

May 1984

To: Officials of Schools Participating in the Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs

Subject: Policy Memorandum Number Six

Introduction

This communication is the sixth in a series of memoranda issued by the Division of Student Assistance (Division), Bureau of Health Professions (Bureau), concerning items of interest to the health professions and nursing student financial aid community. This memorandum addresses the following topics:

<u>Topic</u>	<u>Page</u>
Personnel Changes in the Division of Student Assistance	2
Pending HPSL Regulations	2
Pending NSL Regulations	2
Due Diligence Notices of Proposed Rulemaking (NPRM)	3
Reauthorization	3
Exceptional Financial Need (EFN) Scholarship Program Application and Award Cycle for Academic Year 1984-1985	4
HEAL Program Lending Limit	4
NSL "Set Aside" Funds	4
Investment Income	5
Excess Cash	5
Reporting Requirements	6
Deferment for Active Duty as a Member of a Uniformed Service	6
Disability Cancellation	6
Renegotiation and Forbearance	7
Collection Agencies	7
Credit Bureaus	8
Litigating against Members of the Uniformed Services	9
Procedures Applicable to the Write-Off of Uncollectible Loans	9
<u>Student Financial Aid Guidelines</u>	11
Training Workshops	12

The Bureau has sent a copy of this memorandum to the officials identified on the Annual Operating Report (AOR). Please distribute copies to other personnel at your institution who work with the HPSL and NSL programs.

Personnel Changes in the Division of Student Assistance

The former Deputy Director of the Division of Student Assistance, Mr. Alexander Adler, retired at the end of March. Mrs. Alice M. Swift, who previously was Chief of the Program Development Branch, and has served in many other capacities within the Division and the Bureau during the past 15 years, has been promoted to the position of Deputy Director effective April 29, 1984. Ms. Peggy Washburn will take over the responsibilities of the Chief of the Program Development Branch effective May 29, 1984.

Pending HPSL Regulations

The Department expects to publish revised HPSL regulations which will modify the performance standard provision contained in the existing HPSL regulations. The amended regulations will be based on the comments responding to the June 3, 1983 HPSL Notice of Proposed Rulemaking (NPRM), which proposed to eliminate the borrower delinquency rate option, and a reexamination of the comments responding to the August 1982 HPSL NPRM, which contained the initial performance standard proposals. We will mail copies of the revised HPSL regulations to health professions schools shortly after publication in the Federal Register. However, until the Department publishes revised HPSL regulations, the existing performance standard provision, as published in the HPSL final regulations of June 3, 1983, remains in effect. Although the Department's Federal Register Notice of December 30, 1983 temporarily delayed the performance standard penalties, the HPSL regulations still require that health professions schools comply with the five percent standard on June 30, 1984, and that any health professions school with a delinquency rate over five percent on June 30, 1984, be placed in probation and reviewed again on December 31, 1984.

Pending NSL Regulations

The Department is in the final stages of preparing regulations finalizing the June 3, 1983, NPRM for the NSL program. We will mail copies of these final regulations to nursing schools shortly after publication in the Federal Register. Because the existing NSL regulations do not contain a performance standard provision, there is no delinquency standard with which nursing schools must comply at the current time. However, the amended final regulations will contain a performance standard provision with which the Department will require nursing schools to comply in order to continue participating in the NSL program. With this in mind, nursing schools are urged to continue working diligently to reduce their delinquency rates.

Due Diligence Notices of Proposed Rulemaking (NPRM)

The Department is in the final stages of preparing for publication NPRMs for the HPSL and NSL programs which propose to amend the due diligence provisions of the HPSL and NSL regulations by adding a series of comprehensive procedures which the Department would require a school to follow prospectively in order to comply with the due diligence requirement. We will mail copies of the proposed rules to participating institutions shortly after publication in the Federal Register. We also expect to publish an NPRM proposing to specify due diligence requirements for the Health Education Assistance Loan (HEAL) program this summer.

Reauthorization

Several members of Congress have recently introduced bills containing proposals for reauthorization of the health professions and nursing programs, as follows:

