

DEPARTMENT OF HEALTH HUMAN SERVICES

Bureau of Health Professions

Health Resources and
Services Administration
Rockville MD 20857

December 1, 1998

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

Subject: Recent Legislative Amendments
HEAL School Policy Memorandum S-1999-1
HEAL Lender Policy Memorandum L-1999-2
Campus-Based Policy Memorandum 1999-1

Introduction

President Clinton signed Public Law (P.L.) 105-392, the Health Professions Education Partnerships Act of 1998, on November 13, 1998. This law amends the health professions and nursing student assistance programs and in some cases moves them, within Title VII and VIII of the Public Health Service (PHS) Act, to new sections. The amendments made by P.L. 105-392 are outlined below.

President Clinton signed P.L. 105-244 on October 7, 1998. This law, which primarily reauthorizes and amends programs under the Higher Education Act, includes: (1) A provision which affects the consolidation of loans made under Title VII and VIII of the PHS Act; and (2) an amendment to the Bankruptcy Act which affects loans made under Title VII and VIII of the PHS Act. These amendments are also explained below.

Finally, this memorandum addresses a change in the need analysis requirements for health professions students for academic year 1999-2000, to facilitate use of the Department of Education's electronic application form. This is explained below.

To facilitate the distribution of this memorandum by electronic mail, the table of contents below identifies the location of subject material within the memorandum using an outline form rather than page numbers. The memorandum will also be distributed in hard copy, with page numbers, to those entities that are not part of our electronic mail list-serve. For campus-based programs, this is the last policy memorandum that will be mailed in hard copy to those not on our list-serve. HEAL schools, lenders, and holders will continue to receive policy memoranda in hard copy.

Table of Contents

- 1. P.L. 105-392--The Health Professions Education Partnerships Act of 1998**
 - A. Exceptional Financial Need (EFN) Scholarship and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Programs**

1. Program Authority Repealed
 2. Service Requirement for Existing Recipients
 3. Funding for Existing Recipients
 - B. Scholarships for Disadvantaged Students (SDS) Program**
 1. Student Preferences
 2. School Funding Priorities
 3. New Disciplines
 4. School Eligibility Requirements
 5. Authorization Levels
 6. Allocation of Funds
 - C. Nursing Student Loan (NSL) Program**
 1. Extended Repayment for Cured Defaults
 2. Increase in Minimum Monthly Payment
 3. Statute of Limitations
 4. Extension of Authority to Use Revolving Funds
 - D. Health Professions Student Loan (HPSL), Loans for Disadvantaged Students (LDS), and Primary Care Loan (PCL) Programs**
 1. Maximum Loan Amount
 2. Length of Repayment Period
 3. Increase in Minimum Monthly Payment
 4. Statute of Limitations
 5. Timing of New Federal Awards
 - E. Loans for Disadvantaged Students (LDS) Program**
 1. Authorization Levels
 - F. Primary Care Loan (PCL) Program**
 1. Measurement of Compliance with School Requirements
 2. Penalty for Failure to Comply with Service Obligation
 3. Length of Repayment for Service Defaulters
 - G. Health Education Assistance Loan (HEAL) Program**
 1. Program Authority Not Extended
 2. Deferment
 3. Definition of Eligible Disciplines
 4. Lender and Holder Exceptional Performance Standards
 5. Bankruptcy Restrictions
 6. Refinancing
 - H. Faculty Loan Repayment Program (FLRP)**
 1. New Disciplines
 2. Amount of Loans Eligible for Repayment
 3. Faculty Eligibility
 4. Determination of Salary by School
 5. Authorization Levels
- II. P.L. 105-244-Provisions Affecting Health Professions and Nursing Loans**
- A. Loan Consolidation**

B. Amendment to the Bankruptcy Act
111. Need Analysis Requirements

1. P.L. 105-392--The Health Professions Education Partnerships Act of 1998

A. Exceptional Financial Need (EFN) Scholarship and Financial Assistance for Disadvantaged Health Professions Students (FADHPS) Programs

1. Authority Repealed: Repeals the authority for the EFN and FADHPS programs (former Sections 736, 740(d)(2)(B), and 795 of the PHS Act). Since EFN and FADHPS funds for academic year 1998-1999 were awarded to schools prior to enactment of P.L. 105-392, schools may continue to use these funds for the EFN or FADHPS programs for the remainder of this academic year. However, no finding will be available for these programs subsequent to academic year 1998-1999.

