

December 24 1986

To: Officials at Schools in the Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs
Subject: Policy Memorandum Number Ten

This memorandum provides further information on the penalty charge provision, amends the Department's policy regarding the write-off of small HPSL and NSL loan balances, and encourages schools to use credit bureaus for skip tracing.

Penalty Charge

In administering the penalty charge provision contained in Public Law (P.L.) 99-92, which affects NSL disbursements for which the promissory note was signed on or after October 1, 1985, and P.L. 99-129, which affects HPSL disbursements for which the promissory note was signed on or after October 22, 1985, schools should note the following:

For NSL disbursements for which the promissory note was signed on or after October 1, 1985, and for HPSL disbursements for which the promissory note was signed on or after October 22, 1985, a school must assess a penalty charge on a loan that is more than 60 days past due. A penalty charge may not be assessed on a loan that is 60 days or less past due.

The requirement to charge a penalty applies to any loan that is more than 60 days past due, including a loan for which the school does not have the borrower's current address. A penalty would not be charged on a loan that has been re-negotiated or placed in forbearance (provided that the borrower is complying with the terms of re-negotiation or forbearance agreed upon by the borrower and the school), since this loan would not be considered past due.

The penalty charge may be computed, at a maximum, as 6 percent of the total amount of the payment due (i.e., the amount that has already come due and is now past due, not including payments for which the borrower is being billed on a current basis but which have a future due date).

Since the statute establishes a maximum penalty charge, but does not establish a minimum charge, the school may compute the penalty charge at a lesser rate (for example, 5 percent) or as a flat rate (for example, \$2.00 per month, provided that this does not exceed 6 percent of the total amount past due). However, a school may not comply with the penalty charge requirement by charging 0 percent.

A school has discretion, subject to the 6 percent maximum, in implementing the late fee as a percentage, as a flat dollar rate, or as a combination of both. For example, a school may comply with the penalty charge provision by charging a flat \$1.00 or \$2.00 fee (or any other amount it determines to be appropriate) on a monthly basis when the loan is more than 60 days past due, as long as the charge does not exceed 6 percent of the total amount past due. A school may also *comply* with the penalty charge provision by charging the lesser of, for example, 6 percent or \$15.00 (or any other percentage or dollar amount within the statutory maximum of 6 percent). Each school should assess the penalty charge at an amount, within the 6 percent statutory maximum, that will be most beneficial to its collection efforts.

A school may not charge a penalty on any previous unpaid penalty charges unless the school has chosen to add the penalty charges to the principal balance of the loan.

Federal law supersedes State law when there is a conflict between the two. In the case of the penalty charge provision, the Federal law authorizes schools to charge up to 6 percent of the total amount past due on loans more than 60 days past due, regardless of how this may differ from any State laws governing penalty charges.

Standard accounting procedures dictate that payments received be applied first, to penalty charges outstanding; second, to interest outstanding; and third, to the principal balance.

Write-off of Small Loan Balances

Effective with the publication of this memorandum, a school may write off an HPSL or NSL loan balance that does not exceed \$200 (principal, interest, and penalty charges) without requesting approval from the Office of Debt Management (ODM), provided that the school has exercised due diligence, in accordance with the applicable regulations, in its attempts to collect the loan. When a school writes off a loan under this provision it must notify ODM in writing of the amount of principal, interest, and penalty charges written off. If subsequent collections are received on the loan, these amounts must also be reported to ODM in writing. The address for reporting small balance writeoffs (and subsequent collections and/or adjustments) is the Office of Debt Management, Room 8A-43, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (telephone number: 301 443-1700).

A loan written off under this provision will be reviewed during the biennial audit and Departmental reviews to verify that the school exercised due diligence in its collection efforts. If the findings of the audit or Departmental review indicate that due diligence was not followed, the write-off will be disallowed and the school will be required to reimburse the fund for the full amount of the unpaid loan balance, including principal and any interest and penalties that would have accrued up to the date that reimbursement actually occurs.

Use of Credit Bureaus for Skip tracing

The Department encourages each school to use at least two credit bureaus, one which provides local coverage and one which provides regional or national coverage, in its efforts to locate borrowers for whom the school has no current address. Since the HPSL and NSL regulations require each school to be a member of a credit bureau (to affect the credit rating of delinquent HPSL and NSL borrowers) as part of the required due diligence procedures, schools should already have access to at least one credit bureau. If a school must incur additional credit bureau costs to use the credit bureau for skip tracing, it may charge these costs to the HPSL and NSL funds, provided that the school is exercising due diligence in the collection of its HPSL and NSL loans. If the Department finds that a school is charging the costs of skip tracing through a credit bureau to the HPSL and NSL funds without having followed the applicable due diligence requirements that precede skip tracing, the school will be required to reimburse the fund for these charges.

We will be pleased to respond to any comments or questions regarding this memorandum. Please direct telephone inquiries to the Program Development branch at 301 443-4540, and address correspondence to Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.