- o S. 2559, the Health Professions Training Assistance Amendments of 1984, introduced by Senator Hatch on April 11, and marked up and ordered reported by the Senate Committee on Labor and Human Resources on May 9: includes reauthorization proposals for the HPSL program, the EFN Scholarship program, and the HEAL program;
- o S. 2574, traded Senator Hatch on April 12, and marked up and ordered reported by the Senate Committee on Labor and Human Resources on May 9: includes reauthorization proposals for the NSL program;
- o H.R. 5503, the Health Professions Minority Training Assistance Act, introduced by Representative Stokes on April 24 (supersedes H.R. 5433, introduced by Representative Stokes on April 11): includes proposals for several new programs to fund health professions students;
- o H.R. 5559, the Health Professions and Services Amendments of 1984, introduced by Representative Waxman on May 1, and marked up and approved on May 3 by the Subcommittee on Health and the Environment for full committee action by the House Committee on Energy and Commerce: includes reauthorization proposals for the HPSL program, the EFN Scholarship program, and the HEAL program; and
- o S. 2647, the Health Professions and Nursing Educational Assistance Amendments of 1984, introduced by Senator Kennedy on May 8: includes reauthorization proposals for the HPSL program, the EFN Scholarship program, and the HEAL program. (S. 2559 as marked up, and ordered reported reflected some of the provisions of this bill and was supported by Senator Kennedy.)

Exceptional Financial Need (EFN) Scholarship Program Application and Award Cycle for Academic Year 1984-1985

The fiscal year 1984 budget contains \$5.6 million for the EFN Scholarship program. This money is available to award to health professions schools for the 1984-1985 academic year. We expect to mail EFN applications to the Financial Aid Administrators of health professions schools on May 14, with a return date of July 2, and will mail EFN awards to schools in mid August. The \$5.6 million appropriation will allow us to award one scholarship to each eligible health professions school, with a second scholarship going to approximately half of the schools of medicine (allopathic and osteopathic) and dentistry. The award will cover tuition, fees, other reasonable costs, and a monthly stipend of \$599. As in past years, we will use the budget information that your school submits to the National Health Service Corps Scholarship (NHSC) program to determine the amount of your EFN award.

HEAL Program Lending Limit

The HEAL legislation provides for an insurance limit not to exceed \$250 million during fiscal year 1984. During fiscal year 1983, we insured approximately \$162 million in HEAL loans. The volume of lending under the HEAL program has increased dramatically over the past few years, and it appears that some students are borrowing more HEAL funds than they actually need to cover their educational costs. We urge you to carefully review each application for HEAL funds, in order to make sure that your institution does not approve a HEAL application which would result in a student overborrowing; otherwise, students who need HEAL funds may be denied access if we reach the \$250 million insurance limit before September 30, 1984 (the end of fiscal year 1984 for the Federal Government), and students who have overborrowed may face an unmanageable level of indebtedness upon completion of their studies.

NSL "Set Aside" Funds

The NSL awards made to nursing schools in March 1982 and September 1983 included funds which the Bureau designated as "set aside," as required by the Omnibus Budget Reconciliation Act Of 1981. Schools could award set aside funds only to those students who had neither been in school on a full-time basis nor worked full time for at least seven years prior to the time they received the awards. Due to the special restrictions governing the initial awarding of these funds, the Bureau requires schools to account for the set aside funds separately from the regular NSL funds.

Although a school must continue to maintain separate accountability for these funds, a school may transfer set aside repayments into the regular NSL Federal Capital Contribution (FCC) fund as a borrower repays them and may then reloan these funds to any borrower who is eligible for NSL funds under the standard eligibility criteria. The special restrictions on who can receive set aside funds apply only to the initial awards, and do not continue to apply when the funds become available for reloaning to new students through the NSL revolving loan fund. The Annual Operating Report (AOR) for July 1, 1983 through June 30, 1984 will provide further instructions on the transfer of set aside repayments to the regular NSL FCC fund.

Investment Income

When there is an unavoidable delay between the time a school receives HPSL and NSL Federal Capital Contributions or collections and the time new HPSL and NSL awards are disbursed, the school must place the funds on hand in an insured, interest-bearing account, and must deposit all interest earned in the HPSL and NSL funds. A school that has not placed its investment income in the HPSL or NSL fund will be subject to an audit exception, and will be required to reimburse the HPSL or NSL fund out of institutional money for the amount of investment income that the school should have deposited in the HPSL or NSL fund in the past.

All schools must assure that investment income is being properly handled in addition to the requirements of section 740(b)(2)(E) of the HPSL statute and section 835(h)(2)(E) of the NSL statute that any earnings of the fund be deposited in the fund, this money can be an important source of additional funds for lending to students.

