

Commonwealth of Puerto Rico
DEPARTMENT OF LABOR
Office of the Secretary

no. 1240
May 2, 1969 - 11:00 A.M.
Approved: Leonardo Chardón
Secretary of State

By: Gloria I. Silva de Cruz
Assistant Secretary of State

REGULATION NO.

To regulate the imposition and collection of the contribution levied by the Puerto Rico Employment Security Act and by the Disability Benefits Act.

Section 1. EXTENT OF THE REGULATION

This regulation deals with the imposition and collection of the contribution levied by Section 8 of Act Number 74, approved June 21, 1956, known as the Puerto Rico Employment Security Act, and by Section 8 of Act Number 139, approved June 26, 1968, known as the Disability Benefits Act and the same is adopted by virtue of the authority conferred upon the Secretary of Labor by Section 14 of Act Number 74 and Section 6 of the Act Number 139.

Section 2. DEFINITIONS

Unless otherwise deduced from the context, the terms used herein shall have the following meaning in the interpretation of this Regulation:

All terms defined in the Puerto Rico Employment Security Act and in the Disability Benefits Act shall be construed in the sense in which they are therein defined.

a) "Wages paid" include both wages actually received by the worker and wages constructively paid. Constructively paid are: 1) wages credited to the account of the worker or separated for the worker without any substantial restriction in relation to time, form of payment or condition upon which the payment is to be made; 2) the available wages the worker can obtain at any time; 3) amount withheld for income tax, social security, Disability Benefits Act, and other similar purposes, and the cash value of all

remuneration in any medium other than cash.

b) "Pay period" means a period of not more than 31 consecutive days upon which a payment for service is usually made to a person by an employing unit.

c) "Deficiency" means the amount of any contribution to be collected as assessed by the Secretary:

1. When the employer has failed to file his Contribution Report,
or

2. In excess of the contribution reported by the employer in his contributions report, if such contribution excess is not the result of mathematical error in the sum of the wages reported by the employer and/or in the computation of the contribution based on the wages reported by the employer.

Section 3. INFORMATION TO BE FURNISHED TO WORKERS

a) Each employer shall post and maintain a poster about the rights and obligations of his worker under the Unemployment Insurance and Disability Programs, in a conspicuous place in each plant, branch or establishment maintained by him. Such poster shall be supplied by the Bureau and shall state that the employer is covered under the acts and contain information as to the conditions under which the workers may be eligible for benefits and the place where claims for benefits may be filed. It shall further contain information of the workers contributions to the Disability Benefits Program.

b) Employed less than full-time. Immediately after the termination of any week in which an employer, because of lack of work has furnished any worker in his employ less than full-time work, such employer shall give each such worker a copy of Form PR-SD-529, Notice of Low Earnings.

Section 4. RULES REGARDING THE PAYMENT OF THE CONTRIBUTION

The contribution levied under Section 8 of the Puerto Rico Employment Security Act and under Section 8 of the Disability Benefits Act shall be paid in the form and time as follows:

a) To whom paid. The contributions shall be paid by each employer to the Secretary of the Treasury of Puerto Rico.

b) Form of payment. Such contributions shall be paid by check, postal money order or legal tender.

c) Periods for the payment of the contribution. Beginning on January 1, 1957, for purposes of Act 74 and beginning July 1, 1969, for purposes of Act 139, except as otherwise provided in this regulation, contributions shall be paid for each calendar quarter, ending on March 31, June 30, September 30 and December 31, with respect to wages paid during such calendar quarters. Except also as otherwise provided in this regulation, contributions will accumulate and become due and shall be paid quarterly on or before the last day of the month immediately following the close of the calendar quarter in which the wages were paid.

d) The first payment of contribution by any employing unit which becomes an employer at any time during a calendar year shall, except as otherwise provided in this regulation, become due and shall be paid on or before the last day of the month next following the close of the calendar quarter in which such employing unit becomes employer, and shall include contributions with respect to all wages paid during such calendar year up to and including the last day of such calendar quarter. Those employing units which become employers as provided by the Disability Benefits Act at any time during the period from July 1, 1969 and through December 31, 1969 shall

include the contributions with respect to all wages paid during such period of time.

e) The first contribution payment of any employing unit which elects to become an employer shall, upon written approval of such election by the Director, become due and shall be paid on or before the last day of the month next following the close of the calendar quarter in which the employing unit becomes an employer, which shall be determined by the effective date of such election or the date of approval by the Director, whichever is later.

f) Whenever the Director has given written notice to an employing unit that it has been determined not to be an employer or that services performed for it do not constitute employment, and a legal obligation on the part of such unit to pay contributions is thereafter established, accrued contributions shall become due fifteen days after such employing unit is informed of its liability. Said contributions shall bear interest from and after the day following that on which they become due.

g) Whenever the Secretary finds with respect to a particular employer that the collection of contributions which have accrued during any completed or incompletd quarterly or monthly period may be jeopardized by delay in payment or by any other reason, he may advance the due date of such employers contributions to such date as he deems advisable.

h) The Director may require from every employer who fails to complete the report required by this Regulation or who fails to pay the contributions above mentioned on the dates provided by the Regulation, the immediate monthly payment of the contributions, instead of quarterly, unless he shows to the satisfaction of the Director good cause for the delay. The Director may, in his discretion, permit an employer who has been required to make monthly

payment of contributions to pay his contributions on a quarterly basis if he does not owe any previous contributions to the Unemployment Insurance Division.

i) When an employer fails to pay the contributions in full, the contributions paid shall be prorated proportionally and thus prorated shall be assigned to each one of the programs. The prorating for the Unemployment Insurance Program shall be based on 75% and for the Disability Insurance Program shall be 25%.

Section 5. INSTALMENT PAYMENT PLANS

a) The Secretary may, in his discretion, permit an employer to pay contributions in instalments. Any arrangement for payment in instalments shall make provision for the payment of interest on the past due delinquent contribution balances beginning with the first day of the second month following the period with respect to which such contribution accrued and ending with the date on which each such instalment is paid.

b) Instalment payment plans shall only be granted in those extraordinary cases of inability to pay because of financial difficulties which may be promptly verified.

c) The Director of the Bureau of Employment Security or his authorized representative is empowered to enter into instalment payment plans under the following conditions;

1. No instalment payment plan shall extend for a period of more than twelve months.

2. No payment plan shall be accepted unless the initial payment be, at least, 20 per cent of the contributions due.

3. An employer to whom a partial payment plan has been granted, shall be under the obligation to pay the contributions which may become due monthly.

4. An employer who does not pay his instalments under the terms agreed, or who does not pay the contributions that may subsequently become due, shall be understood as having failed to fulfill his agreement, and the Secretary shall be at liberty to proceed as provided in Section 9 of the Puerto Rico Employment Security Act and in Section 9 of the Disability Benefits Act.

5. No new instalment payment plan shall be granted to an employer who has failed to fulfill his agreement without giving reasons of force majeure or other verifiable reasons.

Section 6. HOLIDAY

If the day on which the payment of the contribution is due is a holiday, or the employer is unable to make the payment because the offices of the Bureau of Employment Security are closed during working hours, contributions shall be paid on the next working day. The same rule will apply when the day due for the payment is Saturday.

Section 7. INTEREST FOR LATE PAYMENTS

a) Whenever an employer fails to pay an amount of contributions within the time prescribed in this regulation, then he shall pay, in addition to the amount of such contributions, interest at the rate of 0.75 per cent per month or fraction of a month from and after such date and until payment is received by the Secretary of the Treasury.

b) Charge for Overdrawn Checks. In addition to any other provisions of the Act, an additional charge of \$5.00 shall be imposed and collected for each check which is returned to the Bureau, corresponding to employers who issued such checks for the payment of contributions, penalties and interests of unemployment insurance, without sufficient funds in their depository banks.

Section 8. EMPLOYERS CONTRIBUTION REPORTS AND EMPLOYERS QUARTERLY REPORT OF WAGES PAID.

a) Each employer subject to the payment of contributions shall file with the Bureau of Employment Security on or before the last day of the month next following the close of the calendar quarter on which the wages were paid, an Employers' Contribution Report and an Employers' Quarterly Report of Wages Paid, except as otherwise provided in this Regulation.

b) Such report shall only be made on the official Form PR-UI-10, Employers Contribution Report, in accordance with instructions contained therein. The employers subject to the payment of the contribution can obtain such form, free of charge, from the Department of Labor, Bureau of Employment Security, Barbosa Avenue 414, Hato Rey, Puerto Rico. 00917

c) Each employer subject to the payment of contributions shall complete and file with official Form PR-UI-10, Employers' Contribution Report, a copy of Form PR-UI-10-A, Employers' Quarterly Report of Wages Paid, for the calendar quarter on which they were paid, stating clearly the names of the workers and the wages on which the contribution was determined.

d) The employers report of wages paid shall be filed in the form and containing the information prescribed by the Secretary of Labor. Such forms can be obtained from the Department of Labor, Bureau of Employment Security, Barbosa Ave. 414, Hato Rey, Puerto Rico. 00917

Section 9. IDENTIFICATION OF WORKERS

Every subject employer shall be obligated to:

a) Ascertain the social security account number of each worker employed by him.

b) Inform the workers social security account number in the Employers' Quarterly Report of Wages Paid and in any report or statement required by the Bureau with respect to any worker.

c) If a worker does not have a social security account number, the employer shall request the worker to produce a receipt or any other document

issued by an office of the Social Security Administration stating the worker has filed an application for an identification number. The receipt shall be retained by the worker. The employer shall include in any report requested by the Bureau of Employment Security, the worker's name and address as shown on the receipt and the date it was issued.

d) If such worker fails to report his correct social security account number or to produce a receipt issued by an office of the Social Security Administration stating that he has filed an application for the social security account number, the employer shall inform the worker that Regulation No. 128 of the Internal Revenue Service, Department of the Treasury, under the Federal Insurance Contribution Act, provides that:

1. Each worker shall report to his employer his social security account number and his name exactly as shown on the account number card issued to him by the Social Security Administration.

