

agency which awarded the contract and sent to the contracting officer. However, if the contract has been assigned to another office for administration, then the check should be sent to the office designated for contract administration. The contracting officer shall forward the check to the office responsible for control of funds. The check shall be accompanied by a letter identifying it as a voluntary refund and listing the contract number(s) involved.

(c) If the refund is other than check or a price reduction, the office responsible for control of the contract funds shall be consulted for proper disposition of the refund.

[FR Doc. 91-19457 Filed 8-14-91; 8:45 am]

BILLING CODE 6820-34-M



# Registered Federal Reporter

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Thursday  
August 15, 1991

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## Part VII

### Department of Health and Human Services

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#### Public Health Service

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

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**
**42 CFR Part 57**
**RIN 0905-AC78**
**Health Professions Student Loan  
Program**
**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulation.

**SUMMARY:** This rule amends existing regulations governing the Health Professions Student Loan (HPSL) program to require schools to: (1) Invest their HPSL funds and return earnings from the investments to the HPSL funds; (2) identify and return to the Department excess cash from the HPSL funds; and (3) determine the collectibility of defaulted loans and, for loans determined to be uncollectible, either obtain approval to write off the loans or reimburse the fund for the amount that remains uncollected on the loans. However, schools are not required to obtain write-off approval or reimburse the fund for loans that became uncollectible prior to August 1, 1985. The Department expects that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the HPSL program.

**EFFECTIVE DATE:** This regulation is effective September 16, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shirley A. Zimmerman, Chief, Program Accounting and Analysis Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, room 8-34, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-1700.

**SUPPLEMENTARY INFORMATION:** On December 18, 1989, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the *Federal Register* (54 FR 51858), a Notice of Proposed Rulemaking (NPRM) to amend the HPSL regulations to improve the cash management practices of schools participating in the HPSL program. The public comment period on the proposed regulations closed on February 16, 1990. The Department received 66 public comments on this NPRM from 59 school officials, 6 professional associations, and 1 State agency. The comments received on the proposed rule and the Department's responses to the comments are discussed below according to the section numbers and headings of the HPSL regulations affected.

**Section 57.205 Health Professions  
Student Loan Funds**

Thirty-two respondents opposed paragraph (a) of this section, which would require that schools must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States, and assure that all earnings become a part of the fund. This paragraph also stated that an institution must exercise the level of care required of a fiduciary with regard to these deposits and investments.

Most respondents objected to this proposal on the grounds that it would force schools to segregate HPSL funds from their standard investment pool, thereby decreasing earnings and increasing costs. These respondents explained that under the proposal, HPSL funds could not be included in an institution's investment pool since this normally includes investments that are not federally insured. Establishing a separate HPSL account would provide a lower rate of earnings and would require additional administrative costs which could be avoided if the HPSL funds were pooled with other institutional monies for investment purposes. As a result, the proposal as written was deemed to be counterproductive to improving cash management.

Several State schools also indicated that they are required to maintain all funds in a State-designated bank account which is not necessarily federally insured, and that they had no authority under State law to establish a separate account for HPSL funds.

As an alternative to the proposed provision, numerous respondents noted that they are already required to comply with the requirements of Office of Management and Budget (OMB) Circular A-110 regarding Federal cash deposits held by third parties, and suggested that these requirements should be sufficient in assuring proper handling of the HPSL funds. Such an approach would permit schools to integrate their HPSL funds with other school resources, with separate accountability maintained to assure that interest is allocated properly. Others suggested that the language be broadened to include securities issued by agencies of the Federal Government, even if they were not guaranteed by the United States, to allow greater flexibility and higher earnings. One respondent indicated that if an institution was willing to guarantee protection of the fund principal and could demonstrate adequate resources

to make such a guarantee, the requirement to use U.S. Government instruments should be waived. This respondent suggested that adequate resources would be demonstrated if the HPSL cash balance was less than 1 percent of the investment pool. Another proposed that the Department require loan funds to be invested in high quality income-producing securities and accounted for separately. It was also stated that the proposed language requiring institutions to exercise the "level of care required of a fiduciary" should be sufficient to take action against a school with poor investment policies, and should eliminate the need to restrict investments to federally-insured accounts. One State school requested that the requirement not be applied to State universities.

In response to these comments, the Department agrees that it would be counterproductive to the improvement of cash management to establish a requirement which prohibits schools from pooling their HPSL funds with other institutional funds for investment purposes, provided that the investment pools are being managed responsibly. The Department also agrees that existing OMB requirements address most of our concerns regarding the investment of Federal funds. Nevertheless, the Department is concerned that the regulations state clearly that the HPSL fund is not to absorb any losses that could occur as a result of using investments that are not federally insured. Accordingly, the Department is amending this provision to state that, in the investment of its HPSL funds, schools must comply with OMB requirements governing the handling of Federal monies. As amended, the provision will further state that the institution is responsible for reimbursing the fund for any losses that may occur due to the use of investments that are not federally insured.

One respondent stated that the regulations should permit a school to claim interest lost, due to a school contributing more than the required one-ninth matching amount, as a deduction against interest income earned by the fund. In response, the Department notes that any overmatch on the part of the school is voluntary. To allow interest income lost by the school as the result of an overmatch to be deducted from interest income would be the equivalent of charging the HPSL fund a fee for "borrowing" school money, and is prohibited by the HPSL statute.

There was also some confusion concerning what was meant by the requirement to deposit and carry HPSL

funds in a "special account." Some respondents understood this to require that HPSSL funds be physically segregated from other institutional funds. It is not the Department's intent that schools physically segregate the HPSSL fund from other monies, but rather that the school maintain separate accountability for these funds. Accordingly, the Department has amended this language to state that the school must maintain separate accountability for the HPSSL fund.

Nine respondents opposed paragraph (a)(2) of this section, which would require that a school must review the balance of the fund on at least a semi-annual basis (quarterly for closing schools), and return the Federal share of any funds determined to be excess to the Federal Government by the due date of the report which identifies the excess monies, with the school's determination subject to the review and approval of the Secretary. The majority of these commenters were concerned that it is difficult to project cash balances, and that a school may show what appears to be excess cash because of extraordinary events. Examples included unexpected windfalls resulting from loan consolidation, the Department's initiative to assure that investment income is properly credited to the HPSSL fund, or large amounts of school monies being deposited in the HPSSL fund due to write-off disapproval, or significant reductions in school enrollment or class size. In these instances, the schools indicated that it could be difficult to use the funds immediately, and thus they could be deprived of future opportunities to use these funds to aid needy students. It was therefore requested that schools be given discretion in dealing with these situations so that the money does not have to be forfeited, and that the Department recognize and allow for cyclical changes in financial aid needs. It was also suggested that schools be given from 2-5 years to distribute excess cash before being required to return it to the Department.

In response to these comments, the Department notes that the procedures for determining excess cash allow schools to take into account their needs for the next 2 years, and do not require funds to be returned unless they will not be used during this period of time. The Department considers the 2-year period adequate to plan for the use of any unexpected windfalls due to circumstances such as those described above and to accommodate cyclical changes in financial aid needs. The Department further notes that, in

unusual cases where the school determines that it will take longer than 2 years to use any excess cash, it may present a letter of explanation to the Department and request permission to retain the funds.

One respondent stated that to avoid a negative cash balance and assure that adequate funds are available when major disbursements occur, the school needs to maintain some cash reserves. The Department agrees that this is reasonable and notes that the procedures for determining excess cash take this into account.

Other commenters indicated that the existing Annual Operating Report (AOR) and Debt Management Report (DMR) are adequate for determining excess cash and providing a mechanism for returning unneeded funds to the Department, and that the audit process allows for adequate verification of the AOR and DMR. Accordingly, they stated that additional regulations were not needed in this area. The Department agrees and clarifies that this regulatory provision is to be implemented through the AOR/DMR reporting process, and will not place any additional reporting burden on the schools.

One commenter was concerned that under this provision the Secretary would have final review and approval of an institution's determination of excess cash, and stated that this should be determined by the school subject to the Department's review. The Department fully intends for the excess cash determination to be made by the school, and expects that the vast majority of schools will act responsibly in complying with this requirement. Nevertheless, because the excess cash determination is based on projections rather than actual figures, it is essential that the Secretary have authority to overrule a school in the event that it uses clearly unreasonable projections with no defensible rationale, or shows a consistent pattern of excess cash that increases and remains unused over a period of several years with no adequate explanation.

