5-1301-8209-1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA HIGHER EDUCATION COORDINATING BOARD

In the Matter of Proposed Adoption of Rules of the Minnesota Higher Education Coordinating Board Regarding State Work Study and the Student Educational Loan Fund (SELF), Minn. Rule Parts 4830.2200-4830.2400 and 4850.0011-4850.0017.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Howard L. Kaibel, Jr. on November 1, 1993, at 9:00 a.m. in the Fifth Floor Hearing Room, Veterans Service Building, 20 West Twelfth Street, St. Paul, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Minnesota Higher Education Coordinating Board (HECB or the Board) has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules, whether the proposed rules are needed and reasonable and whether or not modifications to the rules proposed by HECB after initial publication are impermissible substantial changes.

The Board's hearing panel consisted of Mary Lou Dresbach, Administrative Associate for HECB; Joe Graba, Deputy Executive Director of HECB; and Cheryl Maplethorpe, Director of Financial Aid for HECB. Nineteen persons attended the hearing. Fifteen persons signed the hearing register. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the adoption of these rules.

The record remained open for the submission of written comments for five working days following the date of the hearing, to November 8, 1993. Pursuant to Minn. Stat. § 14.15, subd. 1 (1992), five working days were allowed for the filing of responsive comments. At the close of business on November 16, 1993, the rulemaking record closed for all purposes.

The Board must wait at least five working days before it takes any final action on the rule(s); during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Board of actions which will correct the defects and the Board may not adopt the rule until the Chief Administrative Law Judge determines that the defects have been corrected. However, in those

instances where the Chief Administrative Law Judge identifies defects which relate to the issues of need or reasonableness, the Board may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Board does not elect to adopt the suggested actions, it must submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment.

If the Board elects to adopt the suggested actions of the Chief Administrative Law Judge and makes no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, then the Board may proceed to adopt the rule and submit it to the Revisor of Statutes for a review of the form. If the Board makes changes in the rule other than those suggested by the Administrative Law Judge and Chief Administrative Law Judge, then it shall submit the rule, with the complete hearing record, to the Chief Administrative Law Judge for a review of the changes before adopting it and submitting it to the Revisor of Statutes.

When the Board files the rule with the Secretary of State, it shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On July 6, 1993, the Board published a Notice of Intent to Adopt a Rule Without a Public Hearing and proposed rules for State Educational Loan Fund (SELF) and work study at 18 State Register 16-22.

2. In response to the published notice, the Board received 25 requests from persons for a hearing on the work study rule and 26 requests for a hearing on the SELF loan rule.

3. On September 22, 1993, the HECB mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice, all persons who requested a hearing on these rules, and all persons to whom additional discrectionary notice was given by the Board.

4. On September 23, 1993, the Department filed the following documents with the Chief Administrative Law Judge:

(a) a copy of the proposed rules certified by the Revisor of Statutes as published in the July 6, 1993 State Register;
(b) a copy of the proposed rules certified by the Revisor of Statutes as modified after the July 6, 1993 publication;
(c) the Order for Hearing with a copy of the Board's authorization for its Executive Director to proceed with this rulemaking;
(d) The Notice of Hearing proposed to be issued;

(e) The Statements of Need and Reasonableness (SONAR) for both the earlier rules and the rules as modified;
(f) the Notice of Hearing as mailed;
(g) the Board's certification that its mailing list was accurate and complete as of September 21, 1993, and the Affidavit of Mailing the Notice to all persons on the HECB mailing list;
(h) the Affidavit of Mailing the Notice to those persons to whom the Board gave discretionary notice; and,
(i) the names of persons who would represent HECB, witnesses the Board might call at the hearing, and the anticipated attendance and length of the hearing.

5. On September 27, 1993, a copy of the proposed rules were published at 18 State Register 913. Only the language modified from the publication on July 6, 1993, appears in the latter publication. The unaltered language is referenced in the latter publication.

6. On October 5, 1993, the Board filed a photocopy of the pages of the State Register containing the Notice of Hearing and the proposed rules with the Administrative Law Judge.

7. No copy of a Notice of Solicitation of Outside Opinion together with all materials received in response to that notice was submitted, since no such notice was published.

