

# ADMINISTRATIVE MEMORANDUM

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**SUBJECT** Compliance with the State Employee Debt  
Collection Act (G.S. Chapter 143, Article 60)

**NUMBER** 144

**DATE** December 4, 1980

A. Purpose.

It is the purpose of this Administrative Memorandum:

- (1) to amend Administrative Memorandum Number 132 (dated January 22, 1980) to reflect recent interpretations by the Attorney General of the conditions placed on the State Employee Debt Collection Act (SEDCA) by the federal Privacy Act of 1974;
- (2) to announce a recent request by the State Budget Office for receipt of each institution's debtor list as required by the State Employee Debt Collection Act.

B. History.

By Administrative Memorandum Number 132 you were provided initial written guidance from this office in interpreting and administering the State Employee Debt Collection Act. As you know, SEDCA establishes a sequence for identifying debtors to the State who are also State employees and facilitates collecting those debts by mandating discharge from employment of State employees who fail to make restitution. To implement SEDCA, the State Budget Office established procedures for matching debtor lists with the State records of employees. This procedure begins with the sending by State agencies to the State Budget Office a list of debtors to the agencies accompanied by the debtors' Social Security account numbers. These lists are then matched by the State Budget Office against membership in the Teachers and State Employees Retirement System and persons on Central Payroll to identify debtors who are State employees.

Part of Administrative Memorandum Number 132 set forth advice in the use of the Social Security number to identify debtors who are State employees under the conditions imposed by the federal Privacy Act of 1974. We had formulated that advice in light of previously issued Opinions of the Attorney General and pursuant to an oral understanding reached between this office and the State Budget Office. That original advice had contained the following principles:

- Social Security numbers obtained from individuals before December 31, 1974, may be disclosed and used by the institution unconditionally as the number was obtained before disclosure and use were conditioned by the Privacy Act of 1974.

- Social Security numbers obtained from individuals after December 31, 1974, who are known to be State employees may be sent to the State Budget Office under SEDCA debt collection procedures as that number is already in fact in State employee data banks and as the North Carolina employee record system qualifies for exemption from the Privacy Act under a provision of the statute itself.
- Social Security numbers obtained after December 31, 1974, from individuals not known to the institutions to be State employees and without use of pertinent disclosure procedures established by the Privacy Act should not be sent to the State Budget Office as there is a risk that such debtors will prove not to be employees of any State agency. Instead, the list of debtors sent to Raleigh should show a deletion of such Social Security numbers with reference to the Privacy Act (rather than by indicating lack of information).

This advice was restated in a workshop given at this office for institutional administrators on April 10, 1980.

Earlier, in December 1979, the State Budget Office had first asked for lists of debtors and their Social Security numbers under measures to implement SEDCA; and, consistent with Administrative Number 132 (January 1980) the institutions began to submit their lists with some but not all Social Security numbers provided. Subsequently, institutions began to report to this office that debtor lists lacking even some Social Security numbers were being returned from the State Budget Office with none of the debtor names being processed, even those accompanied by the Social Security number. It may be that some other institutions, learning of this policy, then did not submit to the State Budget Office a debtor list at all. Whatever the exact state of affairs, this office undertook discussion of the privacy law issues with both the State Budget Office and the Office of the Attorney General. Indeterminate discussion proceeded intermittently for several months, but in October 1980, the concerns of this office were framed in specific questions for submission to the Attorney General. By letter dated November 21, 1980, the Attorney General rendered an Opinion, which requires that we modify our advice to you concerning the Privacy Act of 1974 but which will serve to expedite compliance by your institution with the State Employee Debt Collection Act. That Opinion renders now inappropriate the "original advice," (summarized above) in Administrative Memorandum Number 132. Instead, you are now advised that the federal Privacy Act of 1974 conditions implementation of SEDCA as follows:

- (1) The transfer from your institution to the State Budget Office of an individual's Social Security number in the process of debtor/State employee identification under SEDCA is a "disclosure" of that number within the meaning of the Privacy Act of 1974 and so the transfer is conditioned by that Act.
- (2) Any individual who is asked to make initial disclosure to your institution of his or her Social Security number in the context of SEDCA must be told

that (a) such disclosure is voluntary, (b) such request for disclosure is incident to State administrative procedures for debt collection, and (c) the number upon disclosure would be available to effect debt collection.

- (3) Any individual whose Social Security number has been disclosed to your institution in a manner other than according to condition (2), above, without informing the individual of possible use of the number for debt collection, must be informed of such possible use before transfer (disclosure) of the number to the State Budget Office. (The time lapse between informing the individual of the intended or potential use and the transfer of the number to Raleigh for such use is not stated by the Attorney General to be important so long as the individual is, in fact, informed before the transfer.)

The Attorney General's Opinion of November 21, 1980, in clarifying ways in which the Privacy Act of 1974 conditions SEDCA, establishes two principles of which you should make special note. These two principles, which should be deemed official guidance in implementing debt collection under SEDCA, are:

- (1) It is not significant whether your institution obtained a Social Security number before December 31, 1974 (the effective date of the Privacy Act of 1974). The Privacy Act in some way conditions use of any Social Security number.
- (2) It is important whether your institution obtained the Social Security number for use under SEDCA (a) by initial disclosure from the individual [see condition (2), above] or (b) from pre-existing institutional records or from a third party [see condition (3), above].

