

## **MINUTES**

### **HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY**

April 24, 2013

The Higher Education Student Assistance Authority (HESAA) Board held a meeting on April 24, 2013 at 10:00 a.m. at the HESAA offices in Hamilton.

**PRESENT:** Mr. James Allen; Fr. Michael Braden; Ms. Gabrielle Charette, Esq.; Mr. Gregg Edwards, Secretary of Higher Education Designee; Mr. Anthony Falcone; Mr. George Garcia, Esq. (teleconference); Mr. Richard Garcia; Dr. Harvey Kesselman; Dr. Jon Larson; Ms. Jean McDonald Rash; Mr. Christopher McDonough, Treasurer's Designee (teleconference); Ms. Elaine Pappas-Varas; Ms. Michele Petrucelli; Ms. Maria Torres and Ms. Christy Van Horn, Members.

**ABSENT:** Mr. Julio Marengo and Mr. David Reeth.

Also participating were Jennifer McGruther, Esq., DAG; Amy Herbold, Esq., Governor's Authorities Unit and Cliff Rones, Esq., DAG.

#### **CALL TO ORDER**

Richard Garcia called the meeting to order at 10:00 am. Mr. Garcia stated that the meeting had been noticed in compliance with the requirements of the Open Public Meetings Act.

Mr. Garcia led those present in the Pledge of Allegiance.

Mr. Garcia welcomed the Board members and advised that because some members are participating via teleconference, Roseann Sorrentino will conduct a roll call for the resolutions.

Mr. Garcia welcomed Shelly Repp, President, National Council of Higher Education Resources (NCHER); Joe Santoro, Bank of America/Merrill Lynch, Senior Manager; and Steven Kantor, First Southwest, Financial Advisor.

Mr. Garcia introduced Amy Herbold, Esq., Governor's Authorities Unit and Jennifer McGruther, Esq., DAG.

Mr. Garcia advised that no members of the public have registered to speak.

Mr. Garcia asked Roseann Sorrentino to call the roll.

#### **CONSIDERATION OF THE MINUTES OF THE JANUARY 23, 2013 MEETING:**

A motion to approve the minutes of the January 23, 2013 meeting was made by Dr. Harvey Kesselman and seconded by Mr. James Allen. The minutes were approved unanimously.

## **RESOLUTION 04:13 - ADOPTING A SCHEDULE OF MEETINGS FOR FISCAL YEAR 2014**

Marnie Grodman, Esq., presented Resolution 04:13 to the Board.

Ms. Grodman advised that the schedule was changed from the schedule provided in the materials previously sent to the Board. She explained that staff was advised of a conflict with the meeting dates so Resolution 04:13 was revised for today's meeting the Board would vote on the July meeting date and that staff will re-poll the board members to determine availability for the October, January and April meeting dates. Ms. Grodman explained that the last Wednesday of the month at 10:00 am created a conflict. Therefore staff proposed changing the July 2013 board meeting to 11:30 am.

A motion to adopt the revised Resolution 04:13 was made by Ms. Maria Torres and seconded by Mr. James Allen.

The revised resolution was approved unanimously.

George Garcia and Michelle Petrucelli joined the meeting at this point.

## **CHAIR TO ANNOUNCE NOMINATING COMMITTEE APPOINTMENTS**

Mr. Garcia announced that Maria Torres has agreed to Chair, and Jean McDonald Rash and Michael Braden have agreed to serve on, the Nominating Committee. Mr. Garcia thanked them for agreeing to be on this committee. He announced that the Nominating Committee will meet May 31, 2013 to select the recommendations for Chair, Co-Chair and two additional members of the Executive Committee for the HESAA Board. The nominating committee will present their recommendations to the full board for approval at the July meeting. Any Board members interested in serving on the Executive Committee were advised to contact Roseann Sorrentino by May 22, 2013. The Chair, Co-Chair and one executive committee member are selected from among the public members of the Board. The other executive committee member is selected from the institutional representatives on the Board.

## **RESOLUTION 05:13 REQUEST FOR PROPOSAL – FINANCIAL LITERACY SOFTWARE COMPANIES**

Andre Maglione presented Resolution 05:13 to the Board.

A Request for Proposal was conducted for the Financial Literacy Program. A committee was selected to review the two received submissions and EverFi e-Financial Literacy Solution was selected.

The software will include the following features:

- Complete 24x7 on-line e-learning system designed to engage students.
- Meets the National JumpStart National Coalition Standards.
- Comprehensive curriculum covering:
  - Banking

- Savings
- Credit scores
- Credit cards
- Insurance
- Taxes; and
- Paying for college and student loans.

Modules include practical exercises and adaptive pathing which will customize the path based on students' responses to exercises. Each module has interactive exercises designed to motivate behavior changes. Students receive pre, post and follow-up surveys and quizzes to evaluate learning. There is a full range of reporting for administrators at the schools and for parents. The system is supported with 24x7 access with live support. All Marketing and Media Support is provided by the company selected. Everfi ground staff works with the high schools to promote, train staff, assist with kick off ceremonies and student certification ceremonies.

This is the e-Learning Financial Literacy project, paid for by the Federal Challenge Grant 2012-13. The contractual price is \$65,000 per year targeting 35 high need high schools as identified by the Secretary of Higher Education's office using the federal challenge grant.

A motion to approve Resolution 05:13 was made by Mr. Anthony Falcone and seconded by Mr. James Allen.

Christy Van Horn asked if this agreement could accommodate additional schools?

Andre Maglione explained that there is a \$2500 cost per each additional school.

Gabrielle Charette added that HESAA has an obligation to fulfill the Challenge grant parameters in those schools that have been identified. She further explained that staff hopes to learn from that and then move forward to explore and expand.

Ms. Van Horn would like to see the expansion of this program brought back to the Board as part of next year's evaluation.

Harvey Kesselman stated that many school districts have required financial literacy programs built into their freshman through senior year curriculum. Maria Torres added that it is going to be a requirement for the class of 2014 to have a half year of financial literacy.

Maria Torres questioned if anything similar to this was on HESAA's website. Andre Maglione responded that HESAA will be looking at ways to integrate this with the HESAA website.

The motion was passed unanimously.

**RESOLUTION 06:13 AUTHORIZING AMENDMENTS TO THE 2012 INDENTURE OF TRUST AND PRIOR SUPPLEMENTAL INDENTURES AND AUTHORIZING THE ISSUANCE AND SALE OF STUDENT LOAN REVENUE BONDS AND APPROVING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL INDENTURE, PRELIMINARY OFFICIAL STATEMENT, FINAL OFFICIAL STATEMENT, CONTINUING DISCLOSURE AGREEMENT, ACKNOWLEDGEMENT OF**

## **SERVICING, BOND PURCHASE AGREEMENT, AND OTHER MATTERS IN CONNECTION THEREWITH**

Gene Hutchins made the following presentation of this item to the Board.

The proposed resolution 06:13 relates to the 2013-1 Bond Issue together with various bond documents referenced in the resolution. The resolution authorizes a total bond sale not to exceed \$250.0 million in fixed rate bonds with a final maturity not later than June 1, 2048. These bonds would be issued under the existing 2012-1 Master Indenture of Trust.

Total NJCLASS loan volume for academic year 2013-14 is expected to be close to \$275 million. The proceeds of the bonds (net of funds required for reserves) will be used to finance fixed rate Ten Year Option 1 Loans, fixed rate standard 15 year NJCLASS Option 1 and 2 loans, and up to \$35.0 million of 20 year Option 3 loans, as well as graduate/professional NJCLASS Loans, and NJCLASS Consolidation Loans.

The Authority anticipates continuing the structure of last year's bond transaction of fixed rate serial and term bonds.

The 2013-1 Bonds may also include subordinated bonds as part of the overall bond structure. The Master Trust is being amended to ensure that each bond series subordinated bonds are called from available revenues beginning immediately after the senior bonds of that series are retired so that the subordinated bonds do not remain outstanding waiting for senior bonds of other series to be retired. The first time through in the original 2012-1 Master Indenture, that did not matter but as we were going through the documents this year we realized we had to make that clarification.

The 2013-1 bond issue will also require HESAA to contribute up to \$10.0 million in equity as overcollateralization for meeting rating agency stress case requirements. However, this amount is really expected to be around \$5.0 million, if as we are planning, we are successful in marketing subordinated bonds as part of the final bond structure. Last year we sold \$11 million dollars of subordinated bonds. Those bonds were 9 times oversubscribed, so we actually had orders for close to \$100 million dollars in subordinated bonds, and we feel very comfortable that we will have the same success this year. The subordinated bonds are still investment grade rated bonds, receiving A rating from both Moody's and S&P, and investors are looking for the extra yield associated with those bonds.

With regard to the Bond Resolution, customary authorizations for the issuance of new bonds are provided. As the structure is substantially similar to last year's structure, the authorizations are likewise similar.

Authorization for use of up to \$1 million in reserves to cover the use of this year's leftover bond proceeds which will also allow us to reset whatever the loan interest rates on the leftover bond proceeds we have from this year at next year's interest rates. We are hoping to get these bonds out to the market at reduced interest rates for this year which will be good news for students and families and the resolution allows us to take whatever monies are leftover this year and use them at next year's interest rates once the necessary rating agency confirmations are received.

There is also the authorization to use up to \$10.0 million in Authority reserves to meet rating agency initial parity requirements. Amendment to 2012 Indenture to clarify that subordinate bondholders are paid principal once the senior bonds of that same series are paid off.

It also has the Authorization to change the loan rates on 2012 loans originated with proceeds of the 2012 bonds unexpended at the time we issue the 2013 bonds to the loan rates form the 2013 loans.

It includes the employment of McElwee as the printer for our official statement. Most of the disclosures are posted electronically these days there is a small number of paper copies that are printed and this company supports both of those functions.

The resolution also approves the use of KPMG as agreed upon procedures auditor required by Moody's as part of their ratings process. We have to conduct these agreed upon procedures to verify the data we are publishing in official statement under their interpretation of the 17 G5 standards. We receive very good ratings from Moody's and it is therefore important that we incur the cost of this agreed upon procedures audit. The cost of the review is a maximum of \$45,000.

Motion to approve Resolution 06:13 was made by Fr. Michael Braden and seconded by Jean McDonald Rash.

Christi Van Horn asked for a clarification as to what procedures KPMG would be preparing. Mr. Hutchins responded that KPMG is reviewing the data that HESAA produces from all loan originations, defaults, and recoveries of those defaults, which are provided to the rating agencies and published in the official statement. Moody's requires that there is an independent third party verification of that data. The auditor used established procedures for the review and verification of this data.

The motion was passed unanimously.

**RESOLUTION 07:13 AUTHORIZING THE PREPARATION OF POLICIES AND PROCEDURES REQUIRED BY THE DODD-FRANK ACT, APPOINTING FIRST SOUTHWEST COMPANY AS QUALIFIED INDEPENDENT REPRESENTATIVE AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE ISDA AUGUST 2012 PROTOCOL AGREEMENT AND RELATED DOCUMENTS AND AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH**

Gene Hutchins made the following presentation of this item to the Board.

This resolution authorizes the Authority to adopt a standard set of protocols and procedures developed by the International Swap and Derivatives Associations who work in cooperation with the SEC and other federal agencies to develop these protocols. These protocols came out of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010, and as noted in the presentation, most of the controls required are already in place at HESAA. One of the things that the proposed resolution does, under the terminology used in the protocols, is to appoint First Southwest Company as our Qualified Independent Representative. During our Financial Advisor procurement process this past January, First Southwest was appointed as swap advisor.

The Qualified Independent Representative performs the same function. Swap advising services were included in the Authority's last RFP for a Financial Advisor and First Southwest is fully qualified to serve as what is currently termed the Qualified Independent Representative.

These protocols and associated procedures evolved out of a determination by Congress that many municipal issuers prior to the financial crisis had entered into swaps without fully understanding all of the terms and requirements of swaps, and without the advice of an independent qualified financial advisor. I want to make it clear that has never been the case with this Authority. HESAA had both a swap advisor and the support of the Attorney General's Office during the period that swaps were used as part of the annual bond process.

Bond Counsel has been advising the Authority on this issue and Leah Sandbank can answer any questions you may have regarding the resolution.

Leah Sandbank advised that Gene Hutchins gave the background of what the purpose of the resolution is, but specifically the resolution 07:13 before you authorizes the steps that are required for the Authority to comply with the Dodd-Frank Act. Those steps specifically first authorize Gene Hutchins as the Chief Financial Officer to prepare written procedures and those written procedures will formalize again the existing practice by the Authority that they have an established procurement process for swap advisory services, which are now called the Qualified Independent Representative. The next step under the Resolution is to formally appoint First Southwest as our initial Qualified Independent Representative, and again that appointment is based on their appointment as swap advisor under the last bid that was done for those services.

Ms. Sandbank indicated that by approving the procedures referenced by the resolution, HESAA will have met the initial requirement of the protocols. Subsequent to this, the swap providers would be giving highest priority to putting in place protocol documents with issuers who had new swaps in process and those that were actively working to either modify or terminate swaps. Once those active swap transactions were dealt with, protocol documents would then be executed with issuers that have currently static swap agreements such as HESAA.

Motion to approve Resolution 07:13 was made by Jon Larson and seconded by James Allen.

Harvey Kesselman questioned how many swaps do we still have left. Gene responded we had seven years of entering swaps and several counterparties each year and that there is a half dozen to 10 still outstanding.

Mr. Hutchins added that one of the primary driving forces behind the protocols was that many municipal issuers, without the benefit of a financial advisor, had entered into speculative interest rate swaps that provided cash to the issuer upfront based upon interest projections that proved to be false as a result of the financial crisis. Many of these issuers ended up owing tremendous amounts of money back to the swap providers. These swaps contrast sharply with the amortizing swap instruments of the Authority which were strictly used to align fixed interest rate costs of capital with the fixed interest rates on our NJCLASS loans. These swaps continue to amortize as the loans they financed pay down.

The motion was passed unanimously.

## **REVIEW OF FINAL ADOPTED POST-ISSUANCE COMPLIANCE PROCEDURES FOR TAX-EXEMPT STUDENT LOAN REVENUE BONDS**

Last year we notified you that we had procedures that were in the final draft subject to review by the Attorney General's Office that documented the arbitrage procedures the Authority had in place. In fact those procedures have existed at the Authority since 1992 when the first NJCLASS bonds were issued. The arbitrage procedure certificates are included in each bond transcript, and these global procedures are formalizing for the IRS the fact that the procedures exist.

As outlined in the memorandum, the Authority's Chief Financial Officer has the overall, final responsibility for monitoring whether the Authority's Bonds continue to comply with arbitrage regulations, (the post-issuance federal tax requirements), in particular with respect to certain record keeping, monitoring Bond and Student Loan yield changes and other ongoing tax requirements. I have to acknowledge that Bob Clark, the HESAA Controller and his staff do an outstanding job in recording every transaction related to the bond issues. All of those transactions are accumulated into the arbitrage analysis as well as our financial statements for the bond issues. The primary change with these procedures is to put in place the formal designation of the Chief Financial Officer as the tax compliance officer (the "Tax Compliance Officer") with the primary responsibility to monitor the Authority's compliance with federal tax requirements for the Authority's Bonds; however, the Tax Compliance Officer may delegate certain tasks described herein to staff members.

These procedures have been reviewed by the Attorney General's Office.

