

Final Form

REGULATORY ANALYSIS FORM

For use in providing information to the Independent Regulatory Review Commission pursuant to Section 5 of the Regulatory Review Act and for providing information to the Governor's Task Force on Regulatory Relief pursuant to Executive Order 1982-2 and Section 612 of the Administrative Code.

2000 APR 27 PM 3:04

PART I: IDENTIFYING INFORMATION

(1) Agency Pa Higher Education Assistance Agency	(2) I.D. No. (Use Task Force No.) 58-23	THIS SPACE FOR USE BY IRRC: Date Received: _____ IRRC COMMISSION
(3) Short Title Act creating PHEAA and the State Guaranty Loan Program Act granting scholarships		
(4) Pa. Code Cite Act of 8/7/63, P.L. 549 (24 P.S. § 5104) Act of 1/25/66, P.L. 1546 (24 P.S. § 5151)	(5) Agency Contact & Phone Number Sheila Dow Ford, Esquire 720-2199	
(6) Type (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation CAS	(7) Is a 120 day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	(8) APPROVALS (Name & Date) Michael H. Heuback Agency Head Task Force _____ (Executive Agencies Only)

PART II: BASIC ANALYSIS MATERIAL (Required by Sec. 5(a) of the Regulatory Review Act.)

(9) Briefly explain the proposed regulation.

State Grant Program regulation changes are to incorporate changes to certain definitions; to facilitate the classification of home schooled students as graduates of an approved high school; to incorporate a change in the name of an accrediting oversight organization; and to decrease the portion of an approved program that must be completed via classroom instruction.

Loan program regulation changes are being made to bring the Agency's regulations into conformity with changes mandated by federal statute and federal regulations.

The regulations presented for the Early Childhood Education Professional Loan Forgiveness Program reflect the Board-approved policies under which these programs have been administered since enacted into law.

The title of Executive Director is also being changed to President and Chief Executive Officer where it appears in the regulations that are otherwise being changed at this time.

(10) How does this regulation reduce costs of state and local government or private entities (business, consumers, etc.) within the Commonwealth?

Any such effect would be minimal.

(10) What is the statutory or other authority under which the regulation is proposed? (For state law cite Act and P.S. For federal law cite Act and U.S.C. For federal regulations cite C.F.R. or Federal Register. Be sure to cite court decisions, orders, or consent decrees or attach copies of unpublished documents.)

Act of August 7, 1963, P. L. 549 (24 P. S. § 5104)  
Act of January 25, 1966, P. L. 1546 (24 P. S. § 5151)

(11) Why is the regulation needed?

To conform the Agency's loan program regulations to federal statute and regulations.

The changes to the State Grant Program have been initiated by the Agency in the interest of more effective operation of the programs.

(12) What legal, accounting or consultant procedures will be required by the proposed regulation and who must comply with these procedures?

None required.

(13) What additional reporting, record keeping and other paperwork will be required by the proposed regulation? (Attach copies of any available forms or reports which will be required in implementation of the proposed regulation.)

None Required.

(14) What is the suggested timetable for public comment, hearings, implementation, and what are various conformity deadlines (i.e. permits, licenses etc.)?

There will be the usual 30 days for public comment following publication of the proposed regulations in the Pennsylvania Bulletin with Notice of Proposed Rulemaking. No hearings are planned.

(15) What types of persons, businesses and organizations will be affected by the regulation?

Applicants for the benefits of these programs as well as other entities, such as schools, who participate in them.

(16) What other regulations and State agencies will be affected by the regulation?

None.

PART III. REGULATORY FISCAL IMPACT (Required by Sec. 612 of the Administration Code)

(17) Generally describe the costs imposed by this regulation upon state and local government.

None

(18) Are there Revenue Losses? State [ ] Local [ ] School Districts [ ] (Attach statement of method used to estimate)

Fund	FY	FY	FY	FY

(19) Are there increased program costs? State [ ] Local [ ] School Districts [ ] (Attach statement of method used to estimate)

Program	FY	FY	FY	FY
(a)				
(b)				
(c)				
(d)				
(e)				

(20) What is the three year expenditure history for programs affected by the regulation? (Attach statement of method used to estimate)

Year / Program	(a)	(b)	(c)	(a)

(21) Has any increased cost been included in the current budget? [ ] Yes [ ] No

If no, how will funds be obtained?

**PART IV: COSTS AND BENEFITS (Required by Sec. 5(b) of the Regulatory Review Act.)**

(22) Generally describe the costs imposed by this regulation on private entities. (e.g. consumers, business, etc.)

None.

(23) What is the amount of reasonably measurable private cost?

Sector	FY	FY	FY	FY	FY	FY

(24) Explain the types of benefits which arise from the regulation, and who receive these benefits.

Most of the proposed changes are merely to establish conformity with federal statute and regulations or Agency past policy in the administration of programs.

(25) If any of these benefits are measurable, what are their estimated values

Benefit	FY	FY	FY	FY	FY	FY

(26) Will the potential benefits outweigh the potential costs imposed? Explain.

Not a relevant consideration.

(27) Has the regulation been drafted in a manner which maximized the difference between potential benefits and potential costs? Explain.

Not a relevant consideration.

(28) List the alternative regulatory approaches which were considered and reasons for rejecting these alternatives.

Not a relevant consideration.

(29) How will this regulation reduce or minimize paperwork, legal, accounting, reporting or paperwork requirements?

No effect.

(30) What provisions are included in the regulation to meet the special needs of affected groups or persons? If no such provisions are included, explain why.

Not a relevant consideration.

(31) What plan has been developed to evaluate the effectiveness of the regulation after its implementation? What sunset date, if any, has been assigned?

No formal plan. The regulations as proposed will remain in effect indefinitely.

**PART V: OTHER INFORMATION** (Required by Sec. 5(a) of the Regulatory Review Act and Executive Order 1982-2.

(32) Is there a deadline for action? Why? If there is no deadline, when should the regulation be adopted and what are the consequences of delay. (Attach copies of documents supporting the need for a deadline.)

No deadline. Regulations should be adopted as soon as reasonably convenient.

(33) Is this regulation mandated by federal law or court order? (Attach copies of orders, consent decrees, settlement memos, federal regulations, letters of agreement etc.)

Conformity to federal statute and regulations is the objective of many of the proposed changes.

(34) Upon what information is the need for this regulation based? What studies, hearings or other research has been conducted?

Other than the need to conform certain regulations to federal statute and regulations, and the need to adopt the new regulations for the two loan forgiveness programs, Agency staff's experience with the programs.

(35) What steps, if any, were taken in the development of this regulation to provide public and legislative participation?

None. There will, of course, now be a period for public comment.

(36) Will current litigation be affected by this regulation? Cite cases and explain.

No.



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**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

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LEGISLATIVE COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections  
attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Higher Education  
Assistance Agency  
(AGENCY)

DOCUMENT/FISCAL NOTE NO 58-23

DATE OF ADOPTION: April 27, 2000

BY: William Berkehan

TITLE: Senior VP, Public Affairs  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: Shirley Daulton

7/27/00  
DATE OF APPROVAL

(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

FINAL-FORM

**HIGHER EDUCATION ASSISTANCE AGENCY**

Amending 22 PA Code (Part VIII, Chapter 121) Subchapter A - General Provisions §§ 121.1, 121.2, 121.7, 121.8, 121.9, 121.21, 121.32, 121.33; and Subchapter B - Higher Education Grant Program §§ 121.42, 121.48, and 121.55.

Adding to 22 PA Code (Part VIII, Chapter 121) Subchapter A - General Provisions § 121.10 and Subchapter N - Early Childhood Education Professional Loan Forgiveness Program §§ 121.401 through 121.406.