One respondent suggested that an appeal process be established for schools that disagree with the Secretary's determination. The Department clarifies that under existing procedures, as explained in the AOR and DMR instructions given to all schools, a school which would like to retain cash determined to be excess may provide a written explanation for retaining the funds. Should the Department determine that the funds must be returned, the noncompliance notice sent to the school provides for

departmental review of the decision, upon request by the school, prior to a school's termination from the program.

One respondent suggested that the rules for calculating excess cash should state how to handle institutional advances to the HPSSL fund that are made in anticipation of collections, and indicated that the school should not be penalized for providing adequate cash flow from its own resources until collections are received. The Department agrees that temporary institutional advances should be taken into account when determining excess cash, and notes that the current procedures are not intended to penalize a school for a temporary overmatch. To the extent that this creates the appearance of excess cash, the school should provide a written explanation of this to the Department.

One respondent suggested that the Department should assist institutions maintaining excess cash to assure that they are using their funds to the fullest extent possible to help needy students. The Department notes that technical assistance has been provided to schools in the past to help in this area. Further, the Department is willing to help any school which requests this type of assistance, to assure that only funds that the school truly is unable to use are returned to the Department.

One commenter noted that in fiscal years 1989 and 1990, funds returned to the Department as excess cash were not reallocated to schools needing additional funds, and thus the Department's stated concern for maximizing available loan funds was questioned. In response, the Department notes that while the Congress directed in the fiscal year 1990 appropriations bill that these funds be used to reduce the amount of appropriations needed for other programs authorized under Title VII of the Public Health Service Act, excess funds are scheduled for reallocation to eligible schools in fiscal year 1991.

#### *Section 57.210 Repayment and Collection of Health Professions Student Loans*

Forty-two respondents opposed paragraph (b)(4) of this section, which would require a school to classify any loan on which payments are 2 or more years past due as uncollectible. The majority of these commenters indicated strong opposition to declaring a loan uncollectible when it is only 2 years past due, noting that this timeframe was neither adequate nor realistic, and was not a clear indicator of a loan's collectibility. These respondents

explained that many loans are collected after they have become more than 2 years past due.

One of the major concerns of respondents was the negative implications of writing off a loan when it is only 2 years past due. They explained that once the loan is written off, the borrower is "off the hook" in terms of his or her repayment obligation, since it is unlikely that institutions would continue to pursue collections. A written off loan is no longer considered an asset by the school and generally appears on the billing system as closed, causing collection activity to cease. This sends the wrong message to the borrower by relieving him or her of the repayment obligation, and thus, in effect, rewarding him or her for continued nonpayment.

In response to the Department's statement that schools are not precluded from continuing to collect on loans that have been written off, respondents explained in great detail the difficulty of attempting to continue collections and handle repayments for loans that had been written off. Once these accounts are written off and removed from active billing, any future activity must be handled manually, including the calculation of interest, sending of bills, aging of accounts, depositing of collected funds, and adjusting of accounting entries to reflect the revised amount of the write off. This dramatically increases the workload on each account, and would create a bookkeeping nightmare should one or more such accounts enter into a partial payment agreement that extended over time. While maintaining an active account manually was deemed to be prohibitively burdensome and not viable, schools that looked at the possibility of creating a new system to handle loans in this category determined that this also would not be cost-effective.

The recurring theme of these commenters was that student loans are unique and in many cases become more rather than less collectible as they become older. This is true because of the likelihood that the earnings of a student loan debtor, if low at the time repayment is scheduled to begin, generally increase as the repayment period progresses. Changes in the economic circumstances of student loan borrowers were cited as a significant factor in converting defaulted loans to repayment. These changes frequently result in a borrower being in a better financial position 3-5 years after graduation, even though repayment is scheduled to begin sooner than that. Respondents explained that for many

health professions borrowers, it takes both time and money to start a practice and generate the income needed to repay their debts.

For the above reasons, respondents stated that the effect of the 2-year definition of "uncollectible" would be to discontinue collection on many potentially collectible accounts. The potential loss to the fund was deemed to be greater than any gain that might result from reimbursements made due to a school's failure to exercise due diligence. Rather than improving a school's cash management procedures, this would result in the forfeiting of income to the fund.

Respondents also stated repeatedly that a 24-month limit on their collection activities would adversely affect the entire collection process, allowing inadequate time to complete the normal due diligence procedures, which could take anywhere from 3-5 years depending upon the school. Schools would be forced to alter proven and effective collection procedures because of the length of time they require. For example, under this proposal, it would be impossible to use a second collection agency, which has more than a 30 percent success rate at some schools. Also, the school would lose its ability to exercise alternative collection methods to assure the eventual recovery of funds, such as garnishment, State employment restrictions, State income tax offset, withholding of transcripts, and the ability to effect licensure requests.

Some respondents requested exceptions to the "2-year past due" criteria. For example, they stated that if sporadic or minimal payments were being made on a loan, write off should not be required, even if payments were more than 2 years past due. There was also concern that the requirement failed to allow schools to make exceptions based on individual cases, such as unemployment, economic problems, severe illness, or temporary disability. These respondents noted that only the school can determine what is truly uncollectible, based on its detailed knowledge of the borrower's circumstances and repayment history.

Several respondents opposed applying this requirement to schools with low default rates, stating that a low default rate reflects sound management and should be sufficient for the school to be given discretion in determining a loan's uncollectibility.

Schools also explained that efforts to identify loans more than 2 years past due could be confused by the common practice of accelerating loans at the time of referral to a collection agency. This is

because the procedures for aging accounts, which involve dividing the amount past due by the payment amount, could cause an accelerated loan to appear as if it were as much as 10 years past due when it may actually be only 4 months past due.

There was also concern regarding the retroactive liability imposed on schools by this requirement. The prospect of a substantial school liability was viewed as worrisome and in need of further discussion. In response, the Department clarifies that a school liability is imposed only in cases where a school failed to comply with the regulatory due diligence requirements in effect at the time collection activities should have taken place for a particular loan. As a result of the forgiveness provision contained in Public Law 100-607, enacted November 4, 1988, which authorized schools to write off their older uncollectible loans without departmental review, the Department expects that substantial liabilities will not be imposed on schools under the write-off requirement.

Respondents also indicated that since the Department does not pursue the accounts after write off is granted, write off does nothing to further efforts to collect the debt from the borrower and thus is not advantageous; has no precedent in the Department of Education or in any other Federal programs; and is unfair to the borrower, whose credit would be affected with no consideration of his or her intent to repay.

Commenters offered a myriad of suggestions as to how the definition of "uncollectible" should be amended. Many suggested that it be expanded to 3 years. Others said that: (1) There should be a mechanism for requesting an extension to the write-off deadline; (2) schools with low default rates should be allowed to make their own determinations of when a loan is uncollectible; (3) the Department should implement assignment rather than write off; (4) the Department should implement a tiered approach, with progressively more stringent requirements based on escalating default rates; (5) school discretion was essential if the goal is to maximize collections; (6) write off should be optional at 2 years and required at 4 years; (7) the definition should consider willingness to repay; (8) more clear write-off criteria were needed if the 2-year requirement were implemented; (9) loans 2-6 years past due should be in a separate category rather than written off; (10) the Department needed to allow time for enforcing judgments after they

are obtained; (11) write off should not be required until the loan is 5-9 years past due; (12) uncollectibility should be related to completion of the required due diligence steps; (13) the loan should only be uncollectible when the statute of limitations has expired; (14) schools should be allowed to hold loans more than 2 years past due, provided that they review and document the circumstances of the accounts and provide a rationale for retaining them; and (15) the regulations should make clear that schools cannot be found out of compliance for no submitting loans prior to the end of the 2-year period.

In response to the substantive comments and suggestions regarding this proposal, the Department has reconsidered the definition of "uncollectible loan." The Department agrees with respondents that it would be counterproductive to cease collections if there is still a strong likelihood that the borrower will eventually repay. The Department also did not intend to require schools to modify their collection activities in order to comply with this proposal, nor to create the type of administrative burden described by schools as associated with handling these accounts manually after write-off approval is granted.