2. Service Requirement for Existing EFN/FADHPS Recipients: Clarifies that EFN and FADHPS primary care service agreements remain in effect, in accordance with the terms of the agreement, until the service obligation has been fulfilled (Section 101(b)(2) of P.L. 105-392). In other words, students who have agreed to practice in primary care as a condition for receiving EFN or FADHPS funding are still required to fulfill their primary care service obligation.

3. Funding for Existing Recipients: Provides funding for existing recipients of EFN and FADHPS scholarships who will continue to be enrolled after academic year 1998-1999 as part of the amendments to the Scholarships for Disadvantaged Students (SDS) program (new Section 737(b) of the PHS Act).

B. Scholarships for Disadvantaged Students (SDS) Program

Section 101(a) of P.L. 105-392 inserts new SDS authority at Section 737 of the PHS Act, which makes the following amendments to the SDS program:

1. Student Preferences: Requires that schools must give preference to former EFN and FADHPS recipients (new Section 737(b) of the PHS Act). The Senate Report accompanying P.L. 105-392 directs the Department to use SDS funds to fund former recipients of EFN and FADHPS at levels comparable to what they would have received prior to phase out of these programs, before allocating SDS funds for other purposes (Senate Report 105-220, p.20). This provision assures that EFN and FADHPS recipients will continue to have access to scholarship funding at levels comparable to what they would have received if the EFN and FADHPS programs had been continued, until they complete their educational program.

In implementing this provision, the Department will allocate SDS funds for former EFN and FADHPS recipients, based on school identification of the number of such students enrolled and

the total amount needed to provide an award amount comparable to the EFN or FADHPS award, before allocating SDS funds for other students. Funding for former EFN and FADHPS recipients will be awarded to schools without regard to the school eligibility requirements and funding priorities which will affect the awarding of the remaining SDS funds.

2. School Funding Priorities: Requires that, in awarding funds to eligible schools, the Secretary must give priority to schools based on:
 - a. The proportion of graduating students going into primary care;
 - b. The proportion of underrepresented minority students; and
 - c. The proportion of graduates working in medically underserved communities (new Section 737(c) of the PHS Act).

The Senate Report accompanying P.L. 105-392 directs that, following the allocation of SDS funds for former EFN and FADHPS recipients, the initial awarding of remaining SDS funds in each fiscal year be limited to schools that meet at least one of the three funding priorities. Schools which do not meet any of the funding priorities should receive funds only if there is money remaining after fully funding the needs of schools meeting one or more funding priorities. The report also directs that schools must provide the Secretary with whatever data is necessary to assess whether the funding priority has been met (Senate Report 105-220, p.20). Guidance regarding how the Secretary will implement these funding priorities will be provided at a later date.

3. New Disciplines: Requires that, in addition to those schools and programs previously eligible for the SDS program, eligible schools and programs now include:
 - a. A school of chiropractic;
 - b. A school offering a graduate program in behavioral and mental health practice, which is defined by statute to include behavioral and mental health practice, clinical psychology, clinical social work, professional counseling, and marriage and family therapy;
 - c. An entity providing programs for the training of physician assistants;
 - d. A baccalaureate or graduate degree program in speech pathology;
 - e. A baccalaureate or graduate degree program in audiology; and
 - f. A baccalaureate or graduate degree program training students to be registered dietitians (new Section 737(d)(1)(A) of the PHS Act and Senate Report 105-220, p.20).

4. School Eligibility Requirements: Requires that, to be eligible for the SDS program, a school must be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups (new Section 737(d)(1)(B) of the PHS Act). The Senate Report accompanying P.L. 105-392 directs the Secretary to apply appropriate standards in determining which schools have complied with the requirement to be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, using outcome-based measures that provide an indication of the success of the program. The report further states that the existence of a recruitment and retention program for students from disadvantaged backgrounds should not, in itself, result in the

eligibility of a school if the school is unable to demonstrate that the program has achieved success, based on the number and/or percentage of disadvantaged students who graduate from the school (Senate Report 105-220, p.20). Other previously existing school requirements for the SDS program--recruitment and retention of minority faculty, course work addressing minority health issues, linkages with clinics serving disadvantaged populations, linkages with undergraduate institutions, and a mentor program for disadvantaged students--are repealed.

5. Authorization Levels: Authorizes \$37 M for fiscal year 1998, and such sums as necessary for each of fiscal years 1999 through 2002 (new Section 740(a) of the PHS Act). The level of funding authorized for the SDS program for fiscal year 1998 represents an increase over previous years in an amount equal to the amount of funds previously authorized for the EFN and FADHPS programs. Thus, although the EFN and FADHPS programs have been repealed, the total amount of scholarship funds authorized under Title VII of the PHS Act remains comparable to previous levels.