**ANNEX A**

**TITLE 22. EDUCATION**

**PART VIII. HIGHER EDUCATION ASSISTANCE AGENCY**

**CHAPTER 121. STUDENT FINANCIAL ASSISTANCE**

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.1 – DEFINITIONS**

The following words and terms, when used in this Chapter, have the following meanings, unless the context clearly indicates otherwise:

**Academic Term** -- Semester, trimester or quarter.

**Academic Year** -- A period that begins on the first day of classes or examinations and that is a minimum of 30 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at a school which measures program length in credit hours or at least 900 clock hours at a school which measures program length in clock hours.

**Agency or PHEAA** -- The Pennsylvania Higher Education Assistance Agency.

**Board** -- The Board of Directors of the Agency.

**Borrower** -- All endorsers on loans authorized by this Chapter.

**Disposable Pay** -- That part of the borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld.

**Emergency Action** -- Immediate action undertaken against institutions by the President and Chief Executive Officer in a manner consistent with § 121.31(d)(relating to approved institutions in Federal Stafford Loan and Federal PLUS Loan Programs) to withhold the processing of loan applications of the institution; and in a manner consistent with § 121.191(d)(relating to administrative loan collection review procedures) against a lending institution to withhold the processing of loan applications for students borrowing through the institution.

**Federal Consolidation Loan** -- A loan made in accordance with section 428C of the Higher Education Act of 1965 (20 U.S.C.A. § 1078-3).

**Federal Family Education Loan (FFEL) Program** -- The loan program (formerly called the Guaranteed Student Loan (GSL) Program) authorized by Title IV-B of the Higher Education Act of 1965 (20 U.S.C.A. §§ 1071-1087-2), including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students (Federal SLS) and Federal Consolidation Loan Programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the student's attendance at eligible institutions.

**Federal PLUS Loan** -- A loan made in accordance with section 428B of the Higher Education Act of 1965 (20 U.S.C.A. § 1078-2).

## **PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

### **SECTION 121.1 – DEFINITIONS**

**Federal Stafford Loan** -- A loan made in accordance with section 428, if subsidized, or section 428H, if unsubsidized, of the Higher Education Act of 1965 (20 U.S.C.A. § 1078 and 1078-8).

**Full-Time Basis (except for Purposes of the Federal Stafford Loan and Federal PLUS Loan Programs)** -- The equivalent of 12 semester credits or 450 clock hours of instruction per academic term. If the schedule of a program of study offered on a clock-hour basis does not permit the equivalent of 450 clock hours of instruction per term, full-time enrollment shall be defined as 24 clock hours of instruction per week.

**Full-Time Basis (for Purposes of the Federal Stafford Loan and Federal PLUS Loan Programs Only)** -- To be considered enrolled on a full-time basis, a student shall be carrying a full-time academic work load (other than by correspondence) as determined by the institution under a standard applicable to the students enrolled in a particular educational program. The student's work load may include any combination of courses, work, research or special studies that the institution considers sufficient to classify the student as a full-time student. For undergraduate students, an institution's minimum standard shall equal or exceed one of the following minimum requirements:

- (i) Twelve semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester or quarter system.
- (ii) Twenty-four semester hours or 36 quarter hours per academic year in an educational program using credit hours but not using a semester, trimester or quarter system or the prorated equivalent for a program of less than 1 academic year.
- (iii) Twenty-four clock hours per week for an educational program using clock hours.
- (iv) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.
- (v) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work load of a full-time student.
- (vi) Other requirements as prescribed by Federal regulations.

**Guaranteed Student Loan Program** -- A Federal loan guaranty program administered by the Agency that enables qualified students to secure long-term educational loans to meet the costs of postsecondary education. On July 23, 1992, Federal law (Pub.L. No. 102-325) the Higher Education Amendments of 1992, changed the name of the program to The Federal Family Education Loan Program. Whenever the term is used in this Chapter, it refers to and shall be regarded as, "The Federal Family Education Loan Program."

## **PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

### **SECTION 121.1 – DEFINITIONS**

**Guardian** -- For purposes of determining domicile, a person other than a parent with whom an applicant has lived and in whose continuous direct care and control the applicant has been for a period of at least 2 years.

**Half-Time Basis** -- At least ½ the work load of a full-time student, except all students enrolled solely in an eligible program of study by correspondence cannot be considered more than half time.

**Hearing Examiner** -- A neutral third party, not an employee or staff member of the Agency, appointed by a designated Agency official to conduct hearings on Agency matters, consider written materials, weigh the evidence presented and issue impartial decisions.

**Parent (for Purposes of Borrowing under the Federal PLUS Loan Program)** -- A student's mother or father or legal guardian. An adoptive parent is considered to be the person's mother or father.

**President and Chief Executive Officer** -- The President and Chief Executive Officer of the Agency.

**Quarter** -- A period of approximately 11 weeks normally comprising 1/3 of the academic year.

**SAT** -- The College Entrance Examination Board's Scholastic Assessment Test.

**Semester** -- A period of approximately 17 weeks normally comprising ½ of the academic year.

**Trimester** -- A period of approximately 15 weeks normally comprising ½ of the academic year.

**Veteran** -- A person who engaged in active service in the United States Army, Navy, Air Force, Marines or Coast Guard or was a cadet or midshipman at one of the service academies and was released under a condition other than dishonorable, or will be by June 30 of the academic year for which the application is made, or who was a National Guard or Reserve enlistee was activated for duty. ROTC students, cadets or midshipmen currently attending the service academies, National Guard or Reserve enlistees who were not activated for duty, or those currently serving in the United States Armed Forces and will continue to serve through June 30 of the academic year for which application is made are not considered veterans.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.2 – CITIZENSHIP**

To be eligible for a Federal Family Education Loan, a student or parent borrower shall be, on or before the date of filing the loan guaranty application, one of the following:

- (1) A citizen or National of the United States.
- (2) A permanent resident alien of the United States, a temporary resident who intends to become a United States citizen or resident, or a refugee in the United States for other than a temporary purpose. For the purposes of this paragraph, the United States includes the 50 states, the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.7 - NOTICE OF DENIAL AND PRELIMINARY  
REVIEW PROCEDURES**

- (a) If the Agency staff determines that eligibility for financial assistance should be denied, the applicant or recipient shall be notified in writing of such determination, the grounds therefor, and his right to appeal from the decision of the Agency staff.
- (b) All appeals from the decisions of the Agency staff will be reviewed initially by an Administrative Review Committee composed of staff personnel of the Agency designated by the President and Chief Executive Officer. The Administrative Review Committee may grant eligibility in cases it deems proper. This subsection supersedes 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).
- (c) Where the Agency through its Administrative Review Committee denies an applicant or recipient eligibility for financial assistance, the applicant or recipient may obtain a review of the Agency's determination by the Committee on Appeals. The Committee on Appeals will determine whether or not the applicant or recipient is eligible for financial assistance.
- (d) An appeal to the Committee on Appeals shall be filed on or before the 60th day after the date on which notification of the determination by which he is aggrieved was delivered personally to the applicant or recipient or mailed to him at his last known post office address. The Committee on Appeals may waive this requirement in its discretion.
- (e) Such appeal shall be filed in the offices of the Agency at Harrisburg, Pennsylvania and shall include the following information:
  - (1) The name, address, and Social Security number of the applicant or recipient.
  - (2) The date of the decision being appealed.
  - (3) The reasons for appeal.
  - (4) The signature of the applicant or recipient.
- (f) Use of the prescribed appeal form shall not be mandatory to initiate an appeal. Any written notice that may reasonably be construed as a request for an appeal, delivered or mailed to a duly authorized representative or to any office of the Agency within the prescribed 60-day appeal period, advising that the applicant or recipient is aggrieved and apparently desires a review of the determination denying him financial assistance, shall be deemed to initiate and constitute an appeal. Thereafter, the applicant or recipient shall perfect the appeal by filing a completed appeal form within a reasonable time after instructions for filing the appeal

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.7 - NOTICE OF DENIAL AND PRELIMINARY  
REVIEW PROCEDURES**

form have been delivered or mailed to him at his last known post office address. The date of initiation of an appeal delivered by mail, either on the prescribed appeal form or by any other form of written communication, will be determined from the postmark appearing upon the envelope in which the appeal form or written communication was mailed.