2. Each worker who has not secured an account number shall file an application for an account number on Form SS-5 of the Department of the Treasury, Internal Revenue Service. As soon as an account number is assigned to him, he shall show the card to his employer. If the worker quits or is separated from his job before he has been assigned an account number, he may inform the employer such number as soon as it is assigned to him. If the worker does not have an account number, and has not shown the employer a receipt issued by an office of the Social Security Administration indicating that he has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5 completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement signed by the worker, showing the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex and color or race, and a

statement as to whether the worker has previously filed an application on Form SS-5 and, if so, the date and place of that filing. Furnishing the employer with an executed Form SS-5, or a statement in lieu thereof, does not relieve the worker of his obligation to make an application on Form SS-5.

e) As provided in Regulation No. 128 of the Federal Internal Revenue Service, Department of the Treasury, whenever pertinent, each employer shall inform his workers as follows:

1. Any worker who has lost his account number card may secure a duplicate card by applying at the field office of the Social Security Administration nearest his place of employment.

2. Any worker may have his account number changed at any time by applying to a field office of the Social Security Administration and showing good reasons for change.

3. Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, shall report such change or correction to any district office of the Social Security Administration,

f) If a worker fails to comply with these requirements, his employer shall execute a Form SS-5, "Application for a Social Security Account Number", or statement, signed by the employer, setting forth as fully and clearly as possible, the worker's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, and worker's sex, and color or race, and a statement as to whether an application for an account number has previously been filed by the worker and, if so, the date and place of such filing. Such statement of Form SS-5 completely filled and signed by the employer may be attached to any report required by the Unemployment Insurance Division with respect to a worker.

g) Any worker who has more than one account number, shall report all numbers to any district office of the Social Security Administration.

Section 10. HOW AND WHERE SHOULD THE CONTRIBUTIONS BE PAID AND THE CONTRIBUTIONS REPORT AND EMPLOYERS' QUARTERLY REPORT OF WAGES PAID BE FILED.

The contributions may be paid, and the contribution report with the employer's report of wages paid be filed in the Bureau of Employment Security on the date above specified or mailed to Barbosa Avenue 414, Hato Rey, Puerto Rico. 00917

When payment of contribution is received through the mail, it shall be deemed to have been made and received on the date shown by the postmark. These reports shall be completed in accordance with instructions contained thereon.

Section 11. PROCEDURE WHEN EMPLOYER FAILS TO FILE REPORTS

Whenever any employer fails to file completely filled, the reports required in Section 12 of this regulation, within the time and manner prescribed, or files an incorrect or insufficient report or if such report contains a false or fraudulent statement, the Secretary shall file such reports based on his own knowledge or by the information obtained through testimony or otherwise.

Section 12. RECORDS AND REPORTS

a) Each employing unit shall complete and file with the Bureau all reports required by the Secretary. Such reports shall be completed in accordance with the instructions accompanying any such report forms.

Each employing unit shall file with the Bureau of Employment Security a Report to Determine Employer's Status, Form PR-UI-1, stating clearly the information required in said form. This report shall be signed by the employing unit or its authorized agent.

Each employing unit which starts operations shall file the above indicated report on or before the last day of the month following the close of the calendar month in which it starts operations.

b) Every subject employer who, in any calendar year, terminates his business, or transfers or sells all of his organization, trade or business,

or business, or any part thereof; or except in the usual course of business, sells a substantial part of his assets, or changes the business name of the firm or address thereof, shall give notice in writing to the Bureau of Employment Security, indicating:

1. Name and address of the person to whom the business was transferred.
2. Part of business transferred.
3. Date of which the employer ceased to employ workers.

In cases of bankruptcy, receivership or similar proceeding, the employer shall report the name and address of the trustee, receiver or other official placed in charge of the business. All reports indicating the sale, termination, transfer or change of business name or address thereof, as well as the initiation of a bankruptcy or other proceeding, shall be sent to the Director within 20 days after termination, transfer, sale or change. Every employer shall also file any file any other affidavit or report which the Secretary or the Director deems necessary for the effective administration of the Act.

The acquirer of the whole or part of a business from an employing unit or from an employer shall, within 10 days from the date of acquisition, notify the Director of the Bureau of Employment Security the name and address of the former owner, type of organization (individual partnership corporation or other) and the date of the acquisition.

Upon the death of any employer, such report shall be made by his legally authorized representative. In the event no personal representative is appointed, such report shall be made by the heir or heirs succeeding to the interest of the employer.

Section 13. CONTENT AND KEEPING OF RECORDS

Each and every employing unit shall keep work records with respect to the workers employed during the last five years. Such records shall be open to inspection by the Secretary or his authorized representative. The same shall be kept available for the Secretary or his authorized representative to take copies thereof at all reasonable times.

In the event any employing unit maintains employment record elsewhere than in Puerto Rico, such employing unit shall designate an agent in Puerto Rico from whom such records may be requested. The employing unit shall deliver such records to such agent upon demand thereof by the Secretary or his representative.

Such record shall be kept in the manner deemed by the employing unit as best suited to the business transacted by it, but shall clearly show and contain true and accurate information with reference to the total amount of wages paid by the employing unit in each pay period; the address or addresses of each of the establishments in which the payrolls are kept and the following information with respect to each worker;

- a) Name
- b) Social Security Account Number
- c) Place of employment within Puerto Rico (city or town where the work is performed.) The place of employment of a worker who performs his work in more than one city or town shall be recorded as the place in which the employer has his base of operations.
- d) Each day in which the worker performed any service in employment.
- e) The number of hours worked for each pay period if working on an hourly basis.

- f) The beginning and ending date of each pay period.
- g) Wages paid or payable to him for each pay period and date of payment.
- h) Time lost each week due to inability for work.
- i) The date hired, re-hired, or returning to work after temporary separation from work, and date of separation.
- j) Special payments of any kind, including annual bonuses, gifts, prizes, etc., showing separately, money payments, reasonable cash value of other remunerations, the nature of such payments and the period during which services were performed.
- k) If wages were on hourly or piece rate basis, the records shall show for each day the wages earned on such basis and the date of payment thereof.
- l) The amounts deducted from the wages paid to each worker under Act. 139.

Section 14. DESTRUCTION OF RECORDS

Upon the written approval of the Secretary, the Director may order the destruction of any records of the Bureau of Employment Security which in his discretion are no longer necessary; provided that no such records shall be destroyed unless a period of at least five years has elapsed counting from the date on which the employing unit to which they refer has ceased to be a covered employer.

Section 15. DEFICIENCIES AND REMEDIES.

If the Secretary determines that there is a deficiency in the payment of any contributions, he will notify the debtor by mail the amount of such deficiency.

Within thirty (30) days after the notice of deficiency has been mailed, the employer may apply in writing to the Secretary to reconsider his determination stating in his application the grounds thereof, and the Secretary may afford an administrative hearing before a final determination is made.

Within fifteen (15) days after the mailing of notice of the final determination of the Secretary based either on the fact that the employer did not apply for reconsideration of the deficiency in the manner and within the period above specified, or of the confirmation in whole or part of the deficiency, the employer may appeal from said final determination to the Superior Court for the jurisdiction in which the appellant has his principal place of business.

If the employer does not agree to the deficiency or part thereof determined by the Superior Court of Puerto Rico, and wishes to take an appeal from said Judgment to the Supreme Court of Puerto Rico, he shall pay in full the deficiency so determined within the period established by law for an appeal before said Supreme Court. Unless this requirement is complied with the said court shall not acquire jurisdiction.

Section 16. REFUNDS

Any employer who is not satisfied that the contributions, interest or penalties paid by him were due in whole or in part, may make an application for refund within the year from the date on which such payment was made or within 3 years from the last day of the period with respect to which such payment was made, whichever is later. If the Secretary determines that such contributions, interest or penalties, or any portion thereof were erroneously collected, he shall refund such amount, without interest, or allow a credit thereof to the employer against subsequent contributions, interest or penalties in accordance with Section 9(d) of the Puerto Rico

Employment Security Act and in the Section 9(d) of the Disability Benefits Act.

Section 17. PENALTIES

Unless otherwise provided, any violation to the provisions of this Act, shall constitute misdemeanor and shall be punished by a fine not to exceed \$1,000, or imprisonment in jail not to exceed one year, or by both penalties, in the discretion of the court; and each day such violation continues shall constitute a separate offense.

