June 18, 1993

To: Schools and Lenders Participating in the Health Professions and Nursing Student Assistance Programs

Subject: Recent Legislative Amendments
HEAL School Policy Memorandum 38
HEAL Lender Policy Memorandum 93-12
Campus-Based Programs Policy Memorandum 21

President Clinton signed Public Law (P.L.) 103-43, the National Institutes of Health Revitalization Act of 1993, on June 10, 1993. This law includes several amendments to the Public Health Service Act (the Act) which affects the health professions student assistance programs. These amendments are described below.

Health Education Assistance Loan (HEAL) Program

1. Discharge of HEAL loans due to bankruptcy : Amends section 707(g) of the Act to require that, for a HEAL loan to be considered for discharge in bankruptcy, at least 7 years must have passed since the beginning of the repayment period, excluding any periods during which the obligation to repay is suspended. (Previously, the Act required that only 5 years must have passed since the repayment period began, and periods during which repayment was suspended were not excluded when determining the 5-year period.) This amendment applies to any HEAL loan for which bankruptcy proceedings began on or after June 10, 1993.

2. School collection assistance: Adds a new paragraph (j) to section 707 of the Act which authorizes a school or postgraduate training program attended by a HEAL borrower to assist in the collection of any HEAL loan which becomes delinquent, including contacting the borrower to encourage repayment. This provision makes clear that for purposes of these contacts (or any other efforts to assist in the collection of a HEAL loan), the school or postgraduate training program is not subject to section 809 of the Fair Debt Collection Practices Act (FDCPA). (Section 809 of the FDCPA requires a debt collector to provide a borrower with written notice of the amount of the debt, along with other information regarding disputes over the validity of the debt, within 5 days after the initial communication with the borrower.)

As a result of this provision, schools are no longer limited with regard to the nature of their contacts with delinquent or defaulted HEAL borrowers. A school may now contact a delinquent or defaulted HEAL borrower in writing, by telephone, or in person regarding the HEAL loan and provide the borrower with full information on the consequences of default and the importance of timely repayment. Some of the consequences of default which a school may wish to share with delinquent and defaulted HEAL borrowers are as follows:

(1) Reporting to credit bureaus: HEAL lenders and holders are required to report all HEAL loans that become more than 60 days past due to one or more consumer credit reporting agencies. This requirement is designed to assure that information on a borrower's failure to honor the HEAL repayment obligation will be available to other creditors who are considering making a loan to the borrower. As a result of this requirement, borrowers who have defaulted on their HEAL loans frequently have been unable to obtain credit for major purchases such as a car or a house.

(2) Obtaining of a Judgment: HEAL lenders and holders are required to obtain a judgment against a defaulted HEAL borrower before the Department will purchase the loan from them. When a judgment is entered against a HEAL borrower, it becomes a part of the borrower's credit record (making it extremely difficult to obtain any other credit) and a lien is placed against the borrower's property. The lien prevents the borrower from selling property without first satisfying the judgment.

(3) Department of Justice collection efforts: Defaulted HEAL loans that are assigned to the Federal Government are subject to departmental collection procedures, including litigation and/or enforcement of the judgment by the Department of Justice (DOJ). DOJ enforcement procedures include garnishment of wages, attachment of property, and other methods that are appropriate depending upon the circumstances of the defaulted borrower. Over 500 defaulted HEAL borrowers are currently making payments as a result of DOJ collection efforts.

(4) Statute of limitations: HEAL loans are now exempt from any statute of limitations. This allows the Federal Government to pursue all methods available to collect a defaulted HEAL loan, including litigation, until the loan is paid in full, regardless of the length of time that may have passed since the repayment period began.

(5) Internal Revenue Service (IRS) Tax Refund Offset: Defaulted HEAL borrowers who have failed to make satisfactory repayment arrangements with the Department are reported to the IRS annually for the withholding of any tax refund that they would otherwise be entitled to receive, up to the full amount of their unpaid HEAL indebtedness.

(6) Federal salary offset: Defaulted HEAL borrowers who have failed to make satisfactory repayment arrangements with the Department and who are employees of the Federal Government are subject to salary offset until their HEAL debt has been fully repaid. Forty-nine defaulted HEAL borrowers are currently having their salaries offset under this authority.