- (g) Appeal forms may be obtained from any local field office of the Agency or at the offices of the Agency at Harrisburg, Pennsylvania. Assistance in completing and filing the appeal form can be obtained at any local field office of the Agency or at the offices of the Agency in Harrisburg, Pennsylvania.



**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.8 - APPLICANT AND RECIPIENT APPEALS AND HEARINGS**

- (a) An applicant or recipient who is aggrieved by a determination of the Committee on Appeals denying him eligibility for financial assistance may file an appeal to the Board [of Directors].
- (b) An appeal to the Board [of Directors] shall be filed on or before the 15th day after the date on which notification of the determination by which he is aggrieved was delivered personally to the applicant or recipient or mailed to him at his last known post office address.
- (c) Use of the prescribed appeal form is not mandatory to initiate an appeal. Any written notice that may reasonably be construed as a request for an appeal, delivered or mailed to a duly authorized representative or to any office of the Agency within the prescribed 15-day appeal period, advising that the applicant or recipient is aggrieved and apparently desires a review of the determination denying him financial assistance, will be deemed to initiate and constitute an appeal. Thereafter, the applicant or recipient shall perfect the appeal by filing a completed appeal form within a reasonable time after instructions for filing the appeal form have been delivered or mailed to him at his last known post office address. The date of initiation of an appeal delivered by mail, either on the prescribed appeal form or by any other form of written communication, will be determined from the postmark appearing upon the envelope in which the appeal form or written communication was mailed.
- (d) The appeal may be heard by the Board [of Directors] or, at its direction, by a hearing examiner appointed by the Chairperson of the Board [of Directors] of the Agency or, in the event of the unavailability of the Chairperson, by the Vice Chairperson of the Board [of Directors] of the Agency from a list maintained by the President and Chief Executive Officer. The hearing examiner or the Board [of Directors] will schedule the appeal promptly for hearing and give the applicant or recipient at least 7 days' notice of the hearing. The notice will specify the date, hour and place of hearing.
- (e) Hearings will be held at the offices of the Agency in Harrisburg, Pennsylvania. During the hearing, the applicant or recipient will be given the opportunity to submit testimony or evidence, or both, in support of his contentions. The applicant or recipient will also have the right to present oral and written argument and to cross-examine any witnesses offered by the Agency. This subsection supplements 1 Pa. Code § 35.126 (relating to presentation by the parties).

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.8 - APPLICANT AND RECIPIENT APPEALS AND HEARINGS**

- (f) Where a hearing examiner has been appointed, he shall prepare or cause the preparation of a verbatim transcript of the hearing, develop findings of fact and conclusions of law, and forward these directly to the Board [of Directors] for review and final decision. This subsection supplements 1 Pa. Code §§ 35.131 and 35.202 (relating to recording of proceedings; and proceedings in which proposed reports are prepared).
- (g) The Board [of Directors] will make such order or determination as shall appear just and proper from the evidence submitted.
- (h) Notice of the decision of the Board [of Directors] will be mailed promptly to the applicant or recipient at his last known post office address.
- (i) Where the decision of the Board [of Directors] is in favor of the applicant or recipient, he shall be eligible for retroactive financial assistance payments for the period during which such assistance was temporarily delayed.
- (j) The decision of the Board [of Directors] on an appeal will become final ten days after the date thereof. Within 30 days after the decision of the Board [of Directors] becomes final, the applicant or recipient may file an appeal therefrom with the Commonwealth Court.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.9 - ADMINISTRATIVE LOAN COLLECTION  
REVIEW PROCEDURES**

- (a) This section implements the administrative loan collection review process authorized by the act of April 29, 1982 (P.L. 365, No. 102)(24 P.S. § 5104.3).
- (b) Administrative loan collection procedure for those loans which are held by the Agency and which are not reinsured by the United States Secretary of Education:
  - (1) A borrower served with a statement of claim shall file a response thereto within 30 days of receipt of the statement of claim. The statement of claim shall inform the borrower of the nature and the amount of the indebtedness, the intention of the Agency to initiate proceedings to collect the debt through garnishment and an explanation of the rights of the borrower under the law. The response shall set forth all defenses and objections which the borrower has to the statement of claim and any objections or defenses not so presented will be deemed to have been waived. The response shall admit or deny all averments contained in the statement of claim. An averment in a statement of claim will be deemed to be denied only if proof thereof is demanded and the borrower states either:
    - (i) That after reasonable investigation the borrower is without knowledge or information sufficient to form a belief as to the truth of the averment.
    - (ii) That the borrower is without such knowledge or information because the means of proof are within the exclusive control of an adverse party or hostile person.
  - (2) When a borrower files a response to a statement of claim filed in the records of the Agency, the borrower will be afforded an opportunity to enter into a written agreement with the Agency, under terms agreeable to the head of the Agency or a designee, to establish a repayment schedule. The borrower will be afforded a hearing if he does not want to enter into a repayment schedule.
  - (3) All hearings will be conducted by a hearing examiner appointed by the Chairperson of the Board [of Directors] of the Agency or, in the event of the unavailability of the Chairperson, by the Vice Chairperson of the Board [of Directors] of the Agency from a list maintained by the President and Chief Executive Officer and will be held at the offices of the Agency in Harrisburg, Pennsylvania. The time of the hearing will be fixed by the Agency within a reasonable time, as soon as convenient, after the receipt of the borrower's response, allowing at least 15 days' notice to be given to the borrower and the borrower's attorney, if an attorney has entered an appearance on behalf of the borrower. Notice of the hearing will be sent to the borrower by the hearing examiner, specifying the time and place for hearing. If a

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.9 - ADMINISTRATIVE LOAN COLLECTION  
REVIEW PROCEDURES**

borrower wishes to request postponement of a hearing, the borrower shall contact the hearing examiner and provide the hearing examiner with valid reasons for the request. The hearing examiner may approve or disapprove the request in the examiner's discretion.