When the violation consists in the failure to pay the contribution the action in court will be discontinued upon the payment of such contributions plus interest and surcharge.

Any employing unit or employer who makes a false statement knowing it to be false, in relation to any information required by the act or by this regulation shall be considered guilty of misdemeanor and punished by a fine of not more than \$1,000 or imprisonment in jail of not more than one year, or both penalties, in the discretion of the court; and each day such violation continues shall constitute a separate offense.

Any employing unit which fails to maintain records and to keep them for the time and containing the information prescribed by this regulation shall be considered guilty of misdemeanor and punished with a maximum fine of \$1,000 or imprisonment for a maximum of one year, or both penalties, in the discretion of the Court.

Every employing unit or employer who refuses to produce the reports required by the Secretary shall be guilty of misdemeanor and punished with a maximum fine of \$1,000 or imprisonment in jail not to exceed one year, or both penalties, in the discretion of the Court.

SECTION 18. SPECIAL PROVISIONS OF THE DISABILITY BENEFITS ACT

a) Information to be furnished to the Employee:

On each pay day, the employer shall indicate on the pay envelope, voucher, check or any other means, and whenever wages are paid, the deductions made for the payment of contributions, and such deductions must be made separately. At the end of the calendar year or upon termination of employment, as the case may be, the employer shall be liable to furnish each employee a written report including the total wages paid to such employee and the total contributions made.

Section 19. CONTRIBUTIONS CORRESPONDING TO EMPLOYERS AND AGRICULTURAL WORKERS AND TO EMPLOYERS AND SUGAR MILL EMPLOYEES.

The contributions corresponding to the employer and to the worker for wages paid for services specified in section 2(j)(1)(D) of the Disability Benefits Act shall be paid from public funds. Section 2(j)(1)(D) of the Act provides that these employers and workers are those engaged in sugar mills and agricultural work.

The Secretary of the Treasury shall transfer, not later than January 31, of each year, from any available public funds, to the Disability Benefits Fund an amount equal to 1% of the wages paid to agricultural workers and sugar mill employees for service performed under section 2(j)(1)(D) of the Act, amount which shall be determined on the basis of the total payroll reported by the farmers and sugar mills to the State Insurance Fund for the preceding fiscal year.

Section 20. CHAUFFEURS PLAN, NON DUPLICATION

No contribution shall be made under the Disability Benefits Act by the employers or by the employee for any week for which contributions are made on behalf of the employee to the Chauffeurs' Social Security Fund, in accordance with Act No. 428, approved May 15, 1950. The fact that contributions

Commonwealth of Puerto Rico
Department of Labor
Office of the Secretary

REGULATION NO. 2 BENEFIT PAYMENTS AND PRIVATE PLANS

Section 1 - INTRODUCTION

Extent of the Regulation: This Regulation deals with the procedures to be followed for the claiming and payment of disability benefits under the provisions of Section 3 of Act Number 139, approved June 26, 1968, and regulation of private plans to provide disability benefits under Section 5 of the Act. This Regulation is promulgated pursuant to the authority conferred on the Secretary of Labor by Sections 5 and 6 of the said Act.

Section 2 - DEFINITIONS

All terms defined in the Disability Benefits Act shall be construed in the sense in which they are therein defined.

Unless otherwise deduced from the context, the terms used herein shall have the following meanings in the interpretation of this regulation:

1. "Administrator" shall mean, with respect to a Private Plan, the insurance company, employer acting as self-insurer, or association, union, or trustee, acting as self-insurer, whichever has undertaken to pay benefits under the Plan.
2. "Benefits" means the sum payable to an individual under this Act with respect to his disability.
3. "Dependents" or "dependent relatives" means those persons who, according to the sequence established in Section 3.9 (d) of this Regulation, were directly, totally, or partially dependent for their support on the

earnings of the worker at the time of his death or at the time he was judicially declared incompetent.

4. "Division" means the Unemployment and Disability Insurance Division of the Bureau of Employment Security in the Department of Labor.

5. "Doctor" means an individual authorized to practice medicine or a chiropractor authorized under Act Number 493, approved May 15, 1952.

6. "Hospital" shall mean a duly-licensed hospital.

7. "Fund" means the Disability Benefits Fund established by this Act.

8. "Disability", with respect to an employee who is employed, means his inability, as the result of injury or illness, physical or mental, to perform the duties of his employment. With respect to a worker who is unemployed, disability shall mean his inability, as the result of injury or sickness, physical or mental, to perform the duties of any employment for which he is reasonably qualified by training and experience.

9. "Act" means Act Number 139 of June 26, 1968, known as the "Puerto Rico Disability Benefits Act".

10. "Bureau" means the Bureau of Employment Security of the Department of Labor.

11. "Private Plan" means a Private Plan approved by the Secretary for the payment of disability benefits as provided in Section 5 of the Act and the Regulations.

12. "Existing Private Plan" means a Private Plan as defined in this Regulation and in Section 5(d) of the Act.

13. "Public Plan" means the social insurance system established by this Act for the payment by the Fund of temporary non-occupational disability benefits.

14. "Claimant" means an individual who has filed a claim for disability benefits.

15. "Secretary" means the Secretary of Labor of the Commonwealth of Puerto Rico.

Section 3. PAYMENT OF BENEFITS

Section 3.1 - COMPENSABLE DAYS AND WEEKS

Benefits shall be paid weekly on the basis of the days of disability within the preceding calendar week. A "calendar week" is defined as the week from 12:01 A.M. Sunday to 12 M. the following Saturday.

Days of disability are compensable, that is, they are to accrue benefits, only after the end of the waiting period. The waiting period shall end with the seventh day of a period of disability or immediately prior to the first day of hospital confinement, whichever is sooner.

If there are seven compensable days of disability in a particular calendar week, the benefit payment shall be at the weekly benefit amount prescribed in the Act. If there are fewer than seven compensable days of disability in a particular benefit week, the benefit payment shall be at the rate of one-seventh of the prescribed weekly benefit amount for each day of compensable disability, computed to the next higher multiple of one dollar. if not already a multiple of one dollar.

No benefit shall be payable for any disability which began before July 1, 1969, except as provided in the last paragraph of Section 3.2 of this Regulation.

Section 3.2 - PERIOD OF DISABILITY

Successive periods of disability caused by the same or related injury or illness shall be deemed a single period of disability if the periods are separated by less than 90 days. The successive periods shall, for purposes of identification, be referred to as the earlier part and the recurrent part. Days of waiting period discharged in an earlier part shall not be required for the recurrent part.

The liability for payments for a recurrent part shall be that of the Private Plan or Public Plan which would be liable if the recurrent part were a new period of disability.

In order to secure benefits for a recurrent part of a period of disability, an additional claim must be filed by, or on behalf of, a claimant, with the same requirements as to time and evidence as is required of a claim for the beginning of the period of disability.

If the recurrent part of a period of disability began on or after July 1, 1969 but the earlier part began before July 1, 1969, the recurrent part shall be compensable or be counted toward the waiting period only if the claimant was employed after the earlier part.

Section 3.3 - DURATION OF THE BENEFIT PAYMENTS

Benefits shall be paid during the continuance of disability, but not for more than twenty-six (26) benefit weeks in any period of disability or in any period of fifty-two (52) consecutive weeks. Seven days of disability for which disability benefits are payable shall comprise a "benefit week".

Such days shall include days for which benefits would be payable but for non-duplication provisions (Section 3, subsection g) of the Act. (For example, if a worker received full wages for the first two weeks of disability and continued disabled for another 26 weeks, he will be entitled to benefits for only 25 weeks, since the second week of his disability would count against his 26-week limit). The fifty-two consecutive weeks shall be calendar weeks computed retrospectively with respect to each week for which benefits are currently being claimed.

A period of disability shall be deemed terminated when:

1. The claimant returns to work; or
2. The claimant is able to work; or
3. The claimant is not under the care of a doctor; or
4. The claimant is no longer certified as disabled by a doctor.

Benefit payments are further subject to other restrictions and limitations set forth in the Act.

Section 3.4 - DISABILITY DUE TO PREGNANCY

No person shall be entitled to disability benefits for any period of disability caused by a pregnancy or arising in connection with a pregnancy, except if the period of disability occurs after both termination of the pregnancy and return to insured work for at least two consecutive weeks. However, a pregnant woman may receive benefits because of a disability unrelated to her pregnancy.

Section 3.5 - CLAIM FILING

Every claim shall be filed with the Division, except that a claim under

a Private Plan shall be made to the employer or to the administrator of the Plan. A claim under the Public Plan, if mailed, shall be considered filed at the time it was put in the mail, with the necessary postage and the full address of the Division.

If, because of his disability, a worker is unable to file a claim, it may be filed in his name by any person authorized by the worker or his family.

Section 3.6 - PERIOD FOR FILING A CLAIM

A written claim for benefits must be filed within thirty days after the beginning of the period of disability. The claim shall be made in the form prescribed by the Director. To be complete, a claim must be accompanied or supplemented by a certification of a doctor who has examined the claimant.