## **RESOLUTION 08:13 APPROVING THE TRANSFER OF FY 2013 CAPITAL FUND MONIES TO PURCHASE AND INSTALL A NEW TEN-TON AIR CONDITIONER IN THE HESAA DATA CENTER'S COMPUTER ROOM**

Ruth Odom presented Resolution 08:13 to the Board.

We were informed by our air conditioner service company that one of the three air conditioners in the HESAA data center was no longer operational. Currently we are operating with two air conditioners. To maintain optimal environmental conditions in the data center, we need to replace the air conditioner. Our recommendation is to install the air conditioner in the data center before the quickly approaching summer months. Therefore, we are requesting approval to transfer from the current 2013 Capital Budget \$65,000 that had been designated for other line items and up to \$9,366 remaining from a software purchase to be used for procurement and installation of a new air conditioner this fiscal year.

Motion to approve Resolution 08:13 was made by Ms. Maria Torres and seconded by Mr. James Allen.

The motion was passed unanimously.

## **REPORT OF THE PROGRAM REVIEW AND QUALITY CONTROL COMMITTEE**

Richard Garcia reported that the Program Review and Quality Control Committee met on April 17, 2013 at HESAA's Quakerbridge Plaza Office. Participating via teleconference was: Christy Van Horn Anthony Falcone and Richard Garcia. Participating on behalf of HESAA were Gabrielle Charette, Joel Mayer, Gene Hutchins, Gena Carapezza and Marnie Grodman. Ms. Van Horn introduced Gena Carapezza to give the Program Review and Quality Control report.

Gena Carapezza, Director of Audits and Quality Assurance reported to the Board.

I would like to take this opportunity to provide a short summary of the accomplishments over the last year of the Audits & Quality Assurance Department; our full report was provided as item #9 of your Board materials. To highlight just a few of our accomplishments, the department:

- Completed the 2012 Internal Controls Assessment required by the State, reporting no material weaknesses;
- Performed reviews over 2 of HESAA's collection attorneys;
- Performed full scale management reviews at 2 NJ institutions which focused on compliance with regulations and policies over State grant & scholarship award distributions;
- Performed 3 limited management reviews and recently commenced work on 2 others.

The limited management reviews were new to our operations this past year and I am happy to report they were a huge success. We added these types of reviews as a way to both maximize staff as well as the number of institutions we can review in a given year. The major difference between the limited and full scale reviews is a reduction in the time and resources involved by reducing the amount of testing procedures. These reviews were designed to focus on areas with the greatest potential for error such as reconciliations and certification of student eligibility. While full scale reviews are difficult to schedule around HESAA and institutional busy times, the limited reviews can be scheduled and completed in a much shorter time frame. Thus, these limited reviews will allow HESAA to touch more institutions during the academic year allowing A&QA to keep in contact with institutions on a more regular basis. We anticipate this will help us to build professional relationships with institutions, facilitate open communications, and establish A&QA as a resource for institutions for assistance on technical matters. For all these reasons we expect that these limited reviews will increase compliance with regulations on a State wide basis.

The limited and full scale reviews resulted in the return of over \$528,000 during the past year. The related findings did not uncover anything egregious or unexpected so it can be concluded that the institutions appear to be doing their best to keep in line with regulations. We will continue to perform both limited and full scale reviews to ensure that continues to be the case. The review schedule planned for the coming year was approved by the Program Review and Quality Control Committee on April 17, 2013 as Chairmen Garcia previously mentioned. At this time I would be happy to answer any questions the Board may have.

Christy Van Horn stated the limited audit is a great idea.



## **FEDERAL INITIATIVES PRESENTATION**

### **Federal Student Loans**

Mr. Shelly Repp, President of the National Council of Higher Education Resources (NCHER) presented the attached PowerPoint presentation to the Board.

### **Consumer Financial Protection Bureau**

Mr. Joel Mayer, Chief Compliance Officer of HESAA presented the attached PowerPoint to the Board.

## **EXECUTIVE DIRECTOR'S REPORT**

Executive Director Gabrielle Charette gave the following report:

Since this Board last met, Governor Christie delivered his proposed Fiscal Year 2014 budget to the New Jersey Legislature. I am pleased to report that once again the Governor has proposed significant funding for the student aid programs HESAA administers.

For the full-time Tuition Aid Grant program, the Governor has proposed a 5% increase or \$16.1 million in additional spending for total program expenditures of \$341.7 million.

For the Part-Time TAG for County College students program, the Governor has proposed \$876,000 in new appropriations for total expenditures of \$11.236 million in the coming fiscal year.

For the NJ STARS and NJ STARS II programs, the Governor's budget includes \$10.6 million, which will fully fund both programs as they are currently structured.

Finally, the Governor is maintaining his commitment to the Governor's Urban Scholarship program, which he created last year. For Fiscal Year 2014 the Governor has proposed \$1 million for the program we conveniently refer to as "GUS."

The Legislature is now considering The Governor's budget and budget hearings have commenced. Secretary Hendricks and I testified before the Assembly Budget Committee on April 18th, and we will appear before the Senate Budget Committee on May 6th.

While the funding levels are still under consideration, HESAA's processing of applications for the coming academic year is well underway. HESAA began receiving applications in February, and to date over 265,000 applications have been processed for the 2013-2014 academic year. Preliminary Student Eligibility Notices are being sent to alert students and families of their anticipated award amounts, so that they can plan accordingly.

At the January meeting I advised you that the U.S. Department of Education had scheduled an onsite audit of HESAA's management of the Guaranty Agency Fund and the Federal Student Loan Reserve Fund. I am pleased to report that the audit concluded and no findings were issued at the exit conference. Many HESAA staff members contributed to this effort. Preparing for a

federal audit is not something we take lightly. In particular I would like to commend Assistant Director Linda Mollica who manages our student loan data system and is responsible for all reporting to the National Student Loan Data System (NSLDS). Linda was instrumental in coordinating the data needed for the USDE review.

As you have heard me say before, at HESAA we are constantly trying to leverage technology to improve our internal processes and our external delivery of services. At our last meeting, we provided a demonstration of our electronic interface for institutional net price calculators. I am pleased to report that since January, in addition to Student Aid Services, another net price calculator vendor, AidCalc, has entered into a Memorandum of Understanding with HESAA to link to our TAG estimator and has gone live with the interface.

Also since our last meeting, HESAA has instituted "MappingXpress," an electronic document collection tool developed by Mapping Your Future, a national non-profit organization providing career and college counseling, financial aid and financial literacy services to students, families and schools. In addition, Mapping Your Future provides technology and development support to other non profits organizations with similar missions- like state based guaranty agencies such as HESAA. With MappingXpress students can upload documents in PDF format to HESAA through a secure network, eliminating the need for fax or postal mail. We initially deployed MappingXpress for NJCLASS, but we plan to implement this tool within the Grants and Scholarships Unit in the near future. Larry Sharp, who manages our NJCLASS Solutions area and participates on the Mapping Your Future Advisory Committee, was instrumental in integrating Mapping Express into our document collection and storage processes.

The days of receiving unreadable faxes from students are hopefully coming to an end. This is good news, as I recently read that the Smithsonian is adding fax machines to its collection of technology artifacts.

The last item on the technology front that I would like to tell you about is a product called Ultra VNC, which allows HESAA help desk technicians to assist employees experiencing computer problems right from the technician's desk. Ultra VNC enables the technician to remotely control the employee's computer, diagnose and fix the problem. Given that our employees are spread between three buildings, this tool saves time and resources. I would like to commend Assistant Director for Technical Services Adam Grossman for his efforts in bringing Ultra VNC online at HESAA.

Speaking of HESAA staff, I know this Board in the past has expressed interest in knowing that HESAA has the appropriate staffing levels to fulfill our important mission. I am pleased to report that despite a statewide hiring freeze, Governor Christie's office has authorized HESAA to backfill two positions recently. Next month, a new Program Officer for the NJ STARS and NJ STARS II programs will be joining our team as will a new Assistant Director for Special Grants and Scholarships and Appeals. Since May of 2011, HESAA has been able to welcome 19 new staff members to the HESAA family and we have been able to recognize the superior performance of 12 staff members through promotions. Once again, I must thank the Governor's office for its support of the agency and our personnel needs.

**NEW BUSINESS**

Gabrielle Charette presented a resolution acknowledging and thanking Ms. Elaine Pappas-Varas for her service and dedication to the Higher Education Student Assistance Authority Board.

Ethics Update

Mr. Garcia reminded the Board that their Financial Disclosure Statements must be filed by May 15, 2013.

**ADJOURNMENT**

Mr. Garcia announced that after adjourning this meeting the Board will enter a closed session, pursuant to the Open Public Meetings Act, to discuss pending litigation. This will be a closed session pursuant to N.J.S.A. 10:4-12b(7), matters that fall under the attorney-client privilege. Details of the discussion that takes place in the closed session cannot be disclosed to the public until the conclusion of the litigation. A motion to adjourn and go to closed session was made by Mr. James Allen and seconded by Ms. Jean McDonald Rash.

The motion to adjourn passed unanimously.

The meeting adjourned at 12:05.

Mr. Garcia announced that the next Board meeting is scheduled for July 24, 2013 at 11:30 am.



*State of New Jersey*

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY  
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1-800-792-8670  
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CHRIS CHRISTIE  
Governor


KIM GUADAGNO  
Lt. Governor

GABRIELLE CHARETTE, ESQ.  
Executive Director

**MEMORANDUM**

**TO:** Members, Higher Education Student Assistance Authority Board

**THROUGH:** Gabrielle Charette, Esq.   
Executive Director

**FROM:** Marnie B. Grodman, Director   
Legal and Governmental Affairs  
Administrative Practice Officer

**SUBJECT:** Resolution 04:13 - Adopting a Schedule for Meetings for Fiscal Year 2014

**DATE:** April 24, 2013

Attached for your review is Resolution 04:13 recommending dates for the Fiscal Year ("FY") 2014 HESAA Board meetings. The following dates were chosen after polling each member regarding his or her availability.

Wednesday July 24, 2013  
Wednesday October 23, 2013  
Wednesday January 22, 2014  
Wednesday April 23, 2014

All regular Board meetings will take place at 10:00 a.m. at HESAA offices, 4 Quakerbridge Plaza, Building 2, Mercerville, New Jersey. HESAA may call additional meetings, including telephone conference call meetings, at its discretion.

The HESAA Board adopts a regular meeting schedule so that HESAA may notify Board members and the public of future meeting dates. Specific notice of each meeting will be provided to the public in a timely fashion in accordance with the provisions of the Open Public Meetings Act.

Recommendation

It is recommended that the Board approve the attached Resolution 04:13 – Adopting a Schedule of Meetings for Fiscal Year 2014.

Attachment:

1. Resolution 04:13

**RESOLUTION 04:13**

**ADOPTING A SCHEDULE OF MEETINGS  
FOR FISCAL YEAR 2014**

Moved By: Ms. Maria Torres  
Seconded By: Mr. James Allen

**WHEREAS:** Adopting a regular meeting schedule provides general notice to Board members and to the public of meetings of the Higher Education Student Assistance Authority Board; and

**WHEREAS:** The date for the July meeting for Fiscal Year 2014 was chosen after polling the Board members regarding their availability; and

**WHEREAS:** The dates for the October, January and April Fiscal Year 2014 Board meetings will be selected at the July meeting; and

**WHEREAS:** The Higher Education Student Assistance Authority may call additional meetings, including telephone conference call meetings; and

**WHEREAS:** Specific notice of each meeting will be provided to the public in accordance with the provisions of the Open Public Meetings Act.

**NOW, THEREFORE, LET IT BE:**

**RESOLVED:** That the Higher Education Student Assistance Authority hereby adopts Wednesday July 24, 2013 as the first meeting date for Fiscal Year 2014:

April 24, 2013



*State of New Jersey*

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CHRIS CHRISTIE  
Governor


KIM GUADAGNO  
Lt. Governor

GABRIELLE CHARETTE, ESQ.  
Executive Director

**MEMORANDUM**

**TO:** Members, Higher Education Student Assistance Authority

**THROUGH:** Gabrielle Charette, Esquire  
Executive Director 

**FROM:** André Maglione  
Acting Director, Client Services 

**SUBJECT:** Resolution 05:13- Approving the Procurement of Financial Literacy Software

**DATE:** April 24, 2013

**Background**

The Higher Education Student Assistance Authority (HESAA) in partnership with the Office of the Secretary of Higher Education administers the Federal College Access Challenge Grant (CACG). The purpose of the College Access Challenge Grant Program (CACGP) is to foster partnerships among federal, state, and local governments and philanthropic organizations through challenge grants that are aimed at increasing the number of low-income students who are prepared to enter and succeed in postsecondary education. HESAA is charged with promoting financial awareness and outreach for the grant's targeted areas, which are Cumberland, Sussex, Salem, and Warren counties.

One of HESAA's programmatic responsibilities is to provide students and parents/guardians with individualized financial aid information and assistance. One of the tools HESAA agreed to use to provide this assistance is an interactive on-line financial literacy program. As such, on March 14, 2013, HESAA issued a Request for Proposals (RFP) to procure an interactive on-line financial literacy program for high school students. The term of the contract will be for three years with two possible one year extensions.

HESAA mailed the RFP to three companies known to offer the financial literacy programs, posted the RFP on HESAA's website and advertised the RFP in the Trenton Times, Star Ledger, Courier News, and Home News.

HESAA received proposals from two companies, EverFi, Inc. and Inceptia.

### **Selection Process**

An evaluation committee made up of HESAA's Acting Director of Client Services, Director of Communications and Training Coordinator met and reviewed each of the responsive proposals.

The selection criteria for reviewing the proposals were as follows:

1. The ability to meet the Scope of Services of this RFP;
2. Prior experience with web based financial literacy programs;
3. Quality and content of the financial literacy program being proposed; and
4. Costs.

The committee determined that EverFi, Inc. is able to meet all aspects of the financial literacy program while Inceptia was not as strong on items such as support, media and school training. Additionally, Inceptia's fees were over \$50,000 higher than EverFi per year.

### **Recommendation**

It is recommended that the Board approve Resolution 05:13 Approving the Procurement of Financial Literacy Software from EverFi, Inc., 2715 M St. NW, Washington DC. 20007 at a cost of \$65,000 per year for 35 institutions.

Attachment

Resolution 05:13

**RESOLUTION 5:13**

**APPROVING PURCHASE OF COMPUTER EQUIPMENT PURSUANT TO STATE  
CONTRACT**

Moved by: Mr. Anthony Falcone

Seconded by: Mr. James Allen

**WHEREAS:** The Higher Education Student Assistance Authority (HESAA) in partnership with the Office of the Secretary of Higher Education administers the Federal College Access Challenge Grant (CACG); and

**WHEREAS:** HESAA is charged with promoting financial awareness and outreach for the grant's targeted areas, which are Cumberland, Sussex, Salem, and Warren counties; and

**WHEREAS:** One of the tools HESAA agreed to use to provide this assistance is an interactive on-line financial literacy program; and

**WHEREAS:** On March 14, 2013, HESAA issued a Request for Proposals (RFP) to procure an interactive on-line financial literacy program for high school students; and

**WHEREAS:** An evaluation committee made up of HESAA's Acting Director of Client Services, Director of Communications and Training Coordinator met and reviewed each of the responsive proposals.

**NOW, THEREFORE, LET IT BE:**

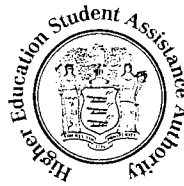
**RESOLVED:** The Board approves the procurement of financial literacy software from EverFi, Inc., 2715 M St. NW, Washington DC. 20007 at a cost of \$65,000 per year for 35 institutions.