- (4) The borrower shall have the following rights during the hearing:
- (i) To present testimony and arguments in person.
  - (ii) To be represented by an attorney.
  - (iii) To confront and cross-examine adverse witnesses.
  - (iv) To examine all documents and records used by the Agency at the hearing. Copies of materials from the files of the Agency relevant to the hearing shall be provided at a reasonable time prior to the day of the hearing upon request without charge to the borrower.
  - (v) To have the Agency prove its claim by a preponderance of the evidence.
- (5) A request for a hearing may be dismissed by the hearing examiner when it is withdrawn by a borrower in a writing submitted to the hearing examiner. If a borrower fails to appear at a scheduled hearing without good cause as determined by the hearing examiner, the request for a hearing will be considered abandoned and will be dismissed with prejudice by the hearing examiner.
- (6) The hearing examiner will have the following powers and duties:
- (i) To administer oaths.
  - (ii) To question witnesses presented by the Agency or the borrower.
  - (iii) To hear the evidence submitted, review the documents presented, consider the arguments, and prepare a report
  - (iv) To recommend in the report a proposed adjudication and order, supported by findings of fact and conclusions of law.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.9 - ADMINISTRATIVE LOAN COLLECTION  
REVIEW PROCEDURES**

- (v) To provide copies of the report to the President and Chief Executive Officer of the Agency and to the borrower or the borrower's attorney of record within 60 days of the hearing.
- (7) The proceedings of a hearing will be conducted in the following order:
- (i) The hearing examiner will state the purpose of the hearing, the procedure to be followed, and the manner in which the report will be transmitted to the parties.
  - (ii) The Agency will present its case.
  - (iii) The borrower or the borrower's attorney may cross-examine each witness.
  - (iv) The borrower or the borrower's attorney will present the borrower's case.
  - (v) The Agency may cross-examine each witness presented by the borrower.
  - (vi) The hearing examiner may question any witness at any time.
- (8) The borrower and the President and Chief Executive Officer of the Agency shall each have the right to file exceptions to the hearing examiner's report within 15 days after the service of a copy of the report. Failure to file exceptions within the time allowed shall constitute a waiver of all objections to the report.
- (9) Upon consideration of the record, the hearing examiner's report, and any exceptions and briefs filed by the borrower and the President and Chief Executive Officer of the Agency, the Board [of Directors] will enter a final order.
- (10) Any form of written communication to the Agency that may be reasonably construed as exceptions, advising that the borrower is aggrieved and desires a review of the hearing examiner's report, will be deemed exceptions to the proposed report sufficient to initiate and constitute an appeal to the Board [of Directors].
- (11) When the Board [of Directors] receives notice of an appeal, it will place the appeal on the meeting agenda of the Board at such time in the future as the Board has received a stenographic record of the hearing before the hearing examiner and has had an opportunity to review such record. The Board [of Directors] may delegate to the review committee, comprised of three or more Board members designated by the Chairperson of the Board, the responsibility to review the record and hearing

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.9 - ADMINISTRATIVE LOAN COLLECTION  
REVIEW PROCEDURES**

examiner's report to the Board and to make a recommendation for action by the Board. The review committee will provide an opportunity for the borrower and the Agency to present oral argument, when requested, before rendering a recommendation for action by the Board. The Board [of Directors] will make such final order as shall appear to it just and proper.

- (12) Notice of the entry of a final order by the Board [of Directors] will be mailed promptly to the borrower at the borrower's last known post office address. The President and Chief Executive Officer may transfer the record and the order of default to the court of common pleas of the district in which the borrower resides or, when residence within this Commonwealth cannot be ascertained, to the Court of Common Pleas of Dauphin County, to be entered as a judgment.
- (13) Within 30 days of the mailing date set forth in the notice of the final order by the Board [of Directors], the borrower who is aggrieved by the final order may appeal the order to the court of common pleas of the district in which the borrower resides or the Court of Common Pleas of Dauphin County. Within 20 days after entry of judgment, the borrower may apply to the court in which the judgment is entered to set aside such judgment.
- (14) If no appeal is filed, the Agency may execute upon the wages, salaries or commissions in the hands of an employer or other person including the borrower when self-employed by serving a notice of its intent on the borrower and a notice of execution on the employer. The notice of execution shall include the following:
  - (i) The total amount to be collected from the borrower.
  - (ii) That the amount to be remitted to the Agency for a given pay period shall be limited to 10% of the borrower's disposable pay, that being any pay remaining after the deduction of any amounts required by law to be withheld.
  - (iii) That the employer is not required to vary its normal pay and disbursement cycles in order to comply with paragraph (2).
  - (iv) That the employer will be held liable for a civil penalty equivalent to the amount of the notice of execution for wages not properly withheld after receipt of the notice of execution.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.9 - ADMINISTRATIVE LOAN COLLECTION  
REVIEW PROCEDURES**

- (15) This section affects 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) as follows:
- (i) Subsection (b)(1) supersedes 1 Pa. Code § 35.14 (relating to orders to show cause).
  - (ii) Subsection (b)(3) supersedes 1 Pa. Code §§ 35.105 and 35.185 (relating to notice of nonrulemaking proceedings; and designation of presiding officers). Subsection (d) supplements 1 Pa. Code § 31.26 (relating to service on attorneys).
  - (iii) Subsection (b)(4)(i-iii) supplements 1 Pa. Code § 35.126 (relating to presentation by the parties); subsection (b)(4)(iv) supersedes 1 Pa. Code § 35.169 (relating to copies to parties and agency).
  - (iv) Subsection (b)(6)(i-iii) supplements 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers); subsection (b)(6)(iv) supersedes 1 Pa. Code § 35.205 (relating to contents of proposed reports); subsection (b)(6)(v) supersedes 1 Pa. Code § 35.207 (relating to service of proposed reports).
  - (v) Subsection (b)(7) supplements 1 Pa. Code § 35.125 (relating to order of procedure).
  - (vi) Subsection (b)(8) supersedes 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).
  - (vii) Subsection (b)(9) supplements 1 Pa. Code § 35.226 (relating to final orders).
  - (viii) Subsection (b)(11) supersedes 1 Pa. Code § 35.214 (relating to oral argument on exceptions).

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.10 - ADMINISTRATIVE WAGE GARNISHMENT  
PROCEDURES FOR FEDERAL LOANS**

- (a) This section implements the Federal administrative wage garnishment process authorized under section 488A of the Higher Education Act of 1965 (20 U.S.C.A. § 1095a).
- (b) Loan collection procedure for those loans which are held by the Agency and which qualify as loans under the Federal Family Education Loan Program ("FFELP") are as follows:
- (1) If the Agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the Agency, on which the United States Secretary of Education (Secretary) has paid a reinsurance claim, it shall do so in accordance with the following procedures.
- [(i) The employer shall deduct and pay to the Agency from a borrower's wages an amount that does not exceed the lesser of 10% of the borrower's disposable pay for each pay period or the amount permitted by section 303 of the Consumer Credit Protection Act (15 U.S.C.A. § 1673) unless the borrower provides the Agency with written consent to deduct a greater amount. For purposes of subsection (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.]
- [(ii) (i) At least 30 days before the initiation of garnishment proceedings, the Agency will mail to the borrower's last known address, a written notice of the nature and the amount of the debt, the intention of the Agency to initiate proceedings to collect the debt through deductions from pay and an explanation of the borrower's rights.
- [(iii) (A) The Agency will offer the borrower an opportunity to inspect and copy Agency records related to the debt.
- [(iv) (B) The Agency will offer the borrower an opportunity to enter into a written repayment agreement with the Agency under terms agreeable to the Agency.
- [(v) (C) The Agency will offer the borrower an opportunity for a hearing in accordance with subparagraph [(x)] (iv) concerning the existence or amount of the debt and, in the case of a borrower whose proposed repayment schedule under the Order of Withholding is established other than by a written agreement under subparagraph [(iv)] (i)(B), the terms of the repayment schedule.



