

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Bureau of Health Professions

Health Resources and
Services Administration
Rockville MD 20857

JUL 9 1990

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

Subject: Submission of Default Claims with Judgments
Lender Policy Memorandum 90-5

Time Frames for Submission of Default Claims with Judgements

Section 60.40 of the HEAL regulations (42 CFR 60.40) establishes a 30-day period for the submission of a claim after completion of lender and holder responsibilities. However, in cases where the lender or holder is required to obtain a judgment against the borrower, the length of time necessary for completion of lender and holder responsibilities varies significantly, depending upon the court jurisdiction in which the judgment is obtained. Even after the court has issued the judgment, procedures which the lender or holder must follow to ensure that the judgment is recorded in the jurisdiction where the borrower resides, and that a lien is created against the borrower's real property in the jurisdiction where the borrower resides, may differ depending upon the jurisdiction.

Due to these variances, the Department believes that, for claims with judgments, it is reasonable to allow lenders and holders up to 60 days after the date of issuance of a judgment to submit the claim for payment. Further, if the lender or holder documents post-judgment collection activities that were conducted on a timely basis, the Department would consider it reasonable for the lender or holder to delay submission of the claim until no more than 30 days after completion of these activities.

Notwithstanding the above claim filing deadlines, 42 CFR 60.41 establishes procedures for curing or excusing defects, such as the late filing of a claim, but does not allow for the payment of interest between the end of the filing period and the date the Secretary received the claim. Accordingly, if a claim is submitted after the periods defined above, it may be eligible for payment in accordance with 42 CFR 60.41(d), which requires that: (1) The lender or holder request that the defect (i.e., late filing) be excused; and (2) the lender or holder satisfy the Secretary that the defect does not prejudice the Secretary's ability to collect the loan. In this case, interest on the claim would not be paid between the end of the filing period and the date the Secretary received the claim.

Implementation of Filing Deadlines for Claims with Previously or Recently Issued Judgments

For any loan for which a judgment was issued prior to August 1, 1990 (and for which post-judgment collection activities are not underway), the Department will pay interest through the date the claim is paid, provided that:

- (1) The complete claim file is submitted by September 30, 1990;
and
- (2) The loan is eligible for payment in accordance with the requirements in effect at the time the judgment was issued. For example, any claim with a judgment which was issued after September 18, 1989, must include proof of service, in accordance with the requirements clarified in HEAL Policy Memorandum 89-11.

If any such claim is submitted after September 30, 1990, and is determined to be eligible for payment, interest will not be paid between October 1, 1990 and the date the Secretary receives the claim.

Documentation Requirements

It has come to our attention that some lenders and holders have encountered difficulties in obtaining an exemplified copy of a judgment, and that this requirement has seriously hampered efforts to submit a litigated claim in a timely fashion. Although this document generally is necessary for enforcement of the judgment, officials from the Department of Justice have indicated that they can obtain it from the court if the lender or holder is unable to include it with the claim submission. Accordingly, while lenders and holders must continue to include a copy of the judgment with the claim submission, and an exemplified copy is preferred, the judgment is not required to be exemplified.

We hope this information is helpful. Please contact John Haczewski, Chief, Claims Section, on 301 443-0603 if you have any questions on this policy memorandum.

Michael Heningburg
Director
Division of Student Assistance