8. The HECB staff certified the Board's mailing list as accurate and complete as of September 21, 1993. The Board's mailing to that list occurred on September 22, 1993. The purpose of certifying the list is to ensure that all persons whose names are on the list on the day of mailing receive notice. While the Board's certification of the accuracy and completeness of the mailing list is technically defective, this is largely a matter of form because the entire actual mailing list itself was filed with the certification and the affidavit of mailing. Further, extensive "discretionary" notice was given--that is, a special mailing was sent to persons potentially interested who were not on the legal list.

In 1992, the Administrative Procedure Act was amended to add a provision excusing harmless errors. Laws of Minnesota 1992, Chap. 494, Sec. 4. Prior to the amendment, the extent to which the agency deviated from the requirement, whether the deviation was inadvertent, and the potential impact of the irregularity on the public participation were the factors which determined whether a procedural error was harmless. Auerbach, Administrative Rulemaking in Minnesota, 63 Minn.L.Rev. 151, 215 (1979); but see Johnson Bros. Wholesale Liquor Co. v. Novak, 295 N.W.2d 238, 241-42 (Minn. 1980). The statutory language directs attention to whether any person was deprived of an opportunity to participate and whether the agency took any corrective action.

Only one day elapsed from the certification to the mailing. There is no indication that the error was intentional. This was the second mailing on the SELF and work study rules. Most significantly, there is no indication that any person or association asked to be on the list and did not receive notice of this hearing. No person was deprived of an opportunity to participate. The error meets the statutory standard of harmless error under Minn. Stat. § 14.15, subd. 5(1); see also City of Minneapolis v. Wurtele, 291 N.W.2d 386,

391 (Minn. 1980); Handle with Care v. Department of Human Services, 406 N.W.2d 518 (Minn. 1987). Under Minn. Stat. § 14.15, subd. 5, this error must be disregarded.

Nature of the Proposed Rules and Statutory Authority.

9. Two different rules are sought to be adopted in this proceeding. The Student Educational Loan Fund (SELF) provides loans to qualified students for expenses incurred in pursuing higher education. Work study is a program which permits qualified students to earn money for expenses by performing compatible jobs while pursuing higher education. The proposed rules establish definitions and set standards for each of those programs. Minn. Stat. § 136A.04, subd. 1(8) authorizes the Board to "prescribe policies, procedures, and rules necessary to administer the programs under its supervision." The Board has statutory authority to adopt these rules.

Small Business Considerations in Rulemaking.

10. Minn. Stat. § 14.115, subd. 2, provides that state agencies proposing rules affecting small businesses must consider methods for reducing adverse impact on those businesses. No one has suggested that the rules proposed by HECB will adversely affect small business. The Board has complied with Minn. Stat. § 14.115, subd. 2.

Fiscal Notice.

11. Minn. Stat. § 14.11, subd. 1, requires the preparation of a fiscal notice when the adoption of a rule will result in the expenditure of public funds in excess of $100,000 per year by local public bodies. The notice must include an estimate of the total cost to local public bodies for a two-year period. The proposed rules will not require expenditures by local bodies of government in excess of $100,000 in either of the two years immediately following adoption. Indeed, there will be no costs incurred by local public bodies as a result of these rules. No notice of a cost to local public bodies is required in this rulemaking.

Impact on Agricultural Land.

12. Minn. Stat. § 14.11, subd. 2 (1988), imposes additional statutory requirements when rules are proposed that have a "direct and substantial adverse impact on agricultural land in this state." The statutory requirements referred to are found in Minn. Stat. §§ 17.80 to 17.84. The rules proposed by the Department will have no substantial adverse impact on agricultural land within the meaning of Minn. Stat. § 14.11, subd. 2 (1988).

Reasonableness of the Proposed Rules.

13. The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn.App. 1985); Blocker Outdoor Advertising Company v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn.App. 1984). The Supreme Court of Minnesota has further defined the burden by requiring

that the agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). In support of the adoption of the proposed rules, HECB staff has prepared a Statement of Need and Reasonableness (SONAR) for each rule. The staff has relied primarily on each SONAR as its affirmative presentation of need and reasonableness at the hearings. Their comments made at the public hearings and in written comments following the hearing supplemented that presentation. This Report will not discuss each rule part, or each change proposed by HECB from the rules as published in the State Register. The Report will focus on those provisions that the Administrative Law Judge or members of the public questioned. Persons or groups who do not find their particular comments in this Report should know that each and every suggestion has been carefully read and considered. A part not commented on in this Report is hereby found to be needed and reasonable and does not exceed the statutory authority for the promulgation thereof. It is further found that on those parts not commented on, the Board has documented its need and reasonableness with an affirmative presentation of facts. Any change not commented upon is found not to constitute a substantial change.

