



**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
333 MARKET STREET
14TH FLOOR
HARRISBURG, PA 17101**

**(717) 783-5417
Fax (717) 783-2864**

May 28, 1998

Michael H. Hershock, President and Chief Executive Officer
Pennsylvania Higher Education Assistance Agency
1200 North Seventh Street
Harrisburg, PA 17102-1444

Re: IRRC Regulation #58-23 (#1933)
Pennsylvania Higher Education Assistance Agency
State Grant Program; Early Childhood Education
Professional Loan Forgiveness Program

Dear Mr. Hershock:

Enclosed are our comments on your proposed regulation #58-23. These comments outline areas of concern raised by the Commission. The comments also offer suggestions for your consideration when you prepare the final version of this regulation. These comments should not, however, be viewed as a formal approval or disapproval of the proposed version of this regulation.

If you or your staff have any questions on these comments or desire to meet to discuss them in greater detail, please contact Mary Lou Harris at 772-1284. She has been assigned to review this regulation.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:kcg
Enclosure

cc: Sheila Dow Ford, Esq.
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

**PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY
REGULATION NO. 58-23**

**STATE GRANT PROGRAM; EARLY CHILDHOOD EDUCATION PROFESSIONAL
LOAN FORGIVENESS PROGRAM**

MAY 28, 1998

We have reviewed this proposed regulation from the Pennsylvania Higher Education Assistance Agency (Agency) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to economic impact, need, and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 121.1. Definitions - Clarity

Board

The term "Board of Directors" is used in Sections 121.10(b)(1)(xx) and (xxi). Existing regulations at Section 121.1 define the term "Board" as "the Board of Directors of the Agency." For consistency, we recommend the phrase "Board of Directors" be replaced with the word "Board."

Borrower

Section 121.10(b)(2) states that "references to 'the borrower' in this section include all endorsers on a loan." We recommend the Agency relocate Subsection (b)(2) to a new subsection in Section 121.10 headed "Definitions." Further, we recommend it define "borrower" to include all endorsers on loans authorized by Chapter 121.

Disposable pay

Section 121.10(b)(1)(i) contains a proviso that "for purposes of section (b), the term 'disposable pay' means that part of the borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld." We recommend that this term and definition be relocated to a newly created definition section in Section 121.10.

Timely request

Section 121.10(b) contains procedures for administrative wage garnishment for Federal loans. Subsection (b)(1)(viii) provides for sending an Order of Withholding to the employer within 20 days after the borrower fails to make a “timely request” for a hearing, or if a “timely request” for a hearing is made by the borrower within 20 days after a final decision is made by the Agency to proceed with garnishment.

The proposal does not clearly state what constitutes a “timely request.” Section 121.10(b)(1)(xi) provides that when a borrower’s written request is received by the Agency on or before the 15th day following the borrower’s receipt of the notice, the Agency may not issue an Order of Withholding until the borrower has been provided the requested hearing. Subsection (b)(1)(xi) further states that in the absence of information to the contrary, a borrower will be considered to have received the notice five days after it was mailed by the Agency.

Considering the provisions contained in Subsection (b)(1)(xi) of Section 121.10, it appears the Agency intends that a response by a borrower within 20 days from its date of mailing by the Agency will be considered a “timely request.” We recommend the Department clearly state what constitutes a “timely request.” This could be done in the form of a definition in a new subsection for definitions specific to Section 121.10. Alternatively, the Department could replace the phrase “make a timely request for a hearing” in Section 121.10(b)(1)(viii) with “request for a hearing within 20 days of the date of mailing of the notice.”

2. Section 121.10(b)(1)(x). Written and oral requests for a hearing - Clarity

The first sentence of this section states “the agency will provide a hearing which, at the borrower’s option, may be oral or written, if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule.”

First, we recommend that the sentence be restructured as two sentences. We suggest the following change: “The agency will provide a hearing if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule. The borrower may request an oral hearing or a written hearing.”

Second, we question how the Agency will conduct a “written” hearing. We request an explanation be provided when the Agency submits its final-form rulemaking.

3. Section 121.10(b)(1)(xi) and (xii). Issuance of an Order of Withholding - Clarity

The last sentence of Section 121.10(b)(1)(xi) states “the Agency will provide a hearing to the borrower in sufficient time to permit a decision to be rendered within 60 days.” We question when the 60 days begins. We recommend the Agency add the phrase “from the date of receipt of the borrower’s hearing request.” We also recommend the addition of similar language to the first sentence after the words “within 60 days.” in Subsection (b)(1)(xii).

4. Section 121.10(b)(1)(xiii). Hearing examiners – Clarity

Paragraph (xiii) states the hearing examiner appointed by the Agency to conduct the hearing may be any qualified individual, “including an administrative law judge.” We understand the Agency does not currently employ administrative law judges. We recommend the phrase “including an administrative law judge” be deleted from the final-form rulemaking.

5. Section 121.10(b)(1)(xix) - (xxi). Hearing procedures – Clarity

Paragraphs (xix) – (xxi) contain provisions for a hearing examiner’s report, notices of appeal and recommendations by the review committee, and final orders. The procedures in the subsections are not clear.

We have several questions. Specifically, who rules on exceptions, the hearing examiner or the Board of Directors? Does the hearing examiner issue a proposed report or a final report? Finally, are proceedings before the Board of Directors considered the last stage in the adjudicatory process or a first level administrative appeal?