(7) Publication of names of defaulters: Section 709(c)(1) of the Act requires the Department to make available to the public, through publication in the Federal Register, a list of defaulted HEAL borrowers. The first such publication is expected by August 1, 1993, and will include, for each defaulter, his or her name, location (city and state), total amount of the HEAL debt, health profession school attended, and date of graduation. The list will include defaulted HEAL borrowers for whom the Department has paid a claim, excluding borrowers who, based on their status as of March 31, 1993: (a) Have paid in full; (b) have received cancellation due to death or disability; (c) are in forbearance or deferment; or (d) have entered into a repayment agreement with the Department and have complied with the repayment agreement for the most recent 12 consecutive months as of March 31, 1993. This listing will be republished on an annual basis. Once the listing is published in the Federal Register, it is likely that the press will further publicize this information through stories addressing defaulters in their local area.

(8) Release of information on defaulters to other interested organizations: Section 709(c)(2) of the Act requires the Department to release information on defaulted HEAL borrowers to relevant Federal agencies, schools, school associations, professional and specialty associations, State licensing boards, hospitals with which such borrowers may be associated, and other relevant organizations. For defaulted borrowers who have not made satisfactory repayment arrangements, this information will be released sometime after the publication of the Federal Register notice listing defaulted borrowers, and will include the defaulted borrower's name, social security number, address, and the total amount of the HEAL debt.

(9) Medicare offset: Section 707(f) of the Act requires the Department to reduce Federal reimbursements or payments for health services under any Federal law to defaulted HEAL borrowers, in accordance with section 1892 of the Social Security Act (SSA). Section 1892 of the SSA requires that the defaulted HEAL borrower be given an opportunity to enter an agreement to repay his or her HEAL loan(s) by having a portion of his or her Medicare reimbursements applied toward HEAL repayment. If the borrower refuses to enter such an agreement, the borrower is subject to exclusion from the Medicare program.

(10) Medicare exclusion: A defaulted HEAL borrower who fails to make satisfactory repayment arrangements with the Department is subject to exclusion from participation in the Medicare program. To date, 170 defaulted borrowers have been excluded from the Medicare program, and more than 1400 additional defaulters recently have been notified that they will be excluded from the Medicare program if they do not make satisfactory repayment arrangements.

(11) Withholding of school services: The Department is in the process of finalizing regulations which are expected to authorize schools to withhold services such as academic transcripts and alumni services from defaulted HEAL borrowers. A defaulted HEAL borrower can expect to face greater difficulties in obtaining these services from his or her school once this requirement becomes effective.

(12) School risk-sharing: Schools with HEAL default rates greater than 5 percent must now share in the risk of HEAL defaults by paying a portion of the insurance premium on any new HEAL loan. This requirement has forced some schools to suspend their participation in the HEAL program, due to the inability to take on this financial obligation, and has impacted on current students by making them unable to receive HEAL loans. For those schools with default rates greater than 5 percent that have not been forced to suspend participation, defaulted HEAL borrowers have created an extra liability which the school must now absorb.

Health Professions Student Loan (HPSL), Loans for Disadvantaged Students (LDS), and Primary Care Loan (PCL) Programs

1. Maximum loan amount: Amends section 722(a) of the Act to authorize the loan amount for a third or fourth year medical or osteopathic medical student to be increased to pay the balances of loans made to the student, for attendance at the school, from sources other than the HPSL, PCL, or LDS programs. The authority to make such an increase is subject to the school and the student agreeing that this amount will be expended only to repay such other loans. This new maximum loan amount applies to any HPSL, PCL, or LDS loan made to a third or fourth year student of medicine or osteopathic medicine on or after June 10, 1993.

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This provision authorizes a school of medicine or osteopathic medicine to use HPSL/PCL or LDS funds to repay higher cost loans that were made to a student during any year of attendance at the school. For example, a school of medicine could make a PCL loan to a third-year medical student which would not only cover a portion of the student's third-year costs, but would also repay one or more HEAL loans made to the student for the first and/or second year of study.

Schools are responsible for implementing this provision and assuring that the loan funds are used appropriately. At a minimum, any school that chooses to use the loan funds for this purpose must assure that the portion of funds designated for repayment of prior loans be disbursed as one or more checks that are jointly payable to the student and the lender(s) involved.

2. Deletion of exceptional financial need" requirement:
Amends section 722(b) of the Act to delete the requirement that students of medicine and osteopathic medicine must be of "exceptional financial need" to receive HPSL, PCL, or LDS funds. As a result of this amendment, a student of medicine or osteopathic medicine must only demonstrate financial need (rather than "exceptional financial need") to be eligible to receive a HPSL, PCL, or LDS loan on or after June 10, 1993. it should be noted that Federal regulations continue to require that, in determining whether an HPSL, PCL, or LDS applicant has financial need, the school must consider the expected contribution from parents as well as from the student and his or her spouse, if applicable.

