2412—CONTRACT DELIVERY OR PERFORMANCE

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2412.1—Delivery or Performance Schedules

2412.104 Contract clause.

(a) The Contracting Officer may insert the clause at 2452.212-70, Contract Period, in all term form cost-reimbursement and fixed-price service solicitations and contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

14. The authority citation for Part 2413 is revised to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. The table of contents for Part 2413 is amended by adding Subparts 2413.1 and 2413.5 to read as follows:

Subpart 2413.1—General

Sec.
2413.107 Solicitation and evaluation of quotations.

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.
2413.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

16. Subpart 2413.1, consisting of section 2413.107, is added to read as follows:

Subpart 2413.1—General

2413.107 Solicitation and evaluation of quotations.

(a)(4) Contracting Officers may use HUD Form 24007, Purchase/Delivery Order Data File, to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

17. Subpart 2413.5, consisting of sections 2413.505 and 2413.505-2, is added to read as follows:

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.

2413.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Contracting Officers may use the HUD Form 24001, Order for Supplies or Services, in lieu of Optional Form 347 for individual purchases not exceeding the small purchase limit.

(b) For small purchases under the Acquired Property Program, Contracting Officers shall use HUD Form 2542, Purchase Order and Payment Authorization. This form shall not be used for construction purchases expected to exceed \$2,000. It shall not be used for purchases above the small purchase limit.

PART 2414—SEALED BIDDING

18. The authority citation for Part 2414 continues to read as follows:

Authority: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2414.406-3 [Amended]

19. In HUDAR 2414.406-3(e)(3), the phrase "Chief, Reconditioning and Contracting Branch" is corrected to read "Chief, Management Branch."

PART 2415—CONTRACTING BY NEGOTIATION

20. The authority citation for Part 2415 continues to read as follows:

Authority: Competition in Contracting Act of 1984 (41 U.S.C. 253); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

21. Section 2415.407 is added to read as follows:

2415.407 Solicitation provisions.

(a) The Contracting Officer shall insert the provision at 2452.215-70, Proposal Content and Outline, in all negotiated solicitations over the small purchase limitation.

(b) The Contracting Officer shall insert the provisions at 2452.215-71, DUNS Contractor Establishment Number, in all solicitations that exceed the small purchase limitation.

22. Sections 2415.411 and 2415.411-70 are added to read as follows:

2415.411 Receipt of proposals and quotations.

2415.411-70 Recording of proposals.

HUD Form 4056, Abstract of Proposals, may be used to record the names and addresses of offerors whose proposals are received before the stated deadline. The offerors total price, including any estimated cost and fixed fee are to be recorded after the deadline at the time the proposals are opened.

PART 2416—TYPES OF CONTRACTS

23. The authority citation for Part 2416 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

24. Section 2416.405 is revised to read as follows:

2416.405 Contract clauses.

(e)(1) The Contracting Officer shall insert the clauses at 2452.216-70, Estimated Cost, Base Fee, and Award Fee; 2452.216-71, Payment of Base and Award Fee; 2452.216-72, Determination of Award Fee Earned; 2452.216-73, Performance Evaluation Plan; and 2452.216-74, Distribution of Award Fee, in all award fee contracts. The Contracting Officer may modify the clauses to meet individual situations and any clause or specific requirement therein may be deleted when it is not applicable to a given contract.

25. Section 2416.504 is added to read as follows:

2416.504 Indefinite-quantity contracts.

(e) The Contracting Officer shall insert the clause at 2452.216-75, Unpriced Task Orders, in all indefinite-quantity contracts.

26. Part 2417 is added to read as follows:

PART 2417—SPECIAL CONTRACTING METHODS

Authority: Economy Act (31 U.S.C. 1535); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

(b) The Contracting Officer shall use HUD Form 730, Award/Modification of Interagency Agreement, when placing or modifying an order for supplies or services from another Government agency.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

27. The authority citation for Part 2419 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

28. The heading and first sentence in HUDAR 2419.503(a) are revised to read as follows:

2419.503 [Amended]

(a) *Class set-aside for construction under the Acquired Property Program.* A class set-aside is hereby made for each proposed procurement for construction under the Acquired Property Program with an estimated cost of less than \$1,000,000.

* * * * *

29. A new Part 2422 is added as follows:

PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2422.14—Employment of the Handicapped**2422.1408 Contract clause.**

(c) The Contracting Officer shall insert the clause at 2452.222-70, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

30. The authority citation for Part 2424 is revised to read as follows:

Authority: Freedom of Information Act (5 U.S.C. 552); Privacy Act of 1974 (5 U.S.C. 552a); Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

31. Section 2424.202-70 is added to read as follows:

2424.202-70 Solicitation provision.

The Contracting Officer shall insert the provisions at 2452.224-70, Freedom of Information Act Notification, in all negotiated solicitations exceeding the small purchase limitation.

32. A new Part 2426 is added to read as follows:

PART 2426—OTHER SOCIOECONOMIC PROGRAMS**Subpart 2426.1—Minority Business Enterprises****2426.101 Policy.****2426.102 Responsibility.****2426.103 Solicitation provision.****Subpart 2426.2—Historically Black Colleges and Universities****2426.201 Policy.****Subpart 2426.1—Minority Business Enterprises****2426.101 Policy.**

It is the policy of the Department to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A "minority business enterprise" is a business which is at least 51 percent owned by one or more minority group members; or, in case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are Black Americans, Hispanic Americans, Native Americans, Asian Pacific

Americans and Asian Indian Americans, and Hasidic Jewish Americans.

2426.102 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and Primary Organization Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

2426.103 Solicitation provision.

All contracting activities shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.226-70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

Subpart 2426.2—Historically Black Colleges and Universities**2426.201 Policy.**

Executive Order 12320, September 15, 1981 ((46 FR 46107), 3 CFR 1981 Comp., P.176), directed the Department to establish annual plans to increase the ability of Historically Black Colleges and Universities to participate in Federally sponsored programs including contracts, grants and cooperative agreements. OSDBU is responsible for developing the annual plans regarding the participation of Historically Black Colleges and Universities in Departmental programs. OSDBU is responsible also for ensuring that the reporting requirements are fulfilled.

33. Part 2427 is added to read as follows:

PART 2427—PATENTS, DATA, AND COPYRIGHTS**Subpart 2427.3—Patent Rights Under Government Contracts****Sec.****2427.305 Administration of patent rights clauses.****2427.305-2 Follow-up by contractor.**

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2427.3—Patent Rights Under Government Contracts**2427.305 Administration of patent rights clauses.****2427.305-2 Follow-up by contractor.**

(b) Contractor reports. Contractors shall complete and submit to the Contracting Officer HUD Form 770, Report of Inventions and Subcontracts, upon receipt of said form. The Contracting Officer shall send the form to those contractors whose contract work may have required the development of inventions upon physical completion of the contract.

Subchapter E—General Contracting Requirements

34-35. Part 2432 is revised to read as follows:

PART 2432—CONTRACT FINANCING**Subpart 2432.4—Advance Payments****Sec.****2432.402 General.****Subpart 2432.9—Prompt Payment****2432.908 Contract clauses.**

Authority: Prompt Payment Act (31 U.S.C. 3901-3906); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2432.4—Advance Payments.**2432.402 General.**

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts.

(2) Each advance payment situation shall be coordinated with the Office of Finance and Accounting before authorization may be given.

