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FEDERAL, STATE AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER LEARNING

Guaranteed Loan Program

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 177—FEDERAL, STATE AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS TO STUDENTS IN INSTITUTIONS

Guaranteed Loan Program

Notice of proposed rulemaking was published in the FEDERAL REGISTER on October 17, 1974 (39 FR 37154–37161), setting forth proposed regulations governing the operation of the Guaranteed Student Loan Program (20 U.S.C. 1071 through 1087–1). Interested persons were invited to submit to the Office of Education written data, views or arguments concerning the proposed rule. In addition, hearings were held in Washington, D.C., Chicago and San Francisco during the 45 day comment period which ended December 2, 1974.

A. *Summary of comments: Changes in the regulations.* Numerous comments were received, both in writing and at the public hearings. Major areas of concern were: the definition of "student" which most commenters saw as a threat to the eligibility status of community colleges and public vocational schools which have open admission requirements; the multiple disbursements required of educational institutions; the proposed ref.nd policy which many colleges feel is an unwarranted intrusion in their internal affairs; the proposed standards for evaluating educational institutions about which many commenters expressed concern over their possible impact on school eligibility and future admissions policies; the several proposals affecting correspondence schools, which many commenters felt would inhibit the flexibility of home study programs; and the additional administrative burden that the proposed regulations would impose on educational institutions.

A summary of the comments follows, arranged in the order of the sections of the final regulation. After each comment, a response is set forth stating changes which have been made in the regulation, or the reason why no change is deemed necessary.

1. *Changes to current regulations.* Section 177.1(e) *Eligible institution. Comment.* A commenter requested that the final regulations make clear that when a student transfers from an eligible to an ineligible program in the same school that this has the same consequences as transferring to an ineligible school, graduation or withdrawal from school.

Response. We see no need to modify the regulations in this respect. However, it should be fully understood that transferring to an ineligible portion of an eligible institution and transferring to an ineligible institution both result in the commencement of the student's grace period.

Vocational School. Comment. One commenter felt that OE should obtain firm evidence as to the legality of a particular school to operate within a given State.

Response. In rendering eligibility determinations, the Office of Education will continue to require each applicant institution to comply with all statutory eligibility qualifications including proof that it is "legally authorized to provide * * * postsecondary vocational or technical education * * *"

Comment. Several comments were addressed to the requirement "to prepare individuals for gainful employment." One commenter noted that this language is a change from the wording of the statute and previous regulations.

Response. This definition has been modified to be consistent with both the statute and previous regulations as no change in meaning was intended.

Comment. Several commenters felt that the 300 clock hour minimum requirement for an eligible vocational school course is excessive and will eliminate many valuable courses from being eligible for the Guaranteed Student Loan Program.

Response. It should be noted that the 300 clock hour minimum requirement is not a new proposal and has been in program regulations since the inception of the Guaranteed Student Loan Program. The original regulation was promulgated in order to establish a floor for eligible courses of study as it did not seem reasonable for students to borrow for very short courses. Insufficient evidence has been submitted to warrant any further consideration of this regulation at this time.

Comment. A number of commenters stated that, in the case of a correspondence student, the requirement of an average of 12 hours of preparation per week for any 4 week period is unreasonable and would present many problems. They cited examples of students (such as farmers during harvest season, military personnel, and people with family responsibilities) who would not be able to maintain such a schedule. One commenter noted that other types of students are entitled to vacation periods during the year.

Response. The proposed definition has been amended to read "not less than an average of 12 hours of preparation per week over a 12 week period * * *" This will still require steady progress but will allow for various contingencies that might interrupt the student's progress, such as job or family responsibilities. The student will be able to plan for time away from his studies by completing lessons in advance or increasing the amount of course work at other times during the 12 week period. This change is made also in paragraph (i) of this section. Related changes were made in § 177.46(d).

Comment. With regard to the requirements for approval of a flight school program, a commenter pointed out that the Veterans Administration itself does not approve schools, but that approval of schools for veterans benefits is performed by special State agencies established for this purpose.

Response. The definition of "Vocational School" has been changed to indicate that a flight school program must be "approved for veterans training according to procedures established by the Veterans Administration".

Comment. One commenter stated that the Commissioner should establish criteria to evaluate a State approval agency's standards for vocational schools.

Response. This issue is properly one to be treated under regulations governing the Commissioner's authority to publish a list of the accrediting agencies which he has approved (45 CFR Part 149). It should be noted that criteria have been published in the FEDERAL REGISTER on August 20, 1974, setting forth criteria for approval of State agencies in order to comply with the provisions of section 438(b) of the Higher Education Act of 1965, as amended. However, such criteria relate only to the approval of public postsecondary vocational educational institutions.

Comment. One commenter felt that if a school is licensed by the State and has a bond to protect students financially, approval by another accrediting agency should not be necessary.

Response. The requirement for accreditation by a nationally recognized agency is a statutory one and cannot be removed by administrative regulation. If a nonpublic vocational school belongs to a category of schools for which there is a national accrediting agency which has been recognized by the Commissioner, the only way such a school can be eligible for the Guaranteed Student Loan Program is through accreditation by this accrediting agency. State approval may not be substituted for national accreditation for such nonpublic schools.

Student.—Comment. One commenter asked that we clarify the phrase "good standing".

Response. The requirement of "good standing" is a statutory provision and this regulation merely reiterates the statute, which further states "as determined by the institution".

Comment. A number of commenters took issue with the provision that an eligible student includes a person who does not have a high school diploma or its equivalent provided the institution does not admit more than a small proportion of such students. There was considerable concern that this provision would eliminate a number of community colleges and public vocational schools that operate under an open admissions provision mandated under State law.

Response. The definition in question deals only with the eligibility of a student, not with the eligibility of an institution of higher education, and is intended to make it clear that if the institution is otherwise eligible, a student who is admitted under unusual circumstances which accelerate his academic progress will be eligible for a loan under this program. The concern being voiced

by the commenters is more properly directed to the statutory definition of "eligible institution". 20 U.S.C. 1085(b) provides that, in order to be eligible for this program, an institution of higher education shall admit as regular students only persons having a high school diploma or its equivalent. This definition is repeated in the current regulations at 45 CFR, 177.1(f). This issue can best be resolved through legislative amendments and appropriate measures are being prepared at this time by interested parties. Meanwhile, it should be noted that the same definitional issue pertains to other student financial assistance programs administered by the Office of Education and such programs will be administered consistently with this one.

Matriculate.—Comment. Several commenters felt that the proposed definition was vague, and did not indicate that the student actually has commenced classes. It was also pointed out that this definition should be clarified to relate specifically to correspondence students.

Response. The regulation has been amended to specify that a student, in order to matriculate, must have commenced the attendance period. A new provision has been added to this definition specifying that a home study student shall be deemed to have commenced attendance by the submission of one lesson.

Section 177.46 *Disbursement and repayment of loans.—Comment.* A number of commenters expressed concern over the requirement that a loan not be disbursed earlier than 30 days prior to the date on which the institution requires the student to pay tuition or required fees. Some suggested that it would be more appropriate to relate disbursement to the date on which classes begin, since early registration at some institutions could require payment of tuition and fees several months before classes begin. Other persons felt that relating disbursement to the date that tuition and fees were due implied that loans could be used only for that purpose. Some commenters felt that different disbursement requirements should be specified depending upon whether the loan would be used for amounts due the school or for other educationally related expenses.

Response. § 177.46(c) has been modified so that the 30 day provision relates to the date of matriculation. However, it was not believed practical to require different disbursement requirements depending upon uses to which the loan would be applied. This is generally not possible for either lenders or schools to determine, and the actual use of the funds may change depending upon the financial circumstances of the student at the time bills are to be paid. It should be noted that Federal law, regulations and operating procedures clearly provide that student loans may be used for any educational expense including room and board, books and supplies, transportation and personal expenses in addition to tuition and fees.

Comment. A great many commenters urged that schools be required to provide lenders with the date on which tuition and fees are to be paid in order that lenders will know when the 30 day period begins.

Response. The changes to § 177.46(c) relating the 30 day provision to the date the student matriculates should resolve this problem. Loan applications currently indicate the period to which the loan applies. The begining of that period provides lenders with a basis for determining the beginning of the 30 day period as in all cases the date of matriculation should not be earlier than the beginning of the period of the loan. If the loan applies to a period of time commencing after matriculation occurs (e.g. second semester) the loan still should not be disbursed earlier than 30 days prior to the beginning of that period.

Comment. A number of comments were received relating to the provision authorizing lenders to disburse the proceeds of the loan to an educational institution after obtaining prior written permission of the borrower. Some indicated that it was not clear if this meant that the check would be made payable to the school. The question was raised if written authorization would be required when the check was made payable only to the student, but mailed to the school to give to the student. Others urged that the checks be made payable to both the student and the school.

Response. The regulation has been clarified to indicate that the borrower's written authorization is required only when the check is made payable either to the institution or payable jointly to both the student and the institution. The lender may, of course, without obtaining the student's authorization, mail a check which is made payable only to the student, directly to the school for delivery to the student. It is not desirable or practical to mandate that in each case the check must be made payable to both student and school. There may be cases at publicly supported institutions where State fiscal procedures could result in delaying the student from receiving his loan if such a requirement were imposed. In addition, such a requirement could further hamper students who needed the loan primarily or solely for expenses that are not paid directly to the educational institution. Every effort has been made to provide maximum flexibility in order not to hinder the loan process. In cases where students attending a particular school receive loans from a single lender or from a relatively small number of lenders, schools and lenders are urged to cooperatively work out those procedures which are most suitable to their particular situation.

Comment. A number of schools and colleges have expressed concern over their ability to handle the paperwork and other administrative functions required where the lender makes the check payable to the school. Many expressed the need for an administrative allowance paid by the Federal Government in order for them to comply with this provision.

Response. Section 177.46(c)(2) has been amended to allow an institution, if it determines that it does not have the ability to administer such disbursements properly, to return the loan proceeds to the lender for disbursement directly to the student. In order to reduce the number of checks that have to be returned and to minimize delays to students, schools are urged to communicate their policy, insofar as possible, to lenders making loans to their students. Statutory changes would be required in order for the Office of Education to provide schools with an administrative allowance.

