

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]

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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

Testis Testis

Thursday
November 17, 1988

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Final
Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule revises existing regulations governing the Nursing Student Loan (NSL) program to implement amendments made to the Public Health Service Act (the Act) by the Nurse Education Amendments of 1985, to clarify the definition of "default," add a paragraph on reallocation of funds, and establish hearing procedures. Also, this rule will require schools to verify the 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 5, 1987, the Department published a Notice of Proposed Rulemaking (NPRM) (52 FR 21486) to incorporate amendments to the NSL program made by Pub. L. 99-92, the Nurse Education Amendments of 1985. The Department received written comments on the NPRM from 8 schools and 1 professional association. 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 57.302 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.

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 57.304 Payment of Federal capital contributions.

One respondent objected to the proposed amendment in § 57.304(c) to reallocate funds returned to the Department under procedures consistent with those used to allocate new Federal capital contributions. This respondent opposed the amended language because it limits schools eligible for the first reallocation of remitted funds to those institutions which established an NSL program after September 30, 1975, and where institutions have more than one NSL program it prohibits the transfer of funds from overfunded programs to those which are underfunded.

The Secretary notes that this provision is consistent with the requirements in section 838(a)(3) of the Act, as amended by Pub. L. 99-92, the Nurse Education Amendments of 1985. That section authorizes the Department to reallocate remitted NSL funds, giving priority to schools which established an NSL fund after September 30, 1975. It does not provide in any way for the transfer of funds from one school to another within an institution with more than one NSL program. However, under the proposed provision, if there are funds remaining after fully funding the priority schools, remaining funds are awarded to other eligible schools. Since the major concern with this provision relates 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 57.306 Eligibility and selection of nursing student loan applicants.

Eight respondents were generally in favor of verification of financial aid information as proposed in § 57.306(c). 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 NSL program.

One respondent stated that schools are currently gathering excessive documentation, such as Federal tax information, statements of non-taxable income, household size, etc., while another respondent asked what information should be verified that will assist in skiptracing and whether processing through a nationally approved need analysis system would satisfy the verification requirement.

One respondent recommended that schools be allowed to use their institutions' overall quality control programs where such programs exist to simplify the verification of applicants' information.

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 this 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.). If a school already has in place a system it uses to verify applicants' information, this provision will allow the school to

expand on that system as appropriate for effective verification. 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 the 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 § 57.306(c) 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 parent's, 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; 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 57.315 Records, reports, inspection, and audit, and section 57.316a Performance standard.

Respondents were generally in favor of the revisions to paragraph (a) of § 57.315 and paragraph (d) of § 57.316a which allow a school to request a hearing with an administrative law judge prior to being terminated. However, they opposed the procedures for determination by the Department of whether a hearing is warranted because they believed that the procedures would deny due process. The respondents commented that allowing the Secretary to dismiss requests for hearings 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. One of the respondents 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 that

the statement of factual issues is frivolous or inconsequential.

One respondent took exception to the proposed requirement that hearings be held in the Washington, DC metropolitan area. The respondent stated that the requirement will limit many schools' opportunity for adequate representation during termination proceedings and recommended that there be regional hearings instead.

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 § 57.315 or the performance standard in § 57.316a 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 the school 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).

With regard to the recommendation for regional hearings, the Secretary continues to believe that the location of hearings must be limited to the Washington, DC, metropolitan area due to constraints in departmental resources. However, the Secretary notes that where the school is unable to attend a hearing in the Washington, DC, metropolitan area, it may be possible for the administrative law judge to conduct the hearing by mail.

Finally, the Secretary believes that clarification is necessary in determining what constitutes a timely request for a hearing. Section 842 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 NSL 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 57.315 and 57.316a contain information collection requirements which have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980 and 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 D of 42 CFR Part 57 is amended as follows:

Dated: August 8, 1988.

Robert E. Windom,
Assistant Secretary for Health.

Approved: September 8, 1988.

Otis R. Bowen,
Secretary.

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

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

Subpart D—Nursing Student Loans

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

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 835-842, Public Health Service Act, 78 Stat. 913-916, as amended, 99 Stat. 397-400, 536-537 (42 U.S.C. 297a-i).

2. Section 57.302 is amended by revising the definition for "default" as follows:

§ 57.302 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 57.304 is amended by revising the heading of the section and adding a new paragraph (c) as follows:

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

(c) *Reallocation of funds remitted to the Secretary.* (1) 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 eligible nursing schools. In making these allotments, the Secretary shall give priority to nursing schools which established a student loan fund under this subpart after September 30, 1975. The Secretary will make payments to eligible schools at a time determined by him or her, according to the procedures indicated in paragraphs (c)(2) and (c)(3) of this section.

(2) *Eligible schools which established a nursing student loan fund after September 30, 1975.* The Secretary will make awards first to those eligible schools that established a nursing student loan fund after September 30, 1975. If the total of the amounts requested for any fiscal year by these 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:

- (i) The amount requested in the application, or
- (ii) 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 Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in these 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.

(3) *Eligible schools which established a nursing student loan fund prior to October 1, 1975.* If there are funds remaining after making awards as specified by paragraph (c)(2) of this section, the Secretary will make awards to eligible schools which established a nursing student loan fund prior to October 1, 1975. If the total of the amounts requested for any fiscal year by these 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:

- (i) The amount requested in the application, or
- (ii) 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 Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in these 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 57.306 is amended by adding a new paragraph (c) as follows:

§ 57.306 Eligibility and selection of nursing student loan applicants.

(c) *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 57.315 is amended by revising paragraph (a)(1) and the OMB control number statement as follows:

§ 57.315 Records, reports, inspection, and audit.

(a) * * *

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

(i) 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:

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

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

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

(ii) 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:

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

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

(C) 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.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915-0047 and 0915-0115)

6. Section 57.316a is amended by revising paragraph (d) and adding an OMB control number as follows:

§ 57.316a 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).

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