MINUTES

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

November 23, 2010

The Higher Education Student Assistance Authority (HESAA) Board held a meeting by conference call on November 23, 2010 at 2:30 pm from the HESAA offices in Hamilton.

PRESENT: Mr. Michael Angulo, Esq.; Mr. Richard Garcia; Mr. Edward Graham; Ms. M. Wilma Harris; Dr. Harvey Kesselman; Mr. Julio Marenco, Esq.; Ms. Jean McDonald Rash; Ms. Rossy Matos-Miranda; Mr. Jonathan Nycz; Mr. Warren Smith; Ms. Nancy Style, Treasurer's Designee; Ms. Maria Torres Ms. Kristy Van Horn; and Wilmot Wilson members.

Also participating via teleconference were David Reiner, Esq., Governor's Authorities Unit, Cheryl Clark DAG; Rev. Michael Braden, St. Peter's College; and Dr. Robert Messina, Burlington County Community College.

CALL TO ORDER

Chair Garcia called the meeting to order at 2:30 pm and stated that the meeting had been noticed in compliance with the requirements of the Open Public Meetings Act.

Mr. Garcia welcomed the Board members and advised that because this meeting is being conducted via teleconference, Roseann Sorrentino will conduct a roll call for the resolutions.

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

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Mr. Garcia asked the Board Secretary to call the roll.

Roseann Sorrentino called the roll.

RESOLUTION 15:10 APPROVING OFFER TO FRANKLIN TEMPLETON OF A 3-YEAR EXTENSION TO THE COLLEGE SAVINGS SERVICES AGREEMENT

Mr. Eugene Hutchins, Chief Financial Officer, presented Resolution 15:10 to the Board.

This memorandum recommends your approval of a 3-year extension of the appointment of Franklin Templeton Investments as the provider of comprehensive services for the NJBEST program as provided for in the contract between HESAA and Franklin Templeton Resources, Inc authorized by the HESAA Board at its meeting of September 9, 2002. Therefore, no RFP is required for this extension. The range of services provided under the contract includes investments management, administration of all NJBEST accounts, and marketing of the program. The term of the contract was a period not to exceed 12 years from the contract effective date of March 17, 2003 and is comprised of an initial term of 5 years followed by two extension terms of 3 years each and a final transition year through March 17, 2015 during which the contract would be re-bid.

The length of the contract was established in recognition of the substantial upfront investment in program infrastructure that needed to be amortized over a sufficiently long period of time to minimize the impact on the cost to program participants as well as to provide continuity of their investments, and is typical in length to similar contracts of other states with 529 program providers.

As outlined in the memorandum, Franklin Templeton has met or exceeded their benchmarks in the following program areas:

Continued Program Growth – Assets under management (AUM) have increased from $149 million in 27,447 accounts in March 2003 to over $2.5 billion as of September 30, 2010. Just in the last month AUM increased by an additional $100 million to $2.6 billion and the number of accounts now total 242,827.

Marketing – Franklin continues to work in partnership with HESAA to provide a wide range of public awareness programs and online program enrollment tools.

Quality and Range of Investment Options – Franklin has offered a wide range of value-based investment options that have provided program participants with positive returns in spite of challenging economic conditions as well as initiated new age-based options for participants who desire less risk in their savings plans.

Fees and Administration – Franklin has reduced program fees while still maintaining high quality service levels.

Based on the contract performance of Franklin Templeton, it is recommended that the contract for comprehensive NJBEST program services be extended for an additional three year period.

It is recommended that the Board approve the attached Resolution 15:10 – Approving Offer to Franklin Templeton of a 3-year Extension to the College Savings Services Agreement.

Motion to approve the resolution was made by Warren Smith and seconded by Jonathon Nycz. Harvey Kesselman asked for and received confirmation from Mr. Hutchins that an RFP was not needed because the extension was allowed for in Franklin Templeton's existing contract. Nancy Style question whether Franklin Templeton would have the ability to get paperless statements to which Mr. Hutchins responded that Franklin Templeton was aware of that request and was working on it.

Resolution 15:10 was adopted by roll call unanimously.

RESOLUTION 16:10 APPOINTMENT OF DESIGNATED PURCHASER OF FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFELP) REHABILITATION & BANKRUPTCY LOANS

Mr. Robert Clark presented Resolution 16:10 to the Board.

HESAA, as the State's designated guaranty agency under the Federal Family Education Loan Program, also known as the FFEL Program, or FFELP, which is administered by the U.S.