Comment. Several persons noted an apparent conflict between § 177.46(c)(2) requiring the school to refund to the lender with § 177.63(c) requiring the school to refund to the student. Clarification was also requested of the phrase "after giving consideration to other forms of Federal student financial assistance".

Response. The provision requiring schools to return the proceeds of the loan to the lender was retained in cases where the student does not matriculate. However, the provision requiring the school to return the remaining portion of the loan to the lender in cases where the student has matriculated but does not complete the academic period for which the loan was made has been deleted. This question is covered in § 177.63 dealing with refunds and with giving proper consideration for other forms of student financial assistance.

Comment. One commenter felt that, when schools receive the loan proceeds from the lender (when the check is made payable to the school), the schools should be required to place the funds in an escrow account in order to assure that funds would be available to pay refunds that may be due or to assure that funds would be available to students under the multiple disbursement provisions.

Response. We did not concur with this suggestion as it was felt that this would place an unnecessary and unwarranted restriction on schools as to how they utilize such funds. Schools will be permitted to invest funds not currently needed. The return on such investments should partially cover their administrative expenses. In addition, where it is determined pursuant to § 177.66(d) that a school is not in a sound financial position and is unable to meet its financial requirements (such as payment of refunds due), corrective action can be taken under that provision of the regulations or under the procedures established in Subpart G.

Comment. One commenter felt that the regulations should be clarified to make it clear that commercial lenders were not required to make mutliple disbursements.

Response. No change has been made to the regulations in this respect as the

proposed rules did not require commercial lenders to make multiple disbursements. Commercial lenders have always been encouraged to make multiple disbursements, and the regulations provide that if they do, the amount disbursed during a particular school period should not be greater than required by the student for that period.

2. Subpart F—*Requirements and Standards for Participating Institutions*—Section 177.61 *Agreements between eligible institution and the Commissioner. Comment.* A commenter felt that the requirements for agreements between institutions participating in the Guaranteed Student Loan Program and the Commissioner should be standardized with those of other student aid programs.

Response. Such standardization would be neither feasible nor practical. Other student aid programs are based on different statutes and regulations, thus making uniform agreements impossible.

Comment. One commenter felt that these agreements should not require concurrence with future regulations.

Response. Rather than require new agreements each time the regulations may be modified, the agreement will signify concurrence by educational institutions with the law and regulations as may be amended from time to time. If future statutory or regulatory amendments are deemed objectionable by a particular institution, it may notify the Commissioner that it can no longer comply with the agreement and thus terminate its eligibility as a participating educational institution for purposes of the Guaranteed Student Loan Program.

Section 177.62 *Procedures, records, and reports. Comment.* Numerous comments were received on the requirement for record keeping. Commenters were concerned as to the type of record keeping required and whether they were to keep separate or additional records for GSLP students. Others commented that many colleges do not maintain attendance records.

Response. This section does not require duplication of records. Existing records and procedures will no doubt, in many cases, meet the requirements of this section. All participating institutions must maintain records sufficient to comply with the requirements of § 177.62(c). Daily attendance records are not required in the case of institutions of higher education. Such institutions must be able to determine that a student has commenced attendance for a particular academic term. For purposes of refund calculations, they must maintain a record of the date of withdrawal for purposes of the Guaranteed Student Loan Program as defined in § 177.63(c)(4)(i).

Vocational schools will be required to maintain daily attendance records in order to determine date of withdrawal for purposes of the Guaranteed Student Loan Program as defined in § 177.63(c)(4)(ii).

Correspondence schools will be required to maintain records showing the date of the student's submission of each lesson and the required date for its submission.

Comment. One commenter asked what records are required in the determination of need for subsidized loans, and whether OE Form 1260 is sufficient.

Response. The original source forms such as ACT and CSS together with the institution's copy of Form OE 1260 must be maintained to fulfill this requirement.

Comment. The question was raised whether microfilm records would be acceptable to meet the requirements of this section.

Response. The regulation has been clarified to specifically include both microfilm and computer records.

Comment. Several commenters interpreted the regulation to mean that they would have to establish additional placement services for GSLP students.

Response. Placement service is and has been optional at most schools. This section has been changed to clarify that the record keeping requirement applies only to GSLP students who choose to utilize the institution's placement service.

Comment. Several commenters suggested that the 5 year records retention should be reduced to 3 years to be consistent with other USOE regulations. Others felt that there was no reason for a long period of records retention.

Response. Changing the GSLP records retention requirement to correspond with those of other OE programs is not appropriate. Considering the relatively lengthy repayment period for guaranteed loans, it is deemed necessary to retain student records for at least 5 years following a student's graduation or withdrawal from school.

Comment. Numerous commenters were concerned with the requirement that schools notify OE or lenders of changes in enrollment status of students. Some commenters stated that schools are not always aware of which students have loans.

Response. The key phrase in this regulation is "* * * at such times and in such manner as the Commissioner may prescribe * * *" To date, only the semi-annual Student Status Confirmation Report has been required. The Commissioner does not intend to require schools to notify lenders until such time as procedures have been implemented to assure that schools are aware of lender identity.

Comment. Clarification was requested by several commenters as to whether the audit requirement in § 177.62(d) applies to all records or only to those related to GSLP.

Response. This provision applies to all records to the extent that they pertain to the institution's participation in the GSLP. Because circumstances surrounding an audit or examination may vary and because institutional record keeping procedures are not uniform, it is not possible to be more specific than is cited in the regulation.

Section 177.63 *Refunds—Comment.* There were a number of commenters who objected to the requirement that an educational institution must have a refund policy or one that is dictated by the Office of Education. Some felt that such a policy would subsidize those who drop out of school at the expense of those students who persevere since institutions must pay salaries and overhead, regardless of how many students leave school. A number of persons suggested that only vocational schools should be required to have refund policies since this appears to be where the problems exist. Other commenters pointed out that other federally administered student aid programs accept schools' refund policies and urged that the Office of Education do the same for the Guaranteed Student Loan Program. It was also pointed out that refund policies of public institutions are often set at the State level and are not subject to change if the Office of Education finds them objectionable. Numerous other comments were made along related lines.

Response. The Commissioner believes that students borrowing to finance their education under the Guaranteed Student Loan Program should be entitled to fair and equitable institutional refund policies regardless of the type of school attended. As there currently are a wide variety of refund policies, it is deemed appropriate to establish certain regulatory criteria upon which an institution's policy can be evaluated. In this regard, where student borrowers under the GSLP are assured of fair and equitable treatment with regard to refunds, the goal of effective administration of the GSLP is advanced. In addition, consideration will be given to determine the feasibility of making similar modifications to the regulations of other student assistance programs. Institutions whose refund policies do not comply with the requirements of these regulations will be subject to having their eligibility under the Guaranteed Student Loan Program limited, suspended or terminated pursuant to the provisions of Subpart G of these regulations.

Comment. Some commenters felt it was not clear whether a refund policy had to apply only to loan recipients or to all students. It was also pointed out that not all loans are used for tuition purposes nor was it easy to determine whether loans were used for payment of tuition and fees.

Response. The regulation does not require a refund policy for students who do not obtain loans under this part. However, if under the institution's refund policy a refund is due a loan recipient, it must be paid, whether or not he used the proceeds of the loan for tuition and fees or for other educational expenses.

Comment. Several persons recommended that, in order to assure that funds exist to pay refunds at such time as they may become due, institutions be required to place loan proceeds in an escrow account.

Response. This suggestion was not adopted as it was felt that this would be

an unwarranted intrusion in the manner in which an institution managed its funds. In addition, § 177.66(d) provides that the institution's financial condition is subject to review and where it is deemed that the institution does not have the financial capability of meeting its obligations, including the payment of refunds, there are several remedies authorized under § 177.66 and Subpart G which the Commissioner has available to correct the situation.

Comment. A number of persons requested clarification of what constitutes "fair and equitable", and suggested that the criteria should also recognize the appropriateness of a penalty for withdrawal.

Response. There are more than 8,600 educational institutions currently eligible under the Guaranteed Student Loan Program, ranging from vocational schools to universities and including both resident and correspondence schools. The problems and circumstances associated with these schools vary considerably and it was not deemed appropriate to be more specific in the regulations than is presently set forth in the six factors by which the Commissioner will determine whether a refund policy is fair and equitable. The Office of Education will evaluate the advisability of providing institutions with examples of refund policies that will meet the standards established by these regulations. It was felt that a penalty for withdrawal was not appropriate. There is no requirement that a refund policy necessarily result in a strict pro-rata refund to a student based on the precise period that a student attends an institution. Furthermore, the permissible administrative fee of up to $100 need not be included in the amount of money subject to refund calculations. Therefore, it is not to the student's financial advantage to take lightly the decision to enroll in or withdraw from an educational institution.

Comment. Many institutions pointed out that they have certain fixed costs that must be paid whether or not the students complete the academic term. They recommended that the refund policy be modified to take these fixed costs into consideration.

Response. It is recognized that all educational institutions have certain fixed costs although these will vary considerably, depending upon the nature and financial strength of the institution. However, it is not deemed feasible to consider an institution's fixed costs in determining whether the refund policy is fair and equitable. It is felt that students should be entitled to a reasonable refund. If an institution's withdrawal rate is low enough, an institution's fixed costs should have little or no effect on its ability to pay refunds, especially in view of the fact that the regulation does not necessarily require a strict pro-rata refund policy.

Comment. One commenter suggested that the regulations should require that the student and/or his parents should be required to certify that they have read and understand the institution's refund policy.

Response. Section 177.63(a) requires the institution to make its refund policy known to the student in writing prior to his initial acceptance for enrollment at the institution and prior to each academic year in which he enrolls thereafter. In addition, § 177.64 requires the institution to make a good faith effort to provide each prospective student with a complete and accurate statement about the institution. It is felt that these two provisions provide adequate protection for the student and that to require written certification would impose an additional workload on the institution which is not warranted. However, the regulation has been modified to require that the school must also make students aware of the procedures to be followed in obtaining a refund.