**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.10 - ADMINISTRATIVE WAGE GARNISHMENT  
PROCEDURES FOR FEDERAL LOANS**

- [(vi)] The Agency will sue any employer for any amount that the employer, after receipt of the garnishment notice provided by the Agency under subparagraph (viii), fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.]
- [(vii)] (ii) The Agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.
- [(viii)] (iii) Unless the Agency receives information that the Agency believes justifies a delay or cancellation of the Order of Withholding, it will send an Order of Withholding to the employer within 20 days after the borrower fails to [make a timely request for a hearing] request a hearing within 20 days of the date of mailing of the notice, 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.
- [(ix)] The notice given to the employer under subparagraph (viii) will contain only the information necessary for the employer to comply with the Order of Withholding.]
- [(x)] (iv) 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. The borrower may request an oral hearing or a written hearing. The time and location of the hearing will be established by the Agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. Telephonic charges are the responsibility of the Agency.
- [(xi)] (v) If the borrower's written request is received by the Agency on or before the 15th day following the borrower's receipt of the notice described in subparagraph [(ii)] (i), the Agency may not issue an Order of Withholding until the borrower has been provided the requested hearing. For purposes of this subsection, in the absence of evidence to the contrary, a borrower will be considered to have received the notice described in subparagraph [(ii)] (i) 5 days after it was mailed by the Agency. The Agency will provide a hearing to the borrower in sufficient time to permit a decision to be rendered within 60 days from the day of receipt of the borrower's hearing request.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.10 - ADMINISTRATIVE WAGE GARNISHMENT  
PROCEDURES FOR FEDERAL LOANS**

- [(xii)] (vi) If the borrower's written request is received by the Agency after the 15th day following the borrower's receipt of the notice described in subparagraph [(ii)] (i), the Agency will provide a hearing to the borrower in sufficient time that a decision may be rendered within 60 days from the date of receipt of the borrower's hearing request, but may not delay issuance of an Order of Withholding unless the Agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the Agency receives information that the Agency believes justifies a delay or cancellation of the Order of Withholding. For purposes of this subparagraph, in the absence of evidence to the contrary, a borrower will be considered to have received the notice described in subparagraph [(ii)] (i) 5 days after it was mailed by the Agency.
- [(xiii)] (vii) The hearing examiner appointed by the Agency to conduct the hearing may be any qualified individual[, including an administrative law judge,] not under the supervision or control of the President and Chief Executive Officer of the Agency and have the following powers and duties:
- (A) To administer oaths.
  - (B) To question witnesses presented by the Agency or by the borrower.
  - (C) To hear evidence submitted, review the documents presented, consider arguments and prepare a report.
  - (D) To recommend in the report a proposed adjudication and order, supported by findings of fact and conclusions of law.
  - (E) To provide copies of the report to the President and Chief Executive Officer of the Agency and to the borrower or the borrower's attorney of record at the earliest practicable date, but not later than 60 days after the Agency's receipt of the borrower's hearing request.
- [(xiv)] (viii) The proceedings of a hearing will be conducted in the following order:
- (A) The hearing examiner will state the purpose of the hearing, the procedure to be followed, and the manner in which the report will be transmitted to the parties.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**  
**SECTION 121.10 - ADMINISTRATIVE WAGE GARNISHMENT**  
**PROCEDURES FOR FEDERAL LOANS**

- (B) The borrower or the borrower's attorney will present the borrower's case.
  - (C) The Agency may cross-examine each witness presented by the borrower.
  - (D) The Agency will present its case.
  - (E) The borrower or the borrower's attorney may cross-examine each witness presented by the Agency.
  - (F) The hearing examiner may question any witness at any time.
- [(xv)] (ix) The borrower and the President and Chief Executive Officer of the Agency will each have the right to file exceptions to the hearing examiner's report within 15 days after the service of a copy of the report. Failure to file exceptions within the time allowed shall constitute a waiver of all objections to the report.
- [(xvi)] (x) The period of time may, for good cause, be extended upon motion made before the expiration of the 15-day time period and filed with the hearing examiner.
- [(xvii)] (xi) The period of time may be extended upon motion made after the expiration of the 15-day time period where reasonable grounds are shown for failure to act. Such motion shall be filed with the hearing examiner.
- [(xviii)] (xii) Requests for the extension to time in which to file briefs shall be filed with the hearing examiner at least 5 days before the time fixed for filing such briefs.
- [(xix)] (xiii) Upon consideration of the record, the hearing examiner's report, and any exceptions and briefs filed by the borrower and the President and Chief Executive Officer of the Agency, the Board [of Directors] will enter a final order.
- [(xx)] (xiv) When the Board [of Directors] receives notice of an appeal, it will place the appeal on the meeting agenda of the Board when the Board has received a stenographic record of the hearing before the hearing examiner and has had

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.10 - ADMINISTRATIVE WAGE GARNISHMENT  
PROCEDURES FOR FEDERAL LOANS**

the opportunity to review such record. The Board [of Directors] may delegate to the review committee, comprised of three or more Board members designated by the Chairperson of the Board, the responsibility to review the record and hearing examiner's report to the Board and to make a recommendation for action by the Board. The review committee will provide an opportunity for the borrower and the Agency to present oral argument, when requested by either party, before rendering a recommendation for action by the Board. Oral argument may be conducted either in-person or by telephone conference. Telephonic charges are the responsibility of the Agency. The Board [of Directors] will make a final order that is just and proper.

- [(xxi)] (xv) Notice of the entry of a final order by the Board [of Directors] will be mailed promptly to the borrower at the borrower's last known post office address.
- [(xxii)] As specified in section 488A(a)(8) of the Higher Education Act of 1965, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ or takes disciplinary action against the borrower due to the issuance of a Notice of Execution. ]
- [(2)] References to "the borrower" in this section include all endorsers on a loan. ]
- [(3)] (2) This section affects 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure as follows:
- (i) Subsection (b)(1)(ii) supersedes 1 Pa. Code § 35.14 (relating to orders to show cause).
  - (ii) Subsection (b)(1)(iii) supersedes 1 Pa. Code § 35.169 (relating to copies to parties and agency).
  - (iii) Subsection (b)(1)(v) supersedes 1 Pa. Code § 35.105 (relating to notice of nonrulemaking proceedings).
  - (iv) Subsection (b)(1)(x) supersedes 1 Pa. Code § 35.105 (relating to notice of nonrulemaking proceedings).

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.10 - ADMINISTRATIVE WAGE GARNISHMENT  
PROCEDURES FOR FEDERAL LOANS**

- (v) Subsection (b)(1)(xiii)(A)-(C) supplements 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers); subsection (b)(1)(xiii)(D) supersedes 1 Pa. Code § 35.205 (relating to contents of proposed reports); subsection (b)(1)(xiii)(E) supersedes 1 Pa. Code § 35.207 (relating to service of proposed reports).
- (vi) Subsection (b)(1) (xiv) supplements 1 Pa. Code § 35.125 (relating to order of procedure).
- (vii) Subsection (b)(1)(xv) supersedes 1 Pa. Code § 35.211 (relating to procedure to except to proposed reports).
- (viii) Subsection (b)(1)(xvi)--(xviii) supersedes 1 Pa. Code § 31.15(a)(relating to extensions of time) and supplements 1 Pa. Code, Subchapter D (relating to motions).
- (ix) Subsection (b)(1)(xix) supplements 1 Pa. Code § 35.226 (relating to final orders).
- (x) Subsection (b)(1)(xx) supersedes 1 Pa. Code § 35.214 (relating to oral argument on exceptions).