Subpart 2432.9—Prompt Payment**2432.908 Contract clauses.**

(a) The Contracting Officer shall insert the clause at 2452.232-70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts. The clause with its Alternate I shall be used for solicitations and contracts issued by the Regional Contracting Officers.

(b) The Contracting Officer shall insert the clause at 2452.232-71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office. The clause with its Alternate I shall be used for solicitations and contracts issued by the Regional Contracting Officers.

36. Part 2434 is added to read as follows:

PART 2434—MAJOR SYSTEM ACQUISITIONS

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2434.001 Definition.

(b) The Department's dollar threshold for a "major system", under OMB Circular A-109, "Major System Acquisitions", is \$15,000,000. The Senior Procurement Executive may, however, designate any acquisition as a "major system acquisition" if its priority to the Department's overall mission warrants such emphasis or may waive the requirements of the Circular if an acquisition exceeds \$15,000,000, but does not otherwise meet the definition of a major system.

2434.003 Responsibilities.

(a) The Senior Procurement Executive is responsible for establishing written procedures for implementation of A-109. Such procedures have been set out in internal Departmental directives.

Subchapter F—Special Categories of Contracting

PART 2437—SERVICE CONTRACTING

37. The table of contents is amended by adding the following subpart:

Subpart 2437.1—Service Contracts—General

Sec.

2437.101 Definitions.

2437.110 Solicitation provisions and contract clauses.

38. The authority citation for Part 2437 continues to read as follows:

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

39. Subpart 2437.1, consisting of sections 2437.101 and 2437.110, is added to read as follows:

Subpart 2437.1—Service Contracts—General

2437.101 Definitions.

"Government Technical Representative" (GTR) means that individual responsible for the technical direction, oversight, and evaluation of the Contractor's performance.

2437.110 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause at 2452.237-70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(b) The Contracting Officer shall insert the clause at 2452.237-71, Reproduction of Reports, in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

(c) The Contracting Officer shall insert the clause at 2452.237-72, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

(d) The Contracting Officer shall insert the clause at 2452.237-73, Conduct of Work, in all service contracts.

(e) The Contracting Officer shall insert the clause at 2452.237-74, Technical Direction, in all cost-reimbursement solicitations and contracts for services.

(f) The Contracting Officer shall insert the clause at 2452.237-75, Clearance of Personnel, in all solicitations and contracts where Contractor personnel will be working on-site in any HUD office. Contractors shall be required to complete Forms FD-258, "Fingerprinting Charts" and GSA-176, "Statement of Personal History."

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2442—CONTRACT ADMINISTRATION

40. Part 2442 is added to read as follows:

Subpart 2442.7—Indirect Cost Rates

Sec.

2442.705 Final indirect cost rates.

2442.705-70 Contract clause.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.

2442.1107 Contract clause.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.242-70, Indirect Costs, in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for

negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.

(a) All contracts for professional or technical services exceeding \$100,000.00 shall use HUD Form 441.1, "Project Management System Baseline Plan," to outline how the Contractor proposes to carry out the contract work and HUD Form 661.1, "Project Management System Progress Report," to monitor quantitative progress against the baseline plan. Each of these forms shall be accompanied by a narrative description. The Contracting Officer may waive the requirement to use these forms if he or she believes the Statement of Work or contractor's technical proposal are sufficiently specific or another acceptable means for project management is substituted. Contracts awarded under the Acquired Property Program are exempt from use of this reporting requirement.

2442.1107 Contract clause.

The Contracting Officer shall insert the clause at 2452.242-71, Project Management System, in solicitations and contracts for professional or technical services exceeding \$100,000 unless the Contracting Officer determines that the Statement of Work or technical proposal is sufficiently specific or another acceptable method for project management is substituted.

41. Part 2446 is added to read as follows:

PART 2446—QUALITY ASSURANCE

Subpart 2446.5—Acceptance

Sec.

2446.502 Responsibility for acceptance.

2446.502-70 Contract clause.

Subpart 2446.6—Material Inspection and Receiving Reports

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2446.5—Acceptance.

2446.502 Responsibility for acceptance.

2446.502-70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246-70, Inspection and Acceptance, in solicitations and contracts unless inspection and acceptance will be performed by

someone other than the Government Technical Representative (GTR).

Subpart 2446.6—Material Inspection and Receiving Reports

Note: Inspection of contractor's performance shall be performed as often as necessary to protect HUD's interest. HUD Form 9519, Acquired Property Inspection Report, shall be used to document inspection and acceptance for work performed on properties under the Acquired Property Program. Distribution shall be as indicated on the form.

42. Part 2451 is added to read as follows:

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2451.3—Contractor Use of Government Discount Air Passenger Transportation Rates

2451.303 Contract clause.

The Contracting Officer shall insert the clause at 2452.251-70, Contractor Employee Travel, in all cost-reimbursement contracts involving airline travel.

SUBCHAPTER H—CLAUSES AND FORMS

43. Part 2452 is added to read as follows:

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2452.2—Texts of Provisions and Clauses

Sec.

- 2452.209-70 Organizational conflicts of interest notification.
- 2452.209-71 Organizational conflicts of interest certification.
- 2452.209-72 Organizational conflicts of interest.
- 2452.212-70 Contract period.
- 2452.215-70 Proposal content and outline.
- 2452.215-71 DUNS Contractor establishment number.
- 2452.216-70 Estimated cost, base fee, and award fee.
- 2452.216-71 Payment of base and award fee.
- 2452.216-72 Determination of award fee earned.
- 2452.216-73 Performance evaluation plan.
- 2452.216-74 Distribution of award fee.
- 2452.216-75 Unpriced task orders.
- 2452.222-70 Accessibility of meetings, conferences, and seminars to persons with disabilities.
- 2452.224-70 Freedom of Information Act notification.

Sec.

- 2452.226-70 Certification of status as a minority business enterprise.
- 2452.232-70 Payment schedule and invoice submission (fixed-price).
- 2452.232-70 Payment schedule and invoice submission (fixed-price)—Alternate I.
- 2452.232-71 Voucher submission (cost-reimbursement).
- 2452.237-70 Key personnel.
- 2452.237-71 Reproduction of reports.
- 2452.237-72 Coordination of data collection activities.
- 2452.237-73 Conduct of work.
- 2452.237-74 Technical direction.
- 2452.237-75 Clearance of personnel.
- 2452.242-70 Indirect costs.
- 2452.242-71 Project management system.
- 2452.246-70 Inspection and acceptance.
- 2452.251-70 Contractor Employee Travel.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2452.2—Texts of Provisions and Clauses

2452.209-70 Organizational conflicts of interest notification.

As prescribed in 2409.508-1, insert the following solicitation provision in all solicitations.

Organizational Conflict of Interest Notification (Feb 1987)

(a) It is the Department of Housing and Urban Development's policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage.

(b) Offerors shall provide a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict. (Offerors should refer to FAR Subpart 9.5 and HUDAR Subpart 2409.5 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest).

(c) In the absence of any relevant interests referred to above, the offeror shall complete the certification at 2452.209-71.

Organizational Conflicts of Interest Certification.

(d) No award shall be made until the disclosure or certification has been evaluated by the Contracting Officer. Failure to provide the disclosure or certification will be deemed to be a minor infraction and the offeror will be permitted to correct the omission within a time frame established by the Contracting Officer.