Comment. Several comments recommended that the refund policy be modified to include room and board and other institutional charges.

Response. The regulation has been modified to include room and board, where paid to the institution. Other institutional charges are already included to the extent that they are included in "required fees".

Comment. A number of schools indicated that the provision authorizing institutions to retain an enrollment or registration fee not to exceed $50 was not sufficient to cover overhead costs.

Response. The regulation has been modified to increase the maximum fee which may be retained in calculating a student's refund to $100. However, the regulation has been further revised to include application fees and other similar charges within the $100 figure.

Comment. One commenter asked if Office of Education recognition of an accrediting agency creates a presumption that its refund policy is fair and equitable.

Response. Listing by the Commissioner of Education of an accrediting body as a "nationally recognized accrediting agency or association" does not imply automatic approval of specific refund policies or formulas promulgated by such agencies. What is required, in accordance with the published Criteria for Recognition (45 CFR 149.6) is that an accrediting agency demonstrate its capability and willingness to foster ethical practices among accredited institutions or programs, including "equitable student tuition refunds * * *" Where an accrediting agency has adopted a specific refund policy, it has generally addressed itself to establishing minimum requirements consistent with its intent to foster equitable refund policies. Accrediting agencies are not regulatory bodies and the minimum refund policy requirements established by such agencies would not necessarily reflect the requirements of these regulations. The requirements of such agencies therefore, cannot be presumed to be fair and equitable within the meaning of § 177.63.

Comment. Many commenters expressed concern and made suggestions regarding the manner in which refunds were to be paid to the student or the lender in § 177.63(c) as well as in § 177.46(c)(2). A number of persons pointed out the inconsistency between the two different sections of the regulations. Some suggested that all refunds be required to be repaid to the lender. Others suggested that there was need for a "leave of absence" policy to take into consideration illness or other acts of God. There were also concerns that the 30 day period in which refunds were due to be paid would not provide the schools with sufficient time to determine that the student actually has withdrawn and to pay the refund. Concern was expressed over the distinction between types of schools in determining the date of withdrawal and a number of correspondence schools expressed concern that the required schedule of lessons was inconsistent with the basic flexibility that is inherent in home study. Finally, clarification was requested about the manner in which schools should consider other forms of student financial aid in determining the amount of refund that would be paid to the student or the lender.

Response. As a result of the many helpful comments received, § 177.63(c) has been rewritten and reorganized for purposes of clarity. In order to assure an equitable distribution of any refund among various financial assistance programs, the regulation requires that the amount of refund attributable to the Guaranteed Student Loan Program be determined by a ratio that relates the loan amount to the student's cost of education. The refund is to be paid to the student unless the student has previously authorized the refund to be paid to the lender. Increasingly, lenders are expected to request such authorizations and the practice will be encouraged. As many commenters urged that all refunds be made payable to the lender and to assure loan proceeds are not used for noneducational expenses, the Commissioner is currently giving consideration to issuing a proposed amendment to this provision that would require any portion of the refund attributable to the student's loan to be paid to the lender.

The proposed regulation required that refunds would be payable within 30 days of the date the student ceased to be enrolled at the institution. As a number of commenters indicated that this was too short a period of time, the final regulation has been modified to permit a 40 day period after the student is considered to be withdrawn from the institution for purposes of the GSLP.

A number of commenters from vocational schools urged that the regulations be modified to permit leaves of absence in order to take into consideration illness and other acts of God that might preclude a student from attending classes. The regulations have been modified to permit a single leave of absence for a period of not to exceed 60 days for students attending such schools provided the student requests the absence in writing. More than one leave of absence can be granted in exceptional circumstances,

where authorized by the Commissioner. As the date of withdrawal for college students is dependent primarily upon the date the student notifies the institution of withdrawal, as opposed to the last date of attendance, an express leave of absence policy is not necessary for college students. Due to the provisions of this section and of § 177.46(d), such a policy is also not necessary for correspondence students.

The provisions that determine when a student is withdrawn have been modified to provide further clarity and, in the case of correspondence students, the period during which a student has to notify the school that he is not withdrawing has been increased from 30 to 60 days in order to be consistent with the changes in § 177.46(d).

A number of correspondence schools indicated that the requirement to provide students with a schedule of lesson submission requirements was contrary to the basic flexibility inherent in home study courses. However, this requirement has been retained as the statute requires students to maintain at least half-time status in order to continue their enrollment status for purposes of this program. Schools are provided flexibility in establishing the schedule of lesson submissions within the limitations of the 12 hours requirement set forth in § 177.1 (g) and (i). Another modification to the regulation requires schools to indicate (as part of the schedule) the date on which the correspondence course must be completed for purposes of the Guaranteed Student Loan Program. There is no requirement that students be terminated for failure to maintain the schedule, although, when the provisions of § 177.46(d) are met, students may be required to begin repayment of their loans even though they may still be enrolled, similar to the resident student who drops below half-time enrollment status.

Comment. Some commenters indicated that the provisions regarding change of ownership in § 177.62(e) and § 177.63(d) will result in major problems for persons who may wish to purchase schools, and may deter purchases that have often resolved major problems in the past.

Response. In order to assure that records will be available for inspection and that students will receive refunds due, the Commissioner believes that these provisions are essential to protect student interests. Therefore, these provisions have been retained.

Section 177.64 *Provision of information to prospective student.—Comment.* One commenter felt that schools should be required to maintain a central location where catalogs and other information would be available to any member of the public.

Response. This section provides that certain types of information be disclosed to prospective students prior to the time they commit themselves to payment of tuition and fees. Because prospective students are assured of receiving this information, it does not seem appropriate that these regulations be the vehicle to require that information about an institution be made available to the general public.

Comment. Several schools and student organizations commented that the disclosure requirements should be made more specific and stringent. Some suggested that the required disclosures should include withdrawal rates and instructions as to how to file complaints.

Response. For the most part, these disclosure requirements are general in order to allow flexibility and to take into consideration the many types of schools involved in the program. Published withdrawal rates could be subject to much misinterpretation and misunderstanding, due to the wide variation in school programs, some with open admissions policies. Section 177.66(b) provides a means of dealing with schools having excessive withdrawal rates. In terms of complaints, GSLP is not the appropriate vehicle for handling all problems dealing with schools. Of course, students or other interested parties having complaints related to the GSLP are encouraged to communicate such complaints to the appropriate regional offices of the USOE.

Comment. Some commenters felt that "an institution holding itself out as preparing students for a particular vocation or trade" should not include colleges or graduate and professional schools. One commenter stated that the misrepresentations which this section intends to correct have not occurred among post-baccalaureate institutions.

Response. This provision has not been modified to exempt colleges that prepare students for a particular vocation or profession. The Commissioner believes that all students should be made aware of what employment opportunities in a particular field may or may not exist prior to their enrollment. The current adverse employment market for teachers is a good case in point that should be brought to the attention of prospective students.

Comment. Several commenters stated a requirement for information regarding employment of graduates is impractical and can lead to misrepresentation. They also stated that this would be a nearly impossible requirement as very few schools can follow the progress of graduates after they leave school. Placement services are voluntary; the schools cannot guarantee jobs and are not employment agencies.

Response. The regulation has been modified to specify certain types of employment information required. Prospective students must be informed of average starting salaries and the percentage of students obtaining employment in the field for which the course of study provided preparation. Educational institutions must use the most recently available data, but where statistically meaningful data about its own students is not available, the institution may use comparable regional or national data. In addition to the required disclosures, other information may be provided as well. The regulation has also been broadened to include "career field" as well as "vocation or trade". In addition, instead of limiting data only to graduates of an institution, the regulation has been modified to specify other appropriate categories of students.

Comment. Several commenters requested clarification of "good faith effort" and "complete and accurate statement".

Response. Because of the wide variety of schools eligible to participate under the Guaranteed Student Loan Program, it was deemed impractical to try to specify in detail the type of information that should be disclosed to prospective students. For this reason, schools are required to make a reasonable effort to disclose that information which will enable students to make the best possible choice as to which school to attend and as to what program of studies to take within a particular insitution. Many school and college catalogs currently provide prospective students with such information. However, where such catalogs do not, they will be required to do so in the future.

Section 177.65 *Admissions criteria for a vocational or trade program.—Comment.* Many commenters stated that there is no test that can accurately determine a student's ability to benefit from the training to be provided by the institution. One commenter recommended that the regulation be modified to state: "* * * there is a reasonable basis to believe that [the student] has the ability to benefit * * *".

Response. This provision has been modified to recognize that no test is infallible and now reads: "* * * there is a substantial and reasonable basis to conclude that [the student] has the ability to benefit * * *".

Comment. Some commenters recommended that, in the case of publicly supported vocational institutions with mandated open admissions policies, students should only be required to meet such school's admissions policies. One commenter stated that there was no way to test such students.

Response. The regulation does not limit institutions to making the required determination solely on the basis of an appropriate examination. Other appropriate criteria may be utilized, provided that such criteria can provide a substantial and reasonable basis to conclude that the student has the ability to benefit from the instruction or training to be provided. Institutions governed by mandated open admissions policies usually have certain criteria which are used to determine a student's eligibility for admission and often provide remedial instruction intended to enable the student to benefit from the instruction or training to be provided. If such criteria and practices do, in fact, meet the regulatory objective they may be deemed acceptable. On the other hand, where an institution is not making an adequate determination of the student's ability to benefit from the instruction or training to be

provided, it would have to commence making such an adequate determination or be subject to the provisions of Subpart G.

Comment. One commenter requested that the phrase, "vocation or trade" be broadened to include "career field" as was proposed (and accepted) in § 177.64. Several commenters requested clarification as to whether this provision applied to colleges and universities.

Response. As was done in § 177.64, the regulation has been modified to include "career field". As was indicated in the response to comments on § 177.64, the terms "vocation, trade or career field" can also apply to college and university courses of study.

Comment. One commenter stated that some states allow schools to make use of "certified State counselors" to determine that students have the ability to benefit from the instruction or training to be offered by certain institutions and asked if such a procedure would meet the requirements of this section.

