

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

**AUG 30 1989**

Bureau of Health Professions

**Public Health Service**

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

TO: Officials of Schools and Lenders Participating in the-Health  
Education Assistance Loan (HEAL) Program

Subject: Applicability of the Fair Debt Collection Practices Act to HEAL  
Schools  
HEAL School Policy Memorandum # Thirteen  
HEAL Lender Policy Memorandum # 89-10

When a HEAL borrower is 90 days delinquent, the lender is required to submit a request for collection assistance to the HEAL Branch. Three preclaim assistance letters are then sent to the borrower by the HEAL Branch, 30 days apart. The letters encourage the borrower to contact his or her lender to make satisfactory repayment arrangements, and remind the borrower of the consequences of default. A copy of the second preclaim assistance letter is forwarded to the school the borrower attended while receiving the HEAL loan, to notify the school of the borrower's delinquent status and give the school an opportunity to assist in encouraging the borrower to repay.

Because a school's activities in this situation involve a debt which is not owed to the school, concerns have been expressed regarding the applicability of the Fair Debt Collection Practices Act (the Act) 15 U.S.C. & 1692 et seq., to these activities. The question of whether a school is considered a "debt collector" in this situation, and thus subject to the Act, was referred to the Federal Trade Commission (FTC.), the Federal agency with jurisdiction over the Act. The FTC response indicated the following:

.... Section 803(6) of the Act defines a "debt collector" as anyone who (1) uses any instrumentality of interstate commerce or the mails in a business which has as its principal purpose the collection of debts or (2) regularly collects or attempts to collect, directly or indirectly, debts owed or due another. The term "regularly" is redefined in either the Act or its legislative history. In general, the term is intended to include those who collect debts for others in the ordinary course of business and excludes those who collect debts for others in an isolated or occasional instance. Some factors to consider include, but are not limited to, the nature and frequency of the collection activities undertaken and whether those activities are an established part of a firm's business operation. The object is to ascertain whether the School's activities are conducted on a routine basis and constitute bona fide "attempts to collect" the debts at issue or whether its activities are simply attempts to facilitate the actual collection of the debt by another party.

As you might expect, a school may be subject to the Act if its contacts with borrowers are similar in nature and content to those traditionally made by collection agencies, i.e., if the contacts are in the nature of dunning communications, and if those contacts are part of the school's normal operating procedure. For example, if, as

a matter of practice, a school locates delinquent borrowers and sends them dunning notices demanding that payment be made to the respective lenders-or implying that a borrower's nonpayment will have negative consequences for the borrower, the school would be engaging in the type of debt collection activities covered by the Act. In that case, the school would be required to comply with the Act, including its affirmative requirements.

However, if a school's contacts with delinquent borrowers are ... in the nature of advice to the borrower that (1) the school knows of the borrower's delinquency and (2) the school encourages the borrower to arrange a repayment plan with the lender, or if they are in the nature of reminders to the borrower to submit deferment forms, if applicable, or a review of the options available for the borrower who is having financial problems, then it is our opinion that the school would not be a "debt collector" under the Act, whether or not such contacts are "regularly" made. The purpose of such contacts would be to assist, rather than dun, the borrower.

In accordance with the above opinion, the HEAL Branch will continue to forward the second preclaim letters for your assistance in encouraging delinquent borrowers to contact their lenders to establish repayment arrangements or to bring their accounts up to date. Your contacts should assure that delinquent borrowers are knowledgeable about deferment, forbearance, graduated repayment, and combined payment as possible options for resolving the delinquency. However, we would suggest that your contacts not make reference to the negative consequences of default, since doing so could cause the school to fall within the definition of "debt collector" for purposes of the Act.

we appreciate your cooperation in furnishing the HEAL Branch any current information you might have on file and your efforts to contact those delinquent borrowers who attended your institution to assist them in rectifying their delinquent status.

If you have any questions concerning this matter, please contact  
the  
Preclaims and Claims Staff at (301) 443-0603.

Sincerely yours,