(e) Refusal to provide the disclosure or certification and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant information shall disqualify the offeror.

(f) If the Contracting Officer determines that a potential conflict exists, the selected offeror shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

2452.209-71 Organizational conflict of interest certification.

As prescribed in 2409.508-1, insert the following solicitation provision in all solicitations.

Organizational Conflicts of Interest Certification (Apr 1984)

The bidder or offeror certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed Government contract and the bidder or offeror's organizational, financial, contractual or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the offeror; or

(b) Impair the offeror's objectivity in performing the contract work.

□ In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to

Offeror(s) or Bidder(s)
possible performance of this procurement.

(End of provision)

2452.209-72 Organizational conflicts of interest.

As prescribed in 2409.508-2, insert the following contract clause in all contracts.

Organizational Conflicts of Interest (Apr 84)

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

2452.212-70 Contract period.

As prescribed in 2412.104(a), insert the following clause in all term form cost-reimbursement and fixed-price service solicitations and contracts.

Contract Period (Apr 1984)

The Contractor shall complete all work hereunder, including delivery of the final report, if required, within _____ months from the effective date of the contract.

(End of clause)

2452.215-70 Proposal content and outline.

As prescribed in 2415.407(a), insert the following solicitation provision in all solicitations over the small purchase limitation.

Proposal Content and Outline (Apr 1984)

(a) Proposals shall be submitted in two separate parts as further described below and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The envelope must show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror. Part I shall consist of the technical and management submittal of the proposed work. Part II shall consist of complete cost and pricing data. Each part of the proposal shall be complete in itself so that the evaluation of both parts can be accomplished concurrently, and the evaluation of the technical and management submittal can be made strictly on the basis of its merit.

(b) *Part I—Technical and Management.*

Section 1: *Proposal Coverage.* Cover the scope of work and general objectives which the proposal addresses.

Section 2: *Tasks and Methods.* Describe the principal tasks or sub-projects to be

undertaken together with a discussion of their relationships to each other. Discuss the considerations for selecting, performing and the time sequencing of the tasks or sub-projects. Describe and discuss the method of personnel training and field personnel recruitment and the method of project control to be applied to the project to ensure timely, professional and quality performance. The Contractor must clearly state his/her plans for project management and in providing current and updated project progress to HUD during those phases of Contractor performance that require substantial coordination with HUD personnel.

Section 3: *Organization and Staffing.*

Include an organizational chart for the project showing the name of the project manager and the names of key personnel. Include a brief resume for each person shown on the special qualifications applicable to the performance of the project. Describe the specific effort to be contributed to the project by each of the key personnel and include a statement expressed either in percentage or person-hours that each will devote to the effort. Include a summation of the minimum person-hours or person-months of professional effort to be used in completing the project. Describe the physical facilities to be used. If consultants, advisors or subcontractors are to be used, describe the arrangements and include resumes of the key personnel.

Section 4: *Prior and Current Experience.*

Include a list of projects currently in progress and completed within the last two years which are relevant to this procurement. Include names, addresses and telephone numbers of contact points with these clients. The Government reserves the right to request information from any source so named.

Section 5: *Conflicting or Multiple Use of Contractor Resources.* Include a description of the contractor's current or planned projects that may draw upon resources or personnel, including top management, proposed to be committed to this project. Explain how such conflicting or multiple uses will be resolved to avoid impairing the timely, professional, and high-quality performance of this project. If the proposer has one or more existing HUD projects that will run concurrently with this project, explain how the level of attention described in the proposal will be preserved across projects.

The Government reserves the right to downgrade the related Factor for Award score for any proposal that does not adequately and credibly address such conflicts or multiple uses.

(c) *Part II—Cost and Pricing Data.*

Furnish cost or pricing data using the forms provided in Part III, Section J of this solicitation, SF-1411, Contract Pricing Proposal. Instructions for using that form are also in Section J. Round all amounts to the nearest dollar. Also execute the "Certifications and Representations" included in Part IV, Section K, and, where appropriate, a "Certification of Current Cost or Pricing Data". Furnish the names and telephone number of the Government audit organization having cognizance of your activity.

(d) Proposals shall be submitted in six (6) copies each of Part I and II.

(End of provision)

2452.215-71 DUNS contractor establishment number.

As prescribed in 2415.407(b), insert the following solicitation provision in all solicitations which exceed the small purchase limitation.

DUNS Contractor Establishment Number (Apr 1984)

Offerors or Bidders are required to complete the following for all solicitations which exceed the small purchase limitation. DUNS Contractor Establishment Number

(End of provision)

2452.216-70 Estimated cost, base fee, and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Estimated Cost, Base Fee, and Award Fee (Apr 1984)

The estimated cost of this contract is \$ (Insert Amount). A base fee of \$ (Insert Amount) is payable in accordance with the clause entitled Payment of Base and Award Fee. In addition, a maximum Award Fee of \$ (Insert Amount) is available for payment in accordance with the clause entitled Payment of Base and Award Fee.

(End of clause)

2452.216-71 Payment of base and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Payment of Base and Award Fee (Aug 1987)

(a) *Base Fee.* The Government will make payment of the base fee in (insert number) increments on the schedule set forth in the Performance Evaluation Plan established by the Government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(b) *Award Fee.* The Government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

2452.216-72 Determination of award fee earned.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Determination of Award Fee Earned (Aug 1987)

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the Government shall evaluate the contractor's performance and determine the amount, if any, of award fee

earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision is made unilaterally by the Government and is not subject to the disputes clause or the provisions of the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* In reaching this decision, the FDO may consider any justification of award fee the Contractor submits, provided that the justification is submitted within (insert number) days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth the basis of the FDO's decision, and shall be sent to the Contractor within (insert number) days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.
(End of clause)

2452.216-73 Performance evaluation plan.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Performance Evaluation Plan (Aug 1987)

(a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy of the Plan to the Contractor (insert number) days before the start of the first evaluation period.

(b) The Government may initially revise the Performance Evaluation Plan at any time during the contract term. The Contractor shall be notified at least (insert number) days before the start of the evaluation period to which the change will apply.
(End of clause)

2452.216-74 Distribution of award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

Distribution of Award Fee (Apr 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:
Evaluation Period: _____
Available Award Fee: _____

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official as designated in the contract. The contract clauses required for cost reimbursement contracts should be

modified for use under award fee contracts as cited below:

(1) The term "base fee and award fee" should be substituted for "fixed-fee" where it appears in the clause at FAR 52.243-2, Changes.

(2) The term "base fee" should be substituted for "fee" where it appears in the clauses at FAR 52.232-20, Limitation of Costs, and FAR 52.232-22, Limitation of Funds.

(3) The phrase "base fee, if any, and such additional fee as may be awarded as provided for in the Schedule"; should be substituted for the term "fee" whenever it appears in the clause at FAR 52.216-7, Allowable Cost and Payment.
(End of clause)

2452.216-75 Unpriced task orders.

As prescribed in 2416.504(e), insert the following clause in all indefinite-quantity contracts.

Unpriced Task Orders (Apr 1984)

(a) Although it is anticipated that the Government and the Contractor will reach agreement on the total cost and fee or profit (if applicable) for the effort to be undertaken, prior to the issuance of a Task Order, there may be occasions when the Government wishes to authorize commencement of work prior to agreement on price. If this is the case, a Task Order may be issued which provides that the Contractor shall immediately commence performance of the services specified in the order, and shall submit a pricing proposal within fifteen days of receipt of the Task Order. Upon negotiations of the cost, a supplemental agreement shall be executed to make specific all terms and conditions of the Task Order. Failure to agree for costs ordered under this procedure shall be considered a dispute within the meaning of the clause of this contract entitled Disputes.

