

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**USE OF MEDICARE OFFSET
AGREEMENTS AND EXCLUSIONS FOR
NATIONAL HEALTH SERVICE CORPS
AND HEALTH EDUCATION ASSISTANCE
LOAN DEFAULTERS**



Richard P. Kusserow
INSPECTOR GENERAL

OEI-02-91-00550

EXECUTIVE SUMMARY

PURPOSE

The purpose of this review is to examine the use of the Medicare offset agreements and exclusions on debt collection activities of the National Health Service Corps scholarship, Physician Shortage Area scholarship and Health Education Assistance Loan programs.

BACKGROUND

Medicare offset and exclusion procedures are not being employed against defaulters in the Department of Health and Human Services' scholarship and loan programs for students in the health professions. To date, the Public Health Service (PHS), which is responsible for debt management activities, has not yet implemented the offset procedure, and has initiated the exclusion option against only one National Health Service Corps (NHSC) scholarship defaulter.

The Medicare offset and exclusion provisions pertain to three PHS scholarship and loan programs for students in the health professions: the NHSC scholarship, the Physician Shortage Area (PSA) scholarship, and the Health Education Assistance Loan (HEAL) programs. While most borrowers or scholarship recipients repay their debt or service obligation, some do not. In 1987 Congress enacted two legislative authorities (discussed below) authorizing Medicare offset agreements to recover some of the financial loss and requiring exclusion from Medicare when defaulters refuse to enter into offset agreements or when they subsequently breach the offset agreements.

In order to determine the effectiveness of these provisions we examined legislation, collected program data, obtained Office of General Counsel legal opinions, and held discussions with officials in the PHS and the Health Care Financing Administration (HCFA). This information was collected in April 1991.

FINDINGS

- ▶ The PHS has not entered into any offset agreements with scholarship or loan defaulters.
- ▶ No further regulations are required in order to implement offset procedures.
- ▶ The PHS has failed to implement procedures to initiate exclusion.
- ▶ The PHS need not await a prior judgment against a defaulter in Federal court before excluding that defaulter from Medicare.

- ▶ Preliminary data suggests a considerable number of NHSC and HEAL defaulters are Medicare providers.
- ▶ Moneys collected through Medicare offsets from NHSC and HEAL defaulters are not returned to the programs, but must be deposited into the general fund of the Treasury.

RECOMMENDATIONS

Authorities to Return Recovered Moneys to the Program

The PHS should seek legislative authority to enable the Secretary to return money recovered from NHSC and PSA scholarship defaulters to the program rather than to the general fund of the Treasury. Additionally, the PHS should seek legislative authority to enable the Secretary to return money recovered from HEAL defaulters through Medicare offsets to the SLIF fund rather than the general fund of the Treasury. This would provide continuing support for program goals and objectives.

Medicare Offset Agreements

The PHS should immediately offer offset agreements to loan and scholarship defaulters and refer successfully negotiated agreements to HCFA for implementation.

The HCFA should take immediate action to implement offset procedures as authorized in Section 1892 of the Social Security Act.

Medicare Exclusions

The PHS should refer to the OIG for exclusion those cases where an offset agreement cannot be negotiated within 90 days of the initial offer or is subsequently breached concurrently with referring the case to the Department of Justice for initiation of a collection action.

COMMENTS

The HCFA and ASPE concurred with our recommendations. PHS agreed in principle but believes that it does not need new legislation to return recovered funds to the programs and prefers to delay referrals to OIG until the Department of Justice acts on them. We continue to believe that legislation is needed and that concurrent referrals should be made.

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INTRODUCTION

PURPOSE

The purpose of this review is to examine the use of the Medicare offset agreements and exclusions on debt collection activities of the National Health Service Corps scholarship, Physician Shortage Area scholarship and Health Education Assistance Loan programs.

BACKGROUND

Medicare offset and exclusion procedures are not being employed against defaulters in the Department of Health and Human Services' scholarship and loan programs for students in the health professions. The Public Health Service (PHS), which is responsible for debt management activities, has not yet implemented the offset procedure, and has initiated the exclusion option against only one National Health Service Corps (NHSC) scholarship defaulter.

The Medicare offset and exclusion provisions pertain to three PHS scholarship and loan programs for students in the health professions: the NHSC scholarship, the Physician Shortage Area (PSA) scholarship, and the Health Education Assistance Loan (HEAL) programs. While most borrowers or scholarship recipients repay their debt or service obligation, some do not. In 1987 Congress enacted two legislative authorities (discussed below) authorizing Medicare offset agreements to recover some of the financial loss and requiring exclusion from Medicare when defaulters refuse to enter into offset agreements or when they subsequently breach the offset agreements.