The Department's concern, in developing the definition of an "uncollectible loan," was to assure that schools do not allow loans to remain on their books indefinitely after all reasonable collection efforts have been exhausted. At the time the proposal was developed, the Department expected that 2 years was a reasonable amount of time in which to complete normal collection activities. After further consideration, the Department agrees with schools that 2 years generally is too short a time to complete due diligence. Further, the Department is compelled by comments indicating that student loan borrowers are unique and that the collectibility of these loans often increases with time. The Department seeks to encourage, rather than discourage, creative collection efforts on the part of schools, such as use of State tax offset, linkage with State licensure, and enforcement of judgments using long-term collection efforts such as placing a lien on property.

Accordingly, the Department has amended this provision to require that the school must conduct an annual review of any loan more than 3 years past due. Where the school determines that the prospects of future collection are promising enough to justify periodic review of the debt, and neither the statute of limitations nor the 10-year

repayment period has expired, the school may retain the account for continued collections, provided that it makes an attempt at least semi-annually to collect from the borrower.

The Department chose 3 years past due as the time period after which the annual review must be done, based on the fact that many commenters indicated that due diligence often is completed within a 3-year period. The Department notes that if the school has not completed the due diligence process, this would be sufficient basis for retaining the account. Further, the Department expects that if a borrower were making partial or sporadic payments, this also would be adequate rationale for retaining the account. Other reasons could include the earning potential of the borrower, long term illness or unemployment, a skip whom the school would like to continue attempting to locate on a regular basis, or the availability of collection tools that have not had time to be fully effective (e.g., credit bureau reporting, withholding of transcripts or other school services, State tax offset, a lien on property, etc.). The school would not be required to document the basis for retaining the account; rather, documentation of the semi-annual collection effort would be adequate to indicate that the school had determined that additional collection efforts were warranted.

In complying with the requirement to attempt collections on at least a semi-annual basis, the school is responsible for determining the types of efforts it will make, based on its own experience regarding which procedures are most effective with its borrowers. Examples of efforts that would satisfy this requirement include referring the borrower for State tax offset, reviewing a judgment for enforceability contacting the borrower to remind him or her of the debt, or performing skiptracing if the borrower's location is unknown.

Once the statute of limitations or the 10-year repayment period has expired, whichever is sooner, the school would be required to submit the loan for write-off review or reimburse the fund. The Department notes that the statute of limitations for HPSL loans is determined by State law, and thus this period of time will vary for each school. The Department also realizes that the statute of limitations applies only to the use of judicial remedies, and does not preclude continued collection efforts that might occur without court intervention. Nevertheless, the Department considers it appropriate to require that a school determine a loan uncollectible at the

point that the State no longer authorizes the use of judicial remedies. The 10-year repayment period would serve to establish a deadline for determining uncollectibility in any State where the statute of limitations exceeds 10 years or does not apply to these loans.

Two respondents requested that the Department amend this provision to clarify that loans subject to the automatic forgiveness provisions of Pub. L. 100-607 are not subject to paragraph (b)(4)(ii), in addition to (b)(4) (i) and (iii). Rather than amending this paragraph, the Department has responded to these concerns by amending paragraph (b)(4)(ii) to state that the school is not liable for loans subject to the automatic write-off provisions of Pub. L. 100-607.

Thirty-three respondents opposed paragraph (b)(4)(i) of this section, which would require that a school request permission to write off an uncollectible loan within 30 days of the determination that it is uncollectible or reimburse the fund for the full amount of the loan. If write off is disapproved, the school would be required to reimburse the fund for the full amount of principal, interest, and penalty charges that remain uncollected on the loan. Reimbursement would be required by the following June 30 or December 31, except that in no case would the school have less than 30 days following the Secretary's disapproval of the write-off request for reimbursing the fund.

Most respondents stated that 30 days was not sufficient time to submit the loan for write-off review, given the amount of activity involved in preparing the account for submission, including compiling the write-off documentation, preparing a summary of the account's collection history, etc. They noted that a 30-day timeframe would require a monthly review of accounts and would cause a measurable increase in the school's workload which would be especially burdensome during reporting and disbursement periods when workloads are already very heavy. Respondents suggested that a more reasonable timeframe for submission would be 60 days or 90 days. One respondent also requested clarification of when the 30-day period would begin.

In response to these comments, the Department notes that the revised procedures for determining uncollectibility should provide a school with sufficient time to anticipate when a loan will be considered uncollectible and to prepare the case for write-off review within 30 days of that time. The absolute deadline for submission would be 30 days following the expiration of the statute of limitations or the 10-year

repayment period, whichever is sooner. In such cases, the date of the expiration of the statute of limitations or the 10-year repayment period must be documented as part of the student's records. If the school determined that the loan was uncollectible prior to that time, the deadline would be 30 days after the determination of uncollectibility was made, the date of which must be documented as part of the student's collection records. In any case, the debtor's file must indicate that, upon completion of the applicable regulatory due diligence requirements, some type of collection activity occurred at least every 6 months until the determination of uncollectibility was made. For loans for which the required due diligence steps were completed prior to publication of these regulations, the first of the semi-annual collection efforts must occur, or the determination of uncollectibility must be made and the loan submitted for write-off review, no later than 6 months after the effective date of these regulations.

Several respondents were concerned about how the 30-day period for submission would apply to bankruptcies, and suggested that they be given 60 days after receipt of the discharge notice to submit these loans for write-off review. In response, the Department clarifies that if the loan was discharged, the determination of uncollectibility would occur at the point that the school received the discharge notice, and the loan would be required to be submitted for write-off review within 30 days of that date. Since the school would have previously been notified of the bankruptcy proceeding, the school could anticipate the granting of the discharge and begin to prepare the loan for write-off submission before the discharge notice is actually received.

Many commenters stated that it was inappropriate to require that the school pay a borrower's late penalties in cases where a write-off request was disapproved, one objected to schools paying anything other than principal, and others said it was unfair to impose any financial liability on the school. In response, the Department clarifies that the school is not required to absorb any financial liability unless it fails to document compliance with the required due diligence procedures. Where due diligence cannot be documented, the Department considers it appropriate for the school to pay the full outstanding balance of the debt, including penalty charges, since the school's failure to comply with the due diligence requirements is viewed as a factor contributing to the borrower's

nonpayment of the debt. Accordingly, no change has been made in this requirement.

One commenter stated that reimbursement by the school would change the 90/10 funding split that is part of the program's terms of agreement, and another questioned whether the school was to reimburse the fund for just the Federal portion or the school contribution as well. The Department clarifies that the school reimburses the full amount of the loan (both Federal and school share) to the loan fund (rather than directly to the Federal Government), and receives the institutional share of these monies at the time of the distribution of assets.

One respondent complained that for closing schools, reimbursing the fund for write-off disapprovals would be a "flow-through" of school funds to the Federal Government, since the school would no longer be making new loans. While this is true, the Department notes that the purpose of the write-off review process is to prevent the Federal Government from absorbing costs associated with losses that occur as a result of the school's failure to follow required due diligence procedures. Thus, it is appropriate for the Federal share of these funds to come back to the Federal Government if the school is in closing status.

Eleven respondents objected to the provision that would require reimbursement within 30 days of the Secretary's determination that it failed to exercise due diligence, indicating that they should be provided with at least 60-90 days to reimburse the fund or to submit documentation that was missing from the initial request. Three requested that the Department institute an appeal process before requiring reimbursement. The Department clarifies that the write-off process currently includes opportunities both to submit additional documentation before a disapproval is finalized and to appeal the decision. These periods could be used by the school to begin the process associated with securing funds for reimbursement in the event that the write off ultimately is denied. The Department also clarifies that reimbursement is only required at the end of each semi-annual reporting period, so that a 30-60 day period for reimbursement would only occur if the disapproval is finalized in May or November.

Several respondents suggested that the Department require a semi-annual review and submission of write-off requests, with the submission to coincide with the semi-annual reports. It was noted that this would allow for

routine scheduling of workloads for schools and the Department. As indicated above, the write-off provision as revised requires schools to conduct an annual review of any loan more than 3 years past due to determine its collectibility. While a school may submit its write-off requests at the same time that semi-annual reports are due, the Department is not requiring submission at these times.

Some respondents stated that the Department should require a school to submit loans for write-off review only if the school's default rate is over 5 percent. In response, the Department notes that the responsibility for the write-off review process, which involves a school liability if a loan is disapproved, needs to remain with the Department to assure proper stewardship of Federal funds.