6. Allocation of Funds: Requires that, of the amount of SDS funds appropriated in any fiscal year, not less than 16% must be distributed to schools of nursing (new Section 740(a) of the PHS Act).

C. Nursing Student Loan (NSL) Program

1. Extended Repayment for Cured Defaults: Provides that, pursuant to uniform criteria established by the Secretary, the repayment period for any student borrower who failed to make consecutive payments during the repayment period, and who has made at least 12 consecutive payments during the last 12 months of the repayment period, may be extended for a period not to exceed 10 years (Section 836(b)(8) of the PHS Act). Schools may use this authority to extend the repayment period of any student borrower who: (1) failed to make consecutive payments at some point during the repayment period; (2) has made at least 12 consecutive payments during the most recent 12 months of the repayment period; and (3) needs additional time, beyond the original 10 year repayment period, to complete repayment of the debt.

The Department intends that schools officials use their professional judgment to determine, on a case-by-case basis, which eligible borrowers need an extended time period to complete repayment of their NSL debt, based on their particular financial circumstances and needs. Although this provision provides flexibility in determining the length of repayment for certain borrowers, school officials should be guided by the need to collect NSL funds in a manner that maximizes the amount of revolving funds available annually for loaning to current students. The Department cautions schools not to grant extended repayment periods except as needed to assure manageable repayment and avoid default, since longer repayment periods will reduce the amount of loan funds available annually for making loans to current students. The Department does not plan to issue further guidance regarding the use of this authority unless schools indicate a need for such.

2. Increase in Minimum -Monthly Payment: Increases the minimum payment for Nursing Student Loans from \$15 to \$40 per month (Section 836(g) of the PHS Act). The increased minimum payment amount applies to loans made on or after November 13, 1998. Schools must revise their NSL promissory notes for loans made on or after November 13, 1998, to reflect this amendment. A revised promissory note reflecting this amendment is available on the Internet at "<http://www.hrsa.dhhs.gov/bhpr/dsa/promdown.htm>".

3. Statute of Limitations: Revises the NSL statute to state that no State or Federal statute of limitations applies to the collection of Nursing Student Loans (new Section 836(l) of the PHS Act). This provision assures that a school can pursue any legal remedies available to collect on a Nursing Student Loan, regardless of the age of the debt, and applies to those loans for which the statute of limitations had not expired prior to November 13, 1998.

4. Extension of Authority to Use Revolving Funds: Provides that NSL funds are allowed to revolve, indefinitely through school loan funds. The time period during which the distribution of assets must occur, previously established as no later than December 31, 1999, is repealed (Section 839 of the PHS Act). This amendment allows schools to maintain the use of their NSL revolving loan funds for as long as they have a need, with no ending date in the statute directing funds to be returned to the Department.

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

1. Maximum Loan Amount: Provides that loans made on or after November 13, 1998, may be made in amounts that do not exceed the cost of attendance (including tuition, other reasonable educational expenses, and reasonable living expenses). Previously, the maximum loan amount was tuition plus \$2,500. In addition, the statute continues to provide that, in the case of the third or fourth year of a student at a school of medicine or osteopathic medicine, the amount of the loan may be increased to pay balances of higher cost loans that were made to the individual for attendance at the school (Section 722(a)(1) and (2) of the PHS Act).

2. Length of Repayment Period: Provides that loans are repayable over a period of not less than 10 years nor more than 25 years, at the discretion of the institution (Section 722(c) of the PHS Act). The Senate Report accompanying P.L. 105-392 directs that this revision to the repayment period be available for any borrowers who have not yet completed repayment of their loans (Senate Report 105-220, p.27).

The Department intends that school officials use their professional judgment to determine which borrowers need an extended time period to repay their loans, based on factors such as the amount of the borrower's indebtedness and projected income. Although this provision provides flexibility in determining the length of repayment, school officials should be guided by the need to collect these funds in a manner that maximizes the amount of revolving funds available annually for loaning to current students. The Department cautions schools not to grant extended

repayment periods except as needed to assure manageable repayment and avoid default, since longer repayment periods will reduce the amount of loan funds available annually for making loans to current students. The Department does not plan to issue further guidance regarding the use of this authority unless schools indicate a need for such.