(b) Unpriced Task Orders shall indicate a "not-to-exceed" amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the Task Order. The Task Order shall only require the Contracting Officer's signature, but shall comply with all other Task Order requirements.
(End of clause)

2452.222-70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 2422.1408(c), insert the following clause in all solicitations and contracts.

Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (Jul 1988)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

2452.224-70 Freedom of Information Act notification.

As prescribed in 2424.202-70, insert the following provision in all solicitations.

Freedom of Information Act Notification (Apr 1984)

Proposals submitted in response to this solicitation are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether or not to release information contained in a proposal in the event a FOIA request is received, offerors may, through clear earmarking or otherwise, indicate those portions of their proposals which they believe should not be disclosed. While an offeror's advice will be considered by the Department in its determination whether to release requested information or not, it must be emphasized that the Department is required by the FOIA to make an independent evaluation as to the information, notwithstanding the offeror's views. It is suggested that if an offeror believes that confidential treatment is appropriate, the basis for this view should be provided, where possible, because general assertions or blanket requests for confidentiality, without more information, are not particularly helpful to the Department in making determinations concerning the release of information under the Act. It should also be noted that the Department is required to segregate disclosable information from non-disclosable items, so particular care should be taken in the identification of each portion of which confidential treatment is requested. Offeror's views concerning confidentiality will be used to aid the Department in preparing its response to FOIA requests. Further, offerors should note that the presence or absence of such comments or earmarking regarding confidential information will have no bearing whatsoever on the evaluation of proposals submitted pursuant to this solicitation, nor will the absence of this earmarking automatically result in greater disclosure.
(End of provision)

2452.226-70 Certification of status as a minority business enterprise.

As prescribed in 2426.103, insert the following solicitation provision in all solicitations.

Certification of Status as a Minority Business Enterprise (Jun 1988)

[] Bidder, Offeror or Supplier certifies that he or she [] is, [] is not, (check one), a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:
(Check the box applicable to you)

- [] Black Americans
- [] Hispanic Americans
- [] Native Americans
- [] Asian Pacific Americans
- [] Asian Indian Americans
- [] Hasidic Jewish Americans

(End of Provision)

2452.232-70 Payment schedule and invoice submission (fixed-price).

As prescribed in 2432.908(a), insert the following clause in all fixed price solicitations and contracts.

Payment Schedule and Invoice Submission (Fixed-Price) (Mar 1988)

(a) *General.* The Government shall pay the Contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Part I, Section B of this contract.

(USE PARAGRAPH (b) ONLY IF PARTIAL PAYMENTS APPLY. OTHERWISE PARAGRAPH (a) ABOVE ASSUMES THE CONTRACTOR WILL BE PAID THE FULL AMOUNT UPON COMPLETION OF ALL CONTRACT REQUIREMENTS)

(b) *Payment Schedule.* Payments will be made in accordance with the following partial payment schedule:

Partial payment number	Specific deliverable	Delivery date	Payment amount
1. []			
2. []			
3. []			

(Continue as necessary)

(c) *Submission of Invoices.* Invoices shall be submitted in an original and three (3) copies to the payment office identified in Block 12 of the SF-26 or Block 25 of the SF-33. To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment."

To assist the Government in making timely payments, the Contractor is also requested to identify the appropriation number (from Block 14 if award is made on the SF-26 or Block 21 if award is made on the SF-33) on each invoice. The Contractor is also requested to identify on the envelope that an invoice is enclosed.

(d) *Contractor Remittance Address.* Payment shall be made to the Contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(Insert appropriate address)

(End of clause)

Alternate I (Mar 1988).

This alternate is required for all fixed-price contracts issued by Regional Contracting Officers. In such cases, substitute the following paragraph (c) for that in the basic clause:

(c) Invoices shall be submitted in an original and three (3) copies to the office identified in Block 5 of the SF-26 or Block 7 of the SF-33. To constitute a proper invoice, the

invoice must include all items per FAR 52.232-25, "Prompt Payment."

2452.232-71 Voucher submission (cost-reimbursement).

As prescribed in 2432.908(b), insert the following clause in all cost-reimbursement solicitations and contracts.

Voucher Submission (Cost-Reimbursement) (Mar 1988)

(a) The Contractor shall submit, on a monthly basis (Contracting Officer may substitute a different time frame, if appropriate), an original and two (2) copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be distributed as follows, except for the final voucher which shall be submitted in all copies to the Contracting Officer.

Interim vouchers	Attention of	Address shown on face of contract in block
Original.....	Voucher Examiner.....	12
One copy.....	Contracting Officer.....	5
One copy.....	GTR.....	11

To assist the Government in making timely payments, the Contractor is requested to identify the appropriation number (from Block 14 of the SF 26) on each voucher. The Contractor is also requested to identify on the envelope that a voucher is enclosed.

(b) *Contractor Remittance Address.*

Payment shall be made to the Contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(Insert appropriate address)

(End of clause)

Alternate I (Mar 1988)

This alternate is required for all cost-reimbursement contracts issued by Regional Contracting Officers. In such cases, substitute the following paragraph (a) for that in the basic clauses:

(a) The Contractor shall submit, on a monthly basis (Contracting Officer may substitute a different time frame, if appropriate), an original and three (3) copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the Contracting Officer specified in Block 5 of the contract.

2452.237-70 Key personnel.

As prescribed in 2347.110(a), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the Contractor's key personnel.

Key Personnel (Apr 1984)

The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer. Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(List Key Personnel)

(End of clause)

2452.237-71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

Reproduction of Reports (Apr 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10% by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducible (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

2452.237-72 Coordination of data collection activities.

As prescribed in 2437.110(c), insert the following clause in solicitations and contracts where the Contractor is required to collect identical information from ten or more public respondents.

Coordination of Data Collection Activities (Apr 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten or more public respondents, the Paperwork Reduction Act (44 U.S.C. 3501-3520) applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting Officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

2452.237-73 Conduct of work.

As prescribed in 2437.110(d), insert the following clause in all contracts for services.

Conduct of Work (Apr 1984)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is _____, or a successor designated in writing by the Contracting Officer.

(b) The Contractor's work hereunder shall be carried out under the supervision of _____

(End of clause)

Alternate 1. This alternate is required for all fixed-price contracts for services. In such cases, add the following paragraph (c):

(c) The GTR shall provide direction on contract performance. Such direction must be within the contract scope of work and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243-2; (3) causes an increase or decrease in the cost of the contract; (4) alters the period of performance or delivery dates; or, (5) changes any of the other express terms or conditions of the contract.

2452.237-74 Technical direction.

As prescribed in 2437.110(e), insert the following clause in all cost-

reimbursement type solicitations and contracts.

Technical Direction (Jun 1985)

(a) The GTR will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the contractor as to which areas the Contractor is to emphasize or pursue.

(2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work.

The GTR does not have the authority to issue technical direction that: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243-2; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

(c) Technical direction will be issued in writing by the GTR or confirmed by him or her in writing within five calendar days after verbal issuance.