Response. There is nothing in the regulation that would preclude such practices. However, it should be made clear that under this regulation, the responsibility for making the determination rests with the institution. Therefore, it would be up to the institution to determine that the examination or other criteria used by such counselors was appropriate.

Comment. Some commenters requested clarification of the meaning of "benefit from the instruction or training to be provided" and further specifications for "appropriate criteria". Others suggested that the examinations used should be reviewed and approved by the Office of Education or asked what kind of test would be appropriate.

Response. It is not deemed practical or feasible for prior review or approval of specific tests or other criteria utilized by various institutions due to the wide variety of programs offered and types of institutions eligible for the Guaranteed Student Loan Program. A major criterion which will be employed in evaluating compliance with this requirement will be the performance of the students admitted. This would include withdrawal rates (including consideration of the extent of course completion prior to withdrawal), failure rates, employer acceptance of the institution's students and other indicators of performance of students admitted.

§ 177.66 *Additional standards for evaluating an educational institution.—Comment.* Many commenters expressed major concerns over the possible effect of this section. These comments were made by representatives of colleges, vocational schools and student organizations. Some felt that institutions, in order to avoid any possible actions or sanctions by the Office of Education, might raise their admissions standards in order to reduce the default rate, the rate of withdrawal from school and the degree of dependence on the program. Such institutional actions might well result in discrimination against low income and minority students. Recognizing the permissive nature of this provision, some commenters asked if the Commissioner would take into consideration the nature of a school's student body (race and income), the geographic location (inner city, suburban or small town), the availability of other forms of student aid or lack thereof, the efforts of the institution to resolve its problems and the type of institution (higher education, vocational or correspondence). Some commenters also suggested that the specific percentages mentioned in the regulation are too restrictive and do not relate to reality. They may hurt many schools that are doing a good job.

Response. The Commissioner does not intend, by adopting these standards, to encourage or condone discrimination in admissions based on the student's socioeconomic status. To the contrary, the Office of Education has consistently supported efforts to assure that all students should have free and equal access to postsecondary educational opportunities. However, the Commissioner does have the responsibility for administering the Guaranteed Student Loan Program in a sound and prudent manner. When an institution comes within the standards set forth in this section, it is often the result of problems in the administration of the program by the institution.

When the Commissioner determines that an institution has come within one or more standards set forth in this section, upon notification to the institution of this determination, he will provide it with the opportunity to response to these findings. In submitting its response, an institution is encouraged to provide evidence showing that the conditions which the Commissioner has found to exist are not a result of problems at the institution which adversely affect the Guaranteed Student Loan Program. Where the institution recognizes that the Commissioner's findings are, in whole or in part, a result of the institution's administration of the program, the institution is encouraged to submit a plan as to how it would propose to correct or improve on the conditions set forth in the findings. Where the Commissioner has reason to believe that the institution is meeting its commitments to its community and students and that it is properly carrying out its responsibilities under the Guaranteed Student Loan Program, he will not initiate any further action under the provisions of Subpart G of these regulations even though the conditions at the institution may exceed the limits set forth in paragraphs (a) through (d) of this section. Where the Commissioner finds that there is need for improvement, he may accept the institution's plan for correcting or improving the conditions set forth in the Commissioner's findings. The Commissioner may also, pursuant to the provisions of Subpart G, impose limitations reasonably intended to correct such conditions.

Comment. Several commenters pointed out that it would not be appropriate to consider some of these criteria for "initial participation", as a new educational institution would not have a default rate, a withdrawal rate for loan recipients or a degree of dependency on the program.

Response. The regulation has been modified so that the withdrawal rate relates to all students enrolled at the institution without regard to those who have obtained student loans. While it is true that the default rate and the rate of dependency on the program would not be appropriate measures for a new educational institution, the withdrawal rate (as modified) and the institution's financial stability are still considered relevant.

Comment. One commenter pointed out that the 30 day period to respond to the Commissioner's findings is not sufficient and recommended that the regulation be modified to provide for a period not less than 90 days.

Response. No change has been made to the regulation in this regard. The amount of time specified by the regulation for an institution to make a response is a reasonable time but in any event not sioner finds that the use of a 30 day period would impose unusual hardships on an institution, he may provide for a longer time period.

Comment. A number of institutions commented that they should not be held accountable for the default rate of their students in cases where the institution is not the lender. The lenders should be held accountable and be required to exercise more diligence in the collection of loans.

Response. Regulations governing lending institutions participating in the Guaranteed Student Loan Program are currently being revised and will be issued as proposed regulations later this spring. However, there is a good deal of evidence which reveals a high correlation between default rates and the educational institution attended. The existence of a high default rate for students attending a particular institution may well be symptomatic that there are problems at the institution which adversely affect the Guaranteed Student Loan Program.

Comment. A few commenters urged that the default rate of an institution be limited only to those defaults on which claims have been filed with the guarantor. Other commenters suggested that the default rate be defined in terms of dollars of defaults rather than the number of students or loans in default. It was also clear from comments received that many institutions did not have an adequate understanding of the definition of the term "default rate".

Response. Section 177.66(a) has been modified to relate to the dollar amount of loans which are in default rather than the number of loans as was stated in the proposed rule. However, the regulation was not modified to reflect calculating the default rate only on loans for which claims have been filed with the guarantor. It is recognized that, in most cases, the default rate can be calculated only on claims filed. However, where the Commissioner has knowledge of defaults that

have not been filed, it is deemed appropriate to consider such information. This is especially true with educational institutions that are lenders or with commerical lenders who make loans primarily to students attending a particular institution. The term "default rate" is defined as the dollar amount of loans which are in default divided by the dollar amount of all loans which have reached the repayment period. Included in the denominator of this fraction are all loans which have been paid in full and those which have entered the repayment period including loans which are in default, whether or not the default claim has been paid. The only loans excluded from the denominator are those loans for students who are still in school or in the 9 to 12 month grace period.

Comment. There were a number of comments made with regard to the institution's withdrawal rate. A number of schools suggested that the withdrawal rate should apply to the total student body, not just those who borrow. To do otherwise, would discriminate against schools that enroll high percentages of low income and minority students as well as against publicly supported schools which, by law, have open admission policies. It was also pointed out that many college students withdraw at the end of the semester rather than during a given academic period. However, vocational schools, who do not have such academic periods, would be judged on withdrawals during any 4 month period. It was recommended that colleges be judged on the basis of those students who do not return for the next semester.

Response. The regulation has been modified to relate the withdrawal rate to the total student body rather than apply only to student borrowers. In addition, the withdrawal rate will now apply to an academic year. For those institutions not having a common academic term for the majority of its students, the prior 4 month period has been raised to a period of 8 months. In calculating the withdrawal rate only matriculated students will be included. Students who do not matriculate at the institution will not be counted in computing the withdrawal rate.

Comment. One commenter felt that, in order to avoid the 20 percent withdrawal rate, some schools may retain students who they know are not qualified. The commenter recommended that this provision be stricken.

Response. As is the case with the default rate, it is felt that a high withdrawal rate may be symptomatic of other problems in the administration of the Guaranteed Student Loan Program by the institution. Retaining non-qualified students may well affect an institution's continued accreditation status, its efforts to place students in positions of employment, and employer attitudes towards the institution.

Comment. There were a number of comments relating to § 177.66(c), which relates to the degree the institution is dependent upon the Guaranteed Student Loan Program. A number of schools felt that it would be difficult to relate loans to tuition and fees, as many schools are not sure which dollars came from loans and that at some low tuition schools, students' loans far exceed the cost of tuition and fees. It was also pointed out that institutions located in poverty areas may often need to have more than 60 percent of their students receiving loans.

Response. As a result of the comments received, this provision has been rewritten to relate to the percentage of students receiving loans during any academic year or, where an institution does not have a common academic year for the majority of its students, during any 8 month period.

The response made at the beginning of this section relating to the manner in which the Commissioner will interpret § 177.66 addresses the issue of how this provision will be enforced.

Comment. There are a number of comments relating to § 177.66(d), which concerns the financial stability of an educational institution. Some commenters felt that the requirement for a CPA prepared statement was too costly. One commenter asked that, in California, we accept "Public Accountants". Some commenters asked for clarification as to which fund in fund accounting was to be utilized, as there are often several funds. Others pointed out that an institution can operate at a deficit for one year and still be sound financially.

Response. Although there were a number of suggested technical modifications to this provision, only one change has been made in the case of fund accounting, to specify that the "current or operating fund" is the one of interest to the Commissioner. It was felt that most other suggestions could be interpreted within the language of the existing regulation. For example, "Public Accountants" in California can fall within the phrase "* * * certified public accountant or the most reasonable equivalent thereof." The Commissioner believes that it is essential to require, upon reasonable request, a certified financial statement in order to have confidence in the reliability and accuracy of the financial statements of the institution. For further clarification as to how this provision will be interpreted, please review the first response under this section.

3. Subpart G—*Procedures for the Limitation, Suspension or Termination of Eligibility for Programs under this Part.* The only comments received relating to Subpart G were in connection with § 177.73 *Possible sanctions.* However, one change has been made to § 177.71, *Purpose and scope,* by amending § 177.71(c) to emphasize that the provisions of Subpart G also apply, for purposes of imposing limitations on an educational institution, as a result of an institution coming within the terms of § 177.66 of Subpart F. A similar conforming change has been made to § 177.73 (a)(6).

Section 177.73 *Possible sanctions.*—*Comment.* A few commenters expressed concern that a sanction could be imposed limiting the number of students at an institution that could receive loans under the Guaranteed Student Loan Program. It was felt that this could hurt poor schools that are more dependent on student loans than some of the wealthier schools and that safeguards are needed to protect students against the power the regulations give to the OE designated official.

Response. The response indicating the intent of the Commissioner in implementing § 177.66 is also applicable in this case. Sanctions will be imposed only after the institution is provided an opportunity to present its case and the evidence indicates that the institution is not properly carrying out its responsibilities under the Guaranteed Student Loan Program. Institutions may appeal any limitation pursuant to the provisions of § 177.77 and § 177.78. The Commissioner believes that these provisions provide institutions with the necessary assurances that they will receive fair and equitable decisions in the event that procedures are applied pursuant to Subpart G.