One respondent questioned paragraph (b)(4)(ii) of this section, which would require that if the Secretary determines that the school has exercised due diligence in accordance with the applicable regulatory requirements, the schools will be permitted to reduce its accounts receivable by the full amount of principal, interest, and penalty charges that remain uncollected on the loan. This respondent requested that the Department specify which "applicable regulatory requirements" are implied in the requirement and communicate to schools clear guidance that identifies acceptable forms of due diligence documentation required in the write-off process. In response to this comment, the Department notes that the regulatory requirements in effect at the time that collection efforts should have occurred are the requirements against which collection efforts are evaluated in the write-off review process. Guidance on the write-off process and acceptable documentation has been provided through various policy memoranda, most recently in Policy Memoranda 8 and 10.

Twenty respondents opposed paragraph (b)(4)(iii) of this section, which would require that if a school does not request write-off review within the required time, it must reimburse the fund for the full amount of the loan by the following June 30 or December 31, but no less than 30 days after the determination of uncollectibility. Concerns regarding this provision mirrored those expressed regarding paragraph (b)(4)(i): i.e., that schools should not be required to pay penalty charges on these loans, and that 30 days was too short a time for completing the administrative work associated with reimbursement. Respondents requested

60-90 days to submit the write-off request, and a minimum of 60-90 days to reimburse the fund. In addition, respondents stated that schools should not be repaying the fund if they are in compliance with the due diligence requirements, and that the penalty of full repayment for failing to submit a write off in time was extreme and unnecessary. It was suggested that the Department establish a process for granting extensions where there is a good cause for the delay, and where the school can show that administrative conflicts prevented submitting the loan within the proper timeframe.

In response to these comments, the Department notes that since schools have been given considerably more discretion in determining when a loan becomes uncollectible, the requirements in this paragraph regarding timeframes for write-off submission, penalties for failure to submit, and timeframes for repayment to the fund should not be burdensome. Accordingly, this provision has been retained as proposed.

#### Other Comments

Several respondents stated that they would need more than 30 days for the initial implementation of the requirement, due to a lag between the date that the regulations are published and received by schools. A few respondents requested that the final regulations not be effective until 6 months after publication to assure

adequate time for implementation; or that the regulations be applicable only to loans made on or after the effective date of the regulations because of the difficulty associated with retroactive application. In response, the Department notes that due to the changes associated with the definition of "uncollectible loans," which allow significantly more discretion than the original proposal, it is reasonable for the regulations to be applied to all loans (other than those exempted by Pub. L. 100-607). However, to allow some lead time for implementation, these final regulations are not effective until 30 days after the date of publication. Also, as indicated previously, schools have up to 6 months after the effective date to determine whether any loan more than 3 years past due is uncollectible, and either conduct the first of their semi-annual collection efforts or submit the loan for write-off review.

#### Regulatory Flexibility Act and Executive Order 12291

The Department expects that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of health professions schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have significant impact on a substantial number of health professions schools.

The Department has also determined that this rule does not meet the criteria for a major rule as defined by section (b) of Executive Order 12291. In addition, costs will not exceed the threshold criteria of \$100 million for major rules, therefore, a regulatory impact analysis is not required.

#### Paperwork Reduction Act of 1980

This final rule contains information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and assigned control number 0915-0137. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**Title:** Health Professions Student Loan Program: Cash Management.

**Description:** Schools must report and return excess cash on a semi-annual basis and request permission to write off uncollectible loans or reimburse the loan fund in the full amount of the uncollectible loan.

**Description of Respondents:** Public or other non-profit institutions.

**Estimated Annual Reporting Burden:**

| Section requirement       | Annual No. of respondents | Annual frequency | Average burden per response | Annual burden hours |
|---------------------------|---------------------------|------------------|-----------------------------|---------------------|
| 57.205(a)(2) <sup>1</sup> | 60                        | 120 requests     | 30 min                      | 60 hrs.             |
| 57.210(b)(4)(i)           |                           |                  |                             |                     |

<sup>1</sup> The burden associated with this regulatory requirement is included in the Annual Operating Report and the Debt Management Report—OMB Clearance Nos. 0915-0044 and 0915-0046.

We received no public comments on the estimated public reporting burden, and it remains the same as in the proposed rule.

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

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

Dated: April 22, 1991.

James O. Mason,  
Assistant Secretary for Health.

Approved: July 5, 1991.

Louis W. Sullivan,  
Secretary.

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

Accordingly, subpart C of 42 CFR part 57 is amended as set forth below:

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

##### Subpart C—Health Professions Student Loans

1. The authority citation for subpart C is revised to read as follows:

**Authority:** Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35, (42 U.S.C. 218); 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, and as amended by 102 Stat. 3125 (42 U.S.C. 294m-q).

2. Section 57.205 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

#### § 57.205 Health professions student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be accounted for separately from other funds, providing a clear audit trail for all transactions. At all times the fund must contain monies representing the

institutional capital contribution. The school must at all times maintain all monies relating to the fund in one or more interest-bearing accounts or investment instruments which meet OMB requirements established for Federal monies held by third parties. The school must place all earnings into the fund but may first deduct from total earnings any reasonable and customary charges incurred through the use of an interest-bearing account. An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments, and shall be responsible for reimbursing the fund for any losses that occur due to the use of investments that are not federally insured.

(1) The Federal capital contribution fund is to be used by the school only for:

(i) Health professions student loans to full-time students;

(ii) Capital distribution as provided in section 743 of the Act or as agreed to by the school and the Secretary; and

(iii) Costs of litigation, costs associated with membership in credit bureaus, and to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans.

(2) A school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs. A school in closing status must review the balance in the fund on a quarterly basis. Monies identified as in excess of the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The school's determination is subject to the review and approval of the Secretary.

(c) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.218 and the Department's Claims Collections regulations (45 CFR part 30), as appropriate.

3. Section 57.210 is amended by revising paragraph (b)(4) and adding a parenthetical statement at the end of the section text to read as follows:

**§ 57.210 Repayment and collection of health professions student loans.**

\* \* \* \* \*

(b) \* \* \*

(4) A school must, on an annual basis, review and assess the collectibility of any loan more than 3 years past due. If the school determines that the prospects of future collection are promising enough to justify periodic review of the debt, and neither the statute of limitations nor the 10-year repayment period has expired, the school may retain the account for continued collections, provided that it makes an attempt at least semi-annually to collect from the borrower. When the due diligence procedures required by paragraph (b)(1) of this section have been exhausted, the school is responsible for determining the collection methods it will use for the semi-annual collection effort required on these loans. If the school determines that the prospects of future collection are not promising, or when the statute of limitations or the 10-year repayment period has expired, the loan must be considered uncollectible. A school may determine a loan to be uncollectible sooner than 3 years past due when it has evidence that the loan cannot be collected, but in no case should a school consider a loan as uncollectible if it has not been in default for a least 120 days. A school is not subject to the requirements in paragraphs (b)(4) (i) and (iii) of this section for loans that became uncollectible, as determined by the school, before August 1, 1985.

(i) A school must request permission to write off an uncollectible loan within 30 days of the determination that it is uncollectible or reimburse the fund in the full amount of the loan, pursuant to § 57.210(b)(4)(iii). The 30-day period for submitting the loan for write-off review begins on the date that the determination of uncollectibility is made, in accordance with paragraph (b)(4) of this section. In any instance where the Secretary determines that a

school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund the full amount of principal, interest, and penalty charges that remains uncollected on the loan. Reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following the Secretary's disapproval of the request for write-off approval.

(ii) If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, or if the school determines that the loan was uncollectible prior to August 1, 1985, the school will be permitted to reduce its accounts receivable for the HPSL fund by the full amount of principal, interest, and penalty charges that remains uncollected on that loan and will not be required to return the Federal share of the loss to the Secretary.

(iii) If a school does not request permission to write off an uncollectible loan within the required timeframe, it must reimburse the fund for the full amount of principal, interest, and penalty charges that remains uncollected on that loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following its determination that a loan is uncollectible.

(iv) Failure to comply with the requirement of this section will subject a school to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0915-0137)

[FR Doc. 91-19471 Filed 8-14-91; 8:45 am]

BILLING CODE 4160-15-M

# Federal Register

Thursday  
August 15, 1991

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## Part VIII

# Department of Health and Human Services

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## Public Health Service

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### 42 CFR Part 57

### Nursing Student Loan Program; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Public Health Service****42 CFR Part 57**

RIN 0905-AC76

**Nursing Student Loan Program****AGENCY:** Public Health Service, HHS.**ACTION:** Final regulation.

**SUMMARY:** This rule amends existing regulations governing the Nursing Student Loan (NSL) program to require schools to: (1) Invest their NSL funds and return earnings from the investments to the NSL funds; (2) identify and return to the Department excess cash from the NSL funds; and (3) determine the collectibility of defaulted loans and, for loans determined to be uncollectible, either obtain approval to write off the loans or reimburse the fund for the amount that remains uncollected on the loans. However, schools are not required to obtain write-off approval or reimburse the fund for loans that became uncollectible prior to January 1, 1983. The Department expects that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the NSL program.