Schools also should be aware that, for PCL borrowers, any extension of the repayment period beyond 10 years will extend their service obligation as well, since the statute continues to require that PCL borrowers practice in primary care until the PCL loan is paid in full.

Schools must revise their HPSL, LDS, and PCL promissory notes for loans made on or after November 13, 1998, to reflect this amendment to the length of the repayment period. A revised promissory note is available on the Internet at "<http://www.hrsa.dhhs.gov/bhpr/dsa/promdown.htm>".

3. Increase in Minimum Monthly Payment: Increases the minimum monthly payment from \$15 to \$40 per month (Section 722(j) of the PHS Act). The increased minimum payment amount applies to loans made on or after November 13, 1998. Schools must revise their HPSL, LDS, and PCL promissory notes for loans made on or after November 13, 1998, to reflect this amendment. A revised promissory note is available on the Internet at "<http://www.hrsa.dhhs.gov/bhpr/dsa/promdown.htm>".

4. Statute of Limitations: Revises the HPS L, LDS, and PCL statute to state that no State or Federal statute of limitations applies to the collection of these loans (new Section 722(m) of the PHS Act). This provision assures that a school can pursue any legal remedies available to collect on a HPSL, LDS, or PCL loan, regardless of the age of the debt, and applies to those loans for which the statute of limitations had not expired prior to November 13, 1998.

5. Timing of Rewarding of Funds Returned to the Secretary: Repeals the requirement that the Secretary must award funds in the fourth quarter. This is replaced with a requirement that funds returned to the Secretary in any fiscal year must be obligated before the end of the succeeding fiscal year (Section 735(e)(2) of the PHS Act).

E. Loans for Disadvantaged Students (LDS) Program

1. Authorization Levels: Authorizes \$8 M for each of fiscal years 1998 through 2002. (Section 724(f)(1) of the PHS Act). Although P.L. 105-392 authorizes funding for fiscal years 1998, 1999, and future years, the appropriations process did not provide new funding for the LDS program for fiscal years 1998 or 1999. As a result, schools must continue to rely on whatever revolving funds are available (e.g., through collections, investment income, etc.) as their source of funding for making new LDS loans.

F. Primary Care Loan (PCL) Program

1. Measurement of Compliance with School Requirements: Requires that Post-Graduate Year 4 (PGY-4) be used for determining the percentage of a school's graduates who are practicing primary care (Section 723(b)(1) of the PHS Act). The Senate Report accompanying P.L. 105-392 directs that this be effective for the reporting period beginning July 1, 1998 (Senate Report 105-220, p.27).

Prior to this amendment, the statute directed that Post-Graduate Year 3 be used for determining the percentage of a school's graduates who are practicing primary care. The use of PGY-4 data will provide a more accurate measure of the percentage of a school's graduates who are practicing primary care. The Department will begin to use PGY-4 data for the reporting period ending June 30, 1999. As part of the June 30, 1999 Annual Operating Report, the Department will collect PGY-4 data as of June 30, 1998 and as of June 30, 1999. The 1998 data will be needed to determine which schools comply with the school requirements by: (1) showing a 5 percentage point increase in their graduates entering primary care from 1998 to 1999; and (2) having at least 25 percent of their graduates in primary care.

P.L. 105-392 did not amend the PCL school penalty provisions. Accordingly, school penalties for non-compliance with PCL school requirements will increase to 30 percent of PCL fund income based on the June 1999 data regarding the percentage of PGY-4 graduates entering primary care.

2. Penalty for Failure to Comply with Primary Care Service Obligation: Requires that, for PCL borrowers who fail to comply with the primary care service requirement, the PCL loan will begin to accrue interest at a rate of 18 percent per year beginning on the date of such noncompliance (Section 723(a)(3) of the PHS Act). These revisions to the service defaulter penalties apply to any loans made on or after November 13, 1998. Schools must revise their PCL promissory notes for loans made on or after November 13, 1998, to reflect this amendment. A revised PCL promissory note is available on the Internet at "<http://www.hrsa.dhhs.gov/bhpr/dsa/promdown.htm>".

3. Length of Repayment for Service Defaulters: Repeals the requirement that service defaulters must repay their PCL loans in 3 years. PCL service defaulters now have the same amount of time for repayment as non-defaulters, which is 10 to 25 years, at the discretion of the institution. This extended repayment period is available for any borrower who has not paid the loan in full, and is explained more fully in this memorandum in section I.D.2., "Length of Repayment Period".