SELF LOANS

Rule 4850.0011 - Definitions

14. The proposed rules amend four definitions in Minn. Rule 4850.0011. Subpart 10 adds the requirement that a person be a permanent resident of the United States to qualify under the definition of "cosigner." The definition of "eligible student," subpart 15, is modified to conform the rule with Minn. Stat. § 136A.15, subd. 8. Subpart 15 is also modified to clarify what loans, if defaulted upon, would render a student ineligible for a SELF loan. Subpart 26, the definition of "maximum effort" [to obtain alternative loans], is modified by adding unsubsidized Stafford loans and other such federal loans. Subpart 29 clarifies when the transition period begins, allowing extension of that period, and stating that borrowers are billed only for interest incurred during the transition period.

15. The Board supported adding the requirement that a cosigner be a permanent resident of the United States as a reasonable assurance to lenders that the cosigner would be reasonably accessible when loan defaults occur. SELF SONAR, at 2 (Item G). This is a rational basis for the residency requirement. There is no evidence in the record that suggests eligible students will be unreasonably denied loans due to the requirement. The language in subpart 10 is needed and reasonable.

16. Two modifications were made to the existing definition of "eligible student" at subpart 15. The first, modifying the residence requirement, received no critical comment. The second alteration clarifies what educational loans, if defaulted upon, disqualify a student from receiving a SELF loan. Frank X. Viggiano, Executive Director of the Minnesota State University Student Association, Inc. (MSUSA), objected to the language as confusing and ambiguous. MSUSA suggested that the rule language would include the payment status of car loans or other consumer loans as well as educational loans. The Board staff insisted that the language of the rule, when read in

full, clearly states that only the payment status of educational loans is to be considered in determining a student's eligibility. The rule, in pertinant part, reads:

> "Eligible student" means a student who:
>
> . . .
>
> D. is not currently in default, as defined by each specific program, of any student educational loan program (Stafford loan, GSL, FISL, NDSL, Perkins, HPL, HEAL, ALAS/SLS, or other similar federal, state, private, or institutional student loan program) at the current or any previous school.

The staff contention is correct. The rule language unambiguously states that only the payment status of educational loans is to be used to determine student eligiblity. There is a need for adding the "similar ...." language because the names of loan programs change.

MSUSA was concerned that the rule could operate to preclude students from obtaining SELF loans where the educational institution had granted a "bridge loan." Such a loan is intended to cover the gap between the start of the school year and the time the regular loan funds become available. Loans are sometimes made for amounts as small as fifty dollars for required class texts. MSUSA asserted that denying eligibility for a large student loan due to a failure to repay a bridge loan (particularly where the bridge loan is intended to be repaid with the regular loan proceeds) would be unreasonable.

HECB staff describes rendering a student ineligible for a SELF loan if that student is in default on an existing educational loan as "sound fiscal policy." HECB Comment, at 7. They point out that credit checks are not performed on student applicants, only cosigners. Most "bridge loans" are granted by the educational institution itself which sets the terms of the loan. A bridge loan by definition should be "in default" only after the regular loan proceeds are available. It is highly unlikely that an educational institution would adopt or retain "bridge" loan repayment requirements that would prevent students from obtaining their regular loan funds. Subpart 15 is needed and reasonable, as proposed.

If the Board chooses, it could modify the proposed subpart to eliminate the possibility of the payment status of a bridge loan interfering with the approval of a SELF loan, by adding the following language to the end of subpart 15(D):

> not including any bridge loan or emergency loan granted at the beginning of the term in which the loan from the student educational loan fund is to be received;

The foregoing language is not required to be added to the subpart, but would clearly eliminate any possibility of a "catch-22" situation where a student

otherwise qualified for a loan could not receive it until the student pays off the debt the loan is intended to pay off. If the Board chooses to make this change, it would not constitute a substantial change. The new language would be needed and reasonable.