**EFFECTIVE DATE:** This regulation is effective September 16, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shirley A. Zimmerman, Chief, Program Accounting and Analysis Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8-34, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-1700.

**SUPPLEMENTARY INFORMATION:** On December 18, 1989, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the *Federal Register* (54 FR 51852), a Notice of Proposed Rulemaking (NPRM) to amend the NSL regulations to improve the cash management practices of schools participating in the NSL program. The public comment period on the proposed regulations closed on February 16, 1990. The Department received 58 public comments on this NPRM from 51 school officials, 5 professional associations, and 2 State agencies. The comments received on the proposed rule and the Department's responses to the comments are discussed below according to the section numbers and headings of the NSL regulations affected.

**Section 57.305 Nursing Student Loan Funds**

Thirty-six respondents opposed paragraph (a) of this section, which would require that schools must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States, and assure that all earnings become a part of the fund. This paragraph also stated that an institution must exercise the level of care required of a fiduciary with regard to these deposits and investments.

Most respondents objected to this proposal on the grounds that it would force schools to segregate NSL funds from their standard investment pool, thereby decreasing earnings and increasing costs. These respondents explained that under the proposal, NSL funds could not be included in an institution's investment pool since this normally includes investments that are not federally insured. Establishing a separate NSL account would provide a lower rate of earnings and would require additional administrative costs which could be avoided if the NSL funds were pooled with other institutional monies for investment purposes. As a result, the proposal as written was deemed to be counterproductive to improving cash management.

Several State schools also indicated that they are required to maintain all funds in a State-designated bank account which is not necessarily federally insured, and that they had no authority under State law to establish a separate account for NSL funds. Of these, one indicated that the State investment standards would adequately protect the fund.

As an alternative to the proposed provision, numerous respondents noted that they are already required to comply with the requirements of Office of Management and Budget (OMB) Circular A-110 regarding Federal cash deposits held by third parties, and suggested that these requirements should be sufficient in assuring proper handling of the NSL funds. Such an approach would permit schools to integrate their NSL funds with other school resources, with separate accountability maintained to assure that interest is allocated properly. Others suggested that the language be broadened to include securities issued by agencies of the Federal Government, even if they were not guaranteed by the United States, to allow greater flexibility and higher earnings. Still others proposed that the Department require loan funds to be

invested in high quality income-producing securities and accounted for separately. It was also stated that the proposed language requiring institutions to exercise the "level of care required of a fiduciary" should be sufficient to take action against a school with poor investment policies, and should eliminate the need to restrict investments to federally-insured accounts. One State school requested that the requirement be amended to allow these funds to be pooled with eligible investments authorized by State statutes.

In response to these comments, the Department agrees that it would be counterproductive to the improvement of cash management to establish a requirement which prohibits schools from pooling their NSL funds with other institutional funds for investment purposes, provided that the investment pools are being managed responsibly. The Department also agrees that existing OMB requirements address most of our concerns regarding the investment of Federal funds. Nevertheless, the Department is concerned that the regulations state clearly that the NSL fund is not to absorb any losses that could occur as a result of using investments that are not federally insured. Accordingly, the Department is amending this provision to state that, in the investment of its NSL funds, schools must comply with OMB requirements governing the handling of Federal monies. As amended, the provision will further state that the institution is responsible for reimbursing the fund for any losses that may occur due to the use of investments that are not federally insured.

Two respondents indicated that if there is only a small amount of money in the loan fund, the cost of keeping the funds in an interest-bearing account may exceed the interest earned. This was expected to be especially true for closing schools, which remit the Federal share of any cash balance in the fund to the Department on a quarterly basis. One suggested that for closing schools, interest-bearing accounts be required only when the balance due to the Federal Government exceeds \$5,000 at the end of two quarters in a fiscal year. In response to this concern, the Department has amended the provision to state that, where the school can document that the costs associated with use of an interest-bearing account would exceed expected interest income, the school is not required to use an interest-bearing account. The Department has not adopted the \$5,000 cut-off since it is prudent to keep any amount in an

interest-bearing account to the extent that earnings can be realized.

One respondent indicated that this would prohibit keeping a small amount of the fund in a regular checking account to maintain the minimum balance required by the bank. Another stated that a school should be required to move its funds from checking to savings only if it would result in greater earnings. The Department clarifies that a school may comply with this provision by keeping all or part of its funds in an interest-bearing checking account or savings account.

One respondent understood this provision to mean that the school was to draw all Federal capital contributions awarded to it, regardless of need, and carry these monies in a special account. The Department clarifies that the provision does not require schools to draw funds before they are needed, but merely provides guidance regarding proper management of Federal funds once they have been drawn down.

Another respondent understood this provision to mean that the institutional contribution had to remain in the loan fund at all times and could not be used for making loans to students. The Department clarifies that the provision requires that the institutional contribution be accounted for as part of the fund at all times, with the intent that this money, as well as any other money in the fund, be used for making loans to students.

One respondent stated that the regulations should permit a school to claim interest lost, due to a school contributing more than the required one-ninth matching amount, as a deduction against interest income earned by the fund. In response, the Department notes that any overmatch on the part of the school is voluntary. To allow interest income lost by the school as the result of an overmatch to be deducted from interest income would be the equivalent of charging the NSL fund a fee for "borrowing" school money, and is prohibited by the NSL statute.

There was also some confusion concerning what was meant by the requirement to deposit and carry NSL funds in a "special account." Some respondents understood this to require that NSL funds be physically segregated from other institutional funds. It is not the Department's intent that schools physically segregate the NSL fund from other monies, but rather that the school maintain separate accountability for these funds. Accordingly, the Department has amended this language to state that the school must maintain separate accountability for the NSL fund.

Ten respondents opposed paragraph (a)(2) of this section, which would require that a school must review the balance of the fund on at least a semi-annual basis (quarterly for closing schools), and return the Federal share of any funds determined to be excess to the Federal Government by the due date of the report which identifies the excess monies, with the school's determination subject to the review and approval of the Secretary. These commenters were concerned that a school may show what appears to be excess cash because of unexpected windfalls resulting from such things as the Department's initiative to assure that investment income is properly credited to the NSL fund, or large amounts of school monies being deposited into the NSL fund due to write-off disapprovals. In these instances, the schools indicated that it could be difficult to use the funds immediately. Also, temporary conditions might exist whereby the institution would use in the near future funds that appeared to be "excess" under the current procedure. It was therefore requested that schools be given adequate time to distribute excess cash before being required to return it to the Department.

In response to these comments, the Department notes that the procedures for determining excess cash allow schools to take into account their needs for the next 2 years, and do not require funds to be returned unless they will not be used during this period of time. The Department considers the 2-year period adequate to plan for the use of any unexpected windfalls due to circumstances such as those described above. The Department further notes that, in unusual cases where the school determines that it will take longer than 2 years to use excess cash, it may present a letter of explanation to the Department and request permission to retain the funds.

Numerous commenters indicated that the existing Annual Operating Report (AOR) and Debt Management Report (DMR) are adequate for determining excess cash and providing a mechanism for returning unneeded funds to the Department, and that the audit process allows for adequate verification of the AOR and DMR. Accordingly, they stated that additional regulations were not needed in this area. The Department agrees and clarifies that this regulatory provision is to be implemented through the AOR/DMR reporting process, and will not place any additional reporting burden on the schools.

A few commenters were concerned that under this provision the Secretary would have final review and approval of

an institution's determination of excess cash, and stated that this should be determined by the school subject to the Department's review. There was also concern that the Secretary should not overrule reasonable estimates made by a school. The Department fully intends for the excess cash determination to be made by the school, and expects that the vast majority of schools will act responsibly in developing reasonable estimates to comply with this requirement. Nevertheless, because the excess cash determination is based on projections rather than actual figures, it is essential that the Secretary have authority to overrule a school in the event that it uses clearly unreasonable projections with no defensible rationale, or shows a consistent pattern of excess cash that increases and remains unused over a period of several years with no adequate explanation.