Failure to furnish notice or proof within the time required shall not invalidate the claim, but no day of disability shall be recognized for benefits or waiting period if it preceded the filing of adequate notice by more than thirty days. The Director may, however, extend the period for the filing of the claim if he finds that there was good cause for failure to make timely filing. A claim filed more than one year after the period of disability began shall not be recognized as timely.

If a claim not duly completed is returned to the claimant for completion, he shall be allowed for completion and resubmission ten (10) days after the request for completion was mailed to him.

If a worker dies before filing a claim, it may be filed by his dependents within thirty days from the time of his death; if his disability occurred within the fifty-two week period preceding his death.

Section 3.7 - EVIDENCE NECESSARY IN FILING A CLAIM

A claim for benefits must be accompanied, or supplemented, by a certification by a doctor who has examined the claimant.

The certification on behalf of a claimant who is outside the Commonwealth of Puerto Rico at the time of disability will be acceptable if made by a physician or chiropractor (within the scope of his authorized practice) who is duly licensed in the jurisdiction in which the claimant is then residing.

A claimant must be examined by a doctor within the first eight days of disability, if full payment of benefits is to be assured. If a claimant is not examined by a doctor within the first eight days, then only the seven days preceding the examination shall be credited, that is, any earlier days shall not be counted toward either a waiting period or toward accrual of benefits.

The certification by the doctor shall include the approximate duration of the period of disability.

The Division or administrator shall advise the claimant of the termination date of the period for which benefits are being paid. If disability continues beyond such period, the claimant may file a claim for extension of the period. A supplemental certification of a doctor attesting to the additional period of disability must in any event be submitted.

Section 3.8 - FURTHER REQUIREMENTS

The Director or administrator may require, in his discretion, that the claimant:

a) Furnish evidence of medical and laboratory examinations, copies of hospital records, affidavits, certificates or evidence of the date when he became unemployed or when he returned to work, and any other kind of additional evidence relating to his claim for disability benefits, etc.

b) Undergo a medical examination by a physician designated and paid by the Division or administrator at a reasonable time and place. If a claimant refuses to furnish the above indicated evidence or refuses to undergo a medical examination by the physician as designated, this fact shall be considered prima facie evidence of claimant's inability to prove his disability.

[Section 3.9 - PAYMENTS TO DEPENDENT PERSONS UNDER PUBLIC PLAN.]

*Emended by
1596*

a) Upon the death of a claimant under the Public Plan or in the event that he has been judicially declared incompetent, and in the event it is found by the Division that the claimant has established his eligibility and has benefits payable to him which remain unpaid at the time of such claimant's death or on his having been judicially declared incompetent, as provided in Section 3 (1) of the Act, the Director shall pay the amount of such unpaid benefits upon the submission of a valid application for payment of benefits to dependent persons.

b) Application for payment of benefits to dependent persons may be made within six months from the date of the claimant's death, or finding of incompetence, or within six months from the date when the payment of benefits to such claimant has been finally authorized, whichever is later. If it is found that the person making the application for benefits due the deceased claimant or mentally incompetent claimant, is entitled to such benefits, a check shall be issued payable to such person and shall be delivered to the person making such application. All benefit checks issued directly to the deceased, or to the mentally incompetent claimant, which had not been cashed shall be returned to the Director for cancellation. If such checks cannot be obtained for delivery to the Director by the person who has applied for the benefits due to the deceased or mentally incompetent claimant, such failure shall be explained to the

satisfaction of the Director before any funds are paid in lieu thereof.

c) In the event an insured worker dies before filing his claim for benefits, such claim may be filed by his dependents in accordance with Section 3.6 of this Regulation. If it is found by the Division that the deceased worker was entitled to benefits, the Director must pay the amount of such benefits upon submission of a valid application for payments to dependent persons. This application must be made within the thirty days from the time of the death of the insured worker. If it is found that the persons making the application for benefits due to the deceased worker are entitled to such benefits, a check shall be issued payable to such persons and shall be delivered to the persons making the application.

d) The payment of benefits to persons who were dependent for their support on the beneficiary worker at the time of his death or when he was judicially declared incompetent, shall be made in accordance with the following sequence:

1. To the widow, and in her default, to the woman who has been living with him as a spouse; the father, mother, children including posthumous and adopted children.

2. If at the time of the death of the worker or when he is judicially declared incompetent none of the beneficiaries designated in subparagraph (1) exist, the dependent grandparents; foster father or mother; foster children; grandchildren or brothers.

3. If at the time of the death or declaration of incompetence of the worker none of the beneficiaries designated in subparagraphs (1) and (2) exist, the following dependent relatives shall be considered next in sequence: foster brothers, or relatives of the deceased or incompetent workers who are in the

third or fourth grade of consanguinity or first or second grade of affinity,

e) The beneficiaries in each of the groups mentioned in paragraph (d) hereinabove shall be compensated in equal portions, but the total dependent shall exclude the partial dependents.

Section 3.10 - PAYMENTS TO MINORS

A minor child shall be entitled to receive payment for disability benefits.

Section 3.11 - REPORTS TO LAST EMPLOYER BY DIVISION

A notice shall be mailed to the claimant's last employer that the worker has filed with the Division a new claim or an additional claim. The employer shall furnish the information requested by the Division and return the form, delivered or postmarked not later than ten days after the postmark date on the Divisions's notice.

Section 3.12 - REIMBURSEMENT OF BENEFIT PAYMENTS TO AN EMPLOYER

If an employee, otherwise entitled to disability benefits, was ineligible for such benefits from the Public Plan for one or more days because his employer paid him full wages for such days, an amount equal to the disability benefits otherwise payable for such days shall be paid to his employer, provided that:

1. The employer makes a written request for such reimbursement and such request is received by the Division prior to payment of benefits to the

employee for the week in question;

2. The evidence necessary to support the claim is submitted, as set forth in Section 3.7 of these Regulations;

3. The employer and the worker have verified that the wage payments were made;

4. The Director may deny reimbursement of benefits to an employer if he finds that the employer's plan or practice for payment of wages or salary during periods of disability is unduly restricted to owners or officers of the employer.

Section 4. DETERMINATION AND APPEALS

Section 4.1 - DISABILITY BENEFIT DETERMINATIONS - PUBLIC PLAN.

When a worker files a claim for disability benefits under the Public Plan, a determination shall promptly be made as to his eligibility as an insured worker and whether he meets the requirements of Section 3 of the Act.

Section 4.2 - NOTICE OF DETERMINATION - PUBLIC PLAN

A claimant shall be given written notice of any decision on his claim and of the reason for any denial of his claim. Any denial shall be accompanied by notice informing the claimant of his right to appeal and of the procedures for filing and appeal.

Section 4.3 - REQUEST FOR RECONSIDERATION - PUBLIC PLAN

In case of a determination, the claimant may request a reconsideration of it or he may establish an appeal as set forth hereinafter. If the

claimant requests a reconsideration, the Director may allow it, in his discretion, if it was presented within ten days from the date the notice of determination was delivered to the claimant or mailed to his last known address. This period may be extended for good cause. The Director may reconsider a determination motu proprio within ten days from the date of the determination, provided, that subject to the same limitations, he may reconsider a case which has been referred to a referee for decision.

At any time within one year from the date of a determination on a claim for disability benefits, the Director may motu proprio reconsider such determination if he finds that an error in computation or identity has occurred in connection therewith or that there are additional wages pertinent to the claimant's insured status which must be taken into consideration or if such determination of disability benefits was made as a result of a nondisclosure or misrepresentation of a material fact. The Director may motu proprio reconsider a determination at any time within two years from the end of any week with respect to which benefits or waiting period credit has been allowed or denied if he finds that such benefits or waiting period credit was allowed or denied as a result of a nondisclosure or misrepresentation of a material fact.

Section 4.4 - FILING APPEALS - PUBLIC PLAN

Any party entitled to notice of determination or redetermination may appeal from it within ten days from the date such determination or redetermination was mailed, or delivered, to his last known address. Any appeal shall be made in writing and presented to the Division within ten days.

Section 4.5 - APPEALS FROM DETERMINATIONS MADE UNDER PRIVATE PLANS

If the claimant does not agree with a disability benefits determination made by the employer or administrator under a Private Plan, he may appeal from such determination before the Division in the same manner as he would appeal from a determination made by the Director, as provided in this Regulation.

Section 4.6 - DISQUALIFICATION OF REFEREES

No referee, special referee or the Secretary shall participate in the hearing of any appeal when he has any interest in the outcome of the proceedings or has had any direct participation in the decision appealed from or has any other interest or prejudice which shall impair a fair and impartial hearing. A challenge to the interest or prejudice of a referee, special referee or the Secretary and the ruling on it shall be made a part of the record of the hearing.

Section 4.7 - WITHDRAWAL OF APPEALS

Any claimant who wishes to withdraw an appeal before the referee shall request it in writing on the appropriate form stating the fact that he does it of his own will. The referee may approve such withdrawal if the record, basis for the appeal, supports the validity of the determination, and to the best of his knowledge the request for withdrawal shows absence of coercion or fraud.

Section 4.8 - NOTICE OF SCHEDULING OF APPEALS

The scheduling of appeals shall be made promptly. Written notice, specifying the time and place thereof, and the questions which are known to

be in dispute, shall be mailed to the parties at interest at least ten days before the appeal takes place. Provided, however, that a shorter notice period may be allowed if not prejudicial to the parties.