G. Health Education Assistance Loan (HEAL) Program

1. Program Authority Not Extended: From October 1, 1995, to September 30, 1998, the HEAL program was in a phase out status, with loans available only to those students who had received one or more HEAL loans prior to October 1, 1995. Effective October 1, 1998, there was no authority to make HEAL loans to any students, including previous borrowers. P.L. 105-392 did

not extend the authority for making new **HEAL** loans, but instead maintained the **HEAL** program's phase out status. As a result, the Department has no authority to make new **HEAL** loans to current students. Although new **HEAL** loans are not available, the Department is committed to assuring proper management of the outstanding **HEAL** portfolio, worth \$4 billion, which will not be fully repaid until the year 2031.

2. Deferment: Authorizes deferment for not in excess of three years during which the borrower is providing health care services to Indians through any health program or facility funded in whole or part by the Indian Health Service for the benefit of Indians (Section 705(a)(2)(C) of the PHS Act). This provision applies to any **HEAL** borrowers with outstanding loan balances, for any service provided on or after February 1, 1999. The Department is updating deferment forms to reflect this as an eligible activity, and will make these available prior to the February 1999 effective date of this provision.

3. Definition of Eligible Disciplines: Amends the disciplines eligible for **HEAL** loans by changing clinical psychology to "behavioral and mental health practice, including clinical psychology" (Sections 703(a) and 719(l) of the PHS Act). "Graduate program in behavioral health and mental health practice" is defined to include behavioral health and mental health practice, clinical psychology, clinical social work, professional counseling, and marriage and family therapy. This amendment has no impact for purposes of the **HEAL** program, since there is no authority to make new **HEAL** loans.

4. Lender and Holder Exceptional Performance Standards:

- a. Reimbursement Rates: Establishes exceptional performance standards for lenders and holders of **HEAL** loans, with 98 percent reimbursement on eligible default claims for those lenders and holders which are not designated for exceptional performance, and 100 percent reimbursement on eligible default claims for those lenders and holders which are designated for exceptional performance (Section 707(a) of the PHS Act).
- b. Designation Process: Provides the Secretary authority to designate an eligible lender, holder, or servicer with a compliance performance rating (as described below) of 97 percent or more for exceptional performance.
- c. Compliance Performance Rating: Requires that the compliance performance rating be determined based on compliance with due diligence in the disbursement, servicing, and collection of loans for each year for which the determination is made. The rating shall be equal to the percentage of all due diligence requirements applicable to each loan, on average, as established by the Secretary, with respect to loans serviced during the period by the eligible lender, holder, servicer.
- d. Annual Audits: Requires that annual financial and compliance audits must be conducted on the **HEAL** loan portfolio of lenders, holders, and servicers desiring an exceptional

- performance designation, by a qualified independent organization as identified by the Secretary. Standards shall measure compliance with due diligence standards and include a defined statistical sampling technique to measure the performance rating of the eligible lender, holder, or servicer., Audit shall be submitted to the Secretary.
- e. Quarterly Compliance Audits: Requires quarterly compliance audits **by** a lender, holder, or servicer to maintain its status as an exceptional performer. These quarterly audits must be submitted to the Secretary. The Secretary has authority to revoke the designation as an exceptional performer if the Secretary has not received the quarterly compliance audit or if the audit indicates that the lender, holder, or servicer has failed to meet the standards for designation as an exceptional performer. A lender, holder, or servicer may reapply for this designation.
 - f. Documentation: Provides that the Secretary may not require exceptional performers to submit greater documentation than that required for lenders, holder, or servicers not designated as exceptional performers.
 - g. Costs of Audits: Provides that the costs of audits associated with these provisions will be paid by each lender, holder, or servicer.
 - h. Effective Date: Provides that this provision shall apply with respect to default claims submitted to the Secretary for payment on or after May 1, 1999.
5. Bankruptcy Restrictions: Eliminates the **HEAL** bankruptcy loophole that allowed **HEAL** borrowers filing for bankruptcy a second time to file without regard to the bankruptcy restrictions set forth in the **HEAL** statute. In other words, the amended language clarifies that the **HEAL** statutory provisions regarding bankruptcy (which restrict the discharge of **HEAL** loans to very specific conditions) apply to any **HEAL** bankruptcy filing (Section 707(g) of the PHS, Act). This amendment applies to any **HEAL** loan that: (1) Is listed or scheduled by the debtor in a bankruptcy case filed on or after November 13, 1998; or (2) was listed prior to November 13, 1998, but for which a discharge had not been granted as of November 13, 1998.
6. HEAL Refinancing: Allows **HEAL** borrowers with one loan to refinance one time (Section 706 of the PHS Act). This provision extends eligibility for refinancing, on a one-time basis, to borrowers who only took out one **HEAL** loan and would like to take advantage of the benefits available through refinancing, such as the possibility of a lower interest rate.