April 24, 2013



EVALUATION SCORE SHEET		HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY Financial Literacy Program for High School Students			
BIDDER Everfi	DATE	4/15/2013			
SUMMARY OF EVALUATION TEAM'S COMMENTS:					
Hits high on the evaluation marks very solidly in all aspects of a financial literacy program that we are looking for to assist our NJ high school students in getting an upper-hand in financial literacy knowledge.					
Scoring 9-10 = Excellent 7-8 = Very Good 5-6 = Good 3-4 = Fair 1-2 = Poor 0 = No Response					
CRITERIA	SCORE 1	SCORE 2	SCORE 3	WEIGHT	TOTAL
The ability to meet the Scope of Services of the RFP	10	9	9	25	700
Prior experience with web based financial literacy programs	6	7	7	15	300
Quality and content of the financial literacy program proposed	10	9	9	25	700
Cost	10	10	10	35	1050
Total	36	35	35	100	2750

<b>EVALUATION SCORE SHEET</b>		HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY Financial Literacy Program for High School Students			
BIDDER Inceptia	DATE	4/15/2013			
<b>SUMMARY OF EVALUATION TEAM'S COMMENTS:</b>					
Provides some of the RFP requirements solidly, however misses the mark on items such as; support, media, school training, and especially cost.					
<b>Scoring 9-10 = Excellent 7-8 = Very Good 5-6 = Good 3-4 = Fair 1-2 = Poor 0 = No Response</b>					
<b>CRITERIA</b>	<b>SCORE 1</b>	<b>SCORE 2</b>	<b>SCORE 3</b>	<b>WEIGHT</b>	<b>TOTAL</b>
The ability to meet the Scope of Services of the RFP	5	5	7	25	425
Prior experience with web based financial literacy programs	8	8	8	15	360
Quality and content of the financial literacy program proposed	6	7	9	25	550
Cost	2	1	2	35	175
<b>Total</b>	<b>21</b>	<b>21</b>	<b>26</b>	<b>100</b>	<b>1510</b>



*State of New Jersey*

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY  
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CHRIS CHRISTIE  
Governor


KIM GUADAGNO  
Lt. Governor

GABRIELLE CHARETTE, ESQ.  
Executive Director

**MEMORANDUM**

**TO:** Members, Higher Education Student Assistance Authority

**THROUGH:** Gabrielle Charette   
Executive Director

**FROM:** Eugene Hutchins   
Chief Financial Officer

**SUBJECT:** NJCLASS Bond Issue 2013-1 Resolution 06:13 Authorizing Amendments to the 2012 Indenture of Trust and Authorizing the Issuance and Sale of Student Loan Revenue Bonds and Approving the Execution and Delivery of a Supplemental Indenture, Final Official Statement, Continuing Disclosure Agreement, Bond Purchase Agreement, and Other Matters in Connection Therewith

**DATE:** April 24, 2013

**Summary**

Enclosed is the proposed resolution relating to the 2013-1 Bond Issue together with drafts of the various bond documents referenced in the resolution. The resolution authorizes a total bond sale not to exceed \$250.0 million in fixed rate bonds with a final maturity not later than June 1, 2048. These bonds will be issued under the existing 2012-1 Master Indenture of Trust. The proceeds of the bonds (net of funds required for bond reserves) will be used to finance fixed rate standard NJCLASS loans, including the Ten Year Option 1 Loan program, graduate/professional NJCLASS Loans, and NJCLASS Consolidation Loans.

Credit market conditions make it most advantageous for the Authority to continue the structure of last year's bonds of fixed rate serial and term bonds. The steepness of the bond market yield curve has led the Authority to continue the replacement of its 20-year fixed rate standard loan with a 15-year loan which will result in a lower interest rate charged to borrowers, a minimal increase in borrowers' monthly payments, and allow the loans to be paid off sooner and at a lower total cost to the borrower.

The 2013-1 Bonds will also include subordinated bonds as part of the overall bond structure. These subordinated bonds would be the last bonds retired in the bond issue, and the bondholders would have subordinated payment rights and subordinated credit rights in the unlikely event of a bond trust default. In return, these bonds carry a higher rate of interest and appeal to investors willing to take higher risk in exchange for a higher yield. This structure was widely used in the student loan industry prior to 2008 and there was robust demand for these bonds in HESAA's 2012 Bond Issue. The use of subordinated bonds in the bond structure reduces the amount of equity that HESAA will be required to contribute to the 2012-1 bond trust as outlined below. It should be noted that although subordinate, these bonds are expected to carry an investment grade rating of A/A.

The amendments to the 2012-1 Master Indenture of Trust provides that the amortization and retirement of senior and subordinated bonds will be done on a series by series basis. This means that as the senior bonds for the 2012-1, 2013-1, and any future series of bonds issued under this Master Trust are fully retired, the associated subordinate bonds for each series would then be retired. This amendment provides for the orderly and efficient administration of debt service on the bonds and helps ensure compliance with IRS arbitrage rules.

The 2013-1 bonds will not use bond insurance. Since the downgrade of all municipal bond insurers during the recent financial crisis, investor appetite for insured bonds is very low. This combined with the higher premiums charged by the remaining investment grade rated insurers make the use of bond insurance uneconomical, i.e., the insurance rates charged would exceed the reduction in interest rates on the bonds in the market and result in higher loan interest rates to students.

The 2013-1 bond issue will require HESAA to contribute as much as \$10.0 million in equity as overcollateralization for meeting rating agency requirements. However, this amount is expected to be around \$5.0 million, assuming the successful marketing of subordinated bonds similar to last year. These funds will be drawn from a combination of HESAA reserves in Guaranty Agency Operating Fund, the NJCLASS Life of Loan Servicing Reserves and NJBEST Scholarship Administrative reserves. These funds are not required for current program purposes, are currently earning only 0.07% in the State's Cash Management Fund and will earn significantly more interest invested through the NJCLASS Trust. Excess revenues in the NJCLASS 2013-1 Bond Issue will be eligible for release from the NJCLASS 2012-1 Trust and other older trusts over the next 5 to 10 years and will be used to replenish the reserves. The resolution further authorizes the contribution of up to \$1 million in equity from the same reserves, if required by the rating agencies, to fund the negative interest rate carry associated with extending the middle origination period for the 2012-1 Bonds from May 1 to September 1.

Total NJCLASS loan volume for academic year 2013-14 is expected to be close to \$275 million and HESAA anticipates using residual unexpended 2012-1 proceeds to meet demand. However, until interest rates on our loans can be better estimated, total sizing of the bond issue will not be finalized. This is a slight decrease in volume from academic

year 2012-2013 and results from tighter credit standards as outlined below, offset by the potential freezes or reductions of federal grant aid (SEOG and CWS), and ongoing tuition increases.

Market conditions have also made it possible for the Authority to continue its 10-year Option 1 Loan that will allow families that can afford higher monthly repayment amounts to borrow under this option at a significantly lower interest rate than both the 15-year NJCLASS loan and the federal Direct PLUS Loan, which currently carries an interest rate of 7.9%.

### **NJCLASS Program Parameters**

As was discussed with the Board last year, general economic and credit conditions and the repayment performance of lower FICO-score borrowers have led the rating agencies to increase stress delinquency and default assumptions, particularly for lower FICO borrowers. This has required HESAA to continue the following program parameters for the NJCLASS program for academic year 2013-2014:

- Minimum Income of \$40,000
- Revised Credit Score Criteria
  - 670-699 FICO Band – all applicants credit reports reviewed for derogatories.
  - 700+ FICO Bands – application auto approved.
- Application fee of 3% for all option types to provide additional collateralization for the Bonds.
- Loan funds available for Option 3 loans not to exceed \$35.0 million and interest rate set at its true cost (not subsidized by other option types as was previously).
- Consolidation Loans – raise the credit and the minimum income standards to those of the standard undergraduate loan.

Borrowers who no longer qualify for the NJCLASS loans will have the choice of obtaining a credit-worthy co-signer or be counseled to apply for the federal Parental Loan for Undergraduate Students (PLUS) where they are able to obtain more flexible repayment terms and less stringent credit standards than can be funded through the bond issues for NJCLASS.

These revised credit standards for the NJCLASS program were put in place for several reasons. Lower FICO-score and Option 3 borrowers from loans made in prior years continue to default on their loans at significantly higher rates than higher FICO-score and Option 1 Loans, where repayment of interest and principal begin immediately following

origination of the loan, and Option 2 Loans where interest payments begin immediately and principal payments are deferred during the in-school period. The higher default rate of Option 3 Loans results in part from the fact that interest accumulated during the in-school period capitalizes (that is it is added to the loan principal balance), which significantly increases the amount that must be repaid. Additionally, all Option 3 Loans that a borrower has taken out enter repayment at the same time, and can create difficulty for families in adjusting their monthly budgets, particularly where large amounts have been borrowed. We continue to counsel families to borrow under options where some level of payment is made during the in-school period as a means of avoiding capitalized interest being added to their debt. This has been particularly true for lower FICO-score borrowers who many times end up being required to make monthly payments they cannot afford, which is detrimental to both the borrower and the NJCLASS program.

The resolution also approves the use of residual 2012-1 loan funds and allows the interest rates charged for loans made from these funds to conform to the interest rates established through the 2013-1 bond issue.

The senior manager will assess market conditions at the time of sale and in coordination with HESAA and the financial advisor will make final sizing and structuring decisions on the initial sale, which is expected to take place in mid May.

This resolution delegates to the Chairperson, Vice Chairperson, Secretary-Treasurer, Executive Director, Chief Financial Officer or other authorized representative or designee of the Authority the power to modify and approve the final structure and interest costs of the bonds.

In conformance with Executive Order 26 (Whitman), the bonds are being issued through a negotiated sale. Because of the complexity of the underlying credit (student loans) which secure the bonds, the size of the issue, and difficult market conditions, a negotiated sale should result in better pricing for the bonds than would be obtained from a competitive sale.

The bond documents are enclosed after the resolution in the following order with blue headers:

Attachment A – 2013-1 Second Supplemental Indenture

Attachment B – 2013-1 Preliminary Official Statement

Attachment C – 2013-1 Continuing Disclosure Agreement

Attachment D – 2013-1 Bond Purchase Agreement

Attachment E – 2013-1 Acknowledgement of Servicing

The staff of the Authority will continue to work with FirstSouthwest, the Financial Advisor, and Bank of America Merrill Lynch, the Senior Manager, to develop an optimum strategy for marketing and pricing the bonds so that sufficient funds will be available to satisfy the demand for NJCLASS Loans while at the same time answering any questions the rating agencies and potential bondholders may have regarding the 2013-1 Bond Issue.

Ms. Leah Sandbank of McManimon and Scotland, Bond Counsel, will review the bond resolution with the Board.

Mr. Joseph Santoro of Bank of America Merrill Lynch, and Mr. Clifford Rones, Deputy Attorney General with the Attorney General's Office, will also be available at the Authority meeting to answer any questions from members of the Board.

Your approval of the attached bond resolution is recommended.

Attachments (6)

RESOLUTION 6:13

RESOLUTION AUTHORIZING AMENDMENTS TO THE 2012  
INDENTURE OF TRUST AND AUTHORIZING THE ISSUANCE  
AND SALE OF STUDENT LOAN REVENUE BONDS AND  
APPROVING THE EXECUTION AND DELIVERY OF A  
SUPPLEMENTAL INDENTURE, PRELIMINARY OFFICIAL  
STATEMENT, FINAL OFFICIAL STATEMENT, CONTINUING  
DISCLOSURE AGREEMENT, ACKNOWLEDGEMENT OF  
SERVICING, BOND PURCHASE AGREEMENT, AND OTHER  
MATTERS IN CONNECTION THEREWITH

Moved: Fr. Michael Braden  
Seconded: Ms. Jean McDonald Rash

**WHEREAS:** The Higher Education Student Assistance Authority (the "Authority") is a body corporate and politic constituting an instrumentality of the State of New Jersey (the "State") established and created under and by virtue of the provisions of the Higher Education Student Assistance Authority Law, constituting Chapter 46 of the Pamphlet Laws of 1999 of the State of New Jersey, as amended and supplemented and any successor legislation (the "Act"); and

**WHEREAS:** The Authority issued \$259,300,000 of Student Loan Revenue Bonds (the "2012-1 Bonds") pursuant to an Indenture of Trust (the "2012 Indenture") dated as of June 1, 2012 by and between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee") as supplemented by the First Supplemental Indenture dated as of June 1, 2012 (the "First Supplemental Indenture") by and between the Authority and the Trustee; and

**WHEREAS:** The Authority wishes to provide for amendments to the 2012 Indenture to clarify the payment priority with respect to Senior Bonds and Subordinate Obligations under the 2012 Indenture; and

**WHEREAS:** The Authority wishes to acknowledge the change in the loan rates for 2012-1 NJCLASS Loans (as defined in the First Supplemental Indenture) for 2012-1 NJCLASS Loans to be originated on and after the issue date of the Series 2013-1 Bonds (as defined herein) with remaining proceeds of the 2012-1 Bonds, all as more particularly provided below; and

**WHEREAS:** Pursuant to Section 8.1(15) of the 2012 Indenture, a Supplemental Indenture not requiring the consent of Bondholders may be executed and delivered by the Authority and the Trustee to make any change which in the judgment of the Trustee, acting in reliance upon an opinion of counsel, to the extent the Trustee deems such opinion desirable, does not adversely affect the interest of any Bondholder; and

**WHEREAS:** In order to accomplish the purposes of the Act and provide student loans commencing with the 2013-2014 school year, the Authority wishes to (i) provide for the issuance and sale of an additional series of student loan



revenue bonds (the "Series 2013-1 Bonds") pursuant to the Indenture of Trust dated June 1, 2012 by and between the Authority and Wells Fargo Bank, N.A. (the "2012 Indenture") and (ii) authorize the transfer of funds from its reserves; and

**WHEREAS:** In accordance with the requirements of Executive Order No. 26 (Whitman 1994), the Authority hereby determines that because of the complexity and size of the financing structure as hereinafter described, and volatile market conditions, a negotiated sale of such Series 2013-1 Bonds would best serve the requirements of this financing; and

**WHEREAS:** An Underwriter, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, a Financial Advisor, First Southwest Company and Bond Counsel, Inglesino, Pearlman, Wyciskala & Taylor, LLC., have been selected in accordance with the requirements of Executive Order No. 26; and

**WHEREAS:** In connection with the issuance and sale of the Series 2013-1 Bonds, the Authority intends to enter into a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") with the Trustee, acting as dissemination agent, in accordance with Rule 15c2-12 under the Securities Exchange Act of 1934, as amended.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY** (not less than a majority of a quorum thereof affirmatively concurring) **AS FOLLOWS:**

**Section 1.** To accomplish the purposes and objectives of the Act, including the purchase and origination of student loans as authorized by the Act, the Authority hereby authorizes the issuance of its Series 2013-1 Bonds issued as Student Loan Revenue Bonds, Series 2013-1, in the aggregate principal amount not to exceed \$250,000,000 in one or more Series. The Series 2013-1 Bonds shall be sold to Merrill Lynch, Pierce, Fenner & Smith Incorporated, New York, New York, acting as representative of the group of underwriters, if any (the "Underwriter"), pursuant to the terms of one or more Bond Purchase Agreement(s) to be entered into by and between the Authority and the Underwriter (collectively, the "Bond Purchase Agreement") with an underwriter's fee not to exceed \$6.25/1,000 of Series 2013-1 Bonds issued. The Chairperson, Vice Chairperson, Secretary-Treasurer, Executive Director and Chief Financial Officer or other authorized representative or designee (each an "Authorized Authority Official") are each hereby authorized to execute the Bond Purchase Agreement. The Series 2013-1 Bonds shall be dated, shall bear interest at the fixed rate or rates, shall be payable as to principal, redemption premium, if any, and interest, shall be issued in the form, shall be in such Authorized Denominations, shall be signed, authenticated and numbered, shall mature, shall be subject to redemption prior to maturity, and shall have such other details and provisions as set forth in the 2012 Indenture, as amended and supplemented by a Second Supplemental Indenture to be dated as of the first date of the month the Series 2013-1 Bonds are issued, by and between the Authority and the Trustee (the "Second Supplemental Indenture"); provided, however, an Authorized Authority Official may modify the stated interest rates of the Series 2013-1 Bonds, the maturity date(s) of the Series 2013-1 Bonds (including, without limitation, creating serial and term bonds, if any, and providing for cumulative and/or mandatory sinking fund payments on term bonds), and the redemption provisions of the Series 2013-1 Bonds subject to the following: (i) the final maturity of the Series 2013-1 Bonds shall not be after June 1, 2048; (ii) the optional redemption price for any Series 2013-1 Bond shall not exceed 103% of

the principal amount thereof, and the initial call protection for any Series 2013-1 Bond shall not exceed 10 years, and (iii) the stated interest rate of the Series 2013-1 Bonds shall not exceed 8.0% per annum.

Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the 2012 Indenture and the Second Supplemental Indenture.

The Authority is authorized, together with the Trustee, to the extent necessary or appropriate, to take such actions and execute such documents as may be necessary or appropriate to qualify the Series 2013-1 Bonds with The Depository Trust Company, New York, New York, as book-entry obligations.

**Section 2.** The Series 2013-1 Bonds shall be special obligations of the Authority, and shall be payable solely out of the Trust Estate as set forth in the 2012 Indenture. The payment of the principal, redemption premium, if any, and interest on the Series 2013-1 Bonds shall be secured by a pledge and assignment of the Trust Estate as provided in the 2012 Indenture. Neither the State nor the Authority shall be obligated to pay the Series 2013-1 Bonds or the interest thereon except as so provided in the 2012 Indenture.

**Section 3.** No covenant, stipulation, obligation, or agreement herein contained or contained in the Bond Purchase Agreement, the 2012 Indenture, the Second Supplemental Indenture or the Continuing Disclosure Agreement, shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Authority or of the State in an individual capacity. Neither the members of the Authority, nor any person executing the Series 2013-1 Bonds issued pursuant to this resolution and the Act, nor any officer nor employee of the Authority shall be liable personally on the Series 2013-1 Bonds by reason of the issuance or execution thereof. The Series 2013-1 Bonds shall not be in any way a debt or liability of the State of New Jersey or any political subdivision thereof, either legal, moral or otherwise, and neither the faith and credit nor the taxing power of the State or any political subdivision thereof shall be pledged to the payment of the principal, redemption premium, if any, or interest thereon. The issuance of the Series 2013-1 Bonds shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or pledge any form of taxation whatever therefor.

**Section 4.** In order to satisfy the initial parity requirement set forth by the Rating Agencies rating the Series 2013-1 Bonds, the Authority hereby authorizes the transfer of an amount to be determined by an Authorized Authority Official as necessary to satisfy such requirement from its reserves, consisting of any or all of the NJCLASS Life of Loan Servicing Reserves, the Guaranty Agency Operating Fund, Direct Loan Servicing Fund or the NJBEST Scholarship Administrative Reserves; provided that such amount does not exceed [\$10 million]. These amounts transferred to the 2012 Indenture from reserves shall be applied to originate Student Loans thereunder. The Authority shall replenish such reserves from Revenues and Recoveries of Principal on the 2013-1 Student Loans as provided under the 2012 Indenture.

**Section 5.** (A) On June 28, 2012, the Authority issued its \$259,300,000 Student Loan Revenue Bonds, Series 2012-1 (the "Series 2012-1 Bonds") pursuant to the 2012 Indenture and the First Supplemental Indenture (the "First Supplemental Indenture") by and between the Authority and the Trustee dated June 1, 2012. The Authority hereby authorizes the extension of the ending date of the second Origination Period (as defined in the First Supplemental Indenture) for the Series 2012-1 Bonds from May 1, 2013 to September 1, 2013, subject to the receipt of a Rating Agency Condition (RAC) from each Rating Agency. In connection with the

RAC request, and in order to satisfy the requirements set forth by the Rating Agencies rating the Series 2012-1 Bonds to provide funds to cover the negative carry resulting from the extension, the Authority hereby authorizes the transfer of an amount to be determined by an Authorized Authority Official as necessary to satisfy such requirement from its reserves, consisting of any or all of the NJCLASS Life of Loan Servicing Reserves, the Guaranty Agency Operating Fund, Direct Loan Servicing Fund or the NJBEST Scholarship Administrative Reserves; provided that such amount does not exceed \$1 million. Any amounts transferred to the 2012 Indenture from reserves shall be applied to originate Student Loans thereunder. The Authority shall replenish such reserves from Revenues and Recoveries of Principal on the 2013-1 Student Loans as provided under the 2012 Indenture.

(B) The Authority hereby authorizes changes to the Loan Rates (as defined in the First Supplemental Indenture) for student loans originated with proceeds of the Series 2012-1 Bonds from and after the issue date of the Series 2013-1 Bonds so that all student loans (within a specific loan type) originated for the 2013/2014 academic year from and after the issue date of the Series 2013-1 Bonds will, at the option of the Authority, bear the same interest rate. The change to the Loan Rates is subject to delivery to the Trustee of (i) a Bond Counsel's Opinion to the effect that the revised Loan Rate is authorized or permitted by the Act, the 2012 Indenture, and this Supplemental Indenture and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2012-1 Bonds, and (ii) a Cash Flow Statement taking into account the revised Loan Rate.

**Section 6.** The Authority hereby authorizes an amendment to the 2012 Indenture (the "Indenture Amendment) to clarify that principal on Subordinate Obligations (as defined in the 2012 Indenture) shall be paid so long as no Bonds (as defined in the 2012 Indenture) of the same Series (as defined in the 2012 Indenture) remain Outstanding, without regard to whether Bonds of any other Series remain Outstanding. The Indenture Amendment shall be set forth in the Second Supplemental Indenture. All actions authorized pursuant to this Section 6 are subject to receipt by the Authority and Trustee of (a) a Bond Counsel's Opinion that such amendment is authorized or permitted by the Act and the 2012 Indenture and the amendment will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2012-1 Bonds and will not adversely affect the interest of any Bondholder and (b) evidence by means of a Rating Agency letter or Rating Agency Condition by each Rating Agency that the execution and delivery of such Supplemental Indenture would not, in and of itself result in a withdrawal or decrease of any rating of the Series 2012-1 Bonds.

**Section 7.** The Bond Purchase Agreement, the Continuing Disclosure Agreement, the Second Supplemental Indenture and the Series 2013-1 Bonds, substantially in the forms submitted to the Authority and made a part of this resolution as though set forth in full herein, are hereby approved. An Authorized Authority Official is hereby authorized to execute, acknowledge and deliver such documents with any changes, insertions and omissions (including, without limitation, insertion of the Loan Rates or the method of determination thereof in the Second Supplemental Indenture) as may be approved by said Authorized Authority Official and the Secretary-Treasurer of the Authority is hereby authorized to affix the seal of the Authority on such documents and attest the same. The execution of any of such documents by said Authorized Authority Official shall be conclusive evidence of any approval of such document in final form as authorized by this Section 7.

**Section 8.** The Acknowledgement of Servicing to be entered into by and between the Authority and the Trustee regarding the servicing of 2013-1 Student Loans (as defined in the Second Supplemental Indenture), substantially in the form submitted to the Authority and made

a part of this resolution as though set forth in full herein, is hereby approved. The Authorized Authority Officials are hereby authorized to execute, acknowledge and deliver such document with any changes, insertions and omissions as may be approved by said Authorized Authority Official and the Secretary-Treasurer of the Authority is hereby authorized to affix the seal of the Authority on such documents and attest the same. The execution of such document by said Authorized Authority Official shall be conclusive evidence of any approval of such document in final form as authorized by this Section 8.

**Section 9.** The Series 2013-1 Bonds shall be executed in the manner provided in the 2012 Indenture, and the same shall be delivered to the Trustee for proper authentication and delivery to the Underwriter, upon instructions to that effect. The 2012 Indenture shall provide the terms and conditions, covenants, rights, obligations, duties and agreements of the 2013-1 Bondholders, the Authority and the Trustee.

**Section 10.** All covenants, stipulations, obligations and agreements of the Authority contained in this resolution and contained in the Bond Purchase Agreement, the Continuing Disclosure Agreement, the 2012 Indenture, the Acknowledgement of Servicing and the Second Supplemental Indenture shall be deemed to be the covenants, stipulations, obligations and agreements of the Authority to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Authority and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this resolution, all rights, powers and privileges conferred, and duties and liabilities imposed, upon the Authority or the members thereof by the provisions of this resolution, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the 2012 Indenture, the Acknowledgement of Servicing and the Second Supplemental Indenture shall be exercised or performed by the Authority or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Bond Purchase Agreement, the Continuing Disclosure Agreement, the 2012 Indenture, the Acknowledgement of Servicing or the Second Supplemental Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Authority or of the State in his or her individual capacity, and neither the members of the Authority nor any officer executing the Series 2013-1 Bonds shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 11.** The proper officers of the Authority are hereby further directed to cause the proceeds of the Series 2013-1 Bonds to be initially deposited and disbursed as provided in the 2012 Indenture and the Second Supplemental Indenture.

**Section 12.** In order to secure payment of principal, on the scheduled maturity dates and/or sinking fund maturity dates, and interest on the Series 2013-1 Bonds, on the dates due, the Authority is hereby authorized to obtain one or more municipal bond insurance policies and to enter into commitments and agreements with respect thereto. The Authorized Authority Officials are each hereby authorized to enter into an agreement with the issuer(s) of such municipal bond insurance policy in customary form, and to make such revisions to the forms of documents submitted to this meeting as may be necessary or appropriate in connection with such policy. The Authority is hereby further authorized to use proceeds of the Series 2013-1

Bonds or other available funds of the Authority to fund all or a portion of the premium payable to the issuer of the municipal bond insurance policy for such policy.

**Section 13.** The Authority, in consultation with the Treasurer of the State of New Jersey (the "Treasurer") and the Attorney General of the State of New Jersey (the "Attorney General"), is hereby authorized to purchase one or more financial guaranty insurance policies or surety bonds for deposit to the Debt Service Reserve Fund established under the 2012 Indenture to satisfy the 2013-1 Reserve Requirement (as defined in the Second Supplemental Indenture) for the Series 2013-1 Bonds, if any, each constituting a Funding Instrument within the meaning of the 2012 Indenture, with respect to any or all of the Series 2013-1 Bonds (the "Funding Instrument(s)"). Such Funding Instrument, if any, shall be issued in an amount not exceeding the 2013-1 Reserve Requirement for the Series 2013-1 Bonds, if an Authorized Authority Official, in consultation with the Treasurer and the Attorney General, determines that such Funding Instrument(s) can be obtained upon terms and conditions consistent with the Act and reasonably acceptable to the Authority. The Authorized Authority Officials are each hereby authorized to enter into an agreement with the issuer(s) of such Funding Instrument(s), in customary form, and to make such revisions to the forms of documents submitted to this meeting as may be necessary or appropriate in connection with such Funding Instruments). Together with, or in lieu of, a Funding Instrument, the Authority is hereby further authorized to use proceeds of the Series 2013-1 Bonds or other available funds of the Authority to fund all or a portion of the 2013-1 Reserve Requirement for the Series 2013-1 Bonds.

**Section 14.** Wells Fargo Bank, National Association is hereby appointed Trustee, Paying Agent, Registrar, and Authenticating Agent for the Series 2013-1 Bonds in accordance with the Authority's Request for Proposals for Trustee Services dated as of November, 2006.

**Section 15.** All actions of the Authority and its staff which have previously been taken with regard to the issuance of the Series 2013-1 Bonds and the NJCLASS Loan Program in respect of the Series 2013-1 Bonds are hereby ratified and approved, including the selection, pursuant to a competitive solicitation process, of McElwee & Quinn as printer for the Preliminary Official Statement and final Official Statement (as such terms are defined in Section 17 hereof) in an amount not to exceed \$5,000 and the selection, pursuant to a competitive solicitation process, of KPMG as the accounting firm required to perform agreed upon procedures for the loan data in an amount not to exceed \$45,000.

**Section 16.** The Authorized Authority Officials are hereby designated to be the authorized representatives of the Authority, and each of them and other authorized representatives and designees are hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the 2012 Indenture, the Second Supplemental Indenture, the Acknowledgement of Servicing, and the issuance of the Series 2013-1 Bonds, including, without limitation, the substitution and approval of documents other than those approved and authorized to be executed by this resolution in order to conform the same to the purposes of the Act and the intentions of the Authority as expressed herein.

**Section 17.** The Preliminary Official Statement (the "Preliminary Official Statement"), substantially in the form presented to this meeting, is hereby approved, with any changes, insertions and omissions as may be approved by an Authorized Authority Official. The Authorized Authority Officials are each authorized to execute such documents as shall be

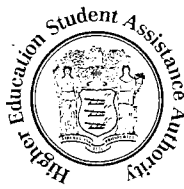
necessary or desirable to evidence that the final Preliminary Official Statement in the form to be distributed, is "deemed final" within the meaning of (and with the exception of certain information permitted to be omitted by) Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended. The Authorized Authority Officials are each authorized to execute and deliver a final Official Statement for the Series 2013-1 Bonds (the "final Official Statement"), substantially in the form of the Preliminary Official Statement, with any changes, insertions and omissions as may be approved by said Authorized Authority Official. The execution of the final Official Statement by said Authorized Authority Official shall be conclusive evidence of any approval of such Official Statement in final form as authorized by this Section 17.

**Section 18.** The Trustee is authorized to invest funds held under the 2012 Indenture in Investment Securities at the direction of an Authorized Authority Officer.

**Section 19.** This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

April 24, 2013

(With Technical Correction)



*State of New Jersey*

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

4 QUAKERBRIDGE PLAZA

PO BOX 545

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CHRIS CHRISTIE  
Governor


KIM GUADAGNO  
Lt. Governor

GABRIELLE CHARETTE, ESQ.  
Executive Director

**MEMORANDUM**

**TO:** Members, Higher Education Student Assistance Authority

**THROUGH:** Gabrielle Charette  
Executive Director 

**FROM:** Eugene Hutchins  
Chief Financial Officer 

**SUBJECT:** Resolution 07:13 Authorizing the Preparation of Policies and Procedures Required by the Dodd-Frank Act, Appointing First Southwest Company as Qualified Independent Representative and Authorizing the Execution and Delivery of the ISDA August 2012 Protocol Agreement and Related Documents and Authorizing Other Matters in Connection Therewith

**DATE:** April 24, 2013

**Summary**

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 required all municipal bond issuers that utilize financial instruments (Swaps) to adopt a standardized set of protocols and procedures that govern the process of entering into, amending, or terminating swap agreements. The International Swaps and Derivatives Association, Inc. (ISDA), working with the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC), has developed a set of protocol documents that establish the framework and definitions, terms and conditions to be utilized as part of all swap transactions. The protocols also require issuers to have a Qualified Independent Representative (QIR), previously known as the Swap Advisor, to provide them advice on the fairness of pricing and other provisions of all swap-related transactions. Finally, the protocol requires the governing board of the issuer to formally adopt the protocols prior to undertaking any further swap transactions.