Primary Care Loan (PCL) Program

1. Waiver or suspension of service obligation: Adds a new paragraph (4) to section 723(a) of the Act which authorizes the Secretary to provide for the waiver or suspension of the primary care service obligation in the following circumstances:

(a) If the borrower terminates his or her studies before graduating from the school and does not later resume studies and graduate from the same or any other school of medicine or osteopathic medicine, the primary care service obligation is waived,

(b) If the borrower terminates his or her studies before graduating from the school, but later resumes studies and graduates from the same or any other school of medicine or osteopathic medicine, the primary care service obligation of the borrower is considered to have been suspended for the period during which the borrower was not in attendance.

This provision does not waive or suspend the borrower's obligation to repay the PCL loan, but merely waives or suspends the primary care service obligation and the associated penalties for non-compliance. Thus, any borrower who fails to graduate from a school of medicine or osteopathic medicine must still repay the PCL in accordance with its normal terms (i.e., 5 percent interest and 10-year repayment period). However, such a borrower is not subject to the 12 percent interest compounded annually or the 3-year repayment period which otherwise applies to a borrower who fails to comply with the primary care service obligation.

Because this provision is an important part of the terms of the PCL loan, we have enclosed with this memorandum, for schools of medicine and osteopathic medicine only, a revised PCL promissory note which includes language addressing this provision. The revised note also contains

several other corrections and clarifications suggested by school officials. This revised note must be used for PCL loans in place of the note issued previously by the Department.

2. School requirements: Amends section 723(b)(1) of the Act to delay from June 30, 1994, until June 30, 1997, the requirement that a school of medicine or osteopathic medicine must meet conditions, as set forth in section 723(b)(2) of the Act, with respect to graduates of the school who are in primary health care residency training programs or are engaged in the practice of primary health care.

3. Measurement of a school's graduates: Amends section 723(b)(1) of the Act to require that the measurement of a school's compliance with the conditions set forth in section 723(b)(2) of the Act (regarding students in primary care residencies or primary care practice) will be made with respect to graduates of the school whose date of graduation from the school occurred approximately 3 years before the end of the period involved. Previously, this provision required that a school's compliance with the conditions set forth in section 723(b)(2) of the Act would be based on graduates whose date of graduation from the school occurred approximately 4 years before the end of the period involved.

4. School conditions: Amends section 723(b)(2)(B) of the Act to require that a school which complies with the school condition of demonstrating a 5 percentage point increase in its output of primary care practitioners over the preceding year must have a total of not less than 25 percent of its graduates involved in primary care residencies or engaged in the practice of primary care (rather than 15 percent, as was required prior to this amendment).

5. Non-compliance by schools: Amends section 723(b)(4) of the Act such that schools which do not comply with the school conditions regarding graduates entering primary care are subject to the following penalties:

(a) Must return 10 percent of the HPSL fund income received for the 1-year period ending June 30, 1997 (rather than June 30, 1994);

(b) Must return 20 percent of the HPSL fund income received for the 1-year period ending June 30, 1998 (rather than June 30, 1995); and

(c) Must return 30 percent of the HPSL fund income received for each 1-year period subsequent to June 30, 1998 (rather than June 30, 1995).

6. Authorization: Authorizes $10 million for each of fiscal years 1994 through 1996 for the purpose of making Federal capital contributions to HPSL/PCL funds at schools of medicine and osteopathic medicine. (Schools are reminded that an authorization level establishes a maximum dollar amount of new funding for a program, which must then be approved as part of an appropriations bill in order to actually become available.)

7. Eligibility for authorized funds: Restricts eligibility for newly authorized funds to schools which have at least 50 percent of their graduates entering primary care, or which are in the top 25 percent of medical and osteopathic schools with regard to the percentage of graduates entering primary care. For this purpose, the school's graduates entering primary care would be measured as of June 30 of the fiscal year prior to the fiscal year during which the Federal capital contribution is made available.

For a copy of the National Institutes of Health Revitalization Act of 1993, you should contact the Government Printing Office, Washington, D.C. 20402, or look in the Congressional Record of May 20, 1993 (available in many libraries) for S. 1.