

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

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**Health Resources and
Services Administration
Rockville MD 20857**

To: Schools and Lenders Participating in the Health Education
Assistance Loan (HEAL) Program

Subject: Recent Legislative Amendments Affecting the HEAL Program - HEAL
School Policy Memorandum Number Ten; Lender Policy Memorandum 88-17

President Reagan signed Public Law (P.L.) 100-607, the Health Omnibus Programs Extension of 1988, on November 4, 1988. This law amends the sections of Title VII of the Public Health Service (PHS) Act which authorize the HEAL program as indicated below.

Amendments Affecting Schools and Lenders

(1) Funding: (a) Authorizes the insurance of new loans at levels not to exceed \$325 million for Fiscal Year (FY) 1989, \$375 million for FY 1990, and \$400 million for FY 1991; (b) Allows that, in any fiscal year for which no insurance ceiling has been established, the amount of carryover available from the previous fiscal year shall constitute the ceiling for making new loans, including loans to new borrowers; (c) Extends the period for which loans may be insured through FY 1994; and (d) Allows loan insurance for the HEAL program to be granted without regard to the apportionment process.

These amendments make new borrowers eligible for HEAL loans effective November 4, 1988, the date of enactment of the law.

(2) Default standards: Authorizes the Secretary to: (a) Establish reasonable limits for default rates for borrowers in each of the health professions disciplines participating in the HEAL program; and (b) Suspend, terminate, or otherwise restrict the eligibility of a discipline from continued borrowing under the HEAL program if the schools within the discipline, taken as a group, exceed the established default rate limits.

This provision, which clarifies the Secretary's authority to implement standards, does not actually establish HEAL default standards. The Department expects to propose school, lender, and holder default standards for the HEAL program through a Notice of Proposed Rulemaking that will be published in 1989.

Amendments Affecting Schools

(1) Determination of financial need: States that the law does not limit the authority of a school, when determining the financial need of a student for a HEAL loan, to make allowances for students with special circumstances as the school determines are appropriate.

This amendment clarifies the school's authority to make allowances for students with special circumstances and is consistent with section 60.51(f) of the HEAL regulations. This section of the regulations currently allows the school to make changes to the need analysis information or the student budget, with appropriate documentation, but only as necessary for the student to complete his or her education.

Amendments Affecting Lenders

(1) Priority in providing insurance authority to lenders: Requires that, in providing comprehensive insurance contracts, the Secretary shall give priority to eligible lenders that agree: (a) To make HEAL loans to students at interest rates below the rates prevailing during the period involved; or (o) To make HEAL loans under terms that are otherwise favorable to the student relative to the terms under which eligible lenders are generally making HEAL loans during the period.

(2) Applicability of regulations to secondary markets: Clarifies that the Department may require the Student Loan Marketing Association (Sallie Mae) or any other secondary market to comply with regulations applicable to lenders, including regulations with respect to applications, contracts, and due diligence.

(3) Frequency of compounding interest: Allows, rather than requires, the compounding of interest on a semiannual basis.

(4) Assignment of HEAL loans: Allows the assignment of HEAL loans to public entities in the business of purchasing student loans.

(5) Requirement to litigate: Requires the lender or holder of a defaulted loan to include, as part of its substantial collection effort, the commencement and prosecution of a legal action.

(6) Authority for the Secretary to sell HEAL loans received through assignment: Authorizes the Secretary to sell to eligible lenders or other entities that the Secretary determines are capable of dealing in such loans, without recourse, HEAL loans received by the Secretary through assignment.

(7) Exercise of care and diligence by lenders and holders: Clarifies that eligible lenders, as well as holders, must exercise reasonable care and diligence in the making of HEAL loans and must exercise a substantial effort in the collection of HEAL loans.

(6) Amount of loss pursuant to default: Clarifies that the term "amount of the loss" means, with respect to a HEAL loan, the unpaid balance of principal and interest, less the amount of any judgment collected pursuant to default proceedings commenced by the lender or holder.

(9) Clarification regarding bankruptcy: Clarifies that the restrictions on the discharge of HEAL loans due to bankruptcy apply to a discharge granted under any chapter of title 11 of the United States Code, not just chapter 7.

(10) Litigation: Requires that, prior to the payment of an insurance claim by the Secretary, the lender or holder must commence and prosecute a legal action for such default unless:

- (a) In the determination of the Secretary:
 - (i) The eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful; or
 - (ii) Prosecution of the action would be fruitless because of the financial or other circumstances of the borrower;
- (b) For loans made prior to November 4, 1988, the loan involved was made in an amount of less than \$5,000; or
- (c) For loans made on or after November 4, 1988, the loan involved was made in an amount of less than \$2,500.

(11) Time period for payment of claims after litigation: Requires that, for an eligible lender or holder that has commenced an action in accordance with the statutory requirements, the Secretary shall pay the claim or deny the claim payment not later than 60 days after the date on which the lender or holder notifies the Secretary that judgment has been entered with respect to the action.

(12) Definition of eligible lender: Adds to the definition of "eligible lender" nonprofit private entities designated by a State, regulated by a State, and approved by the Secretary.

(13) Reissuance and refinancing agreements: Allows any borrower who received a HEAL loan with a fixed interest rate exceeding 12 percent per year to enter into an agreement with an eligible lender (including Sallie Mae) for the reissuance or refinancing of the loan at the interest rate in effect for HEAL loans on the date the borrower submits an application for

reissuance or refinancing. A reissued or refinanced loan would be repayable in accordance with the repayment period applicable to the original loan (i.e., the duration of the original loan would not be extended). The lender reissuing or refinancing the loan may charge the borrower an amount not in excess of \$100 to cover the administrative costs of the reissuance or refinancing. The loan would continue to maintain insurance coverage Without the charging of an additional insurance premium. Lenders must notify borrowers of this option no later than January 1, 1969.

For a copy of the 'Health Omnibus Programs Extension of 1988, you should contact the Government Printing Office, Washington, D.C., 20402, or look in the Congressional Record of October 13, 1988, (available in many libraries) for S. Z889.

If there are questions on the new legislation, schools should contact the Program Development Branch at 301-443-4540 and lenders should contact Carl Schmieg or Glenn King of the HEAL Branch at 301-443-1540.

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Division of Student Assistance