Section 4.9 - CONDUCT OF HEARING

The proceedings shall be informal and shall provide the parties with an opportunity for a fair hearing before an impartial referee, and shall be conducted in such a manner as may be best suited to determine the claimant's benefit rights. The hearing shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public.

Section 4.10 - STIPULATIONS

The parties may, subject to the approval of the referee, make stipulations as to all or portions of the facts involved in the proceedings.

Section 4.11 - RIGHTS OF PARTIES

A party's right to a fair hearing shall include the right to have the claim decided upon testimony and other evidence given or introduced at the hearing and included in the record, to examine, to explain and to rebut, such evidence, to examine and cross-examine witnesses with respect to such evidence, to call and secure the attendance of witnesses for examination or cross-examination, to introduce any evidence pertinent to the claim, and to present argument.

Section 4.12 - CONSOLIDATION

The Secretary of Labor or any referee may consolidate the claims and conduct joint hearings thereon where the same or substantially similar evidence

is relevant and material to the matter in issue unless consolidation would prejudice the substantial rights of any of the parties involved in such consolidation. Notice of consolidation and of the time and place of hearing shall be given or mailed to the parties or their representative.

Section 4.13 - SUBPOENAS

The Secretary of Labor, any referee or special referee may issue a subpoena to compel the attendance of a witness or to compel the production of books, accounts, papers, records and documents at any hearing. A subpoena may be served by any of the parties to a proceeding or by any individual authorized by one of the parties for this purpose, and certification of service thereof shall be sworn to and placed on file in the proceedings, however, no fee shall be allowed for such service.

Section 4.14 - WITNESS FEES

Witnesses subpoenaed for any hearing shall be paid witness fees by the Director in accordance with the following: witness fees shall be paid at the rate of one dollar and twenty-five cents (\$1.25) for each day of appearance. Such witness fees may be claimed on the appropriate forms not later than the time of hearing and shall be certified to by the witness and approved by the referee, the special referee or the Secretary of Labor. However, under no circumstances shall parties to a hearing be granted witness fees. Witnesses who are salaried employees of either the Government of the United States or the Commonwealth of Puerto Rico or any municipality or government instrumentality shall not be granted witness fees.

Section 4.15 - POSTPONEMENTS, ADJOURNMENTS, CONTINUANCES AND REOPENINGS

Any hearing before a referee, a special referee, or the Secretary of Labor shall be postponed, continued or adjourned when such action is necessary to afford the parties a reasonable opportunity for a fair hearing. A case shall be reopened for further hearing upon a showing by a party of good cause for failure to appear at the scheduled hearing, for the presentation of newly discovered evidence, or other sufficient cause. In the event of such action, notice of time and place of the second hearing shall be given the parties or their representatives.

Section 4.16 - PROCEEDINGS, APPEALS BEFORE THE SECRETARY OF LABOR

With respect to appeals before the Secretary of the referees' decisions in cases provided by the Act, the proceedings described in Sections 4.10, 4.11, 4.12, 4.13, 4.14, and 4.15 shall apply as to what is not otherwise provided by the Act.

Section 4.17 - FEES OF ATTORNEYS AND MEDICAL WITNESSES

Any medical witness, attorney or agent subpoenaed for a hearing or who takes any other action that a party could take under this Regulation, in his representation, may charge to a claimant, to the Division, to the employer or insurer that rate established by the referee, special referee or the Secretary, for appearance at a hearing held pursuant to this Regulation. Upon showing of good cause, the referee or the Secretary may not allow a person to represent a party in which case this shall be part of the record in the proceedings.

Section 5. PRIVATE PLANS

Section 5.1 - APPLICATION FOR A PRIVATE PLAN

An employer may apply to the Director for approval of a private plan for

payment of disability benefits. Such an application must be filed on a form and in a manner prescribed by the Director not later than February 28 of the year when the plan is to be effective. The effective date of a private plan shall be July 1.

The Director shall furnish written notice to the employer of approval or disapproval of the private plan prior to its proposed effective date. If the plan is disapproved, the reason for disapproval shall be set forth.

A board of trustees, union, or association may submit a plan of disability benefits for approval as a private plan under the Act. If approved, such a plan will serve as an approved private plan for an employer participating in the plan, insofar as the unit of employees covered by such a plan is concerned, provided the employer files with the Director notice of his commitment to contribute to such plan and such commitment is confirmed by the union, association, or trustees administering such plan.

Section 5.2 - REQUIREMENTS FOR APPROVAL OF PRIVATE PLANS

To secure approval, a private plan must comply with each of the following requirements to the satisfaction of the Director:

A. The plan must provide benefits which are in every respect equal to, or more favorable than, the benefits required under Section 3 of the Act.

A plan may not be less favorable for any employee employed within the unit covered by the plan with respect to eligibility, waiting period, maximum duration, benefit amount, disqualifications or limitations, contributions, or in any other respect. A plan shall be deemed less favorable for an employee if for any day of disability he is entitled to a lesser benefit than he would

receive under Section 3 if his employment were not covered by the private plan.

However, a private plan may be accepted as complying with this requirement with respect to weekly benefit amount if it provides a schedule of weekly benefits equal to at least the following: \$2.00 plus 50 percent of each employee's regular fulltime weekly wage or salary, with a minimum weekly benefit amount of \$10.00 except that the minimum for any worker who regularly works for less than 20 hours a week shall be \$7.00. Such a schedule may, but need not, provide a weekly benefit higher than \$78.00. A schedule of benefits equivalent to, or better than, the foregoing formula shall be acceptable, notwithstanding the fact that a particular employee may receive a benefit thereunder less than would otherwise be required under Section 3 of the Act.

For employees paid on a monthly basis, a schedule will be acceptable if the weekly benefit is equal to at least \$3.00 plus 11.5 percent of the monthly wage or salary, subject to the minimum and optional maximum amounts stated above.

The regular full-time weekly wage or salary shall be the wage or salary regularly paid to the employee for his normal work week. If the rate of hourly or weekly earnings is irregular, the average weekly earnings of the employee in the employment covered by the plan for the eight weeks preceding the period of disability, exclusive of any week when his earnings were less than \$15.00, may be used as the full time weekly wage or salary. If regular full-time weekly wages or salaries can not be equitably or practicably determined, a private plan may be accepted if it is established to the satisfaction of the Director that its schedule or weekly benefit amounts, but for slight exception, would provide benefits at least equal to those that would be paid under Section 3,

Subsection (d) of the Act.

B. The plan must cover all of the employer's employees within the Commonwealth or a reasonable classification of its employees. Among other criteria, a classification will be deemed reasonable if it is based on separate establishment, type or location of work, or collective bargaining practices. A classification defined by sex, age, or wage or salary level will not be deemed reasonable for purposes of a private plan.

C. The plan may not require any greater contributions from the employees than are required under Section 8 of the Act.

Additional contributions by the employees under a private plan for temporary disability benefits may be approved by the Director, upon application in advance by the employer, if the Director finds that (I) the additional contributions are reasonably related to the actual cost of additional cash temporary disability benefits (such as reduction in waiting period, a higher weekly benefit amount, and/or a longer maximum duration); (II) the total contributions of the employees toward the disability benefit plan do not exceed the contribution of the employer; and (III) the additional contribution is deducted from the wages or salary of an employee only if he has consented to such deduction in writing or such deductions have been agreed to by the duly certified or recognized union, if any, representing the employees involved. A plan which has been authorized to use additional contributions from the employees shall be required to make such report or reports as the Director deems advisable so that the propriety of the additional contributions can be verified. Employee contributions for hospital, medical, surgical or any other type of benefit (other than cash benefits to indemnify for loss of earnings during temporary

disability) are not subject to the Disability Benefits Act.

D. If a private plan is to involve contributions by the employees, the employer must submit to the Director, in form prescribed by him, evidence that the employees to be covered by the plan have been advised in writing of the terms of the plan and that a majority have agreed in writing to be covered by it, rather than by the Public Plan. If such consent was given by ballot or other type of election, the employer's record of such consent must be available⁵¹⁰⁰ for inspection by the Director for one year after the date when approval of the plan was requested. Such evidence shall also be required if the plan is to be modified by any increase in any employee's rate of contribution or by any decrease in benefit rights for any employee.

E. The plan must be underwritten either through a contract with an insurance carrier or through a plan of self-insurance approved in advance by the Director.

I. To fulfill the requirements of the Act, an insurance contract must: (a) contain a provision guaranteeing that the benefit payments will in⁵²¹⁰ every respect conform to the requirements of the Act as they apply to private plans; (b) provide for the insurer to pay all of the assessments levied by the Secretary on private plans under Section 5 (a) of the act; (c) provide for the insurer to make all of the reports required by the Director of administrators of private plans; (d) provide that the insurer shall remain liable for the payment of benefits to any employee covered by the policy and the private plan for any period of disability commencing, during the continuance of the private plan, after the policy⁵³¹⁰ became effective and prior to the

termination of the policy; and (e) provide that the insurer shall not cancel the contract of insurance, prior to its expiration date, until at least 15 days after notice of cancellation, on a date specified in such notice, is filed with the Director and also served on the employer; provided, however, if insurance with another insurer becomes effective prior to the cancellation date stated in the notice. The cancellation shall be effective as of the date of such other coverage.

