

DEPARTMENT OF HEALTH & HUMAN SERVICES

Bureau of Health Professions

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

SEP 18 1989

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

Subject: Clarification of HEAL Litigation Requirement
HEAL Lender Policy Memorandum # 89-11

This policy memorandum replaces Lender Policy Memorandum #89-8, which is hereby deleted, and clarifies the following: (1) Documentation requirements with which a lender or holder must comply when submitting a default claim for which a judgment has been obtained against the borrower; (2) Procedures which must be followed as part of the litigation requirement; and (3) Foreign litigation requirements.

Litigation Documentation

Section 60.40(a)(1) of the HEAL regulations requires the submission of the original promissory note as part of the documentation for any claim, including a default claim for which a judgment has been obtained against the borrower. If the original promissory note was released to the court as part of the litigation proceedings, it must be recovered, if possible, for submission with the default claim. If the court will not release the original note, a certified copy must be obtained and submitted to satisfy this requirement.

In addition, section 60.40(c)(1)(ii)(B) of the HEAL regulations requires the lender or holder to submit a collection history with any default claim. As part of the collection history for any loan that has been litigated, the lender or holder must include the following:

- (1) A copy of the complaint filed;
- (2) Proof of service; and
- (3) An exemplified copy (with seal) of the judgment.

The above items are necessary for enforcement of the judgment. In accordance with section 60.40(b), which states that the payment of a claim is contingent upon receipt of all required documentation, any litigated claim submitted without the above documentation will not be eligible for payment.

Litigation Procedures

In complying with the requirement to litigate against a defaulted HEAL borrower, lenders and holders must do the following:

- (1) Ensure that the judgment is recorded in the jurisdiction where the borrower resides (including cases in which the lender used a long-arm statute or the borrower has moved);
- (2) Ensure that a lien is created under State law against the borrower's real property in the jurisdiction where the borrower resides; and
- (3) Notify the borrower in writing that a judgment has been entered against him or her.

Foreign Litigation

Lenders or holders are not required to seek a judgment against a borrower residing outside of a "State", as defined in 42 USC 292a. Identification of foreign residence will be accepted as evidence of an inability to serve the borrower. 42 USC 292a defines a "State" as the 50 states plus the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

Please take the necessary steps to ensure compliance with these requirements before submitting additional claims. Thanks for your cooperation.

Sincerely yours,

Michael Heningburg
Director
Division of Student Assistance