H. Faculty Loan Repayment Program (FLRP)

- 1. New Disciplines: Requires that, in addition to those schools and programs previously eligible for the FLRP program, eligible schools and programs now include:

- a. A school offering a graduate program in behavioral and mental health practice, which is defined to include behavioral health and mental health practice, clinical psychology, clinical social work, professional counseling, and marriage and family therapy;
- b. A baccalaureate or graduate degree program in dental hygiene;
- c. A baccalaureate or graduate degree program in medical laboratory technology;
- d. A baccalaureate or graduate degree program in occupational therapy;
- e. A baccalaureate or graduate degree program in physical therapy-;
- f. A baccalaureate or graduate degree program in radiologic technology;
- g. A baccalaureate or graduate degree program in speech pathology;
- h. A baccalaureate or graduate degree program in audiology; and
- i. A baccalaureate or graduate degree program in medical nutrition therapy (new Section 738(a)(3) of the PHS Act and Senate Report 105-220, p.21).

2. Amount of Loans Eligible for Repent: Deletes former Section 738(a)(4) of the PHS Act which limited the amount of repayments to 20 percent of outstanding principal and interest.

3. Faculty & Eligibility: Deletes the provision in former Section 738(a)(5)(A) of the PHS Act which required that, to be eligible for the FLRP program, an individual could not have been a faculty member during the 18 months preceding the request for loan repayment. In addition, the Senate Report accompanying P.L. 105-392 instructs the Department to allow part-time faculty members to participate in the FLRP program, to encourage more disadvantaged and underrepresented minority health practitioners who want to maintain a practice in the community to become involved as faculty members of health professions schools (Senate Report 105-220, pp.20-2 1).

4. Determination of Salary by School: Adds a new paragraph (iii) to existing Section 738(a)(5)(B) of the PHS Act, which is redesignated as Section 738(a)(4)(B), requiring that the school, in determining the individual's compensation, will make the determination without regard to the amount of payments made to the individual by the Federal Government under the FLRP program.

5. Authorization Levels: Authorizes \$1.1 M for fiscal year 1998, and such sums as necessary for each of fiscal years 1999 through 2002 (New Section 740(b) of the PHS Act).

11. P.L. 105-244-Higher Education Act Provisions Affecting Health Professions and Nursing Loans

A. Loan Consolidation

It is our understanding that P.L. 105-244 amended the Department of Education's (ED) loan consolidation provisions to continue to allow HPSL, LDS, and NSL loans to be included in an ED consolidated loan, but to make the inclusion of these loans optional on the part of the lender.

An ED consolidation lender is no longer required to include a HPSL, LDS, or NSL loan as part of an ED consolidated loan, but may do so if the lender so chooses.

B. Amendment to the Bankruptcy Act

P.L. 105-244 included an amendment to section 523(a)(8) of the Bankruptcy Act which eliminates the automatic dischargeability provision for educational loans that have been in repayment for more than 7 years. Under the new law, educational loans funded in whole or in part by a governmental unit are nondischargeable, regardless of how long they have been in repayment, unless the debtor demonstrates undue hardship. This new provision applies to loans made under Title VII and VIII of the PHS Act (HPSL, LDS, PCL, NSL, HEAL), and applies to any bankruptcy case commenced on or after October 7, 1998.

III. Need Analysis Requirements for Health Professions Students

For health professions students applying for aid for academic year 1999-2000, the Department will allow health professions schools participating in the Title VII campus based programs (HPSL, LDS, PCL, SDS) to comply with the requirement to collect parent financial information, for purposes of determining student need, **without requiring a parent signature**. This allowance is to accommodate the Department of Education's (ED) electronic financial aid renewal application process, which generally does not provide for the collection of a parent signature from these students. Please note that **parent information must still be collected in accordance with existing requirements; the only change is that a parent signature is not required**. Also, schools may still require a parent signature if they so choose; however, the Department is allowing schools to forego the parent signature for academic year 1999-2000 to facilitate the use of ED's electronic renewal application process. The Department's policies beyond academic year 1999-2000 will be determined next year, in consultation with ED officials.

We hope this information is helpful in your management of the health professions and nursing student assistance programs. Questions regarding this memorandum may be submitted by e-mail to "dpolicy@hrsa.dhhs.gov".

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