**(c) Employer provisions:**

- (1) The employer shall deduct and pay to the Agency from a borrower's wages an amount that does not exceed the lesser of 10% of the borrower's disposable pay for each pay period or the amount permitted by section 303 of the Consumer Credit Protection Act (15 U.S.C.A. § 1673) unless the borrower provides the Agency with written consent to deduct a greater amount.**
- (2) As specified in section 488A(a)(8) of the Higher Education Act of 1965, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ or takes disciplinary action against the borrower due to the issuance of a Notice of Execution.**

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**  
**SECTION 121.10 - ADMINISTRATIVE WAGE GARNISHMENT**  
**PROCEDURES FOR FEDERAL LOANS**

**(d) Agency actions with an employer:**

- (1) The notice given to the employer under subsection (b)(iii) will contain only the information necessary for the employer to comply with the Order of Withholding.**
- (2) The Agency will sue any employer for any amount that the employer, after receipt of the Order of Withholding provided by the Agency under subsection (b)(iii), fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.**

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.21 - REQUIREMENT FOR HIGHER EDUCATION  
GRANT APPLICANTS**

- (a) A State higher education grant applicant shall be a graduate of or attending an approved secondary school, or be a recipient of a Commonwealth secondary school diploma
- (b) An approved secondary school shall be any public or private secondary school, located in this Commonwealth or elsewhere, including foreign institutions and United States schools overseas, which in the judgment of the Department of Education provides a course of instruction at the secondary level and maintains standards of instruction substantially equivalent to the standards of instruction of the public high schools located in this Commonwealth.
- (c) For purposes of the State Higher Education Grant Program, an approved secondary school shall also include any home education program that is accredited by any home schooling accreditation agency approved by the Department of Education. If the home education program lacks the requisite accreditation, certification by the appropriate local school official attesting that the home education program is in compliance with section 1327.1 of the Public School Code of 1949 (24 P.S. § 13-1327.1) shall be submitted to the Agency by the appropriate local school official.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.32 - APPROVED INSTITUTIONS IN HIGHER  
EDUCATION GRANT PROGRAM**

- (a) To be eligible for a State higher education grant, an applicant shall enroll in a program approved under § 121.33 (relating to approved program of study in Higher Education Grant Program) and shall attend an institution of higher education approved by the Agency for enrollment of grant recipients under the State Higher Education Grant Program
  
- (b) To be approved, an institution shall be other than a school of theology or a theological seminary as determined by the Agency, shall be located in the United States, the Canal Zone, Puerto Rico, the Virgin Islands, American Samoa or Guam and shall comply with the following:
  - (1) If the institution is a college or university located within this Commonwealth, the institution shall be approved by the Department of Education and shall be accredited or a recognized candidate for accreditation with an accrediting body recognized by the Council for Higher Education Accreditation; if the college or university located outside this Commonwealth, the institution shall be degree-granting, shall be operated not-for-profit and shall be fully accredited by the regional institutional accrediting body recognized by the Council for Higher Education Accreditation responsible for accreditation in the state where the college or university is conducting its educational program.
  
  - (2) If the institution is a hospital school of nursing located within this Commonwealth, the institution shall be initially, provisionally or fully approved by the State Board of Nursing and shall be accredited by the National League for Nursing; if located outside this Commonwealth, the institution shall be accredited by the National League for Nursing.
  
  - (3) If the institution is a trade, technical or business school located within this Commonwealth, the institution shall be approved by the Department of Education or shall currently be, and shall have been throughout the preceding 24 months, licensed by the State Board of Private Licensed Schools and shall be accredited by an accrediting body recognized by the Council for Higher Education Accreditation, except that this requirement for licensure and accreditation may be waived by the President and Chief Executive Officer for branch campuses of an institution that has been operating satisfactorily in this Commonwealth for 2 years or more; if the institution is located outside this Commonwealth, it shall be degree-granting, shall be operated not-for-profit and shall be fully accredited by the regional institutional accrediting body recognized by the Council for Higher Education Accreditation responsible for accreditation in the state where the institution is conducting its educational program.



**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.32 - APPROVED INSTITUTIONS IN HIGHER  
EDUCATION GRANT PROGRAM**

- (4) The institution shall have executed an Assurance of Compliance with section 602 of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000d-1 (1974)) and filed it with the United States Secretary of Education.
  - (5) The institution shall have executed and filed with the Agency an agreement on a form provided by the Agency to report or advise the Agency if the institution has knowledge of the name and address of Commonwealth resident students who are recipients of Agency-administered aid who have been convicted in a court of record of a criminal offense which under the laws of the United States or of the Commonwealth would constitute a felony committed after October 29, 1969. Institutional knowledge shall be facts contained in the academic, disciplinary or financial student records of the institution and facts known to the dean of students, director of financial aid and president of the institution or persons occupying these positions by whatever titles designated by the institution.
  - (6) When a change in ownership of an approved institution occurs, the new owner shall notify the Agency in writing of the change in ownership within 30 days of the effective date of the change. The new owner shall execute and file with the Agency an agreement on a form provided by the Agency to assume responsibility for repayment of State grant funds to the Agency or payment of State grant funds to eligible students, as designated by the Agency, made necessary by the failure of the previous owner to follow Agency procedures and requirements. An institution that fails to execute this agreement will be required to wait 24 months before being considered for approval in the State Grant Program.
  - (7) The institution shall comply with such other administrative requirements as the Agency may legally promulgate, as shall be set forth in the State Grant Certification Procedures and the State Grant Program Policy Manual which will be made available to institutions on an annual basis.
- (c) Approved institutions for an academic year shall be those on record as of the preceding August 1 for the ensuing academic year.
- (d) Approval of an institution after August 1 will become effective the following August 1 with two exceptions:
- (1) To be effective for the ensuing summer term, approval shall be obtained prior to May 1.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.32 - APPROVED INSTITUTIONS IN HIGHER  
EDUCATION GRANT PROGRAM**

- (2) In the light of the particular circumstances related to the institution's approval and the funding and application processing conditions of the Agency, the President and Chief Executive Officer may make the approval effective on a date prior to August 1.
- (e) The President and Chief Executive Officer may suspend the processing of aid request forms of State grant applicants or cease further disbursement of State grant funds to an approved institution, or both, when, in the judgment of the President and Chief Executive Officer, the institution's compliance with the conditions required for approval or the institution's continued eligibility or operation is in question and the action is deemed necessary to protect the interests of the student aid applicants, the Commonwealth or the Agency. This subsection may also be invoked upon a change in ownership, administration or directorship of the institution.
- (f) An institution's approved status may be terminated by the President and Chief Executive Officer when any of the conditions required for approval cease to be met.
- (g) In suspending or withdrawing the approval of an institution, the President and Chief Executive Officer may authorize continuation of eligibility determination and grant disbursement for State grant renewal applicants.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.33 - APPROVED PROGRAM OF STUDY IN HIGHER  
EDUCATION GRANT PROGRAM**

To be eligible for a State higher education grant, an applicant shall enroll in a program of study approved by the Agency and offered by an institution approved by the Agency under § 121.32 (relating to approved institutions in Higher Education Grant Program) for participation in the State Higher Education Grant Program. An approved program of study shall comply with the following

- (1) An approved program of study shall be a program of instruction of at least 2 academic years which shall be the equivalent of at least 60 semester credit hours or at least 1,800 clock hours of instruction (1,500 clock hours in the case of programs leading to the associate degree in specialized technology or the associate degree in specialized business offered by institutions of higher education located within this Commonwealth) except that, other than for those community college programs which are measured in credit hours, programs not leading to a degree shall be measured in clock hours, with at least 30 semester credit hours or 900 clock hours earned through instruction within the classroom, and shall be presented over a calendar of at least 15 months.
- (2) An approved program of study shall require that at least 50% of the credits needed for completion of the program at the approved institution be earned through instruction within the classroom.
- (3) If offered at a trade, technical or business school located within this Commonwealth, an approved program of study shall be approved by the Department of Education or by the State Board of Private Licensed Schools.
- (4) An approved program of study shall be on the approved list as of August 1 for the ensuing academic year. Approval after August 1 will become effective the following August 1 with two exceptions:
  - (i) To be effective for the ensuing summer term, approval must be obtained prior to May 1.
  - (ii) In the light of the particular circumstances related to the approval of the program of study and the funding and application processing conditions of the Agency, the President and Chief Executive Officer may make the approval effective on a date prior to August 1.