Comment. A few commenters stated that the sanction requiring an institution to obtain a bond to assure that it will meet its financial obligations could result in a prohibitive cost to the institution.

Response. The basic method of assuring fairness in the process of imposing sanctions is in the system itself. The Commissioner has no desire, nor intent, to impose unreasonable administrative or financial burdens on institutions. The due process procedures set forth in Subpart G are designed to assure that fairness is inherent in the system.

Comment. Several commenters expressed concern that the provision of § 177.73(a)(6) was too much of a "catchall provision" and provided too much freedom to the Office of Education which could adversely affect educational institutions.

Response. Other requirements or conditions may be imposed only if they meet the tests specified: e.g. they are reasonable and appropriate, there is a high probability they will accomplish what is intended and they will be consistent with program purposes. If an institution feels that the sanction does not meet these criteria, it may appeal pursuant to § 177.77 and § 177.78.

Comment. One commenter requested clarification as to the conditions under which payments may be required of schools under § 177.73(b).

Response. Both § 177.46 and § 177.63 set forth certain conditions regarding the disbursement and refund of monies to students borrowing under the Guaranteed Student Loan Program. When the procedures are not correctly followed, it is possible that the Office of Education may make payments of interest benefits and special allowances to lenders in amounts greater than would otherwise be warranted if correct procedures had been followed by the institution. Therefore, in order to recover

these excess payments, the Office of Education may direct a school to restore amounts equal to the excess payments either to the lender or the Office of Education.

Comments not related to specific regulatory provisions.—Comment. A number of commenters recommended modifications such as:

1. Provide an administrative allowance for schools.
2. Permit deferment for half-time study.
3. Increase academic workload required for student to enter grace period from present half-time status.
4. Authorize hardship deferments.
5. Eliminate or reduce the grace period for dropouts.
6. Permit student option to begin repayment prior to end of grace period.
7. Shorten maximum 10 year repayment period.
8. Establish advisory board of borrowers, student leaders and lenders who could forgive loans granted under false and misleading circumstances.
9. Loans should be made and collected by schools with funds provided by banks.
10. Students should not be permitted loans until their period of actual enrollment has carried them beyond that period of time when refunds would be due if they withdrew from school.

Response. Each of these recommendations would require statutory changes to the program's enabling legislation and may not be implemented by administrative regulations.

Comment. The following comments were submitted as suggestions for modification to the regulations.

1. Establish standards for pre-loan counselling by both schools and lenders.
2. Require a 10 day "cooling-off" period from the time the student is accepted for enrollment before he is obligated to make payments to the school. This would be consistent with similar requirements of the FTC and the Veterans Administration.
3. Exit interviews should be required of all students.
4. Forgive loans for insolvency or fraud by school.

Response. These provisions were not included in the proposed regulations and therefore could not be included in final regulations. Consideration will, of course, be given to these and other changes for future regulatory proposals.

B. *Effect of proposed Trade Regulation Rule of the Federal Trade Commission.* The Federal Trade Commission (FTC) has proposed regulations covering proprietary schools and other organizations marketing educational programs. Their regulations cover a number of subjects including refund policies and disclosure of information which are also the subject of these regulations. These regulations do not refer to the FTC regulations because it will be several months before they are in final form and the exact provisions will be known. The U.S. Office of Education expects to work closely to cooperate with the FTC, both in the drafting and enforcement of applicable regulations.

C. *Effect of the Buckley Amendment.* Section 177.71 has been amended to indicate, along with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, that the provisions of Subpart G of these regulations do not apply to administrative action by the Department of Health, Education, and Welfare based on any alleged violation of the Family Educational Rights and Privacy Act of 1974 (often referred to as the Buckley Amendment). Because of numerous inquiries and complaints regarding the Buckley Amendment as it relates to the Guaranteed Student Loan Program, it seems pertinent to note that there is no provision of that legislation that should be construed to prohibit an educational institution from providing lenders, guarantee agencies or the Office of Education with information concerning the enrollment status or address of any student who has obtained a loan under the Guaranteed Student Loan Program. Such information is vital to the effective administration of this program and educational institutions are encouraged to cooperate with lenders and guarantors in every reasonable way possible.

D. *Effective date.* Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232 (d)) these regulations have been transmitted to the Congress concurrently with the publication of this document in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

It is also recognized that a number of the provisions of these regulations may require a substantial new commitment or effort on the part of an educational institution and that it may take a period of time in order for the institution to bring itself into full compliance with the requirements set forth herein. Institutions should make a good faith effort to comply with the provisions of these regulations as soon as possible. The Commissioner will take into consideration those circumstances that may prevent the institution from implementing these provisions on the effective date of these regulations. However, it is expected that most requirements should be operational for any academic year or school term beginning after August 1, 1975.

(Catalog of Federal Domestic Assistance No. 13.460, Guaranteed Student Loan Program)

Dated: February 1, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: February 12, 1975.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

1. Section 177.1 is amended by revising paragraphs (e) and (g) thereof and adding paragraphs (i) and (r) thereto, to read as follows:

§ 177.1 Definitions.

* * * * *

(e) "Eligible institution" or "institution" means (1) an institution of higher education, (2) a vocational school, or (3) with respect to students who are nationals of the United States, an institution outside the States which is comparable to an institution of higher education or to a vocational school and which has been approved by the Commissioner for purposes of this part. In cases where the Commissioner does not determine the entire institution to be eligible, this term includes only those individual units or programs within an institution which have been determined by the Commissioner to meet all requirements for institutional eligibility pursuant to paragraphs (f) or (g) of this section.

* * * * *

(g) "Vocational school" means a business or trade school, technical institution or other technical or vocational school in any State which (1) admits as regular students only persons who have completed or left elementary or secondary school and who have demonstrated the ability to benefit from the training offered by such institution pursuant to the provisions of § 177.65; (2) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education which (i) is designed to provide occupational skills more advanced than those generally provided at the high school level and to fit individuals for useful employment in recognized occupations, (ii) provides no less than 300 clock hours of classroom instruction or its equivalent or, in the case of a program offered by correspondence, requires not less than an average of 12 hours of preparation per week over any 12 week period and completion in not less than 6 months, and (iii) in the case of a flight school program, maintains current valid certification by the Federal Aviation Administration and is approved for veterans training according to procedures established by the Veterans Administration; (3) has been in existence for 2 years or has been specially determined by the Commissioner pursuant to regulation to be an institution meeting the other requirements of this paragraph and to be eligible to participate in programs under this part; and (4) (i) is accredited by a nationally recognized accrediting agency or association recognized by the Commissioner for this purpose, or (ii) in the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Commissioner for this purpose, or (iii) if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit institutions of the particular category encompassing such institution, is approved by a State approval agency recognized by the Commissioner for this

purpose, or (iv) if the Commissioner determines that there is no nationally recognized accrediting agency or association or State approval agency qualified to accredit or approve institutions of the patricular category encompassing such institution, is approved by the Commissioner's Advisory Committee on Accreditation and Institutional Eligibility, pursuant to standards of content, scope, and quality prescribed by that committee for this purpose. An institution which has been approved pursuant to clause (iv) above must, in order to remain an eligible institution, become accredited within three years after the Commissioner has designated a nationally recognized accrediting or State approval agency for the particular category of institutions which encompasses such institution. For the purpose of this paragraph, the Commissioner shall publish a list of nationally recognized accrediting agencies or associations and State approval agencies which he has determined to be reliable authority as to the quality of education or training afforded.

* * * * *

(l) "Student" means a person who (1) is a national of the United States, is in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territory of the Pacific Islands (except that a student attending an institution outside the States must be a national of the United States); (2) has a certificate of graduation from a school providing secondary education or the recognized equivalent of such certificate or, in the case of a vocational school student, attends neither elementary nor secondary school, is beyond the age of compulsory school attendance in the jurisdiction where he lives, and has demonstrated the ability to benefit from the training offered by such vocational school pursuant to the provisions of § 177.65; (3) is enrolled at an eligible institution and in good standing (as determined by the institution) or has been accepted for enrollment at an eligible institution; (4) plans to carry or is carrying, during the period for which the loan is intended, at least one-half the normal full-time workload as determined by the institution; (5) if enrolled in a program of study by correspondence, plans to engage or is engaging in an average of at least 12 hours of preparation per week over any 12 week period during which he is so enrolled; and (6) if enrolled in a flight school program at a vocational school or institution of higher education, plans to pursue or is pursuing a full-time program leading to commercial flight ratings, has completed ground school training or is taking it concurrently with flight training, holds a private pilot's certificate (or has sufficient flight hours to qualify for such certificate), and holds at least a Class-II medical certificate. This term also includes a person who does not have a certificate required by paragraph (l)(2) of this section, but otherwise meets the requirements of this paragraph and has been admitted by an institution of higher education which admits a small proportion of such persons.

* * * * *

(r) "Matriculate" means that a student has completed all the requisite steps in the enrollment and registration process and has commenced the attendance period. In the case of a program of study by correspondence, the student shall be deemed to have commenced attendance by submission of one lesson.

(20 U.S.C. 1077(a)(1), 1078(b)(1)(I), 1082(a)(1), 1085(a), (c), and 1087-1(b))

2. Section 177.46 is amended by revising paragraphs (c) and (d) and by adding paragraph (c-1) to read as follows:

§ 177.46 Disbursement and repayment of loans.

* * * * *

(c) *Disbursement by a lender which is not an educational institution.* (1) A lender which is not an educational institution may not make a disbursement of any loan proceeds earlier than is reasonably necessary to meet the purposes for which the loan is being made and in no case, except as approved by the Commissioner, earlier than 30 days prior to the date on which the student is scheduled to matriculate. If a loan is disbursed in installments, the proceeds disbursed for use during a given semester, quarter or term should not be greater than the amount required by the student for that academic period.

(2) If the borrower authorizes the lender, in writing, to disburse the proceeds of the loan to an educational institution (by an instrument either made payable only to the institution or made payable jointly to the institution and the student), the lender may do so, but must notify the borrower in writing, when any part of the loan has been disbursed. In such cases, the institution shall disburse the proceeds of the loan to the student as set forth in paragraph (c-1)(2) of this section. However, if the institution determines that it does not have the ability to administer such disbursements properly, it may return the loan proceeds to the lender for disbursement to the student. In cases where the student does not matriculate in the institution for an academic period for which he has received a loan under this part, the institution must promptly notify the lender and return the proceeds of the loan to the lender.