Excess Cash

School officials are continuing to have questions regarding how to determine whether there is an excess cash balance in the HPSL or NSL fund and when to return funds to the Federal Government. The AOR and the Quarterly Debt Management Report (QDMR) contain worksheets to use to determine whether there is money in the HPSL or NSL fund that might be considered excess cash. When using this worksheet to evaluate whether there is excess cash due to funds on hand that have not come from new Federal Capital Contributions, school officials should consider

the following: (3) the level of HPSL or NSL expenditures that has occurred during the past few years and is expected in the coming year, (2) the level of collections that the school has received during the past few years and expects to receive during the coming year, (3) changes in the level of -funding available in other student aid programs, (4) changes in the student budget, and (5) any other factors that will affect the level of the HPSL or NSL awards. The financial aid administrator and the fiscal administrator should work together in determining how the above factors will impact on the need for HPSL or NSL funds. When evaluating the school's need for any HPSL or NSL cash balance, school officials should also keep in mind that there will be no new Federal Capital Contributions for the HPSL or NSL programs for academic year 1984-1985, and that the President's budget for fiscal year 1985 does not propose appropriations for new HPSL or NSL Federal Capital Contributions for academic year 1985-1986.

Reporting Requirements

The Bureau is pleased to report that the return rate for on-time, complete reports has improved considerably since the 1982-83 AOR was due August 14, 1983. Of the active health professions and nursing schools, 45% returned the completed 1982-83 AOR on time, 68% returned the completed QDMR for the period July 1, 1983 through September 30, 1983 on time, and 73% returned the completed QDMR for the period October 1, 1983 through December 31, 1983 on time. The Bureau and Division thank those schools that cooperated fully, and would appreciate the full cooperation of all programs in meeting reporting requirements in the future.

Deferment for Active Duty as a Member of a Uniformed Service

Section 741(c) (1) of the HPSL program legislation and section 836(b) (2) of the NSL program legislation allow a borrower to defer the repayment of loans for up to three years while the borrower performs active duty as a member of a uniformed service. These deferment provisions are specifically limited by the statutes to active duty as a member of a uniformed service, and do not permit deferment if the borrower is employed by one of the uniformed services in a civilian capacity. For example, a borrower who is working for the Public Health Service (PHS) but is not a member of the Commissioned Corps would not qualify for deferment. Similarly, a borrower who is fulfilling an NHSC scholarship obligation through the "private practice option" or through the "private placement option" rather than as a PHS commissioned officer would not be eligible for deferment. Please be certain that borrowers understand this provision prior to graduation in order to avoid subsequent problems in administering the deferment provisions.

Disability Cancellation

In order to grant cancellation of a health professions or nursing student loan due to the borrower's permanent and total disability, a school must obtain medical information to support the disability from the borrower, and must submit this information to the Bureau for review by the Surgeon General's Medical Review Board and final action by the Bureau. Upon receipt of complete documentation of the borrower's medical condition, the Bureau presents the case to the Medical Review Board, the Medical Review Board determines whether the borrower should be eligible for disability cancellation, and the Bureau notifies the school of the final decision.

While the school is awaiting a decision from the Bureau, it may place the borrower in forbearance or renegotiate the borrower's repayment schedule, if such action would be appropriate. If the Bureau approves the disability cancellation, the school would reflect the balance of the loan in the appropriate section on future AORs. If the Bureau does not approve the cancellation, the borrower would continue to be responsible for repayment of the loan. Schools can find further details regarding the procedures for requesting disability cancellation in sections 117.2 and 217.2 of the Student Financial Aid Guidelines.

Renegotiation and Forbearance

For the HPSL and NSL programs, renegotiation and forbearance are two separate methods for dealing with a borrower who is unable to make payments as required by his/her existing repayment schedule. A school should use renegotiation when a borrower is able to make payments on a regular basis, but is unable to pay the amount required to keep the account current according to the existing repayment schedule. If the school is satisfied that the borrower's financial situation precludes compliance with the existing schedule, and if the school obtains documentation to show that the school and the borrower have mutually agreed to replace the existing schedule with a revised schedule, the borrower henceforth would be considered current in his/her repayments as long as he/she complies with the terms of the

renegotiated schedule. The revised repayment schedule must still require full repayment within the maximum ten-year repayment period allowed by the HPSL and NSL statutes. The renegotiated schedule, as agreed to by the school and the borrower, supersedes the previous repayment schedule, and is used to determine whether a borrower is current or past due in any of his/her subsequent payments.

Forbearance differs from renegotiation in that; (1) payments toward principal are temporarily suspended due to extraordinary circumstances and (2) because payments have been suspended, these accounts are excluded from the delinquency rate calculation; i.e., they are neither current nor delinquent. As with renegotiation, periods of forbearance must be counted as part of the ten-year repayment period, since the HPSL and NSL legislation does not include such periods under the deferment provisions.