## **Background**

HESAA entered into amortizing swap agreements from 2001 through 2007 as part of issuing variable rate Auction Rate Certificates (ARC's) bonds. The swap agreements exchanged the variable rate on the ARC's for a fixed interest rate. This eliminated the interest rate basis risk in the financing of fixed rate NJCLASS loans, and offered borrowers some of the lowest interest rates in the history of the NJCLASS program. The Authority utilized an independent swap advisor to provide advice and an opinion to the Authority with respect to the fairness of the swap pricing for each of these transactions and has continued that practice for the series of swap reductions and terminations that have been necessary since the collapse of the auction bond market in 2008. The services of the swap advisors were procured through RFP's issued by the Authority or through pre-qualified lists maintained by the State Office of Public Finance. Both of these processes required the swap advisor to document their firm's qualifications to offer swap advisory services, disclose all political contributions and provide additional State-mandated disclosures. HESAA's current swap advisor, First Southwest Company was appointed under its current RFP process which meets the standard of the Dodd-Frank protocols.

Each of the swap transactions also utilized standard ISDA documents to define the terms of each swap agreement and subsequent amendments or terminations to the agreements. These existing ISDA documents are now being supplemented by the ISDA August 2012 Dodd-Frank Protocols which you are being asked to approve as part of the attached resolution.

## **Recommendation**

It is recommended that the Board approve the attached resolution to designate the Authority's Chief Financial Officer to provide the Authority with a written documentation formalizing HESAA procurement procedures for retaining a qualified swap advisor using the specific language and requirements of the Dodd-Frank protocols, appoint First Southwest Company as HESAA's first QIR under the protocols, and to take all necessary additional steps to ensure compliance with the protocols, including execution of the Dodd-Frank Supplement documents.

Attachments (2)



**RESOLUTION 07:13**

**RESOLUTION AUTHORIZING THE PREPARATION OF POLICIES AND PROCEDURES REQUIRED BY THE DODD-FRANK ACT, APPOINTING FIRST SOUTHWEST COMPANY AS QUALIFIED INDEPENDENT REPRESENTATIVE AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE ISDA AUGUST 2012 PROTOCOL AGREEMENT AND RELATED DOCUMENTS AND AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH**

Moved: Dr. Jon Larson  
Seconded: Mr. James Allen

**WHEREAS**, the Higher Education Student Assistance Authority (the “**Authority**”) is a body corporate and politic constituting an instrumentality of the State of New Jersey established and created under and by virtue of the provisions of the Higher Education Student Assistance Authority Law, constituting Chapter 46 of the Pamphlet Laws of 1999 of the State of New Jersey, as amended and supplemented and any successor legislation (the “**Act**”); and

**WHEREAS**, the Authority entered into the Indenture of Trust, dated as of June 1, 1998, between the Authority and Trustee, as amended and supplemented (the “**Indenture**”); and

**WHEREAS**, pursuant to the Act and the Indenture, the Authority has issued various series of Student Loan Revenue Bonds as Auction Rate Securities, a portion of which remain Outstanding as of the date hereof; and

**WHEREAS**, as permitted under the Indenture, the Authority entered into various Interest Rate Exchange Agreements (the “**Prior Swaps**” or each, a “**Prior Swap**”) to reduce the interest rate risk associated with the Auction Rate Securities and from time to time the Prior Swaps have been terminated, amended or remain outstanding; and

**WHEREAS**, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank**”) was signed into law in July, 2010 and provides for certain standards effective as of January 1, 2013 (as extended to May 1, 2013) applicable to municipal issuers with interest rate swaps; and

**WHEREAS**, pursuant to Dodd-Frank the Authority must develop procedures and policies for procuring a Qualified Independent Representative (QIR), retain a QIR, and make certain representations to swap dealers prior to the entering into of any new trade, assignment, amendment or termination of a swap agreement, which representations may be in the form of the Protocol Agreements (defined below); and

**WHEREAS**, the Authority has historically bid for swap advisory services as part of its request for proposals for financial advisory services and has retained the services of First Southwest Company (“**First Southwest**”) to provide swap advisory services to the Authority pursuant to the most recent request for proposals by the Authority; and

**WHEREAS**, in compliance with Dodd-Frank, the Authority desires to (i) appoint its Chief Financial Officer to prepare written procedures formalizing the Authority's practice for procuring a swap advisor, which shall qualify as a QIR, (ii) appoint First Southwest as the Authority's initial QIR, (iii) authorize the execution and delivery of the ISDA August 2012 DF Protocol Agreement, along with related documentation published by the International Swaps and Derivatives Association, Inc. (ISDA), including but limited to the ISDA August 2012 DF Protocol Questionnaire, ISDA August 2012 DF Supplement and ISDA August 2012 DF Terms Agreement, or such other documentation as may be required by a swap counterparty in compliance with Dodd-Frank (collectively, the "**Protocol Agreements**") in the forms required by ISDA or the swap counterparties, as applicable, subject to consultation and approval by McManimon, Scotland & Baumann, LLC as Bond Counsel and the Attorney General's office and (iv) authorize certain Authority officials to take any such other action as is necessary or appropriate to enable the Authority to comply with Dodd-Frank;

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY** (not less than a majority of a quorum thereof affirmatively concurring) **AS FOLLOWS:**

**Section 1.** The recitals are incorporated by reference as if set forth at length herein.

**Section 2.** The Authority hereby authorizes the Chief Financial Officer to prepare written policy or procedures formalizing the Authority's current practice for procuring a QIR meeting certain criteria delineated by the final business conduct standard rules for swap dealers and major swap participants adopted by the Commodity Futures Trading Commission and attached hereto as **Exhibit A** (the "QIR Requirements").

**Section 3.** In accordance with the proposal for swap advisory services submitted by First Southwest and dated January 4, 2013 the Authority hereby appoints First Southwest as the Authority's initial QIR, meeting the QIR Requirements. First Southwest shall act as QIR of the Authority in accordance with the terms of its proposal and the QIR Requirements and shall take any and all actions as are reasonable or necessary in connection with the Authority's compliance with Dodd-Frank, including but not limited to, execution and delivery of the applicable Protocol Agreements.

**Section 4.** The Authority hereby authorizes the Chairperson, Vice Chairperson, Secretary-Treasurer, Executive Director, Chief Financial Officer and any other authorized representative or designee of the Authority, (each, an "Authorized Official" and collectively, the "Authorized Officials"), to execute and deliver the Protocol Agreements and such other related documents, certificates or instruments as may be necessary or desirable to comply with Dodd-Frank.

**Section 5.** The Authorized Officials, acting severally, are hereby further authorized to take such other actions as may be necessary or appropriate in connection with the transactions contemplated herein.

**Section 6.** This Resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

Dated: April 24, 2013



# Commodity Futures Trading Commission

## Office of Public Affairs

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1155 21st Street, NW  
Washington, DC 20581  
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### Final Rules Regarding Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties

The Commodity Futures Trading Commission (Commission) is adopting final business conduct standards rules for swap dealers and major swap participants dealing with counterparties.

#### **Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)**

The Dodd-Frank Act adds Section 4s(h) to the Commodity Exchange Act (CEA), which requires the Commission to adopt business conduct standards rules for swap dealers (SDs) and major swap participants (MSPs and collectively SDs/MSPs) governing their dealings with counterparties generally, and additional requirements when they deal with "Special Entities." Under the final rules, Special Entities are governmental entities; employee benefit plans subject to Title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) (ERISA); governmental plans defined in Section 3 of ERISA; any other employee benefit plan defined in ERISA that elects to be a Special Entity; and any endowment.

The Commission's final rules apply to SDs and (except where indicated) MSPs and prohibit certain abusive practices, require disclosures of material information to counterparties and require SDs/MSPs to undertake certain due diligence relating to their dealings with counterparties. Certain rules do not apply to transactions initiated on a swap execution facility (SEF) or designated contract market (DCM) when the SD/MSP does not know the identity of the counterparty prior to execution.

#### **General provisions and requirements**

- Definitions
- Policies and procedures to ensure compliance and prevent evasion of the CEA and Commission rules
- "Know your counterparty" (only for SDs)
- Rules relating to means of compliance
- Recordkeeping requirements

#### **Prohibition on fraud, manipulation and other abusive practices**

Prohibition against fraudulent, deceptive, and manipulative acts or practices, including an affirmative defense to non-*scienter* fraud violations based on good faith compliance with policies and procedures

Confidential treatment of counterparty information is required

#### **Swap dealer and major swap participant duties to all counterparties**

Verification – Duty to verify that a counterparty is an eligible contract participant and whether a counterparty is a Special Entity; includes a safe harbor based on specified counterparty representations

Disclosure of material information – in a manner sufficient to allow the counterparty to assess:

- Material risks
- Material characteristics
- Material incentives and conflicts of interest

Daily Mark – Duty to provide the daily mid-market mark for uncleared swaps to the counterparty

Clearing Disclosures – Duty to notify a counterparty of its right (1) to clear a swap that is not required to be cleared and (2) to select the derivatives clearing organization

Communications-Fair Dealing – Duty to communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith

### **Swap dealer duties to all counterparties**

Scenario analysis – Counterparties may elect to receive scenario analysis from an SD for swaps that are not made available for trading on a SEF or DCM

Institutional suitability – Duty to understand risks and rewards of a recommended swap and to have a reasonable basis to believe that a recommended swap is suitable for the counterparty

- Safe harbor – SD will be deemed to satisfy its duty to have a reasonable basis to believe that a recommended swap is suitable for the counterparty if it exchanges specified representations with the counterparty or the counterparty's agent

### **Swap dealers acting as advisors to Special Entities**

Duty for SD that “acts as an advisor to a Special Entity” to act in the best interests of the Special Entity

SD “acts as an advisor to a Special Entity” when it recommends a swap or swap trading strategy tailored to the needs or characteristics of the Special Entity.

#### Safe harbor

- For ERISA plans: the ERISA plan represents that it has an ERISA fiduciary; the ERISA fiduciary represents that it does not rely on SD's recommendations; and the ERISA plan represents it will comply in good faith with policies and procedures ensuring any recommendation the Special Entity receives from the SD materially affecting a swap transaction is evaluated by a fiduciary before the transaction occurs, or that any recommendation the Special Entity has received from the SD materially affecting a swap transaction was evaluated by a fiduciary before that transaction occurred.
- For any Special Entity (including ERISA plans): the SD does not express an opinion as to whether the Special Entity should enter into a recommended swap that is tailored to the particular needs or characteristics of the Special Entity; Special Entity represents that it will not rely on SD and will rely on advice of its independent representative; and SD discloses that it is not acting in Special Entity's best interests.

### **Swap dealers and major swap participants acting as counterparties to Special Entities**

SDs/MSPs must have a reasonable basis to believe that a Special Entity (other than an ERISA plan) has a “representative” that meets the following criteria:

- is sufficiently knowledgeable to evaluate the transaction and risks;
- is not subject to statutory disqualification;
- is independent of the SD/MSP;

- acts in the best interests of the Special Entity;
- makes appropriate and timely disclosures to the Special Entity;
- evaluates, consistent with any guidelines provided by the Special Entity, fair pricing and appropriateness of the swap; and
- in the case of a governmental Special Entity, is subject to restrictions on certain political contributions to public officials of the governmental Special Entity

For ERISA plans, SD/MSP must have a reasonable basis to believe an ERISA plan's "representative" is an ERISA fiduciary

When entering into a swap with Special Entity, SD/MSP must disclose to the Special Entity the capacity in which it is acting

Safe harbor: SD/MSP will be deemed to have a reasonable basis to believe that a Special Entity has a qualified independent representative if:

- For ERISA plans, the ERISA plan represents that its representative is an ERISA fiduciary
- For other Special Entities, the Special Entity represents that it complied in good faith with policies and procedures to select a qualified independent representative; the representative represents that it has policies and procedures designed to ensure that it satisfies the applicable criteria, that it meets the independence test, and is legally obligated to comply with the applicable duties to the Special Entity.

Independence test: a representative will be deemed independent of the SD/MSP if:

- The representative was not an associated person of the SD/MSP within one year of the representation
- There is no principal relationship between the representative and SD/MSP
- The representative discloses to the Special Entity all material conflicts of interest that could reasonably affect the judgment of the representative with respect to its duties to the Special Entity, and complies with policies and procedures designed to manage and mitigate such material conflicts of interest
- There is no common control between the representative and SD/MSP
- The SD/MSP does not refer or recommend the representative to the Special Entity within a year of the representation

## **Political contributions by swap dealers**

Two-year prohibition on entering swaps with a governmental Special Entity when SD makes certain political contributions to officials of the governmental Special Entity

## **Means of compliance with business conduct standards**

As appropriate, SDs/MSPs can:

- reasonably rely on representations of counterparties to meet due diligence obligations
- make disclosures by any reliable means agreed to by the counterparty
- make disclosures of material information to counterparties in a standard format
- include representations and disclosures in counterparty relationship documentation, and deem them renewed with each subsequent swap

## **Regulatory Intersections**

Department of Labor (DOL) ERISA Fiduciary Regulations

- The Commission has coordinated with DOL to ensure that the final rules are appropriately harmonized with ERISA and DOL regulations. The Commission understands from DOL that compliance with the

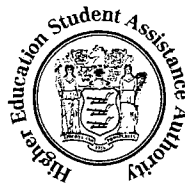
business conduct standards statutory provisions and Commission rules will not, by itself, cause SDs/MSPs to be an ERISA fiduciary to an ERISA plan.

#### Securities and Exchange Commission (SEC) Municipal Advisor Registration

- Independent representatives that advise State and municipal Special Entities on swaps and related activities may be subject to registration with both the Commission as a commodity trading advisor (CTA) and the SEC as a municipal advisor. Commission staff is consulting with SEC, National Futures Association and Municipal Securities Rulemaking Board to harmonize requirements for CTAs and municipal advisors.
- Commission staff continues to consult with SEC staff regarding the proposed municipal advisor registration requirements to address the treatment of SDs/MSPs that comply with the Commission's business conduct standards rules.

#### CTA Status for SDs

- The final rules add a new exclusion from the CTA definition for SDs whose recommendations or advice are solely incidental to their business as SDs.