(End of clause)

2452.237-75 Clearance of personnel.

As prescribed in 2437.110(f), insert the following clause in solicitations and contracts where contractor personnel will be working on-site in any HUD office.

Clearance of Personnel (Jun 1985)

(a) The Contractor shall submit to the Contracting Officer within five days after contract award, two (2) completed Forms FD-258, "Fingerprinting Charts" and one (1) GSA Form 176, "Statement of Personal History," for the Contractor and all employees who have access to the building in performance of the contract work. These forms must be submitted for all replacement employees prior to entrance on duty. Necessary forms will be furnished by HUD. If the Contracting Officer receives an unsuitable report on any employee after processing of these forms or if

the Contracting Officer finds a prospective employee to be unsuitable or unfit for his/her assigned duties, the Contractor shall be advised immediately that such employee cannot continue to work or be assigned to work under the contract.

(b) HUD shall have and exercise full and complete control over granting, denying, withholding, or terminating employment eligibility of contractor employees.

(c) Temporary identification/building passes shall be issued to each Contractor employee working on-site. The Contractor shall submit to the GTR a list of those employee(s) with their Social Security number(s). Building passes, when issued, shall indicate an expiration date not exceeding the first-year term of the contract. The passes shall be renewed for each succeeding option year, if any. The Contractor shall return, to the GTR, all building passes upon expiration of the contract, whenever the employment of any such employee is terminated, or when an employee no longer has a need for access to the building.

(End of clause)

2452.242-70 Indirect costs.

As prescribed in 2442.705-70, insert the following clause in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Indirect Costs (Apr 1984)

(a) Pursuant to the provisions of the clause of this contract entitled, "Allowable Cost and Payment" the rates listed below are established. If the column entitled, "Ceiling Rate" has rates listed, the ceiling applies for those rates only. If there are no ceiling rates listed, ceilings do not apply to this contract and the provisions of paragraph (b) of this clause are not applicable.

Period	Category	Provisional rate	Ceiling rate	Base
--------	----------	------------------	--------------	------

Effective date until amended:

(b) For the term of this contract, the final indirect rates shall not exceed the ceiling rates listed above, if any. However, in the event the indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates agreed to herein, then the rates established by such cognizant audits shall apply (downward adjustment only). The Government shall not be obligated to pay any additional amounts on indirect rates above the ceiling rates set forth for the applicable period.

(End of clause)

2452.242-71 Project management system.

As prescribed in 2442.1107, insert the following clause in solicitations or

contracts for professional or technical services exceeding \$100,000. Use of this system may be waived by the Contracting Officer if he or she believes the Statement of Work or technical proposal are sufficiently specific or another acceptable means of project management is substituted.

Project Management System (Jun 1984)

The Contractor shall provide to the GTR and Contracting Officer a project management system workplan and regular status reports showing actual progress against the workplan. The project management system utilizes two reporting forms (the HUD 441.1 Baseline Plan and the

HUD 661.1 Progress Report), in addition to a narrative description. Briefly, the workplan and progress reports shall consist of the following:

Workplan

The workplan shall consist of a narrative description and a graphic summary (HUD 441.1) of the schedule and financial elements of the contract. The narrative shall: (1) describe the planned schedule; (2) identify each step in the work process required for completing the contract work and the period of time needed to accomplish each step, expressed in terms of calendar dates; (3) provide the staff, financial, and other resources allocated to each task; and, (4) provide the rationale for project organization.

staff utilization, and other resources allocated to each task or activity. The HUD 441.1 shall show: (1) cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract; and (2) the planned project schedule that traces, by reporting period, the task or sub-task start dates, periods of work in progress, and completion dates.

Progress Reports

Progress reports shall consist of a narrative report and the HUD 661.1 which depicts actual progress against planned progress. The narrative report shall: (1) provide a brief, factual summary description of technical progress made and costs incurred for each task (or group of tasks) during the reporting period; and, (2) identify significant problems and their impacts, causes, proposed corrective actions, and the effect that such corrective actions will have on the accomplishment of the contract objectives. The HUD 661.1 reproduces the Baseline Plan (HUD 441.1) and shall show: (1) the schedule status or the degree of completion of tasks/activities by time intervals; and, (2) cost status or the actual costs of work performed in accomplishing the tasks.

Specific and detailed guidance on preparing the forms and the narratives may be obtained from the GTR.

(End of clause)

2452.246-70 Inspection and acceptance.

As prescribed in 2446.502-70, insert the following clause in solicitations and contracts unless inspection and acceptance will be performed by someone other than the GTR.

Inspection and Acceptance (Apr 1984)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) identified in Block 11 of the SF-26, or other individual as designated by the Contracting Officer of GTR.

(End of clause)

2452.251-70 Contractor employee travel.

As prescribed in 2451.303, insert the following clause in all cost-reimbursement solicitations and contracts involving airline travel.

Contractor Employee Travel (Feb 1987)

(a) In the event that travel is required by this contract, the Contractor shall, to the maximum extent practical, utilize the travel discounts offered to Federal travelers, through use of contracted airline discount air fares, hotel and motel lodging rates, and car rental companies, which are available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the Contracting Officer.

(b) The Contractor shall provide the Contracting Officer with the names of those individuals who are required to travel per the

contract terms. The Contracting Officer shall provide the Contractor with an identification letter for presentation to the participating vendors.

(c) The Contractor shall bill the Government for the actual costs incurred for travel in accordance with FAR 31.205-46, ensuring that other savings achieved through the use of any discount fares accrue to the Government.

(End of clause)

44. Part 2453 is added to read as follows:

PART 2453—FORMS

Spec.

2453.000 Scope of part.

Subpart 2453.2—Prescription of Forms

- 2453.213 Small purchases and other simplified purchase procedures.
- 2453.213-70 HUD Form 24007, Purchase/Delivery Order Data File.
- 2453.213-71 HUD Form 24001, Order for Supplies or Services.
- 2453.213-72 HUD Form 2542, Purchase Order and Payment Authorization.
- 2453.215 Contracting by negotiation.
- 2453.215-70 HUD Form 4056, Abstract of Proposals.
- 2453.217 Special contracting methods.
- 2453.217-70 HUD Form 730, Award/Modification of Interagency Agreement.
- 2453.227 Patents, data, and copyrights.
- 2453.227-70 HUD Form 770, Report of Inventions and Subcontracts.
- 2453.242-70 HUD Form 441.1, Project Management System Baseline Plan.
- 2453.242-71 HUD Form 661.1, Project Management System Progress Report.
- 2453.246 Quality Assurance.
- 2453.246-70 HUD Form 9519, Acquired Property Inspection Report.

Authority: Section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2453.000 Scope of part.

This part prescribes Agency forms for use in acquisition and contains requirements and information generally applicable to the forms.

Subpart 2453.2—Prescription of Forms

- 2453.213 Small purchases and other simplified purchase procedures.
- 2453.212-70 HUD Form 24007, Purchase/Delivery Order Data File

As prescribed in 2413.107(a)(4), HUD Form 24007 may be used by the Contracting Officer to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

2453.213-71 HUD Form 24001, Order for Supplies or Services.

As prescribed in 2413.505-2(a), Contracting Officers may use HUD Form 24001 in lieu of Optional Form 347 for individual purchases not exceeding the small purchases limit.

2453.213-72 HUD Form 2542, Purchase Order and Payment Authorization.