The Office of Inspector General (OIG) released a report in 1985 entitled, "Medicare or Medicaid Reimbursements to Doctors and Dentists Who Breached Their Contracts with the National Health Service Corps Scholarship Program" (ACN: 12-53225). This report found that many NHSC defaulters received substantial amounts of reimbursement from Medicare and Medicaid. The limited test showed that the Department could have recovered about \$2.3 million of the \$9 million in overdue principal owed by these individuals through the offset. The OIG has consistently supported the use of Medicare offsets to repay the defaulter's obligation.

In order to determine the use of these provisions we examined legislation, collected program data, obtained Office of General Counsel legal opinions, and held discussions with officials in the PHS and the Health Care Financing Administration (HCFA).

Legislative Authorities

The Medicare and Medicaid Patient and Program Protection Act of 1987 added section 1128(b)(14) of the Social Security Act (42 U.S.C. § 1320a-7(b)(14), which

authorizes the Secretary to exclude an individual from participation in Medicare, Medicaid, the Maternal and Child Health, and Social Services block grant programs if he/she has defaulted on a health education scholarship or loan secured by the Department, provided the Secretary "has taken all reasonable steps available" to secure repayment. The individual is excluded from these programs until the loan is repaid.

The Omnibus Budget Reconciliation Act of 1987 added section 1892 (42 U.S.C. § 1395ccc) to the Social Security Act, which requires the Secretary to enter into a Medicare offset agreement with defaulters. Under the terms of an offset agreement, the individual agrees to accept assignment for all Medicare services and have deductions made to repay the obligation, according to a formula agreed to by the Secretary. Should defaulters refuse to enter into such an agreement, or if the defaulter later breaches the offset agreement, the Secretary is required to "immediately exclude" the individual and to "immediately" refer the matter to the Department of Justice, which must "immediately" commence a collection action. If the individual entering into an offset agreement is employed by a Health Maintenance Organization (HMO), Comprehensive Medical Plan (CMP), or group practice, the Secretary will deduct amounts due from Medicare payments to the HMO, CMP or group practice. These entities then have the right to collect the deducted amount from the individual.

The exclusion authorities in the sections described above have been delegated by the Secretary to the OIG.

NHSC Scholarship Program

The NHSC scholarship program offers a service-connected scholarship which includes a student's tuition and fees, a monthly stipend and a lump-sum payment to cover all other reasonable educational expenses. It is in exchange for professional service in an area of physician shortage after completion of medical training. A scholarship recipient must serve 1 year for each year of support received, with a minimum of 2 years of service and a maximum of 4 years of service.

Each individual who has entered the scholarship program is required to provide service in the full time clinical practice of the individual's profession as a member of the NHSC for the period of time specified in the individual's contract. Should the recipient breach the contract, that individual is to repay one to three times the scholarship amount plus interest and late charges, depending upon the time the individual defaults.

When a NHSC scholarship recipient defaults, the PHS attempts to collect the loan amount, penalties and interest. The individual is first notified of the obligation to pay within 1 year, is sent a reminder notice at 6 months, and finally is sent a demand letter. If the individual does not respond, the PHS notifies the credit bureau network, generally notifies the Internal Revenue Service to offset any tax refunds, and refers the

delinquent account to a commercial collection agency. If the collection agency is unsuccessful after 6 months, the account is returned to the PHS. At that time the PHS prepares the necessary justification and refers the account for collection to the Department of Justice.

Since the program began in 1972, the NHSC has provided over \$469 million in scholarships to 13,825 recipients. For the 1990-1991 school year, there are 71 participants who will receive almost \$5 million in scholarships. Funding for the program was cut sharply beginning in 1984, when only \$6.3 million was available for scholarships. In subsequent years funding ranged between about \$2 million and \$4 million. It was not until the 1991-1992 school year that funding significantly increased to about \$20 million.

As of April 1, 1991, 2738 NHSC scholarships were currently outstanding. Slightly more than half of these, 1506 or 55 percent, are in good standing:

- ▶ 131 scholarship recipients were still in school.
- ▶ Another 920 individuals were repaying their service obligation by practicing in an area of physician shortage.
- ▶ In 455 cases, repayment of service was temporarily deferred.