Collection Agencies

When a school enters into an agreement with a collection agency, it is the school's responsibility to verify that the collection agency is bonded before turning any delinquent accounts over to the agency for collection. The school should also verify that the amount of the agency's bonding is inadequate to protect the school from any loss in the event the agency encounters financial difficulties. If a school refers delinquent accounts to a collection agency that is not bonded, or has minimal bonding, and subsequently loses any of its collections because the agency declares bankruptcy or otherwise ceases collection activities, the school will be held responsible for reimbursing the fund for the money that it is unable to recover from the agency.

Effective with the publication of this policy memorandum, a school may charge collection agency costs to the HPSL or NSL fund without requesting written permission from the Bureau, as long as the school is following sound due diligence procedures, such as those outlined in the Student Financial Aid Guidelines, in the collection of its HPSL and NSL funds. However, if the Bureau finds that a school is charging collection agency costs to the fund without having exercised due diligence, we will require the school to reimburse the fund for these charges. The collection agency fees charged to the fund must not exceed the amount that would be considered normal and reasonable for the geographic area. Schools must prorate collection agency costs between principal and interest collected.

Credit Bureaus

The HPSL regulatory amendments published June 3, 1983 require health professions schools to report accounts more than 120 days past due to a credit bureau when appropriate. To our knowledge, the only situation in which it would not be appropriate to report an account to a credit bureau would be when the account is so old that a credit bureau would not accept the information. However, as schools become more familiar with the use of credit bureaus, it is possible that other situations where it would not be appropriate to report an account to a credit bureau may arise. We will keep schools informed, through future policy memorandums, of other circumstances in which the use of a credit bureau would not be appropriate.

Once a school has reported an account to a credit bureau, the school must update the status of the account to the credit bureau on a monthly basis. If the borrower brings the account current, either by repayment of the delinquent amount or through a renegotiation of the repayment schedule, the school must reflect this in subsequent reports to the credit bureau. Similarly, if the same borrower again becomes past due, the school must indicate a return to delinquent status in subsequent credit bureau reports.

According to the interpretation of the Family Educational Rights and Privacy Act (FERPA) by the Department of Education, which is responsible for FERPA, a school is legally permitted to report delinquent accounts to a credit bureau without borrower consent. However, a school does not have permission to report non-delinquent accounts to a credit bureau without borrower consent. The permission to report delinquent borrowers to a credit bureau comes from a provision in FERPA which allows the release of confidential borrower information (e.g., status of loan accounts) when this is necessary to enforce the terms and conditions of a borrower's financial aid. Thus, if a borrower becomes delinquent, his/her obligation to repay the loan in accordance with the terms of the repayment schedule may be enforced by releasing information regarding the status of the loan account to a credit bureau. However, if a borrower is making payments in a timely manner, the use of a credit bureau would not be necessary to enforce the terms and conditions of the financial aid and, therefore, is not permitted by FERPA without borrower consent. Based on this Page 6 - Policy Memorandum Number Six

interpretation of FERPA, the only credit bureau costs which a school may charge to the HPSL and NSL funds are the costs of membership, which may include the initial membership fee, as well as any required monthly charges, and any costs associated with reporting on delinquent borrowers.

Although FERPA does not specifically require that the school notify the borrower before reporting to a credit bureau, sound due diligence procedures dictate that the school notify a delinquent borrower in writing of its intent to use a credit bureau, and give the borrower a final opportunity to rectify the account, before reporting the account to a credit bureau.

Litigating Against Members of the Uniformed Services

The existing HPSL regulations require, and it is expected that the final NSL regulations will require, that a school use litigation as part of its due diligence procedures. Delinquent borrowers who are serving as members of one of the uniformed services are not exempt from being subject to litigation. Therefore, HPSL schools must endeavor to obtain judgments against delinquent members of the uniformed services when appropriate.

Procedures Applicable to the Write-Off of Uncollectible Loans

Title 42 Code of Federal Regulations, Sections 57.210 and 57.314, have since 1964 required that each school at which a HPSL or NSL fund is established exercise due diligence in the collection of all loans due the fund. In addition to this regulatory due diligence requirement, the Department has periodically issued manuals containing advisory supplemental information regarding the loan collections process, such as the Manual of Information, Policies, and Procedures issued in 1966, the revised Manual of Information, Policies, and Procedures issued in August 1970, the Student Financial Aid Guidelines issued in October 1980, and policy memorandums issued periodically since July 1981.

In order to determine whether a school has exercised due diligence in the collection of a loan, the Bureau reviews the particular circumstances of the loan and the specific activities which the school has undertaken in attempting to collect it. The concept of 'due diligence' always has referred to some degree of active attention directed to the collection of the debt.