*State of New Jersey*

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CHRIS CHRISTIE  
Governor


KIM GUADAGNO  
Lt. Governor

GABRIELLE CHARETTE, ESQ.  
Executive Director

**MEMORANDUM**

**TO:** Members, Higher Education Student Assistance Authority

**THROUGH:** Gabrielle Charette  
Executive Director 

**FROM:** Eugene Hutchins  
Chief Financial Officer 

**SUBJECT:** Report on Post-Issuance Compliance Policies and Procedures for Tax-Exempt Obligations

**DATE:** April 24, 2013

Under current IRS guidelines, the IRS recommends that HESAA have in place a set of written procedures to ensure compliance with IRS regulations regarding the post-issuance investment and usage of tax-exempt bond proceeds. Although not required by IRS Regulations, on each Form 8038 the Authority files with the IRS for each bond issue, the Authority has to tell the IRS whether or not they have in place such written procedures. Initial written procedures were put into place before the Authority's issuance of its 2012-1 Bonds. Attached is a final copy of these procedures which establish processes to (i) assure compliance with the arbitrage, yield restriction and rebate provisions of the code, (ii) ensure that the proceeds of the tax-exempt bonds issued by the Authority are used directly or indirectly to make or finance student loans and for other permitted purposes and (iii) identify any use of Bond proceeds which would be deemed non-qualified use. These procedures were developed by Bond Counsel and reviewed by the Attorney General's Office.

As with the Dodd-Frank protocols, these procedures formalize a comprehensive set of internal controls that have been in place at the Authority since the inception of the NJCLASS program, and as noted in the procedures, are outlined in the bond documents for each issue.

These procedures and associated internal controls ensure that:



- The Chief Financial Officer acts as the Tax Compliance Officer with oversight for ensuring the ongoing tax requirements are met.
- Bond proceeds are held by the Bond Trustee, which disburses funds only for qualified purposes, and has oversight for compliance with provisions of each bond indenture.
- Financial records are maintained by Authority staff that reflect all bond-related transactions, including those required for arbitrage calculations, and are subject to annual external audit.
- Authority complies with IRS arbitrage regulations through the services of a nationally recognized expert firm that specializes in arbitrage calculation, and who consults with Bond Counsel as necessary.
- Permanent records of all documents associated with each bond transaction are maintained by the Authority in bound transcripts.

In summary, the attached procedures in combination with the underlying processes followed by Authority staff meet IRS guidelines and standards.

Attachment

# NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

## POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES FOR TAX-EXEMPT OBLIGATIONS

### **Policy:**

The purpose of these Post-Issuance Compliance Policies and Procedures for Tax-Exempt Obligations (the “**Procedures**”) is to ensure that the ongoing requirements imposed pursuant to the Internal Revenue Code of 1986, as amended (the “**Code**”) for tax-exempt bonds will be satisfied with respect to the tax-exempt bonds that have been, and will be issued by the Higher Education Student Assistance Authority (“**Authority**”). These Procedures establish procedures to (i) assure compliance with the arbitrage and rebate provisions of the Code, (ii) ensure that the proceeds of the tax-exempt bonds issued by the Authority are used directly or indirectly to make or finance student loans and for other permitted purposes and (iii) identify any use of Bond proceeds which could be deemed private business use.

### **Scope:**

The New Jersey Higher Education Student Assistance Authority Law, N.J.S.A. 18A:71A-1 et seq., as amended and supplemented (the “**Act**”) authorizes the Authority to issue bonds for the purpose of financing or refinancing the making or purchasing of student loans. Pursuant to the Act and various Trust Indentures the Authority has issued multiple series of tax-exempt bonds meeting the requirements for being “qualified student loan bonds” under Section 144(b) of the Code (the “**Bonds**”). The Authority’s Bond proceeds were either used to purchase federally guaranteed Federal Family Education Loans (FFELP Loans) under title IV of the Higher Education Act or used to originate or purchase loans under the Authority’s supplemental loan program, NJCLASS (collectively, “**Student Loans**”). Since June 30, 2010, the Authority has not used any Bond proceeds to originate FFELP Loans. These Procedures address the ongoing requirements with respect to the Authority’s outstanding tax-exempt Bonds and the ongoing requirements with respect to any future issues of tax-exempt Bonds.

The Authority understands and acknowledges that the continued status of the Bonds as tax-exempt obligations requires compliance with certain limitations established by the Code. Those requirements include (i) expenditure of Bond proceeds for qualified tax-exempt purposes, (ii) the general arbitrage restrictions imposed by Code Section 148(a), and (iii) the rebate requirement imposed by Code Section 148(f). Summaries of the federal requirements as outlined above are set forth herein and the specific requirements with respect to each particular issuance of Bonds is contained in the certificates or agreements as to tax compliance entered into by the Authority in connection with each of its Bond issues (the “**Tax Certificates**”). The Authority shall maintain compliance with the covenants or agreements set forth in the Tax Certificates by following the procedures established therein and herein.

The Authority’s Chief Financial Officer has the overall, final responsibility for monitoring whether the Authority’s Bonds continue to comply with post-issuance federal tax requirements, in particular with respect to certain record keeping, monitoring Bond and Student Loan yield

changes and other ongoing tax requirements, as further described herein. The Chief Financial Officer is hereby appointed the tax compliance officer (the "Tax Compliance Officer") with the primary responsibility to monitor the Authority's compliance with federal tax requirements for the Authority's Bonds; however, the Tax Compliance Officer may delegate certain tasks described herein to staff members.

**Post-Issuance Compliance Requirement:**

**A. Arbitrage Yield Restriction and Rebate Requirements.**

General Rule: Subject to certain exceptions, the Code restricts the yield that can be earned by investing the proceeds of the Bonds to the yield on the Bonds and requires that any excess investment earnings be rebated to the federal government. Additionally, for all Student Loans, the yield on the Student Loans cannot exceed the yield on the Bonds by more than 2%. The Tax Compliance Officer is responsible for determining whether the proceeds of the Bonds remain eligible for any of the temporary periods of investing in higher yielding investments, whether the Bond proceeds are ineligible for a temporary period and a yield reduction payment needs to be made, whether the yield on the Student Loans require loan forgiveness or the payment of a yield reduction amount and whether any of the spending exceptions to rebate apply to the Bonds, all as specifically set forth in the Tax Certificates. The Tax Compliance Officer is responsible for documenting the investment and allocation of expenditures, causing the rebate analysis for each series of Bonds to be prepared on the fifth (5<sup>th</sup>) anniversary of issuance thereof and determining any required rebate to the federal government on the applicable due date thereof and causing the Student loan yield calculations to be prepared and if necessary, paid at the tenth (10<sup>th</sup>) anniversary of the Bond issue date and each fifth (5<sup>th</sup>) anniversary thereafter. The Tax Compliance Officer has determined, with the consent of bond counsel, that Student Loans originated with proceeds of a specific Bond issue shall be allocated just to that Bond issue and shall not be transferred to any other Bond issue unless, in connection with such transfer, the par amount, plus accrued interest on that Student Loan is paid to the Bond issue and such funds are used by the Authority to redeem Bonds of that issue. Bond proceeds have been expended solely in accordance with each Tax Certificate.

B. In particular, the Tax Compliance Officer shall maintain records (which records may include spreadsheets, bank statements, investment purchase confirmations, agreements, certificates, etc.) of:

- a. Purchases or sales of investments made with tax-exempt bond proceeds (including amounts treated as "gross proceeds" of the tax-exempt bonds under section 148 of the Code) and receipts of earnings on those investments;
- b. The bond yield computation from the issuance underwriter or other outside arbitrage rebate specialist;
- c. The final allocation by date and amount of the Bond proceeds (including investment earnings thereon) to originate Student Loans, including detailed information on each of

the Student Loans allocated to such Bond issue including principal amount, terms and interest rates;

- d. All escrow deposit agreements or other documentation sufficient to show the proceeds of advance refunding bonds are held in a yield restricted defeasance escrow;
- e. Information, such as bank statements, earning statements and disbursement records from the Bond Trustee, sufficient to demonstrate to the Internal Revenue Service (“IRS”) upon an audit of a bond issue that the bond issue has complied with one or more available spending exceptions to the arbitrage rebate requirement with respect to that bond issue;
- f. Maintenance of all rebate calculations and reports prepared for the Authority in accordance with the requirements of each Tax Certificate;
- g. Information and calculations, when applicable, that will be sufficient to demonstrate to the IRS upon an audit of a bond issue, for which an exception to the arbitrage rebate requirement was not applicable, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS. Rebate is ordinarily due no later than 60 days after each 5-year anniversary of the issue date of the bonds, and no later than 60 days after the last bond of each issue is redeemed;
- h. Information and records showing that investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments or if they were, information and calculations, when applicable, that will be sufficient to demonstrate to the IRS upon an audit of a bond issue, that the yield reduction payment, if any, that was payable to the United States of America with respect to investments made with gross proceeds of that bond issue was calculated and timely paid all in accordance with the Tax Certificates;
- i. Information and calculation, that will be sufficient to demonstrate to the IRS upon an audit of a bond issue that the yield on the Student Loans allocated to any Bond issue does not exceed the yield on the Bonds by more than 2%, or if it did, information and records that will be sufficient to demonstrate to the IRS upon an audit of a bond issue that principal on such Student Loans was either forgiven or reduced or a yield reduction payment was made to the IRS to reduce the yield on such Student Loans in compliance with the 2% yield rule for purpose investments; and
- j. Information and records, including spreadsheets or databases allocating each Student Loan to a particular bond issue sufficient to demonstrate that Student Loans are only transferred to other Bond issues in connection with redemption of Bonds of that issue and only in exchange for the payment of the purchase price of that Student loan in accordance with the bond documents.

C. The Tax Compliance Officer shall:

- a. Allocate Student loans to the Bond issue which funded such Student Loan;
- b. Track investment returns;
- c. Monitor compliance with temporary periods for unrestricted investment of Bond proceeds and the end of such temporary periods;
- d. After the end of any applicable temporary periods, yield restrict investments or make yield reduction payments, as applicable;
- e. Monitor Student Loan yields and forgive or reduce principal or make yield reduction payments, as applicable;
- f. Purchase investments at fair market value in accordance with the bidding procedures for guaranteed investment contracts and yield restricted defeasance escrows set forth in the Treasury Regulations and each Tax Certificate; and
- g. Cause the re-calculation of bond yields upon the termination of integrated swap contracts

**B. Restrictions on Private Business Use, Private Loans and Use of Proceeds.** The Tax Compliance Officer shall ensure that each Student Loan is either made under a program of general application to which the Higher Education Act of 1965 applies or made under a program of general application approved by the State in accordance with Section 144(b) of the Code. The Tax Compliance Officer and its staff shall maintain a record of each person to whom a Student loan was made. The Tax Compliance Officer shall ensure that each Student Loan is made to a member of the general public. The Authority regulations prohibit the Authority from making Student Loans to any individual who is not a student and either a resident of, or attending school in, the State. The Tax Compliance Officer shall keep records of (a) the expenditures of all proceeds of the Bonds and shall prohibit the expenditure of Bond proceeds for a use other than the financing or refinancing of Student Loans, (b) the payment of the costs and expenses of the Bond issuance, (c) the maintaining of reasonably required reserve funds, (d) the capitalization of interest, (e) the payment of qualified administrative costs or qualified guarantee fees, or (f) any other use of Bond proceeds permitted under the Tax Certificates. In connection with any deviation from a permissible use of bond proceeds, the Tax Compliance Officer shall consult with bond counsel to the Authority as may be necessary to review any potential noncompliance and determine whether: (a) the use in question will adversely affect the exclusion of interest on the Bonds from gross income; and (b) any "remedial action" permitted under section 141 of the Code may be taken by the Authority as a means of enabling such use to be put into effect without adversely affecting the exclusion of interest on the Bonds from gross income.

**C. Records to be Maintained for Tax-Exempt Bonds.** It is the policy of the Authority that written records (which may be in electronic form) will be maintained with respect to each issue

of tax-exempt bonds for as long as such bonds remain outstanding, plus six years. For this purpose, such bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

- i. The official transcripts for the original issuance of the bonds;
- ii. Records showing how the bond proceeds were invested, as described in B(a) above;
- iii. Records showing how the bond proceeds were spent, as described in B(c) above, including payment of bond issuance costs, and records of allocations of bond proceeds to make reimbursement of program expenditures made before the bonds were actually issued, and any special allocations of bond proceeds;
- iv. Information, records and calculations showing that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of that bond issue was calculated, timely paid with Form 8038-T and timely filed with the IRS, as described in B(g) above;
- v. Records describing any use of Bond proceeds which result in private business use of the Bonds or any use of proceeds of the Bonds for purposes other than the purposes for which the Bonds are permitted under section 144(b) of the Code; and
- vi. Any remedial actions taken with respect to a bond issue, as described in B above. The basic purpose of the foregoing record retention policy for the Authority's tax-exempt bonds is to enable the Authority to readily demonstrate to the IRS upon an audit of any tax exempt bond issue that the Authority has fully complied with all federal tax requirements that must be satisfied after the issue date of such bonds so that, as applicable, interest on those bonds continues to be tax-exempt under section 103(a) of the Code.

**D.** The Tax Compliance Officer shall consult with nationally recognized bond counsel annually to determine whether any changes have been made or proposed to the relevant provisions of the Code or the regulations pertaining to the Bonds or whether the IRS has made any other policy determinations, changes to relevant forms, proclamations, etc. which require an amendment to these Procedures. If recommended by bond counsel, the Tax Compliance Officer shall amend these Procedures to comply with such changes.



*State of New Jersey*  
HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY  
4 QUAKERBRIDGE PLAZA  
PO BOX 540  
TRENTON, NJ 08625-0540  
1-800-792-8670  
[www.hesaa.org](http://www.hesaa.org)


CHRIS CHRISTIE  
Governor


KIM GUADAGNO  
Lt. Governor

GABRIELLE CHARETTE, ESQ.  
Executive Director

## MEMORANDUM

**TO:** Members, Higher Education Student Assistance Authority

**THROUGH:** Gabrielle Charette, Esquire  
Executive Director 

**FROM:** Ruth Odom   
Acting Chief Information Officer

**SUBJECT:** Resolution 08:13 Approving the Transfer of FY 2013 Capital Fund Monies to Purchase and Install a New Ten-Ton Air Conditioner in the HESAA Data Center's Computer Room.

**DATE:** April 24, 2013

### Background

The Higher Education Student Assistance Authority(HESAA) has a Data Center in which sensitive computer equipment, including an IBM mainframe computer, an IBM data storage unit, multiple Dell servers, CISCO network routers/switches, and an Avaya Call Management System, are housed on a raised floor computer room in Building 4 of Quakerbridge Plaza. In order for the computer equipment to function properly specified levels of humidity and air temperature must be maintained. Three ten-ton air conditioning units are currently operating year round in the computer room to maintain optimal air temperature and humidity. Recently, the oldest air conditioner in the computer room, which is over thirty years old, was serviced and found to be in such poor condition and quickly approaching end-of-life that the service company has recommended it be replaced.

The unit will be procured by HESAA's landlord, who has advised that it will cost a total of \$65,450.00. The HESAA State Fiscal Year 2013 Capital Fund budget provides \$25,000 for a Computer Air Study and \$40,000 for Central Logging Software which has not been expended. Additionally, the budget provides \$30,000 for KACE software of which only \$20,634.00 was spent, leaving a balance of \$9,366. Staff believes that these funds would be better spent to cover the cost of purchasing and installing a new ten ton air conditioner for the computer room.

## **Recommendation**

It is recommended that the Board approve Resolution 08:13 approving the transfer of \$25,000 originally designated for a Computer Room Air Study, \$40,000 originally designated for procurement of centralized logging software and up to \$9,366.00 originally designated for KACE software to be used instead to procure and install a new ten-ton air conditioner in the HESAA data center's computer room in fiscal year 2013.