II. To be permitted to self-insure, the employer, union, association, or trustees must: (a) include in the plan a provision guaranteeing that the benefit payments will in every respect conform to the requirements of the Act as they apply to private plans; (b) satisfy the Director as to its financial responsibility; (c) post with the Director security for fulfillment of his responsibilities under the plan; (d) agree to pay assessments levied by the Secretary on private plans under Section 5 (a) of the Act; and (e) agree to make all of the reports required of private plans by the Director.

Security shall consist of cash, a bond of a surety insurer, or bonds duly guaranteed by the Government of the United States or by the Commonwealth of Puerto Rico. The amount of the security shall be determined by the Director on the basis of the number of employees to be covered, the risk involved, the financial standing of the employer, and any additional factor which the Director may deem necessary. If registered bonds are posted, they must be registered in the name of the Secretary of the Treasury. Interest on any security held shall be remitted to the employer, union, association, or trustees, as the case may be. If the bond of a surety company is posted with the Director, it must be in the form and penal sum acceptable to the Director.

F. The plan must remain liable with respect to any disability commencing while the employee is employed under it or within fourteen (14) days after the termination of such employment, but not after the employee, following termination of such employment, has become employed in an employment not covered by the plan.

G. The employer or administrator must undertake to observe any conditions or pay to the Fund any assessments determined by the Secretary to be necessary to avoid actuarial disadvantages to the Fund because of the establishment of the private plan; to pay assessments levied by the Secretary to help pay the cost of disability benefit payments by the Fund to workers who become disabled while unemployed or while employed in non-insured employment; to pay assessments to meet the Fund's cost of administration with respect to private plans.

The plan must also undertake to pay assessments for the pro-rata refund of excess contributions by an employee, who, by virtue of two or more employments in a calendar year, has contributed more than the appropriate maximum contribution.

H. The administrator must undertake to furnish to the Division the reports required under these regulations and any other reports required by the Director.

I. The administrator must undertake to give each employee covered by the plan a certificate or written description of the benefit provisions of the plan, including any uniform description of benefit rights under the Act as may be prescribed by the Director, and to give each claimant written notice of his eligibility or ineligibility, in the form and manner required by the Director, including notice of the right of the claimant, if he is dissatisfied with the determination, to appeal to the Secretary.

Section 5.3. EXISTING PRIVATE PLANS

A "plan of temporary disability benefits" for purposes of this subsection shall be a plan that provides an employee with a cash payment to indemnify for loss of wages or salary because of disability (other than disability arising out of, and in the course of, employment), provided the waiting period is not longer than one week and the maximum duration for payment of benefits is not less than 10 weeks per period of disability or per period of 52 consecutive weeks.

An existing private plan shall be accepted as an approved private plan, regardless of the requirements of this Act, without being required to provide benefits equal to the benefits required under Section 3 of the Act, or to show evidence of consent by a majority of the employees covered, provided it conforms to the following:

(a) The employer, under the terms of a written agreement in effect on June 26, 1968, is not free for some specified period of time after June 30, 1969 either to modify the plan or discontinue it or discontinue his contributions to it or if at June 26, 1968, the employer was obligated not to modify or discontinue the plan or his contributions to it, during some period of time after July 1, 1969. The exemption for an existing private plan from the requirement that benefits be at least equal to the benefit required under Section 3 of the Act shall not extend beyond the earliest date when the employer has the right to modify the plan, discontinue it, or discontinue his contributions to it, without benefit of any subsequent renewal or extension. The mere existence of an insurance contract shall not be deemed an obligation which the employer may not modify or discontinue.

(b) Such plans must be filed in writing with the Director by May 1st, 1969 for review and compliance with Section 5(d) of the Act.

(d) If an employee of an employer with an existing plan, within the meaning of these regulations, is not eligible for benefits under the existing plan because he has had an insufficient period of prior employment (although he would be eligible for benefits under Section 3(b) of the Act if he were covered by the Public Plan) the employer must cover him for benefits through either (a) extension to such an employee of the benefits of the existing plan, (b) another private plan, or (c) the Public Plan. If such an employee is covered through extension of the existing private plan, his benefits shall be not less than the lesser of: (I) the benefits provided under the existing private plan or (II) the benefits required under Section 3 of the Act. If for any day in a calendar quarter, such an employee is not covered by a private plan, the employer shall pay the contribution required under Section 8(a) of the Act for the whole of such quarter with respect to such employee. 6/400

Section 5.4. NOTICE OF ELIGIBILITY OR INELIGIBILITY UNDER A PRIVATE PLAN

The administrator of a private plan shall give a claimant written notice of eligibility of ineligibility within five business days after the end of the first week for which benefits are due or within ten business days after completed claim has been filed, whichever is later.

Section 5.5.- DISPOSITION OF SECURITY FOR SELF-INSURED PLAN

The security required by Section 5.2 of this Regulation shall be applied by the Director to the payment of any unpaid obligations under the private plan. Upon termination of a self-insured private plan or upon withdrawal of approval of a self-insured private plan, as provided elsewhere in this regulation, the Director shall retain the security deposited thereunder and the surety bond shall be cancelled for a corresponding period. The Director shall then make a final assessment of the charges against the employer. If the employer owes an assessment to the Fund, and the amount is not paid within thirty days after the date of notice to the employer, the Division may collect the amount of the assessment out of the security deposited, or may claim such payment from the surety insurer. If there is any amount or security remaining thereafter, it shall be returned to the employer, his legal representative or his assignee, and the surety insurer shall be discharged of its obligations.

Section 5.6 - REPORTS FROM PRIVATE PLANS

In applying for approval of a private plan an employer shall submit such information as is required by the Director.

Each administrator shall mail to the Division a copy of any notice of ineligibility sent to a claimant, at the same time such notice is sent to a claimant.

Each administrator shall, within fifteen days after the final payment for a period of disability, file with the Division a report as to the claim in the form prescribed by the Director.

Each employer or administrator shall file by September 30, 1970 and by each subsequent September 30 a report, in form prescribed by the Director, of experience under the private plan or plans for which it is responsible for the year ended the preceding June 30.

For each insured plan, the following shall be reported:

- (a) premiums earned
- (b) dividends or retroactive rate credits earned
- (c) benefit payments incurred, with a breakdown between benefit payments and reserves for incurred claims payments
- (d) each of the assessments incurred under the Disability

Benefits Law

- (e) expenses incurred
- (f) employee contributions accrued.

Each self-insured plan shall submit a report which is to include a report which is to include the following:

- (a) employee contributions accrued,
- (b) benefit payments,
- (c) estimated benefit payments incurred but not paid at the end of the year,
- (d) expenses incurred, with breakdown by type of expense,
- (e) funds specifically allocated to the plan on hand (I) at the beginning of the year and (II) at the end of the year.

The responsibility for submitting the required reports shall be that of the employer; or of the union, association, or trustees that established the private plan. However, that responsibility may be assumed by the insurance carrier underwriting the plan. In submitting such reports, an insurance carrier may aggregate the experience of all of its private plans under the Act, except that separate reports shall be filed for each plan with 100 or more employees in any one calendar quarter.

Reports filed under this section of the regulation as to any one plan shall be confidential and not available to any person, except to an employee of the Division utilizing such data for appropriate statistical analysis by the Division.

Section 5.7 - REVIEW OF PRIVATE PLANS

Each private plan may be reviewed by the Division at any time the Director deems necessary to insure the continued compliance with the Act and the Regulations.

Section 5.8 - WITHDRAWAL OF APPROVAL OF A PRIVATE PLAN

The Director may at any time withdraw or revoke the approval of any Private Plan, if he finds that:

1. There is danger that benefits accrued, or to accrue, will not be paid; or
2. The security posted by the administrator of a self-insured plan for the payment of benefits is insufficient; or
3. There has been a failure to comply with the terms and conditions of the Private Plan; or
4. The payment of benefits is not made in timely manner; or

5. The employer, union, association, or trustees providing the benefits under the Act is deriving a profit from the Private Plan; or

6. The employer or insurer or any other party responsible for the payment of benefits, as the case may be, has failed to comply with the Act and/or the Regulations.

A Private Plan shall not be terminated by the Director for any of the foregoing reasons without first giving the employer and administrator notice and an opportunity to be heard. Moreover, within ten days after the mailing of a notice of termination, the employer or administrator may request an administrative hearing by the Secretary, whose decision shall be final, except for judicial review as provided in the Act. If the decision of the Director is not appealed to the Secretary within the ten-day period, the Director's decision shall be deemed to be that of the Secretary.

A Private Plan shall be terminated if it is insured and the insurance company has given notice of cancellation of the policy because of non-payment of premium, provided the Director has been given notice by the carrier at least fifteen days in advance. If the insurance policy for a Private Plan has been cancelled, the Private Plan may continue only if the Plan is continued, without any lapse in coverage, with a substitute insurance carrier or under approved self-insurance.