We request the Agency provide an explanation with its final-form rulemaking. We further recommend the Agency revise the proposal to clearly identify the decisionmaking body at each step in the hearing process.

6. Section 121.10(b)(1)(i), (vi), (xxii). Wage garnishment procedures involving employers – Clarity

This section implements the administrative wage garnishment process for loans held by the Agency under the Federal Family Education Loan Program. We have general concerns with the structure of the section and recommend several revisions. We recommend the Agency locate all provisions which relate to the actions, responsibilities and rights of an employer at one location in the regulation. Specifically, we have identified the following provisions located throughout the proposal.

First, Subsection (b)(1)(i) contains requirements which an employer must meet when deducting garnished wages of an employee. Subsection (b)(1)(xxii) states a borrower may seek judicial relief if an employer discharges or refuses to employ or takes disciplinary action against a borrower due to the issuance of a Notice of Execution.

Subsection (b)(1) relates to Agency procedures to garnish the disposable pay of borrowers. Because the provisions in Subsections (b)(1)(i) and (xxii) do not relate to the Agency procedures, we recommend they be relocated to a new Subsection 121.10(c). We further recommend the new Subsection 121.10(c) be titled “Employer Provisions.”

Second, Subsection (b)(1)(vi) contains provisions for the Agency to sue an employer for amounts the employer fails to withhold after receipt of the garnishment notice. Subsection (b)(1)(ix) states the notice given to an employer will only contain information necessary for the employer to comply with the Order of Withholding.

We question whether the “garnishment notice” is another term for an “Order of Withholding,” the term used in Paragraph (viii). If the two terms refer to the same document, one or the other should be used consistently. If not, the Agency should explain and revise its citation in Paragraph (viii) located in Paragraph (vi). We further recommend the Agency reorder these sections to appear consecutively with the information in Paragraph (ix) preceding the information in Paragraph (vi). We further recommend the information be moved from Subsection (b) to a new Subsection (d) with a subheading relating to Agency actions with an employer.

7. Section 121.10(b)(1)(ii)-(v). Borrower Rights - Clarity

We have concerns with the clarity of several provisions relating to borrowers. Subsection (b)(1)(ii) states that at least 30 days before the initiation of garnishment proceedings, the Agency will mail a written notice to the borrower which includes the amount of debt, the Agency’s intention to initiate proceedings, and an explanation of the borrower’s rights. Paragraphs (iii) - (v) provide for the Agency to offer the borrower an opportunity to inspect Agency records, the opportunity to enter into a written repayment agreement, and an opportunity for a hearing in accordance with Paragraph (x).

We question whether the opportunities offered by the borrower in Paragraphs (iii) – (v) are included in the written notice described in Paragraph (ii). If the information is included in the written notice, we recommend that Paragraphs (iii) – (v) be reordered as subparagraphs of Subsection (b)(1)(ii). The final-form regulation should also clearly state that the information is included in the written notice. If, on the other hand, the provisions of Paragraphs (iii) – (v) are not included in the written notice, we recommend the Agency identify how and when the borrower is advised of the opportunity to inspect records, enter into written agreements, or request a hearing.

8. Section 121.401. Application of existing agency regulations - Need and Clarity

Section 121.401 contains provisions for applicability of existing regulations to the new Subchapter N, Early Childhood Education Professional Loan Forgiveness Program. The section lists specific sections of existing higher education regulations contained in Subchapters A and B *except those provisions inconsistent with this subchapter*.

We question why the Agency would include citations to sections that will be inconsistent with Subchapter N. We recommend the Agency remove the phrase “except those provisions inconsistent with this subchapter.” We further recommend that where any portion of an applicable section is inconsistent, a specific citation to the exception be included in the provision.

We have an additional question regarding Section 121.401. All of the regulation citations are contained in Subchapter A. We therefore question why a reference to Subchapter B is needed and recommend it be deleted from the final-form rulemaking.

9. Section 121.403. Loan forgiveness - Clarity

Section 121.403 of the proposal contains the requirements for loan forgiveness from Act 73 of 1993 (Act) (24 P.S. § 7103). Included in the section is the statement “payments shall be

made in accordance with the procedures established by the Agency.” We question what specific “procedures” the Agency has established and why they are not included in the proposal.

We recommend the Agency delete the sentence “payments shall be made in accordance with the procedures established by the Agency” and replace it in the final-form rulemaking with the actual procedures established by the Agency.

We also recommend that the individual requirements for time periods and maximum amounts be structured as subsections within the section. This will make this lengthy section more readable.

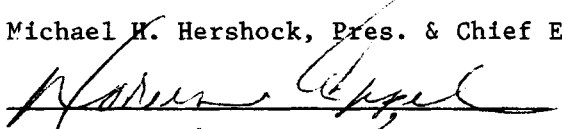
10. Section 121.406. Lottery - Economic impact and Clarity

This section provides for a random lottery if funding is insufficient to fully fund administration of the program and all eligible applicants. Subsection (b) states that when a lottery is required, it shall “include only those records that are complete and eligible in accordance with Agency requirements at the time the lottery is conducted.”

We question how applicants will know what Agency requirements must be met to be eligible for the lottery. We recommend the Agency reference the requirements that would apply. Alternatively, the requirements should be incorporated into the section.

IRRC #1933
Pennsylvania Higher Education Assistance Agency
State Grant Program; Early Childhood Education
Professional Loan Forgiveness Program

Michael H. Hershock, Pres. & Chief Executive Officer


Date: 5-28-98