Attachment



**RESOLUTION 08:13**

**APPROVING THE TRANSFER OF FY 2013 CAPITAL FUND MONIES TO PURCHASE  
AND INSTALL A NEW TEN-TON AIR CONDITIONER IN THE HESAA DATA  
CENTER'S COMPUTER ROOM**

Moved by: Ms. Maria Torres

Seconded by: Mr. James Allen

**WHEREAS:** In order for the Higher Education Student Assistance Authority (HESAA) computer equipment to function properly specified levels of humidity and air temperature must be maintained in the data center computer room through year round operation of three ten-ton air conditioning units; and

**WHEREAS:** HESAA's oldest air conditioner, which is over thirty years old, was serviced and found to be in such poor condition and quickly approaching end-of-life that the service company has recommended it be replaced; and

**WHEREAS:** The unit will be procured by HESAA's landlord, who has advised that it will cost a total of \$65,450.00; and

**WHEREAS:** The HESAA State Fiscal Year 2013 Capital Fund budget provides \$25,000 for a Computer Air Study and \$40,000 for Central Logging Software which has not been expended; and

**WHEREAS:** The HESAA State Fiscal Year 2013 Capital Fund budget provides \$30,000 for KACE software of which only \$20, 634.00 was spent, leaving a balance of \$9,366.

**NOW, THEREFORE, LET IT BE:**

**RESOLVED:** That the Board approves the transfer of \$25,000 originally designated for a Computer Room Air Study, \$40,000 originally designated for procurement of centralized logging software and up to \$9,366.00 originally designated for KACE software to be used instead to procure and install a new ten-ton air conditioner in the HESAA data center's computer room in fiscal year 2013.

April 24, 2013

# Program Review and Quality Control Committee

## Audits & Quality Assurance

### Overview

#### **Introduction**

To ensure HESAA's programs are in compliance with federal and state statutes, regulations, policies and procedures, the Audits & Quality Assurance unit (A&QA) is tasked with conducting Federal Family Education Loan Program (FFELP) reviews of lenders and schools, Institutional Management Reviews focusing on State Grant & Scholarship Programs, Special Counsel Reviews of HESAA's collection attorneys, Internal Control Evaluations, and Quality Assurance Reviews of HESAA's programs.

#### **Federally Mandated Reviews**

Pursuant to Federal Regulation, Guaranty Agencies are responsible for taking all necessary measures to ensure the enforcement of all federal, state, and guaranty agency requirements. To ensure compliance with this requirement, HESAA's Audits & Quality Assurance unit is responsible for conducting biennial reviews of HESAA's ten largest lenders for outstanding FFELP loans. These reviews are conducted jointly by 30 Guaranty Agencies under the Common Review Initiative (CRI), a program approved by the U.S. Department of Education.

During the 2010-2011 biennium HESAA's ten largest lenders were administered by seven servicers, all of which fell within the parameters of CRI.

2010-2011 biennium (January 1, 2010 through December 31, 2011) reviews

- Two reviews were closed in 2010
- Two reviews were closed in 2011
- Two reviews were closed in January 2013
- One review was closed in April 2013

Review findings were not out of the ordinary and servicer management provided sufficient details of corrective actions taken to remediate any issues.

Common findings included:

- Compliance with due diligence requirements
- Incorrect Income-Based Repayment Plan (IBR) payment calculations
- Incorrect interest calculations
- Defects in promissory notes
- Deficiencies in deferment processing

Due to lender/servicer consolidations HESAA only requires four (4) reviews for the 2012-2013 biennium (January 1, 2012 through December 31, 2013). Three reviews commenced in 2012 and one review is scheduled for 2013. HESAA staff participated as desk reviewers for two of the reviews in 2012.

In addition, HESAA is also required to conduct biennial reviews of all schools whose cohort default rate exceeds 20 percent and have at least \$100,000 of loans entering repayment in each of the last two years. One New Jersey institution was identified from the Cohort Default Rate reports that met the review requirements for the current biennium (2012-2013). This review will be performed during the 2013 calendar year.

## HESAA Initiated Reviews

**Institutional Management Reviews** - HESAA conducts Institutional Management Reviews to verify that institutions administer State Grant & Scholarship programs in accordance with all applicable federal and state statutes, regulations, policies and procedures. These management reviews are also designed to provide institutions with recommendations on how to improve the operations of their Business Offices (Financial Aid, Admissions, Registrar, Bursar, and Accounting office's) to ensure compliance with state and federal statutes and regulations.

In order to maximize staff, last year, HESAA's A&QA department began performing limited reviews of institutions in addition to full scale management reviews; the major difference being a reduction in the time and resources involved by reducing the amount of testing procedures. The reviews began as a way to look just at a specific area of institutional operations, reconciliations for example, in order to gain a better understanding of emerging trends that could be the result of a potentially non-compliant practice. These limited reviews allowed HESAA to review certain areas in a much shorter time frame and the review could commence almost immediately. Additional full scale reviews generally could not be fit into the schedule until the next audit cycle due to the difficulty in scheduling full scale reviews around HESAA and institutional busy times. The first two limited reviews proved to be such a success that A&QA decided to incorporate these reviews into its operations on a regular basis. While A&QA will continue to look at areas that may surface which require a greater understanding, we will also be reviewing institutions that meet general requirements for a review such as high dollar volumes of grant and scholarship funding or the amount of time that has passed since a review was last performed. The reviews will focus on areas with the greatest potential for error such as reconciliations and certification of student eligibility. These limited reviews will allow HESAA to touch more institutions during the academic year allowing A&QA to keep in contact with institutions on a more regular basis. We anticipate this will help A&QA to build professional relationships with institutions, facilitate open communications, and establish

A&QA as a resource for institutions for assistance on technical matters. For all these reasons we expect that these limited reviews will increase compliance with regulations on a State wide basis.

#### Current Year (2013) Reviews

A limited review was performed over a State institution in January 2013 resulting in the return of \$7,219.

A full scale review of a previously identified community college was intended to commence in January 2013. In December 2012, the institution was notified of the review but was also provided an option to defer due to the impact Hurricane Sandy had on this institution. The institution accepted the deferral option and it was agreed that this review will instead commence in Fall 2013.

As a result of the above, another institution was selected for a full scale review. This State institution was notified of the review in January 2013. In February 2013, in response to HESAA's letter announcing the review, the institution formally requested a postponement of the review due to a major institutional restructuring which is currently taking place. A&QA in conjunction with HESAA Executive Staff granted a one-time postponement of the review for this institution; the review will instead be scheduled to commence in December 2013.

A&QA added two limited reviews to the schedule commencing in February and March 2013; testing is currently underway for these reviews.

#### 2012 Reviews

One full scale review which commenced in January 2012 was closed in September 2012. Monetary findings were collected in May 2012 totaling \$3,800.

One full scale review scheduled for October 2012 did not commence until November 2012 due to Hurricane Sandy. The Final Report was issued in February

2013 and monetary findings totaling \$287,415 were remitted in March 2013. It is expected this review will be closed later this Spring.

Two limited reviews commenced during the Summer of 2012, both of which have been closed. One review was based on analysis of procedures which did not warrant additional testing. The other resulted in the recovery of \$230,350.

#### 2011 Reviews

One review which commenced in October 2011 was closed in September 2012. Monetary findings were collected in June 2012 totaling \$17,446.

#### 2008 Reviews

One review from 2008 was closed in August 2012. As noted in the prior year, the loss of all key employees involved in this review significantly impacted the ability to complete this review in a timely fashion. Funds previously recovered totaled \$412,736.

**Special Counsel Reviews** - HESAA contracts with Special Counsels to perform collection activities on delinquent FFELP loans, several of these Counsels also administer collection activities for delinquent NJCLASS loans. The Audits and Quality Assurance unit conducts reviews of these Special Counsels to verify compliance with regulations for administering defaulted loans.

For 2012, nine attorneys performed collection activities for approximately 16,000 defaulted debtors. Their defaulted loan portfolios ranged in size from 65 to 4,500 debtors.

Reviews were opened on two of the Special Counsels during 2012. One review is closed, a draft report has been issued for the other review and currently awaits the counsel's response.

The following presents a summary of findings from the 2012 Special Counsel reviews:

- Written procedural updates required to reflect current practices
- Untimely deposit
- Untimely account set up
- Transposition error in borrower information during account set up
- Due diligence procedures not followed

The findings listed above are not out of the ordinary and the attorneys are taking steps to remediate the issues and prevent future issues of a similar nature.

### **Annual Internal Control Evaluation**

The State Office of Management & Budget (OMB) requires all executive branch agencies to conduct an annual self-assessment of their internal controls. For fiscal year 2012 the Office of Management and Budget selected 10 target areas, including expenditures, revenue, segregation of duties, Federal & State Grants, audit findings, agency spending plans, and information security. The Authority participates in this process through a series of evaluations and discussions that are conducted each year between April and June by the Audits & Quality Assurance unit with the assistance of HESAA's senior staff members. The results of the internal control evaluations are provided to HESAA's Executive Staff in a memorandum detailing the review requirements, reviews conducted, and any weaknesses identified along with recommendations for remediation.

On June 25, 2012, HESAA's Executive Director and Chief Financial Officer sent a letter to the Director of OMB confirming that HESAA performed the 2012 Internal Control Evaluation as required and that HESAA's system of internal accounting and administrative controls complies with the standards prescribed by the State of New Jersey. HESAA was happy to report that no major weaknesses were identified as a result of the review.

HESAA is currently in the process of completing the 2013 assessment. A kick-off meeting was recently held in March and evaluations are currently being completed.

### **Quality Assurance/ Other**

In addition to the required reviews listed above, A&QA has also taken part in additional projects to contribute to HESAA's ongoing success.

As mentioned in our last board meeting, HESAA recently developed a Strategic Plan. The process involved much collaboration and many discussions with key staff, as well as organization of all the resulting thoughts and ideas. The Director of A&QA had the privilege of facilitating those processes and authoring the final report (which was provided to the Board in January).

The Director of A&QA also serves as a member of the Policy Review Team. The group was tasked with tailoring State policies and procedures specifically for HESAA to ensure proper compliance in our operating environment. The team also reviews, updates, and creates HESAA specific policies and procedures.

Within the A&QA department we have been progressing in our efforts to improve our own procedures through the continued creation and use of electronic databases and workpapers. These new processes have significantly decreased the amount of time required to complete reviews through access to step-by-step guides and reference materials, and the ease of review as all documentation is organized in one single location. Use of electronic databases also facilitates a more secure control environment for borrower data, including Personally Identifiable Information (PII).



**Conclusion**

The department is very pleased with the results of the past year and we look forward to another productive year, details of which are set forth in the attached review schedule.

**Higher Education Student Assistance Authority**  
**Audits & Quality Assurance Unit**

**2013 Proposed Review Schedule**

<b>Type of Review</b>	<b>Auditee</b>	<b>Description</b>	<b>Review Date / Status Date</b>
Limited Management Review	Institution 2013-L1 Sector: State College	Review of Institutions reconciliation and certification process.	February - April 2013
Limited Management Review	Institution 2013-L2 Sector: Community College	Review of Institutions reconciliation and certification process.	March – May 2013
Annual Internal Control Evaluation	HESAA	Assessment of Internal Accounting and Administration Controls	April – June 2013
FFELP Lender Review	NELNET	CRI Lender/Service Review	April 2013
Management Review	Institution 2012 - 2 Sector: Independent Institution	Receive updated procedures from institution and review for adequacy. Issue Closing Report.	May 2013

# Higher Education Student Assistance Authority

## Audits & Quality Assurance Unit

### 2013 Proposed Review Schedule

Type of Review	Auditee	Description	Review Date / Status Date
Collection Attorney Review	Attorney 2012-2	<p>Receive and review firm's response to Draft Report. Issue Final Report.</p> <p>Receive and review corrective actions taken. Issue Closing Report</p> <p>(for review which commenced in Fall 2012)</p>	<p>May 2013</p> <p>June 2013</p>
Collection Attorney Reviews	Attorney 2013 - 1 Attorney 2013 - 2	Review of compliance with regulations for administering defaulted loans.	June - September 2013
School Review	Institution 2013 - S1	Review of entity's participation in FFELP and compliance with federal regulations.	July - August 2013
Management Review	Institution 2013-1 Sector: Community College	State Grants and Scholarship Program Review	September – December 2013
Management Review	Institution 2014-1 Sector: State College	State Grants and Scholarship Program Review	December 2013 – March 2014



*State of New Jersey*

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

4 QUAKERBRIDGE PLAZA

PO BOX 545

TRENTON, NJ 08625-0545

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[www.hesaa.org](http://www.hesaa.org)

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

GABRIELLE CHARETTE, ESQ.  
Executive Director

RESOLUTION

*Expression of Appreciation to  
Ms. Elaine Papas-Varas*

- WHEREAS: Ms. Elaine Papas-Varas has served with distinction on the on the Higher Education Student Assistance Authority Board since January 2012; and
- WHEREAS: As director of Financial Aid at the University of Medicine and Dentistry of New Jersey, where she also serves as director of the Primary Care Practitioner Loan Redemption Program, Ms. Papas-Varas served as the representative of UMDNJ; and
- WHEREAS: Ms. Papas-Varas' experience in the financial aid industry has been a true asset in achieving the Higher Education Student Assistance Authority's mission of providing students and families with the financial and informational resources for students to pursue their education beyond high school; and
- WHEREAS: Her contributions as a Board member of HESAA have helped advance postsecondary education and enhanced delivery of student aid in New Jersey; and
- WHEREAS: The members of the Board of the Higher Education Student Assistance Authority wish to acknowledge Ms. Papas-Varas' fine service and contributions in providing an effective program of student financial assistance; now therefore be it
- RESOLVED: That the Higher Education Student Assistance Authority hereby adopts this resolution as an acknowledgement of Ms. Papas-Varas' service and dedication; and be it further
- RESOLVED: That the Board of the Higher Education Student Assistance Authority expresses its appreciation to Ms. Papas-Varas for her outstanding leadership and dedication on behalf of New Jersey students; and be it further
- RESOLVED: That the Board of the Higher Education Student Assistance Authority expresses its best wishes to Ms. Papas-Varas for success in all of her future endeavors; and be it further
- RESOLVED: That a copy of this resolution be noted in the official records of the Authority and the original be presented to Ms. Papas-Varas.