In response to continued requests for more specific guidance regarding the write-off review process, we have outlined below types of documentation that we would generally expect a school to submit in order to demonstrate compliance with the due diligence requirement. However, in reviewing this outline, it is essential to understand that **LOANS SUBMITTED FOR WRITE-OFF APPROVAL ARE JUDGED ON A CASE-BY-CASE BASIS KEEPING THE SPECIFIC AND UNIQUE CIRCUMSTANCES OF EACH IN MIND.**

When requesting write-off approval, the school should completely document all activities undertaken as part of its efforts to collect the uncollectible loan. Generally, this documentation would include the following:

1. Copy of signed and dated promissory note;
2. Evidence of initial billings, including information regarding the due date of the first payment, and continued regular billings as appropriate. In order to document regular billing, it is preferable that a school submit actual copies of each bill sent to the borrower. However, if copies of the bills are not available, the school may provide the following in their place:
 - a. In cases where an institution has contracted with a billing agency to perform regular billing, the institution may submit:
 - (1) a copy(ies) of the signed service agreements showing the effective date(s), and (2) evidence of communication with the borrower, such as copies of correspondence, a computer-generated or other authentic summary history sheet from the agency listing all dates and type of correspondence directed to the borrower, or other documentation supporting the claim that the terms of the agreement were carried out. This documentation must be certified by an authorized official at the lending institution to be

true, complete, and correct to the best of his or her knowledge. We note that any person who knowingly takes a false statement or Misrepresentation in the documentation is subject to penalties which may include fines and imprisonment under the U.S. Criminal Code (18 USC 1001).

b. In cases where an institution has used an in-house collection system, the institution may submit a computer-generated or other authentic summary history sheet for the loan, along with a copy of the policies and procedures of the system. This documentation must be certified by an authorized official at the institution to be true, complete, and correct to the best of his or her knowledge. We note that any person who knowingly makes a false statement or misrepresentation in the documentation is subject to penalties which may include fines and imprisonment under the U.S. Criminal Code (18 USC 1001).

c. Actual documented loan payments that were remitted on a timely basis prior to the borrower becoming delinquent.

3. Evidence of delinquency letters/follow-up correspondence with delinquent borrowers.

4. For HPSL loans submitted after June 3, 1983, regulations require that the school show evidence of having used the following procedures:

a. Use of a collection agent (internal or external);

b. Use of legal proceedings against borrowers after all other attempts at collection have failed (or indication of why litigation was not appropriate); and

c. Notification to a credit bureau of the status of the borrower's account (or indication of why the use of a credit bureau was not appropriate).

5. In cases of bankruptcy, a copy of the discharge, the proof of claim, the notice of the first creditors' meetings, and any other relevant activity the institution may have done during this time. For nursing schools, evidence of the use of a collection agent, litigation, and/or credit bureaus should be provided, if available.

Other information which a school should provide, if available, includes grace period letters, evidence of exit interview efforts, and notations of telephone contacts regarding delinquent loans. In other words, as indicated previously, each loan submitted for write-off approval should include all available documentation which evidence the school's efforts to collect the loan.

Student Financial Aid Guidelines

Because of the continued uncertainty regarding pending regulatory changes in the HPSL and NSL programs, the Bureau has postponed the publication of an updated version of the Student Financial Aid Guidelines. We expect to publish the revised Guidelines sometime this fall.

Training Workshops

The Bureau will hold a series of ten training workshops beginning in the late fall of 1984 and extending through the spring of 1985. Four of the workshops will be two-day sessions focusing on the nursing programs, and six will be four-day sessions which include both the nursing and health professions programs, with one day focusing on the HEAL program. We will be conducting the four nursing workshops in San Juan, Puerto Rico; Columbus, Ohio; Memphis, Tennessee; and Denver, Colorado. The six sessions that address both health professions (including REAL) and nursing will be in Boston, Massachusetts; Washington, District of Columbia; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; and Los Angeles or San Francisco, California. We are still in the process of determining actual dates for each of the workshops. Although we will be unable to pay for costs associated with workshop attendance, we will make every effort to minimize costs.

The workshops will be directed toward program directors and financial aid and fiscal administrators, and will be designed to: (1) provide an update on the many changes that have occurred or are still underway in the health professions (including and nursing student assistance programs); (2) review program policies and requirements that have consistently been troublesome in the administration of the programs;

(3) provide training in sound due diligence procedures; (4) provide all who are a part of the student assistance process--from, awarding to collecting--with a better understanding of the need for effective interaction and communication with those who are working on the "other end" of financial aid; and (5) explore future needs in financial aid for health professions and nursing students, such as debt management counseling and new or innovative sources of aid in order to make the sessions of greatest value, the workshop faculty will include financial aid and fiscal administrators from health professions and nursing schools as well, as Bureau personnel.