However, 1232 NHSC scholarship recipients have breached their agreements and defaulted on obligations of approximately \$188.9 million. This amount consists of principal and penalties of \$99.6 million and accrued interest of \$89.3 million. This represents about nine percent of the individuals who have received scholarships since the program began in 1972.

- ▶ 221, valued at \$27.9 million, while technically in default, are in statutory repayment or in a grace period.
- ▶ 449 accounts, valued at \$68.5 million, remain at PHS in various stages of collection; that is, they are being prepared for referral to a collection agency, are at a collection agency, or are being prepared for referral to the Department of Justice.
- ▶ 562 accounts, valued at \$92.7 million, have been forwarded for collection to the Department of Justice. Most are over 3 years old.

Medicare offset procedures could be initiated against the 1011 defaulters representing \$161 million whose loans are in different phases of the collection process. Of these accounts, 78 percent have been delinquent for over 3 years. If offset agreements are not obtained, exclusion procedures must be initiated for these defaulters.

PSA Scholarship Program

In existence for only 1 year, for those entering medical school in 1973, the PSA scholarship was offered in exchange for professional service in an area of physician shortage upon completion of medical training. Each student received no more than \$5000 in 1 year. The students determined before beginning school which physician shortage area they wanted to serve in after graduation. A scholarship recipient had to serve 1 year for each year of support. Only about 100 students ever received a PSA scholarship.

The PSA scholarship defaulters are subject to the same debt collection activities as NHSC defaulters.

- ▶ There are at present 66 default cases at the PHS, representing about \$2.3 million.
- ▶ About six of these cases have been referred to the Department of Justice.

Medicare offset procedures could be initiated against the 66 defaulters representing \$2.3 million. If offset agreements are not obtained, exclusion procedures must be initiated for these defaulters.

HEAL Program

The HEAL program is an insured-loan program administered by the Department for students in the health professions. It insures loans made by nonfederal lending institutions and is intended to operate without using Federal funds. Insurance premiums deducted from the loan principal at the time of the award are deposited into the Student Loan Insurance Fund (SLIF), which reimburses the holder of the loan for the outstanding debt in the event of the borrower's default, death, disability or bankruptcy. The HEAL program has been experiencing financial problems due to an increasing default rate.

When a HEAL borrower defaults, the lender must initiate litigation in the State court. If this collection effort is not successful, the SLIF reimburses the lender and the case is referred to PHS. The PHS then attempts to have the defaulter repay his/her loan obligation; if the individual does not respond, the same collection activities PHS uses with NHSC defaulters are used with HEAL defaulters.

Approximately \$2.7 billion in HEAL loans are currently outstanding:

- ▶ \$1.3 billion represents the amount in loans presently held by students still in training.
- ▶ Approximately \$1 billion, represented by 45,364 loans, is currently being repaid or is in forbearance or deferment status.

- ▶ Approximately \$110 million, represented by 6800 loans, is in delinquent status - that is, repayment is up to 150 days late. Should the account remain unpaid past those 150 days, these cases will become defaults.

Approximately \$268 million, representing 7486 HEAL loans, are in default. The debt varies widely among defaulters, ranging from several thousand dollars to over \$100 thousand.

- ▶ 1266 loans, representing \$38.6 million, while technically in default, are in statutory repayment or in a grace period.
- ▶ 2583 cases, representing approximately \$98 million, are in litigation at the State level.
- ▶ 2077 default cases, representing about \$71.4 million are at the PHS, which is seeking repayment.
- ▶ 1560 default claims, representing \$60 million, have been referred to the Department of Justice. Forty percent of these defaulters have judgments against them.

Medicare offset procedures could potentially be initiated against the 6220 defaulters representing \$229.4 million. If offset agreements are not obtained, exclusion procedures must be initiated for these defaulters.

METHODOLOGY

In order to determine the effectiveness of these provisions we examined legislation, collected program data, obtained Office of General Counsel legal opinions, and held discussions with officials in the PHS and the Health Care Financing Administration (HCFA). This information was collected in April 1991.

FINDINGS

The PHS has not entered into any offset agreements with scholarship or loan defaulters.

The Congress enacted legislative authority in 1987 requiring the Department to offer NHSC and HEAL defaulters a Medicare offset agreement to recover some of the financial loss. However, the Department has not yet employed this option. Until recently, the PHS and HCFA officials had said that regulations governing the offset process had to be published prior to offering the offset agreements. Therefore, the process has not yet been implemented.