As prescribed in 2413.505-2(b), Contracting Officers shall use HUD Form 2542 for small purchases under the Acquired Property Programs.

2453.215 Contracting by negotiation.

2453.215-70 HUD Form 4056, Abstract of Proposals.

As prescribed in 2415.411-70, HUD Form 4056 may be used by the Contracting Officer to record the names and addresses of offerors whose proposals are received before the stated deadline.

2453.217 Special contracting methods.

2453.217-70 HUD Form 730, Award/Modification of Interagency Agreement.

As prescribed in 2417.504(b), HUD Form 730 shall be used by Contracting Officers when placing or modifying an order for supplies or services from another Government agency.

2453.227 Patents, data, and copyrights.

2453.227-70 HUD Form 770, Report of Inventions and Subcontracts.

As prescribed in 2427.305-2, HUD Form 770 shall be completed by the Contractor, and submitted to the Contracting Officer, if requested, upon completion of the contract.

2453.242 Contract administration.

2453.242-70 HUD Form 441.1, Project Management System Baseline Plan.

As prescribed in 2442.1106(a), HUD Form 441.1 shall be used in contract for professional or technical services exceeding \$100,000.00 by Contractors to show how they propose to carry out the contract work. The requirement may be waived by the Contracting Officer if he or she believes that the Statement of Work or Contractor's technical proposal is sufficiently specific or another acceptable means for project management is substituted.

2453.242-71 HUD Form 661.1, Project Management System Progress Report.

As prescribed in 2442.1106(a), HUD Form 661.1 shall be used in conjunction with the HUD Form 441.1 to monitor quantitative progress against the baseline plan. The 661.1 need not be used if use of HUD Form 441.1 has been

waived by the Contracting Officer; however, some acceptable means of progress reporting must be substituted.

2453.246 Quality Assurance.

2453.246-70 HUD Form 9519, Acquired Property Inspection Report.

As prescribed in 2446.6, HUD Form 9519 shall be used to document inspection and acceptance for work performed on properties under the Acquired Property Program.

45. Subchapter U consisting of Part 2470 is removed in its entirety.

Dated: October 27, 1988.

Judith L. Hofmann,

Assistant Secretary for Administration.

[FR Doc. 25427 Filed 11-16-88; 8:45 am]

BILLING CODE 4210-01-M

42 CFR Part 57

Thursday
November 17, 1988

Part III

Department of Health and Human Services

Public Health Service

42 CFR Part 57 Health Professions Student Loan Program; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule revises existing regulations governing the Health Professions Student Loan (HPSL) program to implement amendments made to the Public Health Service Act (the Act) by the Health Professions Training Assistance Act of 1985, to clarify the definition of "default," add a paragraph on reallocation of funds, and establish hearing procedures. Also, this rule incorporates an update of the definition of exceptional financial need used for determining eligibility for students of medicine and osteopathic medicine, and to require schools to verify information provided by the student on the loan application.

EFFECTIVE DATE: These regulations are effective November 17, 1988.

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

SUPPLEMENTARY INFORMATION: On June 3, 1987, the Department published a Notice of Proposed Rulemaking (NPRM) (52 FR 20989) to incorporate amendments to the HPSL program made by Pub. L. 99-129, the Health Professions Training Assistance Act of 1985. The Department received 13 written comments on the NPRM from 9 schools and 4 professional associations. The comments and the Department's responses are discussed below. For clarity, the comments and responses are arranged according to the section numbers and headings of the rule to which they pertain.

Section 57.202 Definitions.

Respondents were generally in favor of the statutory definition of "default." However, they objected to the proposal that if a borrower has failed to make an installment payment when due, the school may reasonably conclude that the borrower intends to repay the loan and thus exclude the loan from the default category only in the following situations: (1) If the loan is in

forbearance, or (2) if the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule. The respondents believed the proposal to be unnecessarily restrictive and suggested that payments of significant portions of the loan or contacts by a credit counseling organization on behalf of a borrower should also be evidence of a borrower's intent to repay the loan.

Three respondents supported the proposal, stating that loans in forbearance or under renegotiated repayment schedules generally involved borrowers of good faith who had sustained temporary setbacks of some kind and did not merit the label of defaulter.

The Secretary believes that responsible borrowers who have temporary financial problems, but who plan to fulfill their obligations, will enter into a renegotiation or forbearance agreement, and abide by the agreement. Therefore, the Department has retained this provision as proposed.

Section 57.204 Payment of Federal capital contributions.

Generally, the respondents supported the proposed amendment in § 57.204(c) to reallocate funds returned to the Department under procedures consistent with those used to allocate new Federal capital contributions. One respondent opposed the amended language because it limits schools eligible for the reallocation of remitted funds to only those institutions which established an HPSL program between July 1, 1972, and September 30, 1985, and where institutions have multiple HPSL programs, it prohibits the transfer of funds from overfunded programs to those which are underfunded.

The Secretary notes that this provision is consistent with the existing requirements in section 742(b) of the Act, as amended by Pub. L. 99-129, the Health Professions Training Assistance Act of 1985. That section authorizes the Department to reallocate remitted HPSL funds to schools which established an HPSL fund during the period July 1, 1972-September 30, 1985. It does not provide in any way for the transfer of funds from one school to another in an institution with multiple HPSL programs. Since the major concerns with this provision relate directly to statutory requirements it has been retained as proposed under the new heading entitled "Payment of Federal capital contributions and reallocation of funds remitted to the Secretary".

Section 57.206 Eligibility and selection of health professions student loan applicants.

Respondents generally supported the increase in the maximum allowable level of resources from \$5,000 to \$6,000 or one-half the cost of attendance, whichever is lesser, as proposed in § 57.206(a)(1)(iv) for determining eligibility for students of medicine and osteopathic medicine. However, they suggested that the Department conduct frequent reviews of the costs of health education to determine if the definition of exceptional financial need remains appropriate in future years. One respondent opposed the proposed level of the increased threshold for maximum allowable resources. This respondent noted that \$6,000 no longer represents half the costs of attendance at public schools of medicine, since the average total expenses at public medical schools for the 1987-88 school year were expected to reach \$12,951. The respondent recommended that \$6,500 would therefore be a more accurate threshold.

According to more recent information from the Association of American Medical Colleges, the average total cost for attending a public school of medicine was \$13,432 for the 1987-1988 school year. Using the Department's rationale for proposing the \$6,000 level, the maximum allowable level of resources should therefore be \$6,700, which represents approximately half the average cost of attendance at a public medical school. The Department accepts the recommendation for the increased level and has revised the maximum allowable level of resources to \$6,700 or one-half the cost of attendance, whichever is lesser.

Eight respondents were generally in favor of verification of financial aid information as proposed in § 57.206(d). However, the respondents expressed strong concerns with the vagueness of the wording of the proposal. The respondents believed that the proposal as presented leaves the impression that the school is responsible for verifying all the data on every application for financial aid, which would impose a significant administrative burden on schools. Most of the respondents noted that the Department of Education (ED) imposes a requirement to verify 30 percent of applications for financial aid and suggested that it would be appropriate for the Department to similarly limit the number of applications that must be verified. In addition, it was believed that the 30 percent limit on verification would

permit schools to focus verification efforts on those applications with the greatest potential for error. Further, since the Department requires that schools use a need analysis system approved by ED, and many of these systems have incorporated ED's computer edit check system, respondents encouraged the Department to adopt the verification procedures required by ED. Finally, the respondents explained that the adoption of ED's verification system would permit schools to use a single system of verification for all Federal student aid applicants rather than verify one set of data for student aid administered by ED and additional data for the HPSL program.