Rule 4850.0012 - Amount and Terms

17. The school agreements and student applications are governed by Minnesota Rule 4850.0012. Subparts 1 and 2 of that rule remain unchanged by this rulemaking proceeding. A modification of Subpart 3 was proposed in the July 6, 1993 publication of the rules to alter the order in which applications for loans are completed. Under the existing rules a student completes the loan form, delivers it to the eligible school, which then delivers the form back to the student, who obtains the cosigner's signature. The cosigner then sends the form to the executive director of the loan program. The change directs the eligible school to submit the application directly to the cosigner, rather than back to the student.

There was a technical error in this publication, indicating that the cosigner should complete the student's portion of the application form. In the Board's subsequent publication of the rule on September 27, 1993, in the State Register, the additional modifications from the earlier publication were indicated, but not the former changes proposed from the existing rule. In this rule part, for example, the latter publication indicates that only one word, student, is altered to cosigner. To discover what other changes exist in the proposed rule part, one must go back to the former publication and compare each part. MSUSA objected to this approach as too confusing for the interested public. The Board staff responded that the method of revision was chosen by the staff at the Revisor of Statutes Office prior to publication in the State Register. HECB staff declined to question the Revisor's methods in certifying the proposed rules.

At some point in the drafting process, confusion has entered and that confusion is reflected in the latter publication in the State Register. The process of drafting revisions to published rules is intended to reflect the changes made by an agency after a public hearing, where all interested persons are aware of the initial wording and the interest is focused on changes proposed from the rules as originally published in the State Register. The State Register pages which contain the proposed rule published on September 27, 1993 contain the following footnote:

> KEY: PROPOSED RULE SECTION -- Underlining indicates additions to the existing rule language. ~~Strike outs~~ indicate deletions from the existing language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULE SECTION -- Underlining indicates additions to the proposed rule language. ~~Strike outs~~ indicate deletions from the proposed rule language.

The proposed rules are published in the "proposed rule section" of the State Register.

In this rulemaking, the September 27, 1993 publication sets the standard for rules as originally published in the State Register. Thus, the publication should have had any part, subpart, or item reproduced in full where any change is proposed from the July 6, 1993 publication. That reproduction should contain the existing wording of the rule as promulgated and any changes proposed marked by strikeout or underlining. As applied to this rule part, the September 27, 1993 publication should contain both the application process changes and the replacement of "cosigner's" for "student's," not merely the latter change. As the rule was published any person reading the State Register could reasonably assume that the former changes to the rule part without underlining or strikeouts were somehow already adopted as promulgated rules.

This error is a defect in the procedural requirements of initating a rule hearing. As discussed to in Finding 8, above, the rule cannot be adopted unless the failure to comply with the procedural requirements is a "harmless error" under Minn. Stat. § 14.15, subd. 5. Several commentators complained of the difficulty in sorting out what changes were proposed. However, when questioned, MSUSA indicated that its objection was raised mainly to ensure that future rule proposals would be more clearly expressed. No commentator advocated starting over with new published notice or expressed an inability to understand what was being proposed. The mailing to interested persons, including all those who requested a hearing, contained the July 7, 1993 State Register publication with the subsequent modifications added in pencil. This mailing gave interested persons an accurate wording of the rule as proposed.

The mailing addresses both statutory tests, ensuring that persons were not denied an opportunity to participate and acting to cure the problem caused by the unusual manner in which the rule was certified by the Revisor of Statutes and published in the State Register. In this particular case, the unusual publication of the rules constitutes a harmless error.

Rule 4850.0014 - Amount and Terms

18. The minimum and maximum amounts of loans are specified in Minn. Rule 4850.0014, subpart 1. This rule is proposed to modify some of the existing rule provisions. The minimum loan amount is reduced from $1,000 to $500. Item A of the proposed rule sets out annual borrowing maximums for undergraduate students of $4,500 for grade levels one and two, and $6,000 for the remaining grade levels. The aggregate maximum for one undergraduate student is $25,000. These maximums are only reached if the cost of attendance less all other forms of financial aid is equal to or exceeds the applicable maximum loan amount. Similar limits are set for graduate students in item B. The annual limit is $9,000 for a graduate student. The aggregate loan limit is not expressly stated. Rather, Minn. Stat. § 136A.1701 is cited as the source of the aggregate limit.