No further regulations are required in order to implement offset procedures.

Based on advice from the Office of the General Counsel, we believe that HCFA has the authority to implement offset procedures without further regulations. This conclusion is based on the following factors:

- (1) The terms of an offset agreement are detailed with sufficient specificity in Section 1892, thus making further regulatory guidance unnecessary;
- (2) Since an offset agreement by its very nature is agreed to by the defaulting individual, there are no due process concerns raised by proceeding in the absence of further regulations; and
- (3) Under 42 CFR § 401.607(d), HCFA has the regulatory authority to implement collections by offset. Section 1892 treats past-due scholarship and loan obligations as debts to HCFA for purposes of offset against Medicare payments, and then requires transfer of the amounts deducted from the Trust Fund to the General Treasury to be credited against the debtor's obligations. Existing regulations are, therefore, broad enough to encompass the implementation of offsets under Section 1892.

Although the HCFA published a proposed rule on November 6, 1990, designed to govern Medicare offset, HCFA's proposed regulatory provisions are solely procedural in nature. As HCFA's authority to offset does not derive from or depend upon these regulations, it does not need to await publication of final rules before implementing offset procedures.

The PHS has failed to implement procedures to initiate exclusion.

The PHS has failed to implement procedures for referring cases to the OIG for exclusion of health care professionals from the Medicare and Medicaid programs who have defaulted on a health care education loan or scholarship obligation.

The PHS has only used the exclusion option in one case. An osteopath, who was an NHSC scholarship recipient, breached his service obligation in 1980 and was subsequently notified that he must repay the \$14,641 borrowed from the program, plus interest. He refused all offers to repay his service or financial obligation and was referred to the OIG for exclusion.

The PHS has taken the position that it must first refer the case to the Department of Justice and obtain a judgement before it can exercise the exclusion provision. In addition, the PHS has raised the issue of timing of the exclusions under these provisions. Specifically, whether it is legally advisable or permissible to delay exclusion actions until after a judgement has been obtained against the defaulter in court. Further, the PHS contends it cannot pursue exclusion without specific regulations that address implementation. (See PHS comments for their current position)

The PHS need not await a prior judgment against a defaulter in Federal court before excluding that defaulter from Medicare.

Based on advice from the Office of the General Counsel, we believe Section 1892 is very clear about the PHS obligations: PHS must attempt to enter into a Medicare offset agreement with each defaulter in the HEAL, NHSC or PSA programs. If the individual refuses to enter into such an agreement or later breaches the agreement, the PHS must "immediately" refer the case to the Attorney General for a collection action and simultaneously forward the matter to OIG which must "immediately exclude" the individual from the Medicare program, until the entire past-due obligation is repaid.

It is quite clear that the PHS may not await a court judgment of default before an exclusion can be imposed. The statutory mandate to exclude, concurrent with referral to the Department of Justice, makes it legally impermissible to delay exclusion until a judgment is obtained.

Preliminary data suggests a considerable number of NHSC and HEAL defaulters are Medicare providers.

An informal computer match with NHSC defaulters and Medicare data performed several years ago revealed that approximately 70 percent of the defaulters were Medicare providers. However, there was no follow-up on this match, and no current information is available on these defaulters.

The HCFA recently completed a computer match of a random sample of 100 HEAL defaulters with Medicare data in order to determine how many are Medicare providers. The information provided to HCFA included the defaulter's name, health discipline, debt balance, date of birth, last school attended, social security number and address. The match revealed that 38 are Medicare providers. However, the data could not show whether these 38 are actually billing Medicare.

The computer match had two limitations: (1) it included specialties that do not usually bill Medicare, such as dentistry and pediatrics; and (2) it did not identify defaulters practicing as part of an HMO, CMP or group practice which is billing Medicare. Thus, 38 percent may be a conservative estimate of the number of defaulters being reimbursed by Medicare. Finally, the match did not identify those providers billing Medicaid.

The PHS plans to contact individual carriers to determine the earnings of the 38 providers and then contact the providers to offer them an opportunity to offset their Medicare reimbursement. Additionally, the PHS plans to implement a mechanism to systematically refer cases to HCFA for offset. However, the PHS has not established a time schedule to carry out these plans.

Moneys collected through Medicare offsets from NHSC and HEAL defaulters are not returned to the programs, but must be deposited into the general fund of the Treasury.