## **PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

### **SECTION 121.42 - SUBMISSION OF APPLICATIONS**

- (a) Applications will be considered only if submitted on or prior to the deadline date announced by the Agency for each group specified in § 121.41 (relating to grouping of applicants). Applications will be accepted after the established deadline, funds permitting, when received from applicants in the following categories, except applicants who have been supplied with an application by the Agency in sufficient time to have had a reasonable opportunity to submit the application to the Agency prior to the deadline:
- (1) Veterans and current and former members of the Peace Corps, VISTA, and other similar organizations.
  - (2) Applicants who have suffered a loss in expected family assistance through the death, disability, or retirement of a major wage earner of the family.
  - (3) Applicants who have suffered a loss in expected family assistance through a major wage earner's separation--as defined by the Agency--or divorce, or through a change in the employment status of a major wage earner of the family.
- (b) If, in the case of applications accepted from students included in the categories mentioned in subsection (a)(1)-(3), the release from active duty, death, disability, retirement, change of employment status, separation or divorce, as the case may be, occurred on or after January 1 immediately preceding the start of the academic year for which aid is requested, the applications will be processed, funds permitting, in accordance with the following schedule:
- (1) Quarter Schedule Institutions. Applications from students attending institutions with quarter schedules will be considered in accordance with the following dates of reception:
    - (i) Received prior to February 1 - full-year consideration.
    - (ii) Received on or after February 1 and prior to April 1 - two-term consideration.
    - (iii) Received on or after April 1 - no consideration for the current academic year.
  - (2) Semester Schedule Institutions. Applications from students attending institutions with semester schedules will be considered in accordance with the following dates of reception:

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.42 - SUBMISSION OF APPLICATIONS**

- (i) Received prior to February 1 - full-year consideration.
  - (ii) Received on or after February 1 and prior to April 1 - one-semester consideration.
  - (iii) Received on or after April 1 - no consideration for the current academic year.
- (c) Applications which are accepted from students included in the categories mentioned in subsection (a)(1)-(3), but not eligible under the terms of subsection (b) will, funds permitting, be processed, after consideration of those applicants designated in subsection (b), for the term or terms designated by the Agency.
- (d) The President and Chief Executive Officer may authorize the setting aside of deadlines for other categories of applicants when in the judgment of the President and Chief Executive Officer the setting aside of the deadline will facilitate administration of the State Higher Education Grant Program in accordance with the policies established by the Board [of Directors] of the Agency and will promote equitable program results. Any determination made by the President and Chief Executive Officer under this subsection will be reduced to writing, which writing will delimit the category and give an estimate of the number of applicants for the particular processing year which is expected to fall within the category. A copy of such writing will be furnished to each member of the Board [of Directors] of the Agency.
- (e) Exceptional cases involving applicants who submit an application after the established deadline will be reviewed and appropriate resolution of the question relating to setting aside the deadline and the term of eligibility will be taken by the Administrative Review Committee or the Committee on Appeals in turn.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.48 - LIMITATION ON PAYMENT OF GRANTS**

The Agency will not make payment of, or further payment on, an existing State higher education grant on the basis of an inquiry or request received after August 1 of the calendar year next commencing following the academic year for which the payment is sought unless the President and Chief Executive Officer specifically directs that payment be made in order to prevent grave hardship

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.56 - YEAR ABROAD PROGRAM**

A recipient shall be eligible to receive an award for a Year Abroad Program which shall provide the recipient with equivalent credit for the academic terms involved in the program as the recipient would earn at the approved institution of higher learning and which requires the recipient to pay the educational costs to the institution. Exceptions to the requirement that educational costs be paid to the approved institution may be made by the President and Chief Executive Officer.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.401 - APPLICATION OF EXISTING AGENCY REGULATIONS**

- (a) The following higher education grant regulations contained in Subchapters A [and B] (relating to general provisions[; and the State Higher Education Grant Program]) apply to applicants in the Early Childhood Education Professional Loan Forgiveness Program [except those provisions which are inconsistent with this subchapter]:
- (1) Section 121.1 - (relating to definitions).
  - (2) Section 121.3 - (relating to discrimination prohibited).
  - (3) Section 121.4(a) - (relating to denial of eligibility to loan defaulters).
  - (4) Section 121.6 - (relating to denial of eligibility for financial assistance).
  - (5) Section 121.7 - (relating to notice of denial and preliminary review procedures).
  - (6) Section 121.8 - (relating to applicant and recipient appeals and hearings).



**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.402 - QUALIFIED APPLICANT**

A qualified applicant in the Early Childhood Education Loan Forgiveness Program is a person who meets the following requirements:

- (1) Has successfully completed an undergraduate program at an accredited college or university.
- (2) Has a bachelor's degree and has obtained Pennsylvania State Early Childhood Education Certification (nursery through third grade), or an associate's degree in Early Childhood or Child Development.
- (3) Has borrowed through the Agency-administered Guaranteed Student Loan Programs.
- (4) Is a resident of this Commonwealth.
- (5) Executes a sworn affidavit, under penalty of perjury, that he does not have a delinquent payment owing to any Commonwealth agency.
- (6) Receives an annual salary of less than \$18,500 for the employment period for which loan forgiveness is requested.
- (7) Has submitted a completed application by the filing deadline designated by the Agency.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.403 - LOAN FORGIVENESS**

Qualified applicants who are selected for the program in accordance with the Early Childhood Loan Forgiveness Act (24 P.S. § 7101-7106) are eligible for payment by the Agency of a portion of the debt incurred by the applicant through the Agency-administered Guaranteed Student Loan Programs for the education necessary to successfully complete the specified bachelor's degree or associate's degree programs. For each 12-month employment period designated by the Agency that the applicant is a full-time professional in an approved Commonwealth child-care facility, the Agency may forgive a proportional part of the applicant's loan so that the loan may be entirely forgiven over 4 years of full-time employment in an approved child-care facility. For a graduate with a bachelor's or associate's degree in the specified areas, no more than \$2,500 shall be forgiven in any year, and no more than \$10,000 shall be forgiven for any applicant. Payments shall be made [in accordance with the procedures established by the Agency] to the lender/servicer in March and September. A loan forgiveness award may not be made for a loan that is in default at the time of the application

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.404 - EMPLOYMENT**

An applicant selected for the Early Childhood Education Professional Loan Forgiveness Program is required to submit documentation the Agency may require as proof that those child-care professionals are working as full-time professionals in approved child-care facilities in this Commonwealth for the 12-month employment period designated by the Agency for loan forgiveness. Each child-care professional is required to submit documentation of eligibility as the Agency may require.

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.405 - APPROVED CHILD-CARE FACILITY**

An "approved child-care facility" is defined as a child day-care center or group day-care home located in this Commonwealth which is subject to and in compliance with 55 Pa. Code (relating to public welfare).

**PART VIII - HIGHER EDUCATION ASSISTANCE AGENCY**

**SECTION 121.406 - LOTTERY**

- (a) Loan forgiveness awards shall be made to the extent that funds are appropriated by the General Assembly and are sufficient to cover administration of the program. If funding is insufficient to fully fund administration and eligible applicants, the Agency shall utilize a random lottery system for determining which applicants receive loan forgiveness awards.
- (b) When a random lottery is required, the lottery shall include only those records that are complete and eligible in accordance with [Agency requirements] § 121.402 (relating to qualified applicant) at the time the lottery is conducted.