Notice that a Private Plan has been terminated shall be posted by the employer in a visible place, for not less than thirty days, in the place (s) of work, so that the employees covered by the Private Plan are aware of its termination.

The Director shall assess the employer for the contributions required

under Section 8 of the Act for any calendar quarter when a Private Plan was found to be in default of its obligations to pay benefits.

Section 5.9 - TERMINATION AND MODIFICATION OF A PRIVATE PLAN

A Private Plan may be terminated, for all or a class of employees, as of July 1, by notice filed by the employer or by the union, association or trustees as administrator, with the Director on or before the preceding February 28.

A Private Plan which requires employee contributions shall be terminated as of the beginning of any calendar quarter after it has been in effect for at least one year and after the Director determines, upon evidence presented to him, that a majority of the employees covered by the plan want it to be terminated.

The provisions of a Private Plan may be modified at any time after submission to, and approval by, the Director, provided the modifications meet all the requirements with respect to the approval of Private Plans, including notice to the employees and, if employee contributions are involved, approval by a majority of the covered employees.

Section 5.10 - ADMINISTRATIVE HEARINGS

Any employer or administrator aggrieved by a determination of the Director with respect to the approval or disapproval, termination, or scope of a Private Plan shall have the right to request of the Secretary an administrative hearing, if such request is made within ten days after the mailing of the Director's determination.

Section 5.11 - EXCHANGE OF INFORMATION BETWEEN PRIVATE PLANS AND PUBLIC PLANS

If a Private Plan needs information concerning a claimant's base year

earnings or previous benefits, including unemployment insurance and workmen's compensation, in order to determine his benefit rights, the administrator shall make application therefore to the Division in the appropriate form prescribed by the Director and the Division shall furnish such information to the administrator. If the Division needs information concerning a claimant's previous benefits in order to determine his benefit rights, it shall enquire of the appropriate administrator, which shall furnish the requested information. If a Private Plan needs information concerning a claimant's employment under another Private Plan or benefits from another private plan, it shall direct an appropriate request to the Division and the Division shall, to the fullest extent possible and relevant, furnish such information.

Section 5.12 - CONTRIBUTIONS OF EMPLOYEES

The amounts deducted from the employees' wages as their contributions under an approved Private Plan shall be considered as trust funds and may be used only for providing benefits under the approved Private Plan and for the payment of any other costs and assessments determined by the Secretary under the law in relation to the approved Private Plan. No part of the employee contributions or the income or balance thereof may be used for the benefit or profit of the employer or of any union, association, or board of trustees.

Section 5.13 - DISPOSITION OF ACCRUED EXCESS OF EMPLOYEE CONTRIBUTIONS

An employer may use any of the following methods or combination thereof for the disposition of any accrued excess of employee contributions over

the net cost of the Private Plan:

1. Reduce or waive employee contributions for a sufficient period to dispose of the excess.

2. Refund the excess to employees covered by the Private Plan in a fair and equitable manner, provided that such action must be approved by the Director before it is carried out.

3. Increase the disability benefits provided by the Private Plan temporarily or permanently, without additional cost to employees.

If the amount of the excess of the contribution of the employee is so small that the use of the disposition methods above mentioned would be impracticable, the amount may, with the approval of the Director, be retained and added to any accrued amounts until there is sufficient amount to permit the use of any of the foregoing methods.

An excess of employees' contributions in any one year may be offset, in whole or in part, by employer cost in the preceding or succeeding year, provided that employer cost for any one year may be used for such an offset only once.

Section 5.14 - REFUND OF EXCESS EMPLOYEE CONTRIBUTIONS

If an employee was employed in more than one covered employment in one or more weeks and, as a result, the deductions from his earnings in the calendar year exceeded the sum of (a) one-half of one percent of his total earnings in covered employment (disregarding any part of his total earnings in covered employment in excess of \$7,800) plus (b) any additional contributions approved under a Private Plan for additional benefits, then the excess shall be refunded to him by the Division upon his written application,

if made within six months after the end of the calendar year in question. The Director shall assess upon any Private Plan within the scope of which the employee was employed in the year in question a pro-rata share of the refund of excess contributions made to the employee and the administrator of the Private Plan shall forthwith make payment of such assessment to the Division. The pro-rating shall be in ratio to the amount of employee contributions deducted in the year in question by the Private Plan(s) and the Public Plan.

Section 5.15 - CONCURRENT EMPLOYMENT

In general, payment of disability benefits is the responsibility of the Plan, Public or Private, covering the employment in which the employee was employed immediately preceding the beginning of his disability. If on that day the employee was concurrently employed, that is, employed in two or more covered employments and he is eligible to benefits from two or more Plans, he shall receive the highest benefit for which he is eligible under the Plans (but not less than the benefit he would receive if all of his base year employment had been under the Public Plan). The payment of that amount shall be pro-rated among the Plans as follows:

(a) the Plan or Plans under which the employee is eligible for the lesser benefits shall pay one-half of its regular benefit amount (if two Plans are involved) or one-third of its regular benefit amount (if three Plans are involved); and

(b) the Plan under which the employee is eligible for the highest benefit amount shall pay the remainder as required to bring the combined benefit payments to the claimant to the highest amount for which he is eligible.

Section 5.16 - MISDIRECTED APPLICATIONS

If a person submits a claim to a Private Plan, when it should have been submitted to the Public Plan, the administrator of the Private Plan shall forward the claim to the Public Plan and so advise the claimant. If a person makes a claim to the Public Plan, when it should have been submitted to a Private Plan, the Director shall forward the claim to the administrator of the Private Plan and so advise the claimant. If a person makes a claim to a Private Plan, when it should have been submitted to another Private Plan, the administrator shall forward the claim to the Director, and so advise the claimant and the Director shall in turn redirect it to the appropriate Private Plan.

In any such case, the claimant shall not be prejudiced as to the timeliness of his claim because of the misdirection; the timeliness of the ultimate claim shall be determined by the timeliness of the original claim.

If a claim is made for unemployment insurance, or workmen's compensation but it should have been a claim for disability benefits, the timeliness of the disability benefit claim shall be determined by the timeliness of the original (unemployment insurance or workmen's compensation) claim.

Section 5.17 - PAYMENT OF BENEFITS UNDER A PRIVATE PLAN

Benefits under a Private Plan shall be paid within five business days after the end of the first week for which benefits are payable or within 10 business days after the completed filing of the claim, whichever is later. Benefits thereafter shall be paid weekly, within five business days after the end of the week. Benefits under a Private Plan may be paid either on the basis of a calendar week or of a benefit week.

Section 5.18 - CONTINUATION OF THE PRIVATE PLAN BY A SUCCESSOR EMPLOYER

If there is a change in the employer, the successor employer shall assume the obligations and liability of the predecessor according to Section 9 (h) of the Act. The Private Plan shall be transferred to the successor. The successor shall be liable for compliance with the Act by means of the Private Plan in the same manner as the employer from whom the successor acquired the organization, trade or business. The successor may modify or terminate the Private Plan following the provisions of Section 5.9 of this Regulation.

The successor shall be liable on any assessments remaining unpaid by the predecessor. The Secretary may collect such assessments in accordance with the provisions of Section 9 (h) of the Act for the collection of other liabilities.

Section 5.19 - CONTINUATION OF THE PRIVATE PLAN OF A PREDECESSOR

Upon transfer to a successor, a Private Plan shall, unless modified, cover only the same class or classes of employees and the same separate unit, plant, department, or establishment as the Plan covered with respect to the predecessor. The Private Plan of a predecessor may, upon transfer to the successor, be extended without modification to additional classes, units, plants, departments, or establishments, provided:

(a) The employees to be covered by the plan after the succession are not required to contribute to the cost of the plan; or

(b) The class or classes of workers covered by the plan immediately prior to the succession constitute a majority of the employees in the same class or classes employed by the successor immediately after

the succession; or

(c) A majority of the employees in the class or classes covered by the plan in the employ of the successor immediately after the succession give their written consent to the plan.

An existing Private Plan may not be extended to additional classes, units, plants, departments or establishments without prior approval of the Director.

Section 6 - CONFIDENTIALITY OF RECORDS

Section 6.1 - DISCLOSURE OF INFORMATION

No information shall be furnished to any agency, service or department, unless and until a written request is filed with the Director containing the information deemed necessary, the specific purpose for which the information is being requested, and the name(s) of the persons authorized to receive such information from the Director.

Except as otherwise provided in this Act, any information obtained from any employing unit, administrator, or individual pursuant to the administration of this Act, and determinations as to the benefit rights of any individual shall be held confidential and shall not be so disclosed or open to public inspection so as to reveal the individuals or the employing units. Any claimant or his legal representative shall be supplied with information from the records of the Department, to the extent necessary with respect to his claim in any proceeding under this Act. Subject to such restrictions as the Secretary may deem necessary, information may be made available to

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Office of the Secretary

REGULATION NO. 3. ASSESSMENTS ON PRIVATE PLANS

Section 1 - SCOPE

Pursuant to Subsections 5 (a) 7 and 5 (a) 8 of the Act, this regulation establishes the assessments to be paid with respect to a private plan to the Disability Benefits Fund by each employer, or by the administrator on its behalf, if the administrator has undertaken to make such payments.