Under 31 U.S.C. § 3302 and related Comptroller General opinions, agencies are ordinarily required to deposit all moneys they receive for the use of the United States in the general fund of the Treasury as miscellaneous receipts. The only two generally recognized exceptions to this rule allow an agency to retain money it collects if it has specific statutory authority to do so, or if the moneys qualify as "refunds to appropriations."

Under the Medicare offset provisions of § 1892 of the Social Security Act, Congress specifically authorized, as a credit toward past-due obligations, the transfer of funds equal to the amount of the offset from the Trust Fund to the general fund in the Treasury, § 1892(e). Thus, any moneys received through Medicare offset from those who have defaulted on their NHSC scholarship obligations or health education loans cannot be channelled back to those scholarship and loan programs, but must be deposited into the general fund of the Treasury.

Moreover, any moneys recovered from NHSC defaulters, whether through Medicare offset agreements or some other means, are returned to the general fund of the Treasury. In fiscal year 1990, NHSC defaulters made cash repayments in the amount of \$9.5 million, which could not be returned to the NHSC scholarship program.

With respect to the HEAL program, however, there is an inconsistency worth noting. Title VII, Subpart I of the PHS Act, in establishing a program of federally-insured student loan assistance for health education, established a student loan insurance fund

("SLIF fund") into which the Secretary must deposit all amounts received in connection with his/her operations under the loan program. By its terms, this would appear to encompass any and all proceeds from collection activities against defaulters, including Medicare offsets authorized under § 1892. See § 734(a) of the PHS Act. However, § 733(f) of the PHS Act references the offset provisions of § 1892 of the Social Security Act, stating that "[p]rocedures for reduction of payments under the Medicare program are provided under section 1892 of the Social Security Act." Thus, the general statutory authority enacted in § 734 appears to be limited by the language of § 733 and thereby made inapplicable to moneys collected by offset. Unlike all other moneys, property, or assets derived by the Secretary in connection with his operation of the HEAL program, which are deposited in the SLIF fund, moneys collected by offset would be deposited in the general fund of the Treasury as required by Section 1892 of the Social Security Act.

RECOMMENDATIONS

Authorities to Return Recovered Moneys to the Program

1. The PHS should seek legislative authority to enable the Secretary to return money recovered from NHSC and PSA scholarship defaulters to the program rather than to the general fund of the Treasury. Additionally, the PHS should seek legislative authority to enable the Secretary to return money recovered from HEAL defaulters through Medicare offsets to the SLIF fund rather than the general fund of the Treasury. This would provide continuing support for program goals and objectives.

Medicare Offset Agreements

2. The PHS should immediately offer offset agreements to loan and scholarship defaulters and refer them to HCFA for implementation.
3. The HCFA should take immediate action to implement offset procedures as authorized in Section 1892 of the Social Security Act.

Medicare Exclusions

4. The PHS should refer to the OIG those cases where an offset agreement cannot be negotiated or is breached for exclusion concurrently with referring the case to the Department of Justice for initiation of a collection action.

Discussion

Medicare offset agreements could potentially be entered into with 7361 defaulters of the health education scholarship and loan programs, representing \$392.7 million as shown below.

<u>Program</u>	<u>Numbers of Defaulters</u>	<u>Outstanding Balances</u>
NHSC	1011	\$161
PSA	66	2.3
HEAL	<u>6220</u>	<u>229.4</u>
TOTALS	7297	\$392.7

Presently, it is difficult to estimate the total dollar amount that might actually be recovered through offset agreements because of uncertainties concerning the degree of participation in the Medicare and Medicaid programs by defaulters. However,

significant dollar amounts may be subject to such offsets in the NHSC scholarship program and could be available for future scholarship recipients. For example, the Federal Government could collect as much as \$7 million dollars during the first year. The \$7 million approximation is based on a conservative estimate that 700 defaulters are Medicare providers (70 percent of the 1011 NHSC defaulters) with the Federal Government collecting \$10,000 from each defaulter through Medicare offsets during the first year. The PHS currently projects that scholarship recipients will need an average of 3 years support of approximately \$82,500. Thus, if this money was returned to the scholarship program, funding would be available for 85 scholarship recipients.

Additional benefits would accrue to the NHSC scholarship program and other health education assistance programs through the so called "sentinel effect" whereby implementation of offsets in some cases might discourage others from defaulting. This would have the effect of increasing the number of NHSC recipients who fulfill their obligations by serving in underserved areas.