(c-1) *Disbursement by a lender which is an educational institution.* (1) An eligible institution acting as a lender or making disbursements pursuant to paragraph (c)(2) of this section may not make a disbursement of any loan proceeds to a student earlier than is reasonably necessary to meet the purposes for which the loan is being made. The Commissioner will not honor a default claim based upon a disbursement, for an amount greater than that reasonably necessary to enable the student to travel from his residence to the institution, to a student who failed to matriculate at that institution during the academic period for which the loan was made. A disbursement for the purpose of a required resident training portion of a correspondence course shall not be made until such time as the student commences resident training.

(2) Unless otherwise approved or required by the Commissioner, an eligible institution shall (except for loans of less than $400) make disbursements in multiple installments, as set forth in subdivisions (i), (ii) and (iii) of this subparagraph. Moreover, the proceeds disbursed for use during a given semester, quarter or term shall not be greater than the amount required by the student for that academic period and the amount of the initial disbursement (except for amounts advanced for travel expenses) shall not be greater than one half of the total loan amount.

(i) With regard to a loan disbursed by an educational institution (other than for a program of study by correspondence) to a student for a full academic year, and such academic year consists of 2 or more academic sessions (e.g. semester, quarter, or trimester), the frequency of installments shall coincide with the frequency of sessions which form an academic year (e.g., two installment disbursements for those institutions utilizing a two semester system). Disbursement of a loan made to a student for a portion of the academic year need not be made for less than a single session.

(ii) With regard to a loan disbursed by an educational institution (other than for a program of study by correspondence) which does not have an academic year consisting of 2 or more sessions, installments shall be made in intervals not greater than four months. With regard to a loan made to a student for a period of 4 months or less, disbursement may be made in a single payment.

(iii) With regard to a loan disbursed for correspondence study, installments shall be made in intervals not greater than six months.

(3) The Commissioner may, pursuant to Subpart G of this part, require an institution that is a lender to utilize a special promissory note which provides that the student's obligation with regard to the loan amount is dependent upon the student's continued enrollment during the academic period for which the loan was made and is proportionate to the percentage of such period which he has completed.

(d) *Commencement of repayment.* The note evidencing a loan shall provide for repayment of the principal amount together with interest thereon, in periodic installments beginning not earlier than 9 months nor later that 1 year after the date on which the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by that institution: *Provided, however,* That in the case of a correspondence student, the repayment period shall begin

not earlier than 9 months nor later than 1 year after (1) the student's completion of his program, or (2) the expiration of a 60 day period during which the student submits no assignments (unless the student, by submitting assignments in advance of the schedule required by § 177.63(c), has not fallen more than 60 days behind such schedule), or (3) the expiration of a 60 day period following the normal time established by the school for the completion of the program and communicated to the student pursuant to § 177.63(c), whichever comes first, The submission of one or more assignments more than 60 days after the previous submission (or, if applicable, more than 60 days after the due date for a scheduled assignment) shall not restore the in-school status of a correspondence student with respect to his loan: *Provided, however,* That the institution may permit one such restoration if the student acknowledges in writing, within such 60 day period, that he wishes to continue his course of study and that he fully understands his responsibilities to submit lessons on a timely basis.

(20 U.S.C. 1077(a), 1079(a), 1082(a)(1) and 1087-1(a)(2))

* * * * *

§ 177.50 [Reserved]

3. § 177.50 is deleted and reserved.

4. Part 177 is amended by adding new Subparts F and G thereto, to read as follows:

Subpart F—Requirements and Standards for Participating Educational Institutions

Sec.

AUTHORITY: 20 U.S.C. 1082(a)(1), 1085 (b), (c), 1087-1(a).

Subpart F—Requirements and Standards for Participating Educational Institutions

§ 177.61 Agreements between eligible institutions and the Commissioner.

(a)(1) Any eligible institution seeking to participate, in any manner, in any program covered under this part shall submit to the Commissioner for his approval, on a form provided by him, an agreement signed by an appropriate official acknowledging the institution's obligation to comply with all applicable laws and all applicable regulations set forth in this part.

(2) The agreement provided for in paragraph (1) of this paragraph shall be for a term of 2 years and be renewable for additional terms of 2 years. A shorter term may, however, be provided if the Commissioner has knowledge that the institution's accreditation or its satisfaction of other eligibility requirements, as set forth in § 177.1, will be effective for less than 2 years.

(3) If a participating institution undergoes a change of controlling ownership or form of control, its agreement shall automatically expire at the time of such change. In such instance, continued participation by the institution in loan programs under this part shall require a new agreement with the Commissioner and continuation of the institution's status as an eligible institution under this part.

(4) Institutions outside the States shall be required to comply with the provisions of this part only to the extent determined by the Commissioner on a case by case basis.

(b) An institution designated as an "eligible institution" on the effective date of this regulation shall have a period of 90 days to submit the agreement described in paragraph (a) of this section in order to assure continuous participation in programs covered under this part. An institution which has not submitted such agreement by the end of this 90 day period will be subject to having its eligibility suspended or terminated pursuant to Subpart G of this part.

(20 U.S.C. 1082(a)(1), 1087-1(a))

§ 177.62 Procedures, records and reports.

(a) Each participating institution shall establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of any funds received from students who have obtained loans under this part, to assure that the rights of students established under this part are protected, to protect the United States from unreasonable risk of loss due to defaults, and to comply specifically with all applicable requirements set forth in this part.

(b) Each participating institution shall maintain records, with respect to each student who receives a loan under this part, regarding the student's admission(to the extent required for purposes of § 177.65), academic standing, periods of attendance (to the extent required for purposes of paragraph (c) of this section and § 177.63), courses taken and placement (if the institution provides a placement service and the student uses such service). Such records will also be maintained with regard to the determination of need for interest subsidies on the student's loan, receipt and disbursement of loan proceeds, receipt of tuition and fees, and refunds. The institution shall retain such records (which may be stored in microfilm or computer format) for not less than 5 years (unless otherwise directed by the Commissioner) following the date the student graduates, withdraws, or fails to matriculate for an academic period for which he has received a loan under this part. Copies of reports submitted by the institution pursuant to this section and other forms utilized by the institution relating to loans made under this part shall also be retained for not less than 5 years following their completion, unless otherwise directed by the Commissioner.

(c) Each participating institution shall submit such reports to the Commissioner or to lenders at such times and in such manner as the Commissioner may prescribe concerning the changes in enrollment status of its students who are borrowers. Such reports shall include timely completion of the Student Status Confirmation Report (OE Form 1072) and the notification to lenders, on forms provided by the Commissioner for that purpose, of any change in the status of a student borrower to less than half-time enrollment.

(d) The Commissioner or his designee may audit or examine the institution with respect to such matters pertaining to the institution's participation in programs covered under this part as he deems appropriate. Each participating institution shall afford access to records required by paragraphs (a) and (b) of this section and by § 177.66(d) at any reasonable time to the Commissioner or his designee as needed in order to verify compliance with the regulations in this part.

(e) In the event of the closure, termination, suspension or change of ownership of a participating institution, the institution or its successors must make provision for the retention of the records provided for in paragraph (b) of this section and for the access to such records by the Commissioner as provided for in paragraph (d) of this section.

(20 U.S.C. 1082(a)(1), 1087-1(a))

§ 177.63 Refunds.

(a) Each participating institution shall establish a fair and equitable refund policy, under which it shall make a refund of unearned tuition, required fees and, where paid to the institution, room and board charges to a student who receives a loan under this part and who does not matriculate or who otherwise does not complete the period of study for which the loan was advanced. The institution shall make such policy (including the procedure for obtaining a refund) known in writing to the student prior to his initial acceptance for enrollment at the institution and prior to each academic year in which he enrolls thereafter.

(b) In determining whether a refund policy is fair and equitable, the Commissioner will consider the following factors:

(1) Whether the refund policy takes into consideration the period for which tuition, and other required fees and room and board charges were paid;

(2) Whether the refund policy takes into consideration the length of time the student was enrolled at the institution;

(3) Whether the refund policy takes into consideration the kind and amount of instruction, equipment and other services provided over the periods described in Paragraphs (b) (1) and (2) of this section;

(4) Whether the refund policy produces refunds in reasonable and equitable amounts when the considerations described in Paragraphs (b) (2) and (3) of this section are compared with that described in Paragraph (b)(1) of this

section: *Provided, however,* That an institution may retain reasonable fees not to exceed $100, for the period for which tuition and other fees were required, in order to cover application, enrollment, registration, and other similar charges;

(5) Whether the refund policy of the institution is mandated by State law; and

(6) Whether, in the case of an accredited institution, the Commissioner has approved the refund policy requirements of the pertinent accrediting body.

(c) For purposes of this section, the date on which a student's period of enrollment shall be deemed to have ended will be:

(1) In the case of an institution of higher education, the date on which the student notifies the institution of his withdrawal or the date on which the institution determines that the student has withdrawn, whichever is earlier;

(2) In the case of a vocational school (other than a program of study by correspondence), the date on which the student notifies the institution of his withdrawal or the date of the expiration of a thirty day period during which the student does not attend any classes or submit any assignments, whichever occurs first. An institution in this category may, however, upon a student's written request, grant a leave of absence not to exceed 60 days; if the student does not return to his classes or scheduled assignments at the expiration of such leave of absence, the date of withdrawal shall be deemed to be the first day of the approved leave of absence: *Provided,* however, that in determining the amount of a refund due such a student, the institution may consider the costs of any services actually provided to the student during the leave of absence. Except as approved by the Commissioner, only one such leave of absence shall be granted to a student;

(3) In the case of a program of study by correspondence, sixty days after the due date of a required lesson which the student has failed to submit, unless the student, within such sixty day period, notifies the institution in writing that he is not withdrawing. For purposes of this section and § 177.46(d), each institution having a course of study by correspondence must establish a schedule of the number of lessons in the course, the intervals at which lessons are to be submitted, the date by which the course is to be completed for purposes of this part, and the period of time within which any resident training must be completed. Such a schedule must conform to the requirements set forth in § 177.1(g)(2) and must be furnished to the student prior to his enrollment.