One respondent suggested that the Secretary's review should be completed promptly, with a school given time to respond in cases where the Secretary disagrees with its determination. The Department notes that the process for reviewing excess cash balances includes an opportunity for a school to respond and justify its calculations in the event that the Secretary disagrees with its projections.

Two respondents suggested that the excess cash calculation should recognize institutional advances to the NSL fund that are made in anticipation of collections, and that a school should not be penalized for providing adequate cash flow from its own resources until collections are received. The Department notes that the current procedures are not intended to penalize a school for a temporary overmatch, and expects that in most situations this would not artificially create an excess cash balance. However, in the event that this creates the appearance of excess cash, the school should provide a written explanation to the Department.

One respondent stated that for closing schools, the requirement to return funds quarterly should provide for a minimum amount, below which the remittance would only be required semi-annually or annually. It was suggested that this level be set at \$200-\$500, since the paperwork associated with the remittance was not justified for a smaller amount. In response, the Department notes that the NSL statute requires that closing schools remit funds to the Department on a quarterly basis. Accordingly, no change has been made in this regard.

One respondent suggested that "excess cash" be defined in the regulations so that schools would

clearly understand how to determine the amount of funds due to the Federal Government. In response, the Department notes that the procedures for determining excess cash are clearly set forth for schools in the semi-annual reports, and involve a level of detail that is inappropriate for these regulations.

One respondent stated that schools should be given at least 90 days to return these funds. The Department notes that the requirement to submit the funds with the semi-annual report provides them with 45 days from the end of the reporting period. Since excess cash represents funds on hand that the school is unable to use, the Department considers a 45-day period more than adequate for returning these funds to the Federal Government.

#### *Section 57.310 Repayment and Collection of Nursing Student Loans*

Thirty-four respondents opposed paragraph (b)(4) of this section, which would require a school to classify any loan on which payments are 2 or more years past due as uncollectible. The majority of these commenters indicated strong opposition to declaring a loan uncollectible when it is only 2 years past due, noting that this timeframe was neither adequate nor realistic, and was not a clear indicator of a loan's collectibility. These respondents explained that many loans are collected after they have become more than 2 years past due.

One of the major concerns of respondents was the negative implications of writing off a loan when it is only 2 years past due. They explained that once the loan is written off, the borrower is "off the hook" in terms of his or her repayment obligation, since it is unlikely that institutions would continue to pursue collections. A written off loan is no longer considered an asset by the school and generally appears on the billing system as closed, causing collection activity to cease. This sends the wrong message to the borrower by relieving him or her of the repayment obligation, and thus, in effect, rewarding him or her for continued nonpayment.

In response to the Department's statement that schools are not precluded from continuing to collect on loans that have been written off, respondents explained in great detail the difficulty of attempting to continue collections and handle repayments for loans that had been written off. Once these accounts are written off and removed from active billing, any future activity must be handled manually, including the calculation of interest, sending of bills, aging of accounts, depositing of collected funds, and adjusting of

accounting entries to reflect the revised amount of the write off. This dramatically increases the workload on each account, and would create a bookkeeping nightmare should one or more such accounts enter into a partial payment agreement that extended over time. While maintaining an active account manually was deemed to be prohibitively burdensome and not viable, schools that looked at the possibility of creating a new system to handle loans in this category determined that this also would not be cost-effective.

The recurring theme of these commenters was that student loans are unique and in many cases become more rather than less collectible as they become older. This is true because of the likelihood that the earnings of a student loan debtor, if low at the time repayment is scheduled to begin, generally increase as the repayment period progresses. Respondents explained that this is especially true for nurses, since entry-level nursing positions generally are not high-paying. Changes in the economic circumstances of student loan borrowers were cited as a significant factor in converting defaulted loans to repayment. These changes frequently result in a borrower being in a better financial position 3-5 years after graduation, even though repayment is scheduled to begin sooner.

For the above reasons, respondents stated that the effect of the 2-year definition of "uncollectible" would be to discontinue collection on many potentially collectible accounts. The potential loss to the fund was deemed to be greater than any gain that might result from reimbursements made due to a school's failure to exercise due diligence. Rather than improving a school's cash management procedures, this would result in the forfeiting of income to the fund.

Respondents also stated repeatedly that a 24-month limit on their collection activities would adversely affect the entire collection process, allowing inadequate time to complete the normal due diligence procedures, which could take anywhere from 3-5 years depending upon the school. Schools would be forced to alter proven and effective collection procedures because of the length of time they require. For example, under this proposal, it would be impossible to use a second collection agency, which has more than a 30 percent success rate at some schools. Also, the school would lose its ability to exercise alternative collection methods to assure the eventual recovery of funds, such as garnishment, State employment restrictions, State income tax offset,

withholding of transcripts, and the ability to effect licensure requests.

Some respondents requested exceptions to the "2-year past due" criteria. For example, they stated that if sporadic or minimal payments were being made on a loan, write off should not be required, even if payments were more than 2 years past due. There was also concern that the requirement failed to allow schools to make exceptions based on individual cases, such as unemployment, economic problems, severe illness, or temporary disability. These respondents noted that only the school can determine what is truly uncollectible, based on its detailed knowledge of the borrower's circumstances and repayment history.

Several respondents opposed applying this requirement to schools with low default rates, stating that a low default rate reflects sound management and should be sufficient for the school to be given discretion in determining a loan's uncollectibility.

Schools also explained that efforts to identify loans more than 2 years past due could be confused by the common practice of accelerating loans at the time of referral to a collection agency. This is because the procedures for aging accounts, which involve dividing the amount past due by the payment amount, could cause an accelerated loan to appear as if it were as much as 10 years past due when it may actually be only 4 months past due.

Respondents also indicated that write off has no precedent in the Department of Education (ED) or in any other Federal programs, and is unfair to the borrower, whose credit would be affected with no consideration of his or her intent to repay.

Commenters offered a myriad of suggestions as to how the definition of "uncollectible" should be amended. Many suggested that it be expanded to 3 years. Others said that: (1) There should be a mechanism for requesting an extension or allowing exceptions to the write-off deadline; (2) schools with low default rates should be allowed to make their own determinations of when a loan is uncollectible; (3) the Department should implement assignment rather than write off; (4) school discretion was essential if the goal is to maximize collections; (5) write off should be optional at 2 years and required at 4 years; (6) more clear write-off criteria are needed, following the example of the Department of Education (ED), if the 2-year requirement is implemented; (7) loans 2-6 years past due should be in a separate category rather than requiring them to be written off; (8) write off

should not be required until the loan is 4-9 years past due; (9) uncollectibility should be related to completion of the required due diligence steps; (10) the loan should only be uncollectible when the statute of limitations has expired; (11) schools should be allowed to hold loans more than 2 years past due, provided that they review and document the circumstances of the accounts and provide a rationale for retaining them; (12) the regulations should make clear that schools cannot be found out of compliance for not submitting loans prior to the end of the 2-year period; (13) timeframes, procedures, and language similar to those used by ED for Perkins loans should be adopted; (14) the exception for loans that are part of an open court case should be clarified; and (15) "uncollectible loans" should exclude loans where the borrower has demonstrated a willingness to repay.

In response to the substantive comments and suggestions regarding this proposal, the Department has reconsidered the definition of "uncollectible loan." The Department agrees with respondents that it would be counterproductive to cease collections if there is still a strong likelihood that the borrower will eventually repay. The Department also did not intend to require schools to modify their collection activities in order to comply with this proposal, nor to create the type of administrative burden described by schools as associated with handling these accounts manually after write-off approval is granted.

The Department's concern, in developing the definition of an "uncollectible loan," was to assure that schools do not allow loans to remain on their books indefinitely after all reasonable collection efforts have been exhausted. At the time the proposal was developed, the Department expected that 2 years was a reasonable amount of time in which to complete normal collection activities. After further consideration, the Department agrees with schools that 2 years generally is too short a time to complete due diligence. Further, the Department is compelled by comments indicating that student loan borrowers are unique and that the collectibility of these loans often increases with time. The Department seeks to encourage, rather than discourage, creative collection efforts on the part of schools, such as use of State tax offset, linkage with State licensure, and enforcement of judgments using long-term collection efforts such as placing a lien on property.