Section 2 - PAYMENTS OF ASSESSMENTS

The rate of assessment determined under this regulation shall be paid each year with respect to each Private Plan on the wages covered by the Disability Benefits Act to the employees covered by the private plan during the calendar year disregarding any such wage for an employee to the extent that it exceeds \$7,800. The assessment incurred by a plan in a calendar year shall be paid to the Fund no later than the following March 31. Payment shall be accompanied by the appropriate duly completed form to supply the data necessary to substantiate the calculation of the assessment.

Section 3 - RATE OF ASSESSMENT FOR
THE UNEMPLOYED DISABLED

With respect to sharing in the cost of disability benefits to the disabled unemployed, the rate of assessment shall be 0.00155 (0.155 percent).

Section 4 - RATE OF ASSESSMENT FOR
ADMINISTRATIVE COSTS

With respect to the administrative costs of the public program in regard to private plans, the rate of assessment shall be 0.0003 (0.03 percent).

Section 5. - RATE OF ASSESSMENT FOR
RISK SELECTION

With respect to the presumptive actuarial disadvantage resulting for the Disability Benefits Fund because of the nature of the group covered by the private plan, the rate of assessment shall be 0.00004 (.004 percent) multiplied by the difference between 115 and the Index of Favorable Risk determined for the plan under this section. If the Index of Favorable Risk is 115 or more, no assessment for risk selection shall be paid.

The Index of Favorable Risk for a private plan shall be determined as follows:

(a) Of all the Employees covered by the private plan in the first calendar quarter of the year, there shall be determined (I) the percentage represented by women under the age of 50, and (II) the percentage represented by employees who are 50 years of age or older. For the calendar year 1969, the employees covered by the plan in the calendar quarter ended September 30, 1969 shall be used. The ages of employees shall be determined by their age to nearest birthday or by subtracting the year of birth from the current year.

(b) One-half of the percentage determined with respect to women under 50 (ignoring any fraction of a percent) plus 150 percent of the percentage determined with respect to employees 50 years of age and older shall be entered as the first components of the plan's Index of Favorable Risk.

(c) The aggregate wages for the calendar year for employment covered by the plan, disregarding any part of any such wage in excess of \$3,000, shall be determined as a percentage of the aggregate wages for the calendar year for employment covered by the Plan, disregarding any part of any such wage in excess of \$7,800. Any fraction of a percent shall be disregarded. Such percentage shall be added to the plan's Index of Favorable Risk.

(d) An insurance carrier may pay the assessments for risk selection for all of the plans which it insures on the basis of calculating the rate of assessment for risk selection as if all of the plans it insures were one. The prescribed form shall be filed for such coverage in the aggregate as well as for each plan covering 100 or more employees separately and the carrier shall maintain available for inspection by the Division, records of the date required by subsections (b) and (c) with respect to each plan separately.

Section 6 - PLANS IN EFFECT FOR PART
OF A YEAR

With respect to a plan which has not been in effect for an entire calendar year: (I) the calendar quarter on the basis of which the age and sex percentages defined by Section 5, subsection (b) are to be determined shall be the first calendar quarter when the plan was in effect; and (II) the wages taken into account under Section 5, subsection (c) shall be the wages of the employees covered by the plan and earned in the calendar quarter it has been in effect, multiplied by four if the plan was in effect for one quarter, by two if the plan was in effect for two quarters and by one and one-third if the plan was in effect for three quarters. With respect to any such computed wages, any excess over \$3,000 for any employee shall be disregarded in determining the numerator of the ratio to be calculated

under Section 5, subsection (c) and any excess over \$7,800 for any employee shall be disregarded in determining the denominator of the ratio.

For 1969, the amount of the assessment on a plan in effect from July 1, 1969 shall be the amount determined by applying the rates of assessment to the wages earned by employees covered by the plan from July 1, 1969 through December 31, 1969. However, in determining the percentage under Section 5, subsection (c) the wages of such employees for all of 1969 shall be used.

Section 7 - SUBSTITUTE APPROXIMATIONS

If a plan established by a board of trustees, union, or association and covering the employees of more than one employer cannot feasibly secure the data required for determining the Index of Favorable Risk or the wages to which rates of assessment are to be applied, the administrator may make application to the Director, at least six months before the last date for payment of the assessment, for approval of a substitute basis for determining the assessment, with evidence as to the adequacy of the substitute basis in approximating the proper assessment. If the Director is satisfied that it is not feasible to secure the required data, he shall fix whatever assessment or rate of assessment he finds to be a reasonable approximation of the assessment or rate of assessment that would be levied if all of the pertinent facts were available.

Section 8 - DELINQUENT PAYMENT OF ASSESSMENTS

If assessments are not paid by the date when they are due and payable, the employer (or the administrator, if the administrator has

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Explanatory Statement for Regulation No. 3, Assessments on Private Plans

The Disability Benefits Law permits employers to establish private disability benefit plans instead of making the regular contributions to the public Disability Benefits Fund. One condition for establishing a private plan is that the employer pay assessments to the public Disability Benefits Fund for the following purposes:

- 1- to help pay the cost of disability benefit payments by the Fund to workers who become disabled while unemployed or while employed in non-insured employment;
- 2- to meet the Fund's costs of administration with respect to private plans; and
- 3- to avoid actuarial disadvantage to the Fund because of the establishment of the private plan

Regulation No. 3 establishes specific rates of assessments for each of these purposes. They are firm rates, established in advance, so that insurance carriers, employers, boards of trustees, and any other parties concerned with the cost of maintaining a private plan can evaluate in advance the assessments to which the plan will be subject.

These rates of assessments will be subject to change from year to year, so that they will be brought closely into line with the experience of the program. However, changes in assessment rates will be prospective, effective only with respect to wages after amendment of the regulation.

The assessment rates have been based on a number of actuarial factors.

The assessment for the unemployed disabled in effect calls upon private plans to pay for such benefits to the same extent that employers contributing to the Public Plan pay for them. The rate of 0.155 percent of taxable payrolls was determined after taking account of the following:

- 1- The rate of insured unemployment in Puerto Rico;
- 2- The coverage by the Disability Benefits Act of all of agriculture, in which unemployment is relatively high;
- 3- The fact that a higher-than-normal rate of disability can be expected among the unemployed;
- 4- The administrative costs for benefits to unemployed workers;
- 5- The fact that private plans will be liable directly for disabilities commencing within two weeks after termination of employment under a private plan; and
- 6- An allowance so that the Fund will be adequate to continue all disability benefit payments if, for a period of time, the rate of unemployment and of disability payments to the unemployed are at the higher end, rather than the lower end, of the range of expected experience.

The assessment to avoid actuarial disadvantage to the Disability Benefits Fund is based on recognition of the fact that private plans may take groups of employees that are better-than-average risks out of the Public Plan and therefore, over a period of time, leave the Public Plan

with worse-than-average risks, actuarial disadvantage, and consequent financial difficulty. The regulation selects three major factors by which a private plan can be identified as covering a better-than-average risk - sex, age, and wage level - and it assesses the plan accordingly in order to redress the resulting actuarial disadvantage to the Disability Benefit Fund.

Percentage of women. The regulation is based on the expectation that rates of compensable disability will be at least 50 percent higher among women under 50 years of age than among men under 50 years of age. Women under 50 comprise about 25 percent of all employees and to the extent that a private plan covers a lesser percentage of women it will pay an assessment for favorable risk.

Percentage of older workers. The regulation is based on the experience that rates of compensable disability will be at least 150 percent higher among workers 50 years of age or older than among younger male workers. Workers 50 and older comprise about 19 percent of all employees. To the extent that a private plan covers a lesser percentage of employees 50 and older, it will pay an assessment for favorable risk.

Percentage of low-paid workers. The regulation is based on the expectation that costs, as a percentage of payroll, among workers receiving less than the average wage will be at least 50 percent higher than among workers earning more than average wage and that the cost for employees below-average in wages will be 100 percent higher than for employees earning \$7,800 or more. On the average, wages taxable under

Unemployment Insurance (wages up to \$3,000 per year per workers) are expected, for the fiscal year ended June 30, 1970, to be 75 percent of wages taxable under the Disability Benefits Law (wages up to \$7,800 per year per workers). To the extent that a private plan covers employees with higher-than-average wages (as expressed in a low ratio between Unemployment Insurance taxable wages and Disability Benefits taxable wages), it will pay an assessment for favorable risk.

The three factors - sex, age, and wage level - are combined into a single Index of Favorable Risk so that one factor may be offset against another. Thus, a plan covering few women will not be assessed if it happens to cover a sufficiently high percentage of men 50 or older. A plan covering employees with higher-than-average wages will find that the assessment on that account is offset if the plan covers a sufficiently high percentage of women or a sufficiently high percentage of workers 50 years of age or older.

Moreover, insurance carriers are permitted to aggregate all of their disability benefit policies so that an assessment to compensate for actuarial disadvantage will be payable only if the composite of employees insured by it is a more favorable risk.

The bases for calculating assessment rates and for determining and paying assessments were selected in order to make the procedure simple for both employers and insurance carriers. Integration with payroll reports for Unemployment Insurance and Federal Social Security has been utilized to the utmost.