(d) Each participating institution shall make each refund which is due under this part within 40 days after the date on which the student's period of enrollment has ended: *Provided* That, in the case of a student whose enrollment has ended on the first day of a leave of absence, pursuant to subparagraph (c)(2) of this section, the refund shall be made within 40 days of the last day of such leave of absence.

(e) In determining what portion of a refund which is due under this part shall be payable to the student, the institution shall make provision for the refund requirements of other forms of financial assistance which the student has received. In order to assure that an equitable portion of the refund is allocated to the loan made under this part, the amount of the refund attributable to such loan shall not be less than an amount which bears the same ratio to the total amount of the refund as the amount of such loan bears to the amount determined by the institution to be the cost of education for such student at such institution for the period of enrollment for which the loan was made. The net amount of the refund which is payable to the student shall be paid directly to the student after making such disbursements as may be authorized to the lender or holder of the loan by the student. The student must be given written notice of such disbursements or payments made on his behalf out of the proceeds of a refund.

(f) In the event of the closure, termination, suspension or change of ownership of a participating institution, the institution or its successors must make provision for compliance with the requirements of this section with regard to refunds which are due or may become due for students who obtained loans under this part for periods of attendance at the institution prior to such change in status.

(20 U.S.C. 1082(a)(1), 1087-1(a))

§ 177.64 Provision of information to a prospective student.

Each participating institution shall make a good faith effort to present each prospective student, prior to the time the prospective student obligates himself to pay tuition or fees to the institution, with a complete and accurate statement (including printed materials) about the institution, its current academic or training programs, and its faculties and facilities, with particular emphasis on those programs in which the prospective student has expressed interest. In the case of an institution having a course or courses of study, the purpose of which is to prepare students for a particular vocation, trade or career field, such statement shall include information regarding the employment of students enrolled in such courses, in such vocation, trade or career field. Such information shall include data regarding the average starting salary for previously enrolled students entering positions of employment for which the courses of study offered by the institution are intended as preparation and the percentage of such students who obtained employment in such positions. This information shall be based on the most recently available data. If the institution, after reasonable effort, cannot obtain statistically meaningful data regarding its own students, it may use the most recent comparable regional or national data. Where the data the institution possesses, regarding its own students, is more than 3 years old and cannot be updated after reasonable effort by the institution and where there is available comparable regional or national data at least 3 years more recent than the institution's data, the institution shall use such regional or national data.

(20 U.S.C. 1082(a)(1), 1085(b), (c) 1087-1(a))

§ 177.65 Admissions criteria for a vocational, trade or career program.

Each participating institution holding itself out as preparing students for a particular vocation or career field trade, shall, prior to the time the prospective student obligates himself to pay tuition or fees to the institution, make a determination, based on an appropriate examination or other appropriate criteria, that there is a substantial and reasonable basis to conclude that such person has the ability to benefit from the instruction or training to be provided.

(20 U.S.C. 1082(a)(1), 1085(b), (c) 1087-1(a))

§ 177.66 Additional standards for evaluating an eligible institution.

If the Commissioner determines that any of the following conditions exist, he may, pursuant to the provisions of Subpart G of this part, require reasonable and appropriate measures to alleviate such conditions as a requirement for an institution's initial or continued participation in programs under this part: *Provided, however,* That prior to initiating such action, the Commissioner shall inform the institution of his findings and provide it a reasonable period, not less than 30 days, to respond to such findings, to show that such conditions do not have an adverse effect on the program, or to submit a plan as to those measures it will voluntarily initiate to alleviate such conditions:

(a) The dollar amount of loans made under this part to students at the institution which are in default represents more than 10 percent of the dollar amount of all such loans which have reached the repayment period;

(b) More than 20 percent of the students at the institution withdrew from enrollment at such institution (1) during any academic year or (2) where an institution does not have a common academic year for the majority of its students, during any 8 month period: *Provided,* That only those students enrolled at the beginning of such academic year or 8 month period shall be counted for purposes of this provision;

(c) More than 60 percent of the students at the institution received loans under this part (1) for any academic year, or (2) where an institution does not have a common academic year for the majority of its students, for any 8 month period; or

(d) The institution's financial condition is such that it is unable (1) to provide the educational services for which

its students who have obtained loans under this part have enrolled; (2) to meet its obligations to refund unearned tuition and fees; or (3) to provide the administrative resources to comply with the requirements of this part. An institution's financial condition will be deemed not to satisfy these requirements (i) in the case of an institution utilizing accrual accounting, if the ratio of its current assets to current liabilities falls below 1:1 at the conclusion of its most recent fiscal year, or (ii) in the case of an institution utilizing fund accounting, if the current or operating fund reflects a deficit at the conclusion of its most recent fiscal year. For purposes of making this determination, the institution will make available to the Commissioner, upon reasonable request, its latest financial statement prepared by a certified public accountant or the most reasonable equivalent thereof.

(20 U.S.C. 1082(a)(1), 1087–1(a))

Subpart G—Procedures for the Limitation, Suspension or Termination of Eligibility for Programs Under This Part

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177.71 Purpose and scope.
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AUTHORITY: 20 U.S.C. 1080(d), 1082(a), 1087–1(a).

Subpart G—Procedures for the Limitation, Suspension or Termination of Eligibility for Programs under this Part

§ 177.71 Purpose and scope.

(a) This subpart establishes rules and procedures for the limitation, suspension or termination of the eligibility of an institution participating in programs under this part and of a lender participating in the Federal Insured Student Loan Program under this part for failure to comply with applicable laws, regulations, agreements or limitations and, for purposes of imposing limitations on an institution, as a result of an institution coming within the terms of § 177.66 of Subpart F.

(b) This subpart does not apply to administrative action by the Department of Health, Education, and Welfare based on any alleged violation of Title VI of the Civil Rights Act of 1964, which is governed by Parts 80 and 81 of this Title, or Title IX of the Education Amendments of 1972, or the Family Educational Rights and Privacy Act of 1974 (section 431 of the General Education Provisions Act, as amended).

(20 U.S.C. 1080(d), 1082(a), 1087–1(a))

§ 177.72 Definitions.

As used in this subpart:

(a) "Limitation" means the continuation of an institution's or a lender's eligibility, subject to compliance with special conditions or restrictions which have been set as a result of a failure to comply with applicable law, regulations or agreements or as a result of an institution coming within the terms of § 177.66 of Subpart F.

(b) "Suspension" means the removal of an institution's or a lender's eligibility (or portions thereof) for a specified period of time or until the occurrence of one or more specified conditions.

(c) "Termination" means the unqualified removal of an institution's or lender's eligibility (or portions thereof) for an indefinite period of time.

(d) "Designated OE Official" means an official of the Office of Education, other than the Commissioner, to whom the Commissioner has delegated the responsibilities indicated in this subpart.

(20 U.S.C. 1080(d), 1082(a), 1087–1(a))

§ 177.73 Possible sanctions.

(a) *Limitations.* A limitation on an institution's or a lender's participation established under this part may include any of the following:

(1) A limit on the number or total amount of loans which a lender may make under the Federal Insured Student Loan Program;

(2) A limit on the number or percentage of students enrolled in an institution who may receive loans under this part;

(3) A limit on the percentage of an institution's total receipts for tuition and fees which may be derived from loans under this part for a stated period of time;

(4) A requirement that an institution obtain a bond, in an appropriate amount, to provide assurance that it will be able to meet its financial obligations to students enrolled in such institution who have received loans under this part;

(5) A requirement that an institution, acting as a lender, utilize a special promissory note form as provided in § 177.46 (c–1)(3); and

(6) Such other requirements or conditions as a designated OE official, an Administrative Law Judge or the Commissioner may determine: (i) Are reasonable and appropriate as a direct means of correcting a violation of applicable laws, regulations or agreements or of correcting a condition coming within the terms of § 177.66 of Subpart F; (ii) have a high probability for successfully correcting such violation or condition; and (iii) will promote the purposes of the programs provided for in this part.

(b) *Reimbursements and refunds.* As part of any decision resulting in a limitation, suspension, or termination under this subpart, a designated OE official, an Administrative Law Judge or the Commissioner may also require an institution or lender to take such other corrective action as is reasonable and appropriate to remedy a violation of applicable laws, regulations, agreements or limitations. Such corrective action may include payment, to the Office of Education or to recipients designated by the designated OE official, the Administrative Law Judge or the Commissioner, for;

(1) Ineligible interest benefits, special allowances, or other claims paid by the Commissioner;

(2) Discounts, premiums or excess interest paid in violation of § 177.6(e); or

(3) Refunds due to students under the regulations of this part.

(20 U.S.C. 1080(d), 1082(a), 1087–1(a))

§ 177.74 Effect on prior participation.

An action under this subpart resulting in the limitation, suspension or termination of an institution or lender shall not affect any of its responsibilities arising from participation in programs under this part prior to the date of such action. Nor shall such action impair any benefits or claims to which an institution or lender may be entitled based on its participation prior to such action, except that if such action results in a requirement that such institutions or lenders make payments to the Office of Education, then such payments may be used as offsets against such benefits or claims.

(20 U.S.C. 1080(d), 1082(a), 1087–1(a))

§ 177.75 Informal compliance procedure.

If a designated OE official receives a complaint, or has other information which he believes to be reliable, indicating that a violation of applicable laws, regulations, agreements or limitations has occurred or is occurring, the designated OE official shall call such matter to the attention of the institution or lender involved and shall give such institution or lender a reasonable opportunity to respond to the allegation and, if the alleged violation occurred, to show that it has been corrected or to submit an acceptable plan as to those measures which will be undertaken to correct the violation and to prevent its recurrence. The procedures provided in §§ 177.76 and 177.77 for limitation, suspension or termination need not be delayed during such informal compliance procedure if the designated OE official believes that such delay would have an adverse effect on programs covered under this part or believes that such informal compliance procedure will not result in a successful resolution of the alleged violation.