One respondent who requested clarification of this provision indicated that her institution currently requires certified copies of Internal Revenue Service (IRS) tax returns to verify both tax filing status and Social Security numbers, compares the admissions records to check for ineligible students and collects information annually on a personal data sheet prior to loan disbursement for skiptracing.

Another respondent requested that the Secretary clarify what is meant by verification. The respondent asked the following questions: Would verification for the HPSL program be in the same manner that ED uses for its student assistance programs under Title IV of the Higher Education Act? What information should be verified that will assist in skiptracing? Does processing through a nationally approved need analysis system satisfy the verification requirement? Should the applicant's financial information (that which is used to determine eligibility) be verified even though it is not used in the skiptracing process? Is 100 percent verification of all applicants required or expected?

One respondent believed that schools are already gathering excessive documentation for a variety of checks on student eligibility and that the procedures currently in place should satisfy the intent of this paragraph. The respondent noted that parental tax information for HPSL students is currently requested by the school. The respondent suggested that the word "must" in the requirement be replaced by the word "should" or "is strongly encouraged to."

The Secretary believes that the school has an obligation to verify, to the best of its ability, the information provided by the student on the loan application. The Secretary does not, however, intend for a school to verify all data on every application for financial aid. The Secretary points out that the provision

was not intended to be a new system of verification, but was intended to give schools the authority to require documents which the schools deem appropriate for verification and to require, to the extent possible, that verification be performed using information that is accessible within the school system (e.g., foreign student advisors, registrar's office, etc.).

In response to the suggestions that the Department adopt ED's verification system and the suggestions in favor of a single verification system for all Federal student aid programs, the Secretary notes that ED's verification system focuses on need analysis data. Further, the Secretary reiterates that the intent of this provision is to provide broad authority for schools to require from applicants information necessary to verify other parts of the student's application information, such as citizenship and skiptracing information as well as need analysis data. Accordingly, the Department has retained the provision in § 57.206(d) with clarification that a school may require that an applicant provide documentation to support information provided as part of the loan application process. Examples of supporting documentation include, but are not limited to: Photocopies of the parents', student's and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed); tax returns that are certified as having been received by the IRS; certified copies of birth certificates; copies of alien registration cards; or other documentation that the school considers necessary to help assure that the information on the loan application is correct.

Section 57.213a Loan cancellation and reimbursement.

There was general agreement with the provision which would permit a school to assess a charge on HPSL loans to insure against the loss of its institutional contribution for loans made on or after October 22, 1985, that are canceled due to the borrower's death or permanent and total disability. However, there was much opposition to the maximum insurance premium which was proposed at .3 percent of the loan amount, because it was thought not to be cost effective. Two respondents stated that the dollar value involved in reimbursing a school for its portion of loans canceled, due to the borrower's death or permanent and total disability, is not significant. Further, the cost to implement and maintain this proposed procedure outweighs any benefits.

One respondent was in favor of the concept, but believed that the time and expense it would take to charge, bill, and record the transactions for each disbursement could make the proposed provision less than cost effective. In addition, the respondent noted that the change would probably need to be included in the Regulation Z, Truth in Lending Statement. Another respondent was concerned with the negative impact of an insurance fee on the overall costs of education, a student's indebtedness, and the financial aid administrators and their resources. The Secretary reminds these respondents that implementation of this provision, including the maximum or minimum rate at which the amount of the premium will be assessed, is at the discretion of the school. The Secretary agrees that if schools decide to implement this provision, the information must be included in the Truth in Lending disclosure statement required by Regulation Z (12 CFR Part 226).

One respondent stated that an institution should be allowed to set and define a maximum insurance premium rate based on the history of its program. This respondent explained that the calculated insurance rate for his school would be .629 percent for the period ending June 30, 1985, and .499 percent for the period ending June 30, 1986.

Since the primary purpose of this provision is to allow schools, at their discretion, to adequately cover the losses of their institutional contributions for loans appropriately canceled, the Secretary accepts the recommendation that a school should be allowed to use a rate in calculating the insurance premiums that reflects its cancellation experience and does not exceed .6 percent of the loan amount. The provision has been modified accordingly.

Section 57.215 Records, reports, inspection, and audit, and Section 57.216a Performance standard.

Four respondents were in favor of the revisions to paragraph (a) of § 57.215 and paragraph (d) of § 57.216a which allow a school to request a hearing with an administrative law judge prior to being terminated and provide procedures for determination by the Department of whether a hearing is warranted. Five respondents opposed the provisions because they believed that the procedures for determining if a hearing is warranted deny due process. Some of the respondents commented that allowing the Secretary to dismiss requests for hearing if the basis for the requests were judged to be frivolous or

inconsequential, runs counter to the essential purpose of a hearing and that any determination that the issues in dispute are frivolous or inconsequential should be made by the administrative law judge. They stated that providing a statement of the material, factual issues in dispute narrows the scope of review so dramatically as to render it meaningless for many, if not most, schools.

Another respondent commented that the Secretary's judgment regarding the decision to accept or deny the hearing is a conflict of interest, since the Secretary would be a party in the hearing proceedings and suggested authorizing a third party to determine if in fact the statement of factual issues is frivolous or inconsequential. One respondent took exception to the proposed provision, believing that as proposed it is contrary to the intent of Congress. The respondent believed that the intent was that the Department should consider administrative problems beyond the control of current school officials responsible for loan collection and intended that termination should be reserved for recalcitrant institutions that do not make good faith efforts to redress previous administrative shortcomings. A final concern of two other respondents was for clarification of the precise situation that would be untimely in requesting a hearing.

The Department emphasizes that the intent of the proposal is to assure that the hearing process is administered as efficiently and cost-effectively as possible for the schools and the Department, and concludes that it is consistent with both due process and legislative requirements. We note that under administrative hearing procedures, an administrative law judge can rule only on issues in dispute. Existing regulations have the effect of law and are not subject to dispute through a hearing before an administrative law judge.

A determination of what constitutes a factual issue in dispute is directly tied to the reporting requirements in § 57.215 or the performance standard in § 57.216a of the regulations. An example of a factual issue in dispute would be a case where a school alleges facts which, if true, would undercut the Department's determination that it has not met the requirements of the performance standard provision. Such a case would involve a material, factual issue in dispute that would be appropriate for resolution through a hearing by an administrative law judge.

The proposed procedure for determining whether a hearing must be conducted is essentially an

administrative "summary judgment" proceeding. It is a well-settled principle that an agency has the authority to deny a hearing when it appears from the request that no substantial issue of fact is in dispute. *Weinberger v. Hynson, Westcott & Dunning*, 412 U.S. 609 (1973); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202-205 (1956); *Pineapple Growers Association of Hawaii v. F.D.A.*, 673 F.2d 1083 (9th Cir. 1982).