FUTURE ACTIONS

We will in the coming months perform a match of loan and scholarship defaulters with provider reimbursement data from State Medicaid programs, HMO, CMP and group practices.

COMMENTS

We received comments from PHS, HCFA and ASPE which concur, fully or in part, with our recommendations. These comments are included in Appendix A.

While PHS concurs with our recommendation that it should seek legislative authority to return monies recovered from Medicare offsets from HEAL defaulters to the HEAL program, it does not concur that it must do the same for the NHSC. The PHS cites Section 338F of the Public Health Service Act as authorizing the establishment of a NHSC Membership Replacement Fund, to which monies equal to the amounts collected from defaulters may be paid to sites needing a replacement health professional. However, Section 338F requires a Congressional appropriation before being implemented, and such an appropriation seems unlikely due to time and fiscal constraints. We therefore believe that PHS should seek additional legislative authority to return monies collected from NHSC defaulters directly to the scholarship program.

The PHS advocates that, for certain practical reasons, referrals of NHSC and PSA scholarship cases for exclusion be prioritized, with judgement cases being referred first. We understand that in the short run it is reasonable and prudent to prioritize judgment cases. However, we would emphasize that PHS is legally required by statute to exclude both pre-judgement and judgement defaulters. We feel there should be fair and consistent treatment of all categories of defaulters. Since there is already a substantial backlog of NHSC cases awaiting judgments, we feel any further delay for

payment should be avoided. We recommend that PHS develop the capacity to simultaneously refer NHSC and PSA default cases to the OIG for Medicare offset/exclusion and to the DOJ for the initiation of a collection action.

APPENDIX A

COMMENTS



*Given
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Memorandum

Date **SEP 24 1991**

From Assistant Secretary for Health

Subject **OIG Draft Report "Use of Medicare Offset Agreements and Exclusions for NHSC and HEAL Loan Defaulters," OEI-02-91-00550**

To **Inspector General, OS**

Attached are the PHS comments on the subject draft report. We concur fully or in part with all recommendations. The actions taken or planned to implement these recommendations are described in detail in the attached document.

James O. Mason
James O. Mason, M.D., Dr.P.H.

Attachment

IG	<u>✓</u>
PDIG	<u>✓</u>
DIG-AS	<u>✓</u>
DIG-EI	<u>✓</u>
DIG-OI	<u>✓</u>
AIG-MP	<u>✓</u>
OGC/IG	<u>✓</u>
EX SEC	<u>✓</u>
DATE SENT	<u>9/25</u>

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PUBLIC HEALTH SERVICE (PHS) COMMENTS ON THE OFFICE OF
INSPECTOR GENERAL (OIG) MANAGEMENT ADVISORY REPORT "USE
OF MEDICARE OFFSET AGREEMENTS AND EXCLUSIONS FOR NATIONAL
HEALTH SERVICE CORPS (NHSC) AND HEALTH EDUCATION ASSISTANCE
LOAN DEFAULTERS (HEAL)," OEI-02-91-00550

General Comment

The Health Resources and Services Administration (HRSA) has reviewed the OIG's estimates of the number of defaulters and the amounts of outstanding scholarship or loan balances as set forth in the report and has found them to be accurate. The figures reported are in agreement with the data contained in HRSA's quarterly reports.

OIG Recommendation

PHS should seek legislative authority to enable the Secretary to return money recovered from NHSC and Physician Shortage Area (PSA) scholarship defaulters to the program rather than to the general fund of the Treasury. Additionally, PHS should seek legislative authority to enable the Secretary to return money recovered from HEAL defaulters through Medicare offsets to the Student Loan Insurance Fund (SLIF) rather than the general fund of the Treasury. This would provide continuing support for program goals and objectives.

PHS Comment

We do not concur with the recommendation that PHS should seek legislative authority to recover and re-use money paid back by NHSC and PSA scholarship defaulters. PHS already has legislative authority which would achieve essentially the same goal.

Section 338F of the Public Health Service Act authorizes the establishment of the NHSC Member Replacement Fund, to which monies equal to the amounts collected from defaulters may be appropriated. Amounts in the fund would be paid to sites which need a replacement health professional as the result of a scholar breaching his/her service commitment. The sites' use of the funds is restricted to purposes set forth in the statute, i.e., recruiting and employment of a health professional to provide primary health services to patients of the entity or to enter into a contract with such a professional to provide the services to the patients. PHS will submit to the Office of Management and Budget appropriation language for fiscal year 1993 to implement Section 338F.