(20 U.S.C. 1080(d), 1082(a), 1087–1(a))

§ 177.76 Suspension.

(a) *Scope and duration.* A suspension may affect all aspects of an institution's or lender's participation in programs under this part or only a portion thereof. The duration of a suspension may be set to extend until the designated OE official has determined that the basis for the suspension has been removed and that a repetition of such violation appears unlikely: *Provided, however,* That the period of suspension shall not exceed 60 days, unless the institution or lender and the designated OE official agree to an extension or unless limitation or termination proceedings are initiated pursuant to § 177.77 within this period of

time, in which case the period of suspension may be extended until the completion of such proceedings, including any appeal which may be made to the Commissioner.

(b) *Procedures.* (1) Except as provided in paragraph (c) of this section, suspensions shall only be made pursuant to notice and opportunity to show cause as provided in this paragraph.

(2) Suspension proceedings shall be initiated by a designated OE official mailing to the institution or lender in question a notice, by certified mail with return receipt requested:

(i) Informing the institution of the Office of Education's intent to suspend the institution's or lender's eligibility and of the basis for such action;

(ii) Specifying the proposed effective date of the suspension and the consequences of such action; and

(iii) Informing the institution or lender of its rights, if exercised within a stated period of time, to submit written material and to request an informal meeting to show cause why such action should not be taken, prior to the time the suspension becomes effective. The notice shall also provide information about the nature of the meeting and such other information about the matter as the designated OE official may determine appropriate. The notice shall also invite voluntary efforts to correct the violation which led to the initiation of these proceedings.

(3) The proposed effective date for suspension provided for in paragraph (b)(2) of this section shall not be less than 15 days after the notice of intent has been sent. The period of time within which the institution or lender may submit written material or request a meeting to show cause shall not be less than 10 days after such notice has been sent. If such a meeting is requested, the designated OE official shall set a time and place for it, which time shall not be less than 5 days nor more than 30 days after the request is received by him. If a meeting is requested, but it cannot be held prior to the proposed effective date of suspension, the date shall be postponed until the completion of such meeting.

(4) The designated OE official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraph (b)(3) of this section and any showing that the institution or lender has adequately corrected the violation which led to the initiation of suspension proceedings. If, after considering such material, the designated OE official concludes that the institution or lender has failed to show cause why its eligibility should not be suspended, he may suspend eligibility in whole or part and subject to such terms and conditions as he shall specify. Notice of such suspension shall be promptly transmitted to the institution or lender and shall become effective upon the date of transmittal.

(c) *Emergency action.* The Commissioner may withhold the issuance of further commitments of insurance to a participating lender or with respect to loans for students attending a participating institution, without prior notice and opportunity to show cause as provided for in paragraph (b) of this section, if he determines that such immediate action is necessary in order to prevent an unreasonable risk of a substantial loss of funds either to the Federal Government or the students involved if further disbursements under this part were permitted and that such risk is sufficiently serious to outweigh the importance of following the procedures set forth in paragraph (b) of this section. Such emergency action shall be initiated by sending the institution or lender a notice, by certified mail and return receipt requested, informing the institution or lender of the suspension and the grounds therefor. Such emergency action shall not exceed 7 days in length unless suspension proceedings are initiated pursuant to paragraph (b) of this section or limitation or termination proceedings are initiated pursuant to § 177.77 within such seven day period, in which case the Commissioner may continue to withhold commitments of insurance until the conclusion of such proceedings, including any appeal which may be made to the Commissioner. If limitation or termination proceedings are initiated, the Commissioner shall provide the institution or lender, if it so requests, an opportunity to show cause why the action should be rescinded pending the outcome of such proceedings.

(20 U.S.C. 1080(d), 1082(a), 1087-1(a))

§ 177.77 Limitation and termination.

(a) *Scope and duration.* A limitation or termination may extend to all aspects of an institution's or lender's participation in programs under this part or may be limited to portions thereof. The duration of a limitation may be set to extend for a definite period of time or until the designated OE official has determined that the basis for the limitation has been removed and that a repetition of such violation appears unlikely. An institution or lender which has been limited or terminated may subsequently seek reinstatement of its full eligibility to participate in programs under this part, pursuant to § 177.78(b).

(b) *Procedures.* (1) A limitation or termination may be initiated whether or not suspension proceedings have been initiated under § 177.76. Limitation or termination procedures shall be initiated by a designated OE official mailing to the institution or lender in question a notice, by certified mail with return receipt requested:

(i) Informing the institution or lender of the Office of Education's intent to limit or terminate the institution's or lender's eligibility, the nature of any proposed limitation and the basis of such action;

(ii) Specifying the proposed effective date for the limitation or termination and the consequences of such action; and

(iii) Informing the institution or lender of its rights, if exercised within a stated period of time, to submit written material and to request a hearing before the limitation or termination takes effect. The notice shall also provide information pertaining to this proceeding as the designated OE official may determine to be appropriate. The notice shall also invite voluntary efforts to correct the violation which led to the initiation of this action.

(2) Except as provided in paragraph (c) of this section, the proposed effective date of limitation or termination shall not be less than 21 days after the notice of intent has been sent. The period of time within which the institution or lender may submit written material or request a hearing shall not be less than 15 days after such notice has been sent. If a hearing requested by the institution or lender cannot be held prior to the proposed effective date of the limitation or termination, the date shall be extended until the completion of such proceedings.

(3) If the institution or lender does not request a hearing, the designated OE official may, after considering any written material submitted on a timely basis by the institution or lender, dismiss the matter or notify the institution or lender that it has been limited or terminated.

(4) If the institution or lender requests a hearing within the time permitted, such hearing shall be conducted as promptly as possible by an Administrative Law Judge pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. sections 554–557). Proposed findings of fact, conclusions of law, and briefs shall be submitted to the presiding officer within 15 days of the conclusion of the hearing.

(5) The Administrative Law Judge shall issue an initial decision consisting of findings of fact and conclusions of law. The initial decision of the Administrative Law Judge shall become final 10 days after being issued, unless within such 10 days the institution or lender or the designated OE official who initiated these proceedings notifies the Commissioner that it or he wishes to appeal the decision, in whole or in part. If any such party makes such an appeal, it must submit, within 20 days of the initial decision of the Administrative Law Judge, any further written material it wishes to be considered by the Commissioner, including exceptions to the decision of the Administrative Law Judge, proposed findings and conclusions, and supporting reasons. The opposing party will have 15 days to submit a response. Parties making any submission to the Commissioner must simultaneously transmit copies of such submission to all other parties which participated in the hearing. Any decision by the Administrative Law Judge limiting or terminating the institution or lender shall be stayed pending the appeal, unless the Commissioner determines that such stay would produce a serious and adverse effect on the program involved. The Commissioner may, in his discretion, provide an opportunity for an oral presentation by the institution or lender and by members of the

Office of Education staff. The Commissioner shall issue a decision on the appeal, including a statement of reasons for his decision, no later than 20 days following receipt of all written materials from the parties involved. Such decision may affirm, reverse or modify the initial decision of the Administrative Law Judge: *Provided, however,* That findings of fact made by the Administrative Law Judge shall not be set aside unless found to be clearly unsupported by the evidence. The decision of the Commissioner shall be final.

(c) *Effect of prior proceedings.* If any proceedings have been previously initiated under this subpart against an institution or lender at the time limitation or termination proceedings are initiated, such proceedings need not duplicate the previous proceedings. Any matters resolved under the previous proceedings shall be considered final and any hearings undertaken in the subsequent limitation or termination proceedings shall be limited to new evidence or new issues: *Provided, however,* That the Administrative Law Judge, or the Commissioner in the case of an appeal, may, in his discretion, agree to reconsider matters previously resolved. Moreover, the time schedules set forth in subparagraphs (2), (4) and (5) of paragraph (b) of this section may be shortened to reflect the previous proceedings in such manner as the Administrative Law Judge or the Commissioner may deem appropriate.

(20 U.S.C. 1060(d), 1062(a), 1067-1(a))

§ 177.78 Denial or limitation of initial application or reinstatement.

(a) *Initial application.* If an institution requests an agreement under § 177.61(a) of this part or a lender requests an agreement under § 177.42(a) of this part, the Commissioner shall respond to such submission within 30 days and, if he has decided not to approve such request, shall state reasons for his decision. An institution or lender which has been denied an agreement shall be given an opportunity to meet with a designated OE official to show cause why such agreement should not be denied. However, the Commissioner need not give reasons for a denial or grant an opportunity to show cause if such a request is submitted within 6 months of a previous denial. If a request is submitted by an institution at which the conditions set forth in § 177.66(b) or (d) exist, the Commissioner may add to such agreement such terms as are necessary to alleviate those conditions: *Provided, however,* That such institution may request that the procedures set forth in § 177.77(b) (4) and (5) be exhausted before such agreement becomes effective. Such institution may, without waiving its rights under the preceding sentence, participate in programs under this part subject to such terms pending the outcome of such procedure.

(b) *Reinstatement.* An institution or lender against which a final adverse decision has been issued under this subpart, may at any time request reinstatement of its eligibility (or portion thereof) and may submit to the designated OE official such material as it wishes, or as the designated OE official requests, to demonstrate that the basis for such decision has been remedied and is unlikely to recur. The designated OE official shall respond to such request within 30 days and, if he denies the request, shall provide reasons for such denial. An institution or lender whose request has been denied shall be given an opportunity to show cause why such request should not be denied. However, the designated OE official need not consider a request to remove a limitation or termination or grant an opportunity to show cause if such a request is submitted within 6 months of a previous denial. The reinstatement of an institution or lender which has been terminated may be subject to reasonable and appropriate conditions or limitations relating to the grounds for such termination. *Provided, however,* That such institution or lender may request that the procedures set forth in § 177.77(b) (4) and (5) be exhausted before such reinstatement becomes effective. Such institution or lender may, without waiving its rights under the preceding sentence, participate in programs under this part subject to such conditions or limitations pending the outcome of such procedures.

(20 U.S.C. 1060(d), 1062(a), 1067-1(a))

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