C. Submission of Debtor Lists.

At this time the State Budget Office does not have (or has not retained) a list of debtors to your institution submitted by your institution pursuant to its request of December 12, 1979. However, the State Budget Office has followed the progress of interpretation by the Attorney General of the Privacy Act of 1974 as it relates to SEDCA; and recently the State Budget Office renewed its request for such debtor lists by letter to Vice President Joyner. That letter was accompanied by the original Budget Office instructions of December 12, 1979, and by a new "Past Due Accounts Format." In the letter to Vice President Joyner the State Budget Office had established a deadline of December 1, 1980, for receipt of your institution's debtor list under the renewed request. However, because of the timing by which this office received the Opinion of the Attorney General, the December 1, 1980, deadline has proved unrealistic. Accordingly, this office, consistent with its recent representations to the State Budget Office, now requests that your institution submit directly to the State Budget Office by December 31, 1980, a list of debtors to your institution, as required by SEDCA, in a form prescribed by State Budget Office directions, and as conditioned by legal considerations discussed in this Administrative Memorandum. You are also requested to notify Vice President Joyner of the date of transmittal of your list to the State Budget Office.

[Note. The recent Attorney General's Opinion makes clear that it is proper to send to the State Budget Office a more complete list of debtors' Social Security numbers than we had earlier advised you. However, your institution's debtor list will still lack those Social Security numbers that your institution simply does not have, including any denied your institution by an individual at the time your institution requested the individual to make initial disclosure of the number.]

D. Application of this Administrative Memorandum.

This Administrative Memorandum, including legal interpretation, procedural advice, and requests for institutional action pertains only to the State Employee Debt Collection Act (SEDCA) and not to the Set-Off Debt Collection Act (SODCA). (With respect to SODCA, see Administrative Memorandum Number 127, dated October 30, 1979.)

This Administrative Memorandum pertains to the 16 constituent institutions, North Carolina Memorial Hospital, and the North Carolina State Education Assistance Authority.

Any questions concerning these matters may be addressed to Mr. David Edwards of this office.



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William Friday

Attachments

## Past Due Accounts Format

The data can be on tape or cards. If tape, the record length should be 80 characters and blocksize 6400 characters. The tape should be either IBM standard labeled or non-labeled and should be 1600 or 6450 BPI.

### Format

Column 1 Institution Alpha Code

A - ASU	I - PSU
B - ECSU	J - UNC-A
C - ECU	K - UNC-CH
D - FSU	L - UNC-C
E - NCA&T	M - UNC-G
F - NCCU	N - UNC-W
G - NCSA	O - WCU
H - NCSU	P - WSSU
	Q - NCMH

Column 2 - 10 Social Security Number

Column 11 - 40 Name

See the attached December 12, 1979 memorandum for additional instructions. Please send this information to this office by December 1, 1980. All questions should be addressed to Frank Tomczak (733-7061). Thank you for your cooperation in this matter.



STATE OF NORTH CAROLINA  
OFFICE OF STATE BUDGET AND MANAGEMENT

JAMES B. HUNT, JR., GOVERNOR  
AND DIRECTOR OF THE BUDGET

JOHN A. WILLIAMS, JR.  
EXECUTIVE ASSISTANT TO THE GOVERNOR  
AND STATE BUDGET OFFICER

December 12, 1979

MEMORANDUM

TO: State Department Heads and Chief Fiscal Officers

FROM: Marvin K. Dorman, Jr.  
Deputy State Budget Officer *MKD*

The 1979 General Assembly enacted House Bill 561 (Chapter 864 of the 1979 Session Laws) relating to the collection of money owed to the State by certain public employees. The purpose of this memorandum is to indicate what procedures to follow in collecting past due accounts owed to the State by state employees, certain local governmental employees and public officials.

1. Send a list to this office of the names and Social Security numbers of individuals with past due accounts owed to the State. Do not include names of individuals with past due accounts when satisfactory provisions have already been made for repayment.
2. This office will arrange to compare your lists with lists of employees who are members of the Teachers and State Employees Retirement System or who are on a central payroll.
3. You will be notified if any of the individuals on your lists are employed by a State department, agency or institution, Community College system or by a city or county Board of Education.
4. You should then write the agency employing the individual who has a past due account with your department and state: (a) individual's name, amount of money owed and for what reason; (b) that a written notice be sent to the employee stating that full restitution of the amount owed is a condition of continued employment (Chapter 143, Article 59 of the North Carolina General Statutes); (c) that the employee obtain and provide written evidence from the department owed that a satisfactory arrangement for payment has been agreed upon; (d) that the employee be given a reasonable time period to accomplish (c) above. If the employee does not provide this evidence, steps must be taken to terminate employment unless the employee is pursuing administrative or judicial remedies.

If you have any questions concerning this matter, please contact Frank Tomczak of this office (733-7061). Thank you for your cooperation in this matter.

MKDjr/abf