## PREAMBLE

### Statutory Authority

The Pennsylvania Higher Education Assistance Agency, under authority contained in the Act of August 7, 1963, P.L. 549, No. 290 (24 P.S. § 5104), the Act of January 25, 1966, P.L. 1546, No. 541 (24 P.S. § 5151), the Act of July 18, 1974, P.L. 483, No. 174 (24 P.S. §§ 5181-5189) the Act of July 1, 1988, P. L. 1259, No. 155 (24 P.S. §§ 5191-5197) and the Act of June 26, 1992, P.L. 322, No. 64 (24 P.S. §§ 5198.1-5198.7) is amending 22 PA Code by amending Sections 121.1, 121.2, 121.7, 121.8, 121.9, 121.21, 121.32, 121.33, 121.42, 121.48, and 121.56; and by adopting new regulations Section 121.10 and Subchapter N, Sections 121.401 through 121.406, as set forth in Annex A.

### Purpose of Regulations

The changes affect the State Grant Program (24 P.S. § 5152.1), Loan Programs (24 P.S. § 5104 et seq.), and the Early Childhood Education Professional Loan Forgiveness Program (24 P.S. § 7103 et seq.).

### Public Comment

Written comments, suggestions and objections were solicited within a 30-day period after the publication date. As a result of the comments received from the Independent Regulatory Review Commission (“Commission”) and the standing committees, numerous revisions were made to the proposed regulations. The final-form regulation now includes language revisions to clarify the meaning of various sections. The revisions do not, however, enlarge the original purpose of the proposed rulemaking.

### Summary of Changes

#### Comments

#### 1. Section 121.1 – Definitions – Clarity

##### *Comment:*

It was requested that the term “Board of Directors” be changed to “Board” in Sections 121.10(b)(a)(xx) and (xxi) since the existing regulation Section 121.1 defines “Board” as “the Board of Directors of the Agency.”

##### *Response:*

The phrase “Board of Directors” was replaced with the word “Board” in Section 121.10. For consistency purposes we also made this change in Sections 121.8, 121.9, and 121.42.

##### *Comment:*

Section 121.10(b)(2) contains a definition of ‘borrower’.

##### *Response:*

Definition of “borrower” was added to Section 121.1

**Comment:**

Section 121.10(b)(1)(I) contains a definition of 'disposable pay'.

**Response:**

Definition of "disposable pay" was added to Section 121.1.

**Comment:**

Section 121.10(b)(1)(viii) does not clearly define 'timely request'.

**Response:**

The phrase "make a timely request for hearing" in Section 121.10(b)(1)(viii) was replaced with "request for a hearing within 20 days of the mailing of the notice".

**2. Section 121.10(b)(1)(x).**

**Comment:**

Written and oral requests for a hearing – Clarity.

**Response:**

The first sentence was restructured into two sentences as suggested.

By way of further response, a "written hearing" is conducted by review of written documents submitted by both the borrower and the Agency. The hearing examiner reviews all exhibits and written statements offered and then issues his ruling based on his review of the documents without any oral testimony.

**3. Section 121.10(b)(1)(xi) and (xii).**

**Comment:**

Issuance of an Order of Withholding – Clarity.

**Response:**

The phrase "from the date of receipt of the borrower's hearing request" was added to the last sentence of Section 121.10(b)(1)(xi) and to the first sentence after the words "within 60 days" in subsection (b)(1)(xii).

**4. Section 121.10(b)(1)(xiii).**

**Comment:**

Hearing examiners – Clarity.

**Response:**

The phrase "including an administrative law judge" was deleted.

**5. Section 121.10(b)(1)(xix) – (xxi).**

**Comment:**

Hearing procedures – Clarity. Questions were received regarding who rules on exceptions, the hearing examiner or the Board of Directors: Does the hearing examiner issue a proposed report or a final report? And, finally, are proceedings before the Board of Directors considered the last stage in the adjudicatory process or the first level of administrative appeal?

***Response:***

The hearing examiner issues a proposed final order. The proposed order is then reviewed and accepted or rejected by the Board. Proceedings before the Board of Directors are considered the last stage in the adjudicatory process.

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

***Comment:***

A subsection should be created titled “Employer provisions.”

***Response:***

Subsection (c) titled “Employer provisions” was created and subsections(b)(1)(i) and (xxii) were moved to that subsection.

***Comment:***

A question was received regarding whether the “garnishment notice” mentioned in subsection(b)(1)(ix) is another term used for the “Order of Withholding” mentioned in paragraph (viii).

***Response:***

The term “garnishment notice” was replaced with the term “Order of Withholding”.

***Comment:***

A subsection should be created relating to Agency actions with employers.

***Response:***

A new subsection (d) was created. Paragraphs (viii) and (vi) were reordered and moved to this new subsection.

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

***Comment:***

A question was received regarding whether the opportunities offered by the borrower in paragraph (iii) – (v) are included in the written notice described in paragraph (ii).

***Response:***

The information is included in the written notice and paragraphs (iii) – (v) have been reordered as subparagraphs of subsection (b)(1)(ii)

**8. Section 121.401 – Application of Existing Agency Regulations**

***Comment:***

Need and clarity.

***Response:***

The phrase “except those provisions inconsistent with this subchapter” has been removed. The reference to Subchapter B has also been deleted.



**9. Section 121.403 – Loan Forgiveness**

***Comment:***

Clarity

***Response:***

The phrase “in accordance with the procedures established by the Agency” was replaced with “to the lender/servicer in March and September.” Additionally, the requirements for time periods and maximum amounts have been structured as subsections within the section.

**10. Section 121.406 -- Lottery**

***Comment:***

Economic impact and clarity. A question was received regarding how the applicant will know what Agency requirements must be met to be eligible for the lottery.

***Response:***

The phrase “Agency requirements” was replaced with Section 121.402 in 121.406 (b). This refers the applicant to the eligibility requirements.

**11. Section 121.33 – Approved Program of Study in Higher Education Grant Program**

***Comment:***

Comments were received from the House Education Committee and Montgomery County Community College regarding the percentage of classroom instruction time needed for course eligibility for a State Grant recipient.

***Response:***

We continue to monitor all available sources of information in this regard and will adjust the percentage as soon as it is deemed appropriate.

**Regulatory Review**

Under Section 5 (a) of the Regulatory Review Act, the Act of June 25, 1982 (P.L. 633, No. 181), as amended by Act 24 of 1997 (P.L. 252, No. 24), the Agency submitted a copy of the Notice of Proposed Rulemaking, published at 28 Pa.B. 13, on March 28, 1998 to the Independent Regulatory Review Commission and to the House Education Committee and the Senate Education Committee for review and comment. In compliance with Section 5(c), the Agency also provided the Commission and the committees with copies of all comments received as well as other documentation.

In preparing this final-form regulation the Agency has considered all comments received from the Commission, the Committees and the public.

This final-form regulation was deemed approved by the House Education Committee on \_\_\_\_\_ and deemed approved by the Senate Education Committee on \_\_\_\_\_. The Commission met on \_\_\_\_\_ and deemed approved the regulation in accordance with Section 5(c) of the Act.

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**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT**

**I.D. NUMBER:** 58-23  
**SUBJECT:** Regulation Revisions  
**AGENCY:** PA Higher Education Assistance Agency

REGULATORY REVIEW ACT  
2000 APR 27 PM 3:04  
REVIEW COMMISSION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
4/27/00	<i>Clean Rogers</i>	<u>HOUSE COMMITTEE</u> (EDUCATION)

	<i>S. Baker</i>	<u>SENATE COMMITTEE</u> (EDUCATION)
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4/27/00	<i>Tim Eckert</i>	<u>INDEPENDENT REGULATORY REVIEW COMMISSION</u>
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	<i>[Signature]</i>	<u>ATTORNEY GENERAL</u>
	<i>[Signature]</i>	<u>LEGISLATIVE REFERENCE BUREAU</u>