19. An example is set out in item B of what the aggregate borrowing limits would be if the aggregate statutory limit is $40,000. That aggregate limit is the most recent statutory limit in Minn. Stat. § 136A.1701. The example in the rule consists of repeating the statutory aggregate limit for each grade level. The example is unnecessary and potentially confusing since the wording parallels that of the undergraduate aggregate limits in item A.

The undergraduate limits clearly show progression from year to year. By contrast, the graduate limits in the example consist of repeating $40,000 four times.

The treatment of graduate student aggregate limits is not similar to undergraduate student aggregate limits. The statute sets one aggregate limit for graduate students, regardless of what grade level is attained. The rule language must reflect the statutory approach, not distort the statutory approach. As proposed, one might think that the limits are in some fashion incremental, since there is no reason to repeat $40,000 in each instance. To correct this defect, the last sentence of item B must be deleted. If the Board wishes to include the $40,000 figure in the rule the last clause of item B can be amended to read:

> and the cumulative student loan debt of the graduate student (excluding PLUS loans borrowed on the student's behalf) does not exceed $40,000 for both undergraduate and graduate educations combined.

This language incorporates the statutory aggregate limit for graduate students without attempting to fit the statutory approach into an incompatible schedule.

20. David H. Anderson, Financial Aid Director of Moorhead State University (Moorhead); Representative Peter G. Rodosovich, Chair of the Higher Education Finance Division of the Minnesota House of Representatives; Representative Lyndon Carlson, Chair of the Education Committee of the Minnesota House of Representatives; and MSUSA objected to the limits set forth in item A as being inconsistent with the legislative intent behind the most recent statutory changes. As noted above, Minn. Stat. § 136A.1701, subd. 4 sets the terms and conditions of loans, and that subdivision states:

> The board may loan money on such terms and conditions as the board may prescribe. The principal amount of a loan to an undergraduate student for a single academic year shall not exceed $6,000. The aggregate principal amount of all loans made under this section to an undergraduate student shall not exceed $25,000. The principal amount of a loan to a graduate student for a single academic year shall not exceed $9,000. The aggregate principal amount of all loans made under this section to a graduate student shall not exceed $40,000.

The changes to the statute, adopted in Laws of Minnesota 1993, First Special Session, Chap. 2, Art. 2, § 15, use the word "shall" instead of "may," alter the maximum loan amounts from $4,000 to $6,000 annually and from $16,000 to $25,000 in the aggregate for undergraduate loans, and alter the maximum loan amounts from $6,000 to $9,000 annually and from $25,000 to $40,000 in the aggregate for graduate loans.

Representative Carlson, Representative Rodosovich, Moorhead, and MSUSA assert that the legislative intent behind the change of annual loan maximums

is to make the higher maximum amount available to students, regardless of whether those students are in their first year of study or their fourth year. Only undergraduate students are affected, since the graduate student annual maximums follow the statute for each year of graduate study.

The House of Representatives omnibus education finance bill set the maximum amount available annually for undergraduate loans at $4,500. The Senate omnibus education bill was amended to raise the limits to $6,000 annually and $25,000 in the aggregate. The conference committee passed on a reconciliation that adopted the Senate's limits. The only discussion on this issue came in relation to S.F. 818, which is an independent bill from the omnibus education bill. S.F. 818 was considered by the Senate Higher Education Finance Division on March 25, 1993. In a partial transcript provided by the Board (Exhibit 1), Senator Neuville moved to raise the figure from the Board's suggestion of $5,500 (for loans after the second year) to $6,000. There was no discussion of changing the Board's proposal of $4,500 for the first two years. The reason for raising the limit was to give the Board some "wiggle room for each of these numbers in the future, even above what you're proposing now." Ex. 1.

The legislative history is not extensive or free from ambiguity. There was no discussion in the House of any portion of the loan provisions. The House version of the omnibus education bill contained an annual maximum of $4,500. The language of Minn. Stat. § 136A.1701, subd. 4 authorizes the Board to set the terms or conditions of loans and authorizes loans which "shall not exceed $6,000." In the normal operation of SELF loans, many different loan amounts are granted, since the maximum amount of money for which a student is eligible varies depending upon the individual's financial situation.