Presented April 24, 2013

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# Presentation to the Board of New Jersey Higher Education Student Assistance Authority

Shelly Repp, President

National Council of Higher Education Resources



- 
- Income Driven Repayment Plans
  - Representative Petri's (R-WI) Student Loan Reform Proposal
  - Sequestration's Impact on U.S. Department of Education

# Income-Driven Repayment Plans

Primarily intended for borrowers who are:

- Entering repayment with high student loan debt relative to income
- Earning lower salaries as they begin their careers
- Having difficulty making payments under standard repayment plan

Potential borrower benefits

- More manageable monthly payments
- Avoidance of delinquency and default
- Remaining principal and interest is forgiven after 20 or 25 years of qualifying payments

Potential negatives

- Increased incentives to (over) borrow
- Repayment period likely to be more than 10 years
- More interest could be paid over time
- Requires annual submission of information on income and family size
- Amount forgiven at end of plan is taxable income
- Costs more to government

---

## Current Income Driven Repayment Plans

- Income-Contingent Repayment (ICR)
- Income-Based Repayment (IBR)
- Pay As You Earn (PAYE)



Criteria	Income Based Repayment	Income Contingent Repayment	Pay As You Earn
Eligible Loans	FFELP & Direct Loans	Direct Loans	Direct Loans
New Borrower Requirement	Not applicable	Not Applicable	Must be new borrower to qualify
Discretionary Income	Adjusted Gross Income (AGI) minus 150% of applicable Poverty Line	Adjusted Gross Income (AGI) minus 100% of applicable Poverty Line	Adjusted Gross Income (AGI) minus 150% of applicable Poverty Line
Income Derived Payment	15% of Discretionary Income ÷ 12 Minimum monthly payment = \$0	<b>Lesser of:</b> 20% of Discretionary Income ÷ 12 <b>OR</b> 12-year standard payment x Income Percentage Factor published by Dept. of Ed Minimum monthly payment = \$0	10% of Discretionary Income ÷ 12 Minimum monthly payment = \$0
Temporary Interest Subsidy	Yes (first 3 years)	Not applicable	Yes (first 3 years)
Payments Required for Forgiveness	25 years	25 years	20 Years
Interest Capitalization	Yes	Yes, up to maximum of 10% of loan balance at beginning of repayment	Yes, up to maximum of 10% of loan balance at beginning of repayment

# Petri Plan – Earning Contingent Education Loans (ExCEL) Act

- Replaces Subsidized Stafford, Unsubsidized Stafford and GradPLUS loans
- Loan limits and interest rates
  - Up to current Stafford limit = 10yr T-bill + 3%
  - For graduate students borrowing more than current Stafford limit = 10yr T-bill + 4.1%
  - Fixed rates
- Repayment rate equals 15% of income above exemption amount.
- Interest subsidies eliminated
- Loan payments withheld by employer
- Unpaid interest would not compound and would stop accruing once it equals 50% of loan balance when loan enters repayment
- Program only available for new loans – not legacy FFELP or Direct Loans
- Parent PLUS program not affected.



# Sequestration

- Effective March 1, 2013
- Impact on Department of Education: \$2.2 billion over 10 years
  - Pell protected for 2013
  - All other student assistance programs impacted immediately with estimated cut of 5.52% in first year
    - Includes FSEOG, Work Study, TEACH grants, TRIO, GEAR UP, GANN
  - Origination fees to rise for Stafford loans from 1.00 to 1.051 percent and for PLUS loans from 4.00 to 4.204 percent, effective July 1, 2013
- No additional servicing volume to be allocated this year to not-for-profit servicers



# The Consumer Financial Protection Bureau

Presentation to the Board of the NJ Higher  
Education Student Assistance Authority

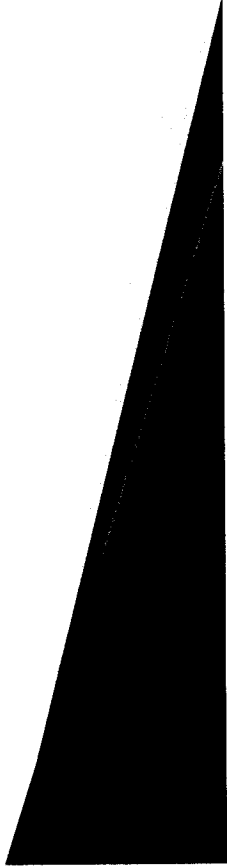
April 2013

Joel S. Mayer, Esq., CCEP  
Chief Compliance Officer



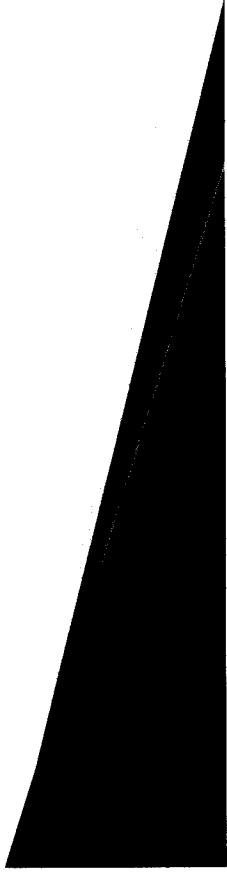
# CFPB

- ▶ Consumer Financial Protection Bureau
- ▶ Established by the Dodd–Frank Act in 2010
- ▶ Commenced operations July 21, 2011
- ▶ No. 1 Goal:
  - Prevent financial harm to consumers (students) while promoting good practices that benefit them
- ▶ Broad Mandate



# CFPB BACKGROUND

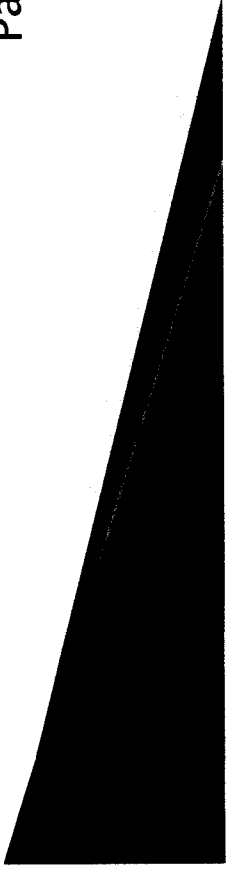
- ▶ Well Funded
- ▶ Fastest growing federal regulatory agency
- ▶ Recently hired 1700+ new examiners and attorneys
  - PRIMARILY FOR THEIR ENFORCEMENT DIVISION
- ▶ Aggressive



# CFPB REGULATORY AUTHORITY

- ▶ Banks
- ▶ Mortgage Originators & Servicers
- ▶ Credit Card Companies
- ▶ Institutions of Higher Education
- ▶ Private Student Lenders (including PSL debt collectors)

ESSENTIALLY ANY BUSINESS THAT EXTENDS CREDIT (Car Dealerships,  
Payday Lenders)



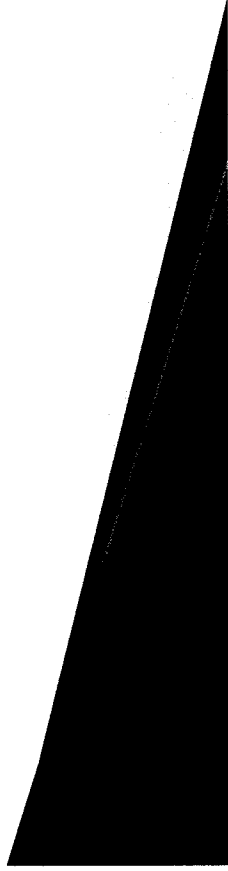
# CFPB

## MAJOR FEDERAL LENDING LAWS

- ▶ FDCPA (Fair Debt Collection Practices Act)
- ▶ TILA (Truth In Lending Act)
- ▶ ECOA (Equal Credit Opportunity Act)
- ▶ FCRA (Fair Credit Reporting Act)
- ▶ GLBA (Graham Leach Bliley Act – consumer financial privacy)

19 AND COUNTING SEPARATE LAWS/REGULATIONS

ALREADY UNDER THE CFPB UMBRELLA



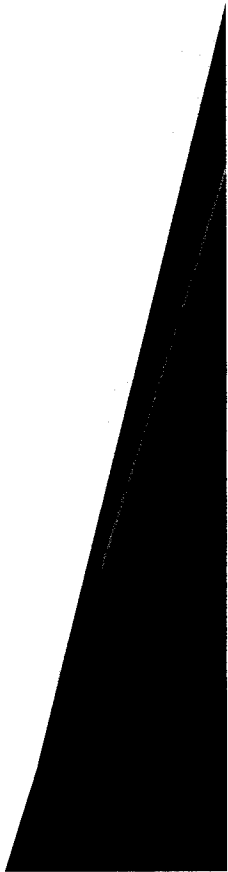


# CFPB

## WHAT IS THEIR MISSION?

TO MAKE MARKETS FOR CONSUMER FINANCIAL PRODUCTS AND SERVICES WORK FOR AMERICANS - WHETHER APPLYING FOR A MORTGAGE, CHOOSING AMONG CREDIT CARDS, OR USING ANY NUMBER OF OTHER CONSUMER FINANCIAL PRODUCTS" (*THIS INCLUDES PRIVATE STUDENT LOANS*)

THE CFPB IS ESSENTIALLY BECOMING THE PRIMARY CONSUMER (BORROWER/STUDENT) WATCHDOG AND VIEWS THEIR ROLE AS PROTECTING CONSUMERS FROM BEING TAKEN ADVANTAGE OF BY LARGE FINANCIAL INSTITUTIONS, PRIVATE STUDENT LENDERS, CREDIT CARD COMPANIES, COLLECTIONS AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

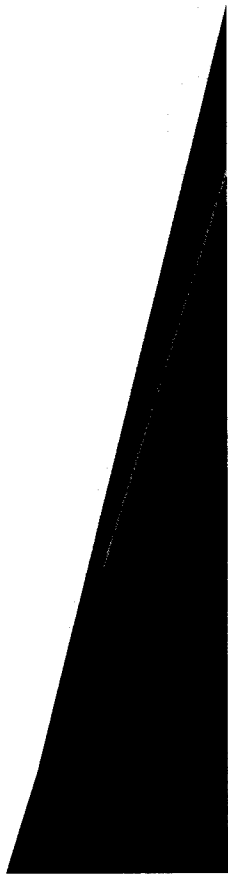


# CFPB TOOLKIT

THE CFPB HAS A NUMBER OF POWERFUL TOOLS AT THEIR DISPOSAL BUT PERHAPS THE MOST IMPORTANT AND ADAPTABLE IS KNOWN AS “UDAAP”

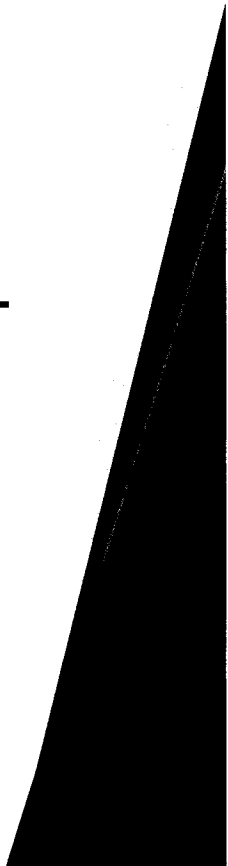
- ▶ UNFAIR
- ▶ DECEPTIVE
- ▶ ACTS and
- ▶ ABUSIVE
- ▶ PRACTICES

A STANDARD USED TO ANALYZE WHETHER OR NOT A PROVIDER’S MARKETING, DISCLOSURES, PROMISES OR JUST ABOUT ABOUT ANYTHING ELSE HAS THE CAPACITY TO MISLEAD A CONSUMER (STUDENT)



# CFPB

## UDAAP

- ▶ Considered the top Legal & Compliance risk to Student Loan Providers
  - ▶ Business practices – especially the content of disclaimers – are viewed from the perspective of the “least sophisticated consumer”
  - ▶ Striking the correct balance between detail and simplicity is extremely difficult
  - ▶ Clear description of loan terms and fees critical
- 

# CFPB COMPLAINT PORTAL

LAST YEAR THE CFPB LAUNCHED THEIR ONLINE COMPLAINT PORTAL FOR CONSUMERS/STUDENTS. THEY USE THOSE COMPLAINTS TO STUDY TRENDS, IDENTIFY AREAS FOR POSSIBLE FUTURE INITIATIVES AND TARGET INQUIRIES, INVESTIGATIONS AND ENFORCEMENT ACTIONS. DATA COLLECTED THROUGH THE PORTAL IS PUBLICLY AVAILABLE

AMONG THE AREAS NOW COVERED BY THE PORTAL ARE:

- ▶ MORTGAGES
- ▶ CREDIT/DEBIT CARDS (CAMPUS DEBIT CARDS)
- ▶ COLLECTIONS AGENCIES
- ▶ PRIVATE STUDENT LOANS

MORE PRODUCTS/SERVICES WILL BE ADDED IN TIME



# CFPB

## COMPLAINT MANAGEMENT

- ▶ CFPB examinations place great emphasis on a lender's complaint handling process
- ▶ Upper Management Involvement – Board Awareness
- ▶ Must capture all borrower complaints – not just those forwarded via the CFPB Portal
  - CFPB Portal
  - Governor's Office Referrals
  - Legislative Referrals
  - Direct Borrower Complaints (letters, e-mails, telephone)
  - Includes Co-borrowers and Cosigners

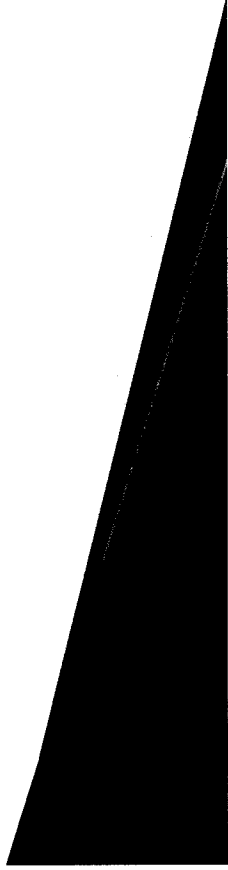
WHAT IS A COMPLAINT?



# CFPB

## COMPLAINT MANAGEMENT

- ▶ All complaints must be quickly investigated, responded to and resolved regardless of type and/or complexity
- ▶ Portal complaints require timely responses to the CFPB and the borrower
  - HESAA's complaint response statistics are excellent compared to the vast majority of Private Student Lenders).
  - As of April 3, 2013 HESAA has received and responded to 23 portal complaints – not a single one has alleged the violation of any consumer fair lending law.
  - Tremendous credit to Tera Gervasio, Dave Gillespie, Russ Archer, and HESAA Servicing & Collections Unit

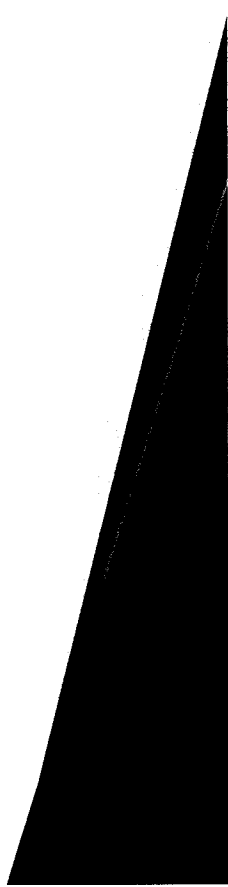


# CFPB

## RESPONSE TO COMPLAINTS

- ▶ Vast majority of complaints stem from financial distress
- ▶ HESAA practices – insists upon – the exact safeguards identified by the CFPB as best practices to best educate borrowers and protect against over-borrowing
  - School Certification
  - Disbursement of funds to institution
  - Maximizing Grants & Scholarships
  - Federal Loans
  - Outreach/Communication

RECENT CFPB RFI TO LENDERS



# CFPB

## HORIZON

- ▶ Examinations and Enforcement Actions will escalate
- ▶ Large private student lenders at top of list but entire industry on radar – nonprofit, state affiliation irrelevant
- ▶ Complaint Portal Data used to target exams





# CFPB

## CONCLUSION & GOALS

- ▶ Continuing to practice HESAA's Borrower Protection Policies:
  - RESPONSIBLE BORROWING
  - INFORMED BORROWING
  - BETTER CHOICES
  - BORROWER ENGAGEMENT
    - BEFORE AND DURING LOAN REPAYMENT
    - MOBILE AND SOCIAL MEDIA
- ▶ Remain vigilant in capturing, investigating & resolving borrower complaints
- ▶ Respond consistently, transparently & fairly
- ▶ Constantly evaluate and reevaluate UDAAAP risks



# CFPB

<http://www.consumerfinance.gov/>

QUESTIONS?