We concur with the OIG recommendation that PHS should seek legislative authority to return monies recovered by Medicare offsets from HEAL defaulters to the HEAL Program (i.e., the SLIF). Other HEAL collections, Internal Revenue Service offsets

and debtor payments after return of the note to the government, are presently returned directly to the HEAL Program. Furthermore, such direct return would be consistent with treatment of refunds and collections afforded other HRSA Programs.

OIG Recommendation

PHS should immediately offer offset agreements to loan and scholarship defaulters and refer successfully negotiated agreements to the Health Care Financing Administration (HCFA) for implementation.

PHS Comment

We concur. At a Departmental level meeting on May 30, 1991, PHS received clarification that it can now offer Medicare offset agreements to loan and scholarship defaulters. PHS will expeditiously notify HCFA when agreements are negotiated with the defaulters so that HCFA may take the necessary immediate actions to recover the appropriate amounts from the defaulters.

It should be noted, however, that the OIG's estimated impact of Medicare offset on HEAL defaulters could be misleading. The only HEAL loans subject to offset are those on which we have paid a claim from the SLIF. Our current procedure, once a claim has been paid from the SLIF, is to notify the defaulter that the Government is the holder of the note and advise the debtor that a repayment agreement must be negotiated within 30 days. If there is no agreement within that period, the debtor is given an additional 60 days to enter into a Medicare offset agreement. Failing that, the debtor will then be referred to the Department of Justice (DOJ) for enforced collection as appropriate.

OIG Recommendation

PHS should refer to OIG for exclusion of those cases where an offset agreement cannot be negotiated within 90 days of the initial offer or is subsequently breached concurrently with referring the case to the DOJ for initiation of a collection action.

PHS Comment

We support the concept of Medicare offset/exclusion for scholarship defaulters. However, to process the Medicare offset/exclusion through the OIG and the default simultaneously through the DOJ does not appear in PSA and NHSC cases to be practical for the following reasons:

- o We expect that exclusion of pre-judgment NHSC and PSA scholarship defaulters, where the individual's liability has not yet been established by a court, will be laborious, as the defaulter will undoubtedly use the exclusion hearing as another opportunity to challenge his/her default status. Litigating each case twice (through the administrative exclusion hearing and the Federal court litigation) would double the workload of the Office of General Counsel (OGC) and the program, while not disposing of more cases.
- o Neither OGC nor the Scholarship Program currently has sufficient personnel to assist both regional attorneys handling exclusion hearings and DOJ attorneys handling the Federal court litigation. In both areas, litigation support would involve answering numerous questions about program operation and policies, investigating factual allegations made by defaulters, coming up with appropriate witnesses for hearings and trials, and providing documents (e.g., copies of scholarship files, regulations, policies, and NHSC placement lists.)
- o Neither OGC nor the program has the funds available to significantly expand the OGC staff assigned to scholarship default cases. Two attorneys and a secretary in OGC are now funded by the agency just to handle the ongoing Federal court litigation involving scholarship defaulters.
- o With simultaneous administrative and judicial proceedings comes an increased risk of inconsistent outcomes. If the administrative hearings official were to rule against the Department (i.e., overturn the default determination) the Government's position in District Court could be severely compromised. We could also receive resistance from DOJ about prosecuting a case which the Department lost at the administrative level.

We believe that it makes sense, in terms of resource management, to limit exclusions of scholarship defaulters to those defaulters against whom we have judgments. However, we are legally required, under the statute, to exclude pre-judgment defaulters as well. Therefore, we advocate that referrals of NHSC and PSA scholarship cases be prioritized, with judgment cases referred first.

The PHS will simultaneously refer defaulted HEAL cases for exclusion and collection to the OIG and DOJ respectively in those instances when an offset agreement cannot be negotiated within 90 days or when a negotiated offset agreement is subsequently breached.

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RECEIVED
OFFICE OF INSPECTOR
GENERAL

TO: Richard P. Kusserow
Inspector General

FROM: Assistant Secretary for
Planning and Evaluation

SUBJECT: Review of OIG Draft Management Advisory Report: "Use
of Medicare Offset Agreements and Exclusions for
National Health Service Corps and Health Education
Assistance Loan Defaulters," OEI-02-91-00550

Thank you for giving me the opportunity to review your draft management advisory report on the use of Medicare offset agreements and exclusions for National Health Service Corps (NHSC), Physician Shortage Area (PSA) Scholarship, and Health Education Assistance Loan (HEAL) defaulters.