The statutory language does not require the Board to offer loans of up to $6,000 to undergraduate students for each year of higher education, up to an aggregate total of $25,000. Rather, some lesser amounts appear to be assumed in the statutory language. The only question is whether the Board has authority to adopt some such lesser amount as a rule. The only legislative discussion over the statutory language suggests the annual limit was altered to $6,000 to provide HECB with discretion to set the upper limit of some loans. While the sparse legislative history is not conclusive, it is enough to support the Board's assertion that it has the statutory authority to set a lower maximum level for the first and second years of undergraduate SELF loans.

MSUSA asserts that setting a lower maximum loan level treats students at community colleges differently from other students. Since most community college programs are of only two years duration, such students will not become eligible for the higher loan limits enjoyed by students in four year programs. There is no difference between the treatment of all first year students and all second year students regardless of length of program. Patricia S. Holycross, Financial Aid Director of Itasca Community College (Itasca) supported the lower limits for the first two years as it applied to students attending less expensive institutions.

In its SONAR, HECB explained that the SELF program obtains certain benefits through keeping the default rate on SELF loans low. The 6.25% guarantee fee originally collected from students is no longer charged. The bonds issued to support the SELF program are rated Aaa by Moody's, resulting

in lower interest rates on SELF loans to students. To ensure that the low default rate on SELF loans is maintained, the Board seeks to limit the total amount of debt which can be incurred by students who either complete community college degrees or fail to complete either two year or four year degree programs. This limitation is based on the Board's experience that the earnings of persons in either of the two categories mentioned is inadequate to support the debt payments which would be required of higher loan totals.

HECB submitted statistical data in support of its position. SONAR, Appendix C (Exhibit I). The default rate from technical colleges, community colleges, and private two-year colleges is 3.11%, compared to 1.04% from private four-year colleges, state universities, and the University of Minnesota. Absent any information suggesting a different explanation for the disparity in default rates, the statistics demonstrate a rational basis for treating the first two years of borrowing differently from later years.

The Board's obligation in adopting rules is to support the proposed rules with affirmative facts demonstrating that the rule is needed and reasonable. Minn. Stat. § 14.14, subd. 2. This burden is met if the proposed rule is rationally related to the problem sought to be addressed by the rule. Manufactured Housing Institute v. Pettersen, 347 N.W.2d at 244. The Board has met its burden regarding the annual loan limits. The Board is charged with managing the SELF program to ensure that funds are available to as many students as are eligible and at the best interest rate possible. The proposed loan limit rule is rationally related to that end. The Board has demonstrated that proposed rule 4850.0014 is needed and reasonable.

Proposed Rule 4850.0017 - Repayment Procedures

21. The present wording of Minn. Rule 4850.0017, item H, requires the executive director of the loan program to provide to the borrower and cosigner an annual statement of outstanding principal and interest paid during the foregoing year. The proposed rule would add "upon request" to the existing item language. Frank E. Loncorich, Director of Financial Aid at St. Cloud State University (SCSU); MSUSA; and Moorhead objected to this addition. MSUSA suggested that advising borrowers and cosigners of principal and interest information is in keeping with "truth in borrowing" laws. By advising students of what interest was being paid, Moorhead opined that they would be encouraged to pay off their student loans faster.

In its SONAR, HECB maintains that discontinuing automatic principal and interest statements is in keeping with the federal practice. SONAR, at 7 (Exhibit I). The federal student loan programs ceased to provide such statements automatically when the interest payments were no longer tax-deductible. Id. Itasca supported the new language to keep down administrative expenses. There is no evidence that the existing system of automatically sending principal and interest statements encourages faster loan payments. Eliminating the automatic notices will save the SELF program up to $57,000. Id. The Board staff has shown that proposed rule 4850.0017 is needed and reasonable.

SCSU suggested that, at a minimum, the balance and interest information be included in the optional language available on the January billing

statement. The staff responded that each statement already includes a current principal amount. The language contained in legend of each statement is optional, but standard on each bill. Thus, personalizing statements by including the amount of interest paid by each individual borrower is not possible. The Board could require that legend to carry a telephone number for persons seeking that amount, though the exercise is not likely to result in a significant number of inquiries so long as the interest remains nondeductible for income tax purposes.

Scope of the SELF Loan Program

22. Joseph A. Becker, Director of the Becker Driver Training Facility (Becker), objected to the SELF loan program to the extent that funds were only available to institutions approved by the United States Commissioner of Education under the Higher Education Act of 1965 (Title IV). Becker maintains that this limitation discriminates against some Minnesota residents by limiting the disbursement of state funds to institutions which meet a federal mandate. Becker indicates two rule provisions, the definition of "eligible student" (Minn. Rule 4850.0011, subd. 15) and the application process (Minn. Rule 4850.0012, subd. 3), could be changed to correct this situation.