Accordingly, the Department has amended this provision to require that

the school must conduct an annual review of any loan more than 3 years past due. Where the school determines that the prospects of future collection are promising enough to justify periodic review of the debt, and neither the statute of limitations nor the 10-year repayment period has expired, the school may retain the account for continued collections, provided that it makes an attempt at least semi-annually to collect from the borrower.

The Department chose 3 years past due as the time period after which the annual review must be done, based on the fact that many commenters indicated that due diligence often is completed within a 3-year period. The Department notes that if the school has not completed the due diligence process, this would be sufficient basis for retaining the account. Further, the Department expects that if a borrower were making partial or sporadic payments, this also would be adequate rationale for retaining the account. Other reasons could include the earning potential of the borrower, long term illness or unemployment, a skip whom the school would like to continue attempting to locate on a regular basis, or the availability of collection tools that have not had time to be fully effective (e.g., credit bureau reporting, withholding of transcripts or other school services, State tax offset, a lien on property, etc.). The school would not be required to document the basis for retaining the account; rather, documentation of the semi-annual collection effort would be adequate to indicate that the school had determined that additional collection efforts were warranted.

In complying with the requirement to attempt collections on at least a semi-annual basis, the school is responsible for determining the types of efforts it will make, based on its own experience regarding which procedures are most effective with its borrowers. Examples of efforts that would satisfy this requirement including referring the borrower for State tax offset, reviewing a judgment for enforceability, contacting the borrower to remind him or her of the debt, or performing skiptracing if the borrower's location is unknown.

Once the statute of limitations or the 10-year repayment period has expired, whichever is sooner, the school would be required to submit the loan for write-off review or reimburse the fund. The Department notes that the statute of limitations for NSL loans is determined by State law, and thus this period of time will vary for each school. The Department also realizes that the statute

of limitations applies only to the use of judicial remedies, and does not preclude continued collection efforts that might occur without court intervention. Nevertheless, the Department considers it appropriate to require that a school determine a loan uncollectible at the point that the State no longer authorizes the use of judicial remedies. The 10-year repayment period would serve to establish a deadline for determining uncollectibility in any State where the statute of limitations exceeds 10 years or does not apply to these loans.

One respondent suggested that the provision state that the school has the right to collect write-off approvals for its own account and not for the NSL fund. The Department clarifies that any collections made on write-off approvals must be returned to the NSL fund in accordance with the NSL statute.

One respondent suggested that closing schools be allowed to turn over all outstanding loans to the Department for collection. In response, the Department notes that the NSL statute does not authorize assignment of these loans to the Federal Government.

One respondent suggested that the last sentence of paragraph (b)(4) should state that pre-1983 loans will be treated as loans written off following due diligence in accordance with paragraph (b)(4)(ii) and will reduce the school's accounts receivable by the amount forgiven. Rather than amending this paragraph, the Department has responded to this concern by amending paragraph (b)(4)(ii) to state that the school is not liable for loans subject to the automatic forgiveness provisions of Pub. L. 100-607.

Thirty-four respondents opposed paragraph (b)(4)(i) of this section, which would require that a school request permission to write off an uncollectible loan within 30 days of the determination that it is uncollectible or reimburse the fund for the full amount of the loan. If write off were disapproved, the school would be required to reimburse the fund for the full amount of principal, interest, and penalty charges that remain uncollected on the loan. Reimbursement would be required by the following June 30 or December 31, except that in no case would the school have less than 30 days following the Secretary's disapproval of the write-off request for reimbursing the fund.

Most respondents stated that 30 days was not sufficient time to submit the loan for write-off review, given the amount of activity involved in preparing the account for submission, including compiling the write-off documentation, preparing a summary of the account's

collection history, etc. They noted that a 30-day timeframe would require a monthly review of accounts and would cause a measurable increase in the school's workload which would be especially burdensome during reporting and disbursement periods when workloads are already very heavy. It would create difficulties both for schools with large loan volumes, and for small offices which could get caught in violation of the 30-day limit due to travel, illness, registration, exit interviews, or other periods of very heavy workloads. Respondents suggested that a more reasonable timeframe for submission would be 60 days or 90 days; or that more flexibility was needed if a 30-day submission requirement were to be implemented, such as an extension where the school demonstrates that an administrative conflict or burden prevented submission within the required period. One respondent also requested clarification of when the 30-day period would begin, and one requested a 6-month implementation period after the effective date of the regulation.

In response to these comments, the Department notes that the revised procedures for determining uncollectibility should provide a school with sufficient time to anticipate when a loan will be considered uncollectible and to prepare the case for write-off review within 30 days of that time. The absolute deadline for submission would be 30 days following the expiration of the statute of limitations or the 10-year repayment period, whichever is sooner. In such cases, the date of the expiration of the statute of limitations or the 10-year repayment period must be documented as part of the student's records. If the school determined that the loan was uncollectible prior to that time, the deadline would be 30 days after the determination of uncollectibility was made, the date of which must be documented as part of the student's collection records. In any case, the debtor's file must indicate that, upon completion of the applicable regulatory due diligence requirements, some type of collection activity occurred at least every 6 months until the determination of uncollectibility was made. For loans for which the required due diligence steps were completed prior to publication of these regulations, the first of the semi-annual collection efforts must occur, or the determination of uncollectibility must be made and the loan submitted for write-off review, no later than 6 months after the effective date of these regulations.

One respondent was concerned about how the 30-day period for submission would apply to bankruptcies, and suggested that they be given 60 days after receipt of the discharge notice to submit these loans for write-off review. In response, the Department clarifies that if the loan was discharged, the determination of uncollectibility would occur at the point that the school received the discharge notice, and the loan would be required to be submitted for write-off review within 30 days of that date. Since the school would have previously been notified of the bankruptcy proceeding, the school could anticipate the granting of the discharge and begin to prepare the loan for write-off submission before the discharge notice is actually received.

Many commenters stated that it was inappropriate to require that the school pay a borrower's late penalties in cases where a write-off request was disapproved; one objected to schools paying anything other than principal; still others said it was burdensome to impose any retroactive financial liability on the school, and that this was an excessive penalty which could jeopardize a school's continued participation in the program. One respondent stated that imposing a school liability was unfair, since borrowers who drop out are generally the collection problems, and their loans would be uncollectible regardless of whether the school exercised due diligence. Also, since schools have little say in the eligibility criteria, this respondent concluded that they should not be responsible for loans that are not repaid. Another respondent noted that proof of due diligence cannot always be substantiated since a paper trail was not always maintained in a manner acceptable to the Department.

In response to these comments, the Department clarifies that a school is not required to absorb any financial liability unless it fails to document compliance with the regulatory due diligence requirements in effect at the time collection activities should have taken place for a particular loan. Further, Public Law 100-607, enacted November 4, 1988, contained a "forgiveness provision" which authorized schools to write off their older uncollectible loans without departmental review. Since documentation of older loans is no longer an issue, it is not expected that substantial liabilities will be imposed on schools under this requirement. Nevertheless, where due diligence on more recent loans cannot be documented, the Department considers it appropriate for the school to pay the

full outstanding balance of the debt, including penalty charges, since the school's failure to carry out its collection responsibilities is viewed as a factor contributing to the borrower's nonpayment of the debt. Accordingly, no change has been made in this requirement.

One commenter stated that reimbursement by the school would change the 90/10 funding split that is part of the program's terms of agreement. The Department clarifies that the school reimburses the full amount of the loan (both Federal and school share) to the loan fund (rather than directly to the Federal Government), and receives the institutional share of these monies at the time of the distribution of assets; thus, the 90/10 funding split is not changed.

Numerous respondents objected to the provision that would require reimbursement within 30 days of the Secretary's determination that it failed to exercise due diligence, indicating that they should be provided with at least 60-90 days to reimburse the fund or to submit documentation that was missing from the initial request. Three requested that the Department institute an appeal process before requiring reimbursement. The Department clarifies that the write-off process currently includes opportunities both to submit additional documentation before a disapproval is finalized and to appeal the decision. These periods could be used by the school to begin the process associated with securing funds for reimbursement in the event that the write off ultimately is denied. The Department also clarifies that reimbursement is only required at the end of each semi-annual reporting period, so that a period of less than 60 days for reimbursement would only occur if the disapproval is finalized in May or November.

Several respondents suggested that the Department require a semi-annual review and submission of write-off requests, with the submission to coincide with the semi-annual reports. It was noted that this would allow for routine scheduling of workloads for schools and the Department. As indicated above, the write-off provision as revised requires schools to conduct an annual review of any loan more than 3 years past due to determine its collectibility. While a school may submit its write-off requests at the same time that semi-annual reports are due, the Department is not requiring submission at these times.