This is a timely report in light of recent problems with scholarship and loan program defaulters and the solvency of the Student Loan Insurance Fund (SLIF). Your findings and recommendations point clearly to the need for the Department to develop a more coherent and aggressive strategy for pursuing offset agreements and exclusions. I understand that since the draft report was completed the PHS has changed its position on the need for regulations governing the offset process prior to entering into offset agreements, and I assume that its current position will be reflected in the final version of the report.

We agree that PHS should develop and submit legislative proposals to enable the Secretary to return money recovered from NHSC and PSA scholarship defaulters to the program and from HEAL defaulters to the SLIF rather than to the general fund of the Treasury.

If you have any questions, please phone Elise Smith on 245-1870.

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Martin H. Gerry



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JUL 25 1991

Memorandum
JUL 26 1991

Date: Gail R. Wilensky, Ph.D. *gn*
From: Administrator

Subject: **OIG Draft Management Advisory Report - "Use of Medicare Offset Agreements and Exclusions for National Health Service Corps and Health Education Assistance Loan Defaulters," OEI-02-91-00550**

To: **Inspector General
Office of the Secretary**

We have reviewed the subject draft management advisory report which examines the use of Medicare offset agreements and exclusions on debt collection activities of the National Health Service Corps (NHSC) scholarships, Physician Shortage Area (PSA), and Health Education Assistance Loan (HEAL) programs.

The report found that Medicare offset and exclusion procedures are not being employed against defaulters in the Department of Health and Human Services' scholarship and loan programs for students in the health professions. To date, the Public Health Service (PHS), which is responsible for debt management activities for the loan programs, has not yet implemented the offset procedure and has initiated the exclusion option against only one NHSC and HEAL scholarship defaulter.

OIG specifically recommends that HCFA take immediate action to implement offset procedures as authorized in Section 1892 of the Social Security Act (the Act). HCFA concurs with this recommendation. However, PHS has not yet forwarded any requests for offset or any loan or scholarship defaulters offset agreements to us. When PHS refers offset agreements to HCFA, we will process the Medicare offsets under the Agency's current authority granted in Section 1892 of the Act. HCFA published a proposed rule, BPO-088-P in the Federal Register on November 6, 1990 to specifically address the Medicare offset agreements as described in Section 1892 of the Act. The final rule has been drafted and is being circulated for comment within the Agency.

Thank you for the opportunity to review and comment on this draft report. Please advise us whether you agree with our position on the report's recommendation at your earliest convenience.

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Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**USE OF MEDICARE OFFSET
AGREEMENTS AND EXCLUSIONS FOR
NATIONAL HEALTH SERVICE CORPS
AND HEALTH EDUCATION ASSISTANCE
LOAN DEFAULTERS**



Richard P. Kusserow
INSPECTOR GENERAL

DECEMBER 1991

OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services' (HHS) programs as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by three OIG operating components: the Office of Audit Services, the Office of Investigations, and the Office of Evaluation and Inspections. The OIG also informs the Secretary of HHS of program and management problems and recommends courses to correct them.

OFFICE OF AUDIT SERVICES

The OIG's Office of Audit Services (OAS) provides all auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations in order to reduce waste, abuse, and mismanagement and to promote economy and efficiency throughout the Department.

OFFICE OF INVESTIGATIONS

The OIG's Office of Investigations (OI) conducts criminal, civil, and administrative investigations of allegations of wrongdoing in HHS programs or to HHS beneficiaries and of unjust enrichment by providers. The investigative efforts of OI lead to criminal convictions, administrative sanctions, or civil money penalties. The OI also oversees State Medicaid fraud control units which investigate and prosecute fraud and patient abuse in the Medicaid program.

OFFICE OF EVALUATION AND INSPECTIONS

The OIG's Office of Evaluation and Inspections (OEI) conducts short-term management and program evaluations (called inspections) that focus on issues of concern to the Department, the Congress, and the public. The findings and recommendations contained in these inspection reports generate rapid, accurate, and up-to-date information on the efficiency, vulnerability, and effectiveness of departmental programs. This report was prepared in the New York Regional Office under the direction of Regional Inspector General Thomas F. Tully and Deputy Regional Inspector General Alan S. Meyer. Project staff included:

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