The changes Becker seeks cannot be made to the proposed rule, since the rules are directly governed by Minn. Stat. § 136A.15, subds. 6 and 8. The Legislature has made the decision to extend SELF funding only to institutions which qualify under Title IV. Minn. Stat. § 136A.15, subd. 6. Only students at those institutions may receive SELF loans. Minn. Stat. § 136A.15, subd. 8. Any rule proposed by HECB which differs from the statutory plan lacks statutory authority. Can Manufacturers Institute, Inc. v. State, 289 N.W.2d 416 (Minn. 1979). Making the changes to the rule proposed by Becker would constitute a defect in the rulemaking proceeding.

WORK STUDY

Proposed Rule 4830.2200 - Application and Distribution of Funds for Grants

23. The allocation formula for grant money to be distributed under the work study program is altered by proposed rule 4830.2200. The new formula requires the school to use resident full-time equivalent enrollments. Nonresident full-time equivalent enrollments are excluded from the formula by Minn. Stat. § 136A.233, subd. 2(a) and (b), which limits participation in the work study program to Minnesota residents. The rule is needed and reasonable as proposed.

Proposed Rule 4830.2300 - Work Study Grants

24. Proposed rule 4830.2300 modifies the existing rule by adding a statutory reference to one eligibility criterion. A preference is added for students who are enrolled with a course load of at least 12 credits. The existing requirement that a student employed during a period of nonenrollment must enroll full time is reduced to at least half-time. The Board explained that changes arise from new statutory language. Laws of Minnesota 1993, First Special Session, Chap. 2, Art. 2, Sec. 17 (codified as Minn. Stat. § 136A.233, subd. 2(a)). No commentators objected to these changes. Proposed rule 4830.2300 is needed and reasonable.

Proposed Rule 4830.2400 - Employment Terms; Amount of Grants

25. The work study program combines money from Board grants with the employer's payroll to pay eligible students for work performed. The existing rule, Minn. Rule 4830.2400, subp. 3, requires the employer to pay "not less than 30 percent" of the amount earned by each student. The actual amount, subject to the minimum level set in rule, must be determined between the school and the employer. The Board has proposed to change the minimum percentage of employer contribution to 25 percent.

MSUSA urged the Board to tie the employer contribution rate to the federal work study program rate. HECB staff related the history of federal employer contribution minimum rates. Under 34 C.F.R. § 675.26, the rate went from 20 percent to 25 percent, to 30 percent from 1989 to 1991. Board Comment, Attachment C. The rate for the upcoming academic year is 25 percent for standard jobs and 15 percent for community service jobs. Staff asserts that having one minimum rate avoids confusion, offers administrative flexibility, and avoids possible errors in determining which rate applies to a particular work study job. Board Comment, at 3. An administrative agency is not required to choose one option over another in rulemaking if both have been shown to be needed and reasonable. Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 233 (1943). The Board staff has shown that the proposed rate of employer contribution is needed and reasonable. There is nothing in the record to show that tying the state rate to the federal rate is required of the Board.

On the other hand, the Board should certainly consider the option of adopting federal fifteen percent rate for public service jobs, sought by the affected students. The federal distinction is self-evidently meritorious and administratively feasible. Such revision would also be needed, reasonable, and not a substantial change.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Higher Education Coordinating Board (HECB) gave proper notice of this rulemaking hearing.

2. HECB has substantially fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.

3. HECB has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).

4. HECB has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii), except as noted at Finding 19.

5. No additions or amendments to the proposed rules were suggested by the HECB after publication of the proposed rules in the State Register, and thus the rules as finally proposed do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, subp. 1 and 1400.1100.

6. The Administrative Law Judge has suggested language to correct the defect cited in Conclusion 4, as noted at Finding 19.

7. Due to Conclusions 4 and 6, this Report has been referred to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3.

8. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the HECB from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted except where otherwise noted above.

Dated this 14TH day of December, 1993.

HOWARD L. KAIBEL, Jr.
Administrative Law Judge

Reported: Tape Recorded; No Transcript.