Some respondents stated that the Department should require a school to submit loans for write-off review only if

the school's default rate is over 5 percent. In response, the Department notes that the responsibility for the write-off review process, which involves a school liability if a loan is disapproved, needs to remain with the Department to assure proper stewardship of Federal funds.

One respondent opposed paragraph (b)(4)(ii) of this section, which would require that if the Secretary determines that the school has exercised due diligence in accordance with the applicable regulatory requirements, the schools will be permitted to reduce its accounts receivable by the full amount of principal, interest, and penalty charges that remain uncollected on the loan. This respondent requested that the Department add to this provision a reference to the older uncollectible loans excluded from write-off review as a result of Pub. L. 100-607. The Department has amended this paragraph accordingly.

Nine respondents opposed paragraph (b)(4)(iii) of this section, which would require that if a school does not request write-off review within the required time, it must reimburse the fund for the full amount of the loan by the following June 30 or December 31, but not less than 30 days after the determination of collectibility. Concerns regarding this provision mirrored those expressed regarding paragraph (b)(4)(i): i.e., that schools should not be required to pay penalty charges on these loans; that 30 days was too short a time for completing the administrative work associated with reimbursement; and that schools should not be required to reimburse the fund for any of these loans. Respondents requested at least 60 days to submit the write-off request, and a minimum of 60 days to reimburse the fund.

In response to these comments, the Department notes that since schools have been given considerably more discretion in determining when a loan

becomes uncollectible, the requirements in this paragraph regarding timeframes for write-off submission, penalties for failure to submit, and timeframes for repayment to the fund should not be burdensome. Accordingly, this provision has been retained as proposed.

One respondent questioned what effect the noncompliance provision in paragraph (b)(4)(iv) would have on closing schools. The Department clarifies that while closing schools could not be terminated, the Department would follow the Claims Collections regulations in enforcing compliance with these requirements.

#### Other Comments

Several respondents stated that they would need more than 30 days for the initial implementation of the requirement, due to a lag between the date that the regulations are published and received by schools. A few respondents requested that the final regulations not be effective until 6 months after publication to assure adequate time for implementation; or that the regulations be applicable only to loans made on or after the effective date of the regulations because of the difficulty associated with retroactive application. In response, the Department notes that due to the changes associated with the definition of "uncollectible loans," which allow significantly more discretion than the original proposal, it is reasonable for the regulations to be applied to all loans (other than those exempted by Pub. L. 100-607). However, to allow some lead time for implementation, these final regulations are not effective until 30 days after the date of publication. Also, as indicated previously, schools have up to 6 months after the effective date to determine whether any loan more than 3 years past due is uncollectible, and either conduct the first of their semi-annual collection efforts or submit the loan for write-off review.

#### Regulatory Flexibility Act and Executive Order 12291

The Department expects that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of nursing schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have significant impact on a substantial number of nursing schools.

The Department has also determined that this rule does not meet the criteria for a major rule as defined by section (b) of Executive Order 12291. In addition, costs will not exceed the threshold criteria of \$100 million for major rules, therefore, a regulatory impact analysis is not required.

#### Paperwork Reduction Act of 1980

This final rule contains information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control number 0915-0138. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Nursing Student Loan Program: Cash Management.

*Description:* Schools must report and return excess cash on a semi-annual basis (quarterly for closing schools) and request permission to write off uncollectible loans or reimburse the loan fund in the full amount of the uncollectible loan.

*Description of Respondents:* Public or other non-profit institutions.

*Estimated Annual Reporting Burden:*

| Section requirement  | Annual No. of respondents                                                                                                                                                     | Annual frequency | Average burden per response | Annual burden hrs. |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----------------------------|--------------------|
| 57.305(a)(2).....    | (The burden associated with this regulatory requirement is included in the Annual Operating report and the Debt Management Report—OMB Clearance Nos. 0915-0044 and 0915-0046) |                  |                             |                    |
| 57.310(b)(4)(i)..... | 200                                                                                                                                                                           | 800 requests     | 30 min.                     | 400 hrs.           |

We received no public comments on the estimated public reporting burden, and it remains the same as in the proposed rule.

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

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency

medical services, Grant program—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

Dated: April 22, 1991.

James O. Mason,  
Assistant Secretary for Health.

Approved: July 5, 1991.

Louis W. Sullivan,  
Secretary

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

Accordingly, subpart D of 42 CFR part 57 is amended as set forth below:

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

**Subpart D—Nursing Student Loans**

1. The authority citation for subpart D is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 835–482, Public Health Service Act, 77 Stat. 913–916, as amended, 99 Stat. 397–400, 530–537, and as amended by 102 Stat. 3160–3161 (42 U.S.C. 297 a–i).

2. Section 57.305 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

**§ 57.205 Nursing student loan funds.**

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be accounted for separately from other funds, providing a clear audit trail for all transactions. At all times the fund must contain monies representing the institutional capital contribution. The school must at all times maintain all monies relating to the fund in one or more interest-bearing accounts or investment instruments which meet OMB requirements established for Federal monies held by third parties, except that if the school documents that the costs associated with the use of an interest-bearing account would exceed expected earnings, the school is not required to maintain these monies in an interest-bearing account. The school must place all earnings into the fund but may first deduct from total earnings any reasonable and customary charges incurred through the use of an interest-bearing account. An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments, and shall be responsible for reimbursing the fund for any losses that occur due to the use of investments that are not federally insured.

(1) The Federal capital contribution fund is to be used by the school only for:

- (i) Nursing student loans to full-time or half-time students;
- (ii) Capital distribution as provided in section 839 of the Act or as agreed to by the school and the Secretary; and
- (iii) Costs of litigation, costs associated with membership in credit bureaus, and to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans.

(2) A school must review the balance

in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs. A school in closing status must review the balance in the fund on a quarterly basis. Monies identified as in excess of the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The school's determination is subject to the review and approval of the Secretary.

(c) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.318 and the Department's Claims Collections regulations (45 CFR part 30), as appropriate.

3. Section 57.310 is amended by revising paragraph (b)(4) and adding a parenthetical statement at the end of the section text to read as follows:

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

(b) \* \* \*

(4) A school must, on an annual basis, review and assess the collectibility of any loan more than 3 years past due. If the school determines that the prospects of future collection are promising enough to justify periodic review of the debt, and neither the statute of limitations nor the 10-year repayment period has expired, the school may retain the account for continued collections, provided that it makes an attempt at least semi-annually to collect from the borrower. When the due diligence procedures required by paragraph (b)(1) of this section have been exhausted, the school is responsible for determining the collection methods it will use for the semi-annual collection effort required on these loans. If the school determines that the prospects of future collection are not promising, or when the statute of limitations or the 10-year repayment period has expired, the loan must be considered uncollectible. A school may determine a loan to be uncollectible sooner than 3 years past due when it has evidence that the loan cannot be collected, but in no case should a school consider a loan as uncollectible if it has not been in default for at least 120 days. A school is not subject to the requirements in paragraphs (b)(4) (i) and (iii) of this section for loans that became uncollectible, as determined by the school, before January 1, 1983.

(i) A school must request permission

to write off an uncollectible loan within 30 days of the determination that it is uncollectible or reimburse the fund in the full amount of the loan, pursuant to § 57.310(b)(4)(iii). The 30-day period for submitting the loan for write-off review begins on the date that the determination of uncollectibility is made, in accordance with paragraph (b)(4) of this section. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund the full amount of principal, interest, and penalty charges that remains uncollected on the loan. Reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following the Secretary's disapproval of the request for write-off approval.

(ii) If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, or if the school determines that the loan was uncollectible prior to January 1, 1983, the school will be permitted to reduce its accounts receivable for the NSL fund by the full amount of principal, interest, and penalty charges that remains uncollected on that loan and will not be required to return the Federal share of the loss to the Secretary.

(iii) If a school does not request permission to write off an uncollectible loan within the required timeframe, it must reimburse the fund for the full amount of principal, interest, and penalty charges that remains uncollected on that loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following its determination that a loan is uncollectible.

(iv) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

(Approved by the Office of Management and Budget under control number 0915-0138)

[FR Doc. 91-19472 Filed 8-14-91; 8:45 am]

BILLING CODE 4160-15-M