Section 746 of the Act which requires the Secretary to provide an opportunity for a hearing does not constitute a bar to such summary judgment. When it is apparent from a request that there are no substantive issues in dispute, no purpose could be served by holding a public hearing. In upholding a similar summary judgment provision promulgated by the Food and Drug Administration, the Eighth Circuit articulated the rationale for the provision as follows:

* * * The hearing is solely for the purpose of receiving evidence "relevant and material to the issues raised by such objections." Certainly, then the objections, in order to be effective and necessitate the hearing requested, must be legally adequate so that, if true, the order complained of could not prevail. The objections must raise "issues." The issues must be material to the question involved; that is, the legality of the order attacked. They may not be frivolous or inconsequential. Where the objections stated and the issues raised thereby are, even if true, legally insufficient, their effect is a nullity and no objections have been stated. Congress did not intend the governmental agencies created by it to perform useless or unfruitful tasks. If it is perfectly clear that the petitioner's appeal for a hearing contains nothing material and the objections stated do not abrogate the legality of the order attacked, no hearing is required by law. *Dyestuffs and Chemicals, Inc. v. Flemming*, 271 F.2d 281, 286 (8th Cir. 1959), cert. denied 362 U.S. 911 (1960).

One respondent suggested that the notice of intent to terminate be mailed by registered mail. In response, the Secretary notes that notification of termination status is currently being accomplished through certified mail, return receipt requested, and addressed to the authorized official as indicated by the school.

Finally, with regard to the comments concerning clarification of timely requests for a hearing, section 746 of the Act provides a 30-day period after receipt of the written notice of the Secretary's intent to terminate within which the school must request a hearing. The NPRM proposed an expansion of this period to 90 days to allow additional time for a school to prepare and submit material factual issues in

dispute to warrant a hearing. The Department has clarified the time frame in the final regulations. The regulations state that the Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of HPSP 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 rule will not exceed the threshold level of \$100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

Sections 57.215 and 57.216a contain 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 have been assigned control number 0915-0115.

List of Subjects in 42 CFR Part 57

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

Accordingly, Subpart C of 42 CFR Part 57 is amended as follows:

Dated: August 8, 1988.

Robert E. Windom,
Assistant Secretary for Health.

Approved: September 19, 1988.

Otis R. Bowen,
Secretary.

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

**PART 57—GRANTS FOR
CONSTRUCTION OF TEACHING
FACILITIES, EDUCATIONAL
IMPROVEMENTS, SCHOLARSHIPS
AND STUDENT LOANS**

**Subpart C—Health Professions
Student Loans**

1. The authority for Subpart C continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740-747, Public Health Service Act, 77 Stat. 170-173, 90 Stat. 2266-2268, 91 Stat. 390-391, 95 Stat. 920, 99 Stat. 532-536 (42 U.S.C. 294m-q).

2. Section 57.202 is amended by revising the definition for "default" as follows:

§ 57.202 Definitions.

"Default" means the failure of a borrower of a loan made under this subpart to make an installment payment when due, or comply with any other term of the promissory note for such loan, except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy, the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule, or the loan is in forbearance.

3. Section 57.204 is amended by revising the heading of the section and adding a new paragraph (c) as follows:

§ 57.204 Payment of Federal capital contributions and reallocation of funds remitted to the Secretary.

(c) *Reallocation of funds remitted to the Secretary.* All funds from a student loan fund established under this subpart which are remitted to the Secretary in any fiscal year shall be available for allotment under this subpart, in the same fiscal year and the succeeding fiscal year, to schools which, during the period beginning on July 1, 1972, and ending on September 30, 1985, established student loan funds with Federal capital contributions under this subpart. The Secretary will from time to time set dates by which the schools must file applications to receive a portion of these funds. If the total of the amounts requested for any fiscal year by eligible schools exceeds the amount of funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller:

(1) The amount requested in the application, or

(2) An amount which bears the same ratio to the total amount of returned funds determined by the Secretary at the time of payment to be available for that fiscal year for the Health Professions Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in all eligible schools during that year.

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

4. Section 57.206 is amended by revising paragraph (a)(1)(iv) and adding a new paragraph (d) as follows:

§ 57.206 Eligibility and selection of health professions student loan applicants.

(a) * * *

(1) * * *

(iv) Of exceptional financial need in the case of students of medicine or osteopathic medicine. A student will be considered to demonstrate exceptional financial need if the school determines that his or her resources, as described in paragraph (b)(1) of this section, do not exceed the lesser of \$6,700 or one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits and earnings during the school year will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need, but will be considered in determining the amount of funds a student may receive; and

(d) *Verification of loan information.* The school must verify, to the best of its ability, the information provided by the student on the loan application. To comply with this requirement, a school may require that a student provide, for example: Photocopies of the parents', student's, and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed); tax returns that are certified as having been received by the Internal Revenue Service; or other documentation that the school considers necessary to help assure that information on the loan application is correct.

5. Section 57.213a is revised as follows:

§ 57.213a Loan cancellation reimbursement.

(a) For loans made prior to October 22, 1985, in the event that insufficient funds are available to the Secretary in any fiscal year to enable him or her to pay to all schools their proportionate shares of all loans and interest canceled under this subpart for practice in a shortage area, death, or disability:

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

(2) Any additional amounts to which a school is entitled will be paid by the Secretary at the time of distribution of the assets of the school's Fund under section 743 of the Act.

(b) For loans made on or after October 22, 1985, a school may assess the borrower a charge to insure against the loss of the institutional share of a loan canceled due to the borrower's death or permanent and total disability. The school must develop annually a rate which reflects its cancellation experience. This charge shall not exceed .6 percent of the loan amount. Funds collected under this provision must be maintained by the school in an insured, interest-bearing account (with any earned interest credited to this insurance fund), and used only to reimburse the school for the institutional share of any HPSL loan made on or after October 22, 1985, that is canceled due to the borrower's death or permanent and total disability. A school is not required to establish a separate bank account, but is required to maintain separate accountability.

6. Section 57.215 is amended by revising paragraph (a) and the OMB control number statement to read as follows:

§ 57.215 Records, reports, inspection, and audit.

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period.

(1) A school which fails to submit a required report for its Federal capital contribution fund within 45 days of the close of the reporting period:

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

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

(iii) May make no loan disbursements. The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement.

(2) A school that fails to submit a complete report within 6 months of the close of the reporting period will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(ii) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(iii) The statement of factual issues in dispute is frivolous or inconsequential. In the event that the Secretary denies a hearing, the Secretary will send a

written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for failure to submit a complete report within 6 months of the close of the reporting period must continue to pursue collections and may reapply for participation in the program once it has submitted the overdue report.

(3) The school must also comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

(Approved by the Office of Management and Budget under control numbers 0915-0094 and 0915-0115)

7. Section 57.216a is amended by revising paragraph (d) and adding an OMB control number to read as follows:

§ 57.216a Performance standard.

(d) Any school subject to the provisions of paragraph (c)(3) of this section which fails to comply with those requirements will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 30 days of the receipt of this notice, a formal hearing. If

the school requests a hearing, it must within 90 days of the receipt of the notice, submit material, factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely (i.e., fails to meet the 30-day requirement);

(2) The school does not provide a statement of material, factual issues in dispute within the 90-day required period; or

(3) The statement of factual issues in dispute is frivolous or inconsequential. In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing, termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for failure to comply with the provisions of paragraph (c)(3) of this section must continue to pursue collections and may reapply for participation in the program only when it has attained a default rate of 5 percent or less.

(Approved by the Office of Management and Budget under control number 0915-0115)

[FR Doc. 88-26448 Filed 11-16-88; 8:45 am]

BILLING CODE 4190-15-M