Department of Education, participates is the FFELP loan rehabilitation program. Loan Rehabilitation is a service that allows borrowers with defaulted loans issued under the FFEL Program to remove the default status on their loans and repair their credit history if nine consecutive, on-time, voluntary monthly payments are made within a ten month period. Bankruptcy loans referred to in this resolution are also FFELP Loans, where the borrowers have completed their bankruptcy actions and are eligible to have their loans placed with a lender. The Higher Education Act also provides for payments of 18.5% of principal, interest and collection cost to the guaranty agency when loans held in its pool of defaulted loans are rehabilitated. As a result, in addition to the benefits that the rehabilitation program provides to FFELP borrowers, it has been a significant source of program revenue to the Authority's Guaranty Agency Operating Fund.

From February 2002 through May 2010, the NJCLASS/FFELP Loan Program purchased monthly pools of rehabilitated defaulted FFELP loans from the portfolio of defaulted FFELP loans held by HESAA as the New Jersey FFELP guaranty agency after they met the requirements for rehabilitation as described above. Prior to that time, HESAA sold rehabilitated loans to an outside lender. Due to changing market conditions, HESAA management was advised by its Senior Manager and Financial Advisor in the Spring of 2010 that the continued financing of rehabilitated and bankruptcy loans through the purchase of these loans into its NJCLASS/FFELP Loan Program Trust Estate was no longer economically feasible. Concurrently, a new refunding plan for the Auction rate debt supporting existing FFELP loans owned by HESAA, including rehab loans, resulted in a bond issue that did not allow for origination or purchase of additional FFELP loans by the NJCLASS/FFELP Program. As a result of these circumstances, in order to be able to continue to offer the rehabilitation option to its defaulted FFELP borrowers, as well as continue to earn rehabilitation fees from the USDE, HESAA has found it necessary to once again sell rehabilitated loans to an outside entity.

In order to achieve this objective, on September 27, 2010, HESAA issued an RFP for Rehabilitation Loan Purchases. The Loan Rehabilitation RFP Evaluation Committee met on November 8, 2010 to discuss the two proposals received in response to the RFP and score them. This memo and the accompanying Resolution 16:10 document the results of this effort. In response to the RFP, the two proposals received were both from large, well respected entities active in the student loan industry. Under the current market conditions, potential purchasers of these loans were expected to make purchase offers at a discount, meaning that they would likely be below the outstanding amount of the loans.

As a result of its evaluation, the Committee determined that the submission by Nelnet had the clear advantage both in the quality of the proposal and the discount percentages offered. Nelnet's discount percentages, based on age of loans and type, ranged from 5% to 6%. The discount percentage proposed by the only other competitor, SunTrust, ranged from 8% to 13%.

As a result, The Rehabilitation Loan RFP Evaluation Committee recommends that the Board approve the attached Resolution 16:10 – appointing Nelnet, Inc., as the Authority's designated purchaser of FFELP rehabilitation and bankruptcy loans for the two year period ending December 31, 2012, with three 1-year extensions at the option of the Authority.

Motion to approve the resolution was made by Jean Rash and seconded by Edward Graham.

Resolution 16:10 was adopted by roll call unanimously.

RESOLUTION 17:10 APPOINTMENT OF ARBITRAGE CALCULATION CONSULTANT

Mr. Robert Clark presented Resolution 17:10 to the Board.

Resolution 17:10 calls for appointment of a consultant to perform arbitrage calculations and issue the appropriate reports and filings as required under the federal tax code.

Under the federal tax code, municipal bond issuers, including HESAA, are required to produce two types of arbitrage reports on a periodic basis, and remit any liability determined as a result of the calculations to the IRS. The basic purpose of arbitrage calculations is to determine if the yield on the assets acquired with the proceeds of a tax exempt bond issue are within the percentage allowed under the federal tax code. Due to the complexity of the code as it relates to arbitrage calculations for the structures of HESAA asset-backed bonds, the services of a specialist in this area of tax accounting are required to ensure compliance. A list of the services provided by an arbitrage calculation consultant is included in the memo provided to the Board. The Authority has previously issued RFPs for arbitrage compliance services.

At the present time, the Authority is seeking another term contract with a provider of arbitrage calculation services in order to bring the arbitrage reports current for all its outstanding bond issues. This is particularly important since HESAA is engaged in an effort to refund and retire all of its Auction rate debt. All of the Auction Rate issues will require final arbitrage calculations to be performed within a short time after they are retired.

In order to achieve this objective, HESAA issued an RFP for Arbitrage Compliance Computation Services, advertised it in the RFP in the Newark Star Ledger, the Trenton Times, the Home Tribune and Courier News and posted it to the HESAA website. The memo and the accompanying Resolution 17:10 document the results of this effort.

In response to the RFP, three (3) proposals were received from potential arbitrage compliance computation service providers. The Evaluation Committee, consisting of the Controller, an accountant within the HESAA Finance Unit, and a member of the HESAA Internal Audit staff met to discuss these three proposals and score them, based on the merits and relative cost of each.

All three firms evaluated appeared to have personnel with the requisite skills to perform the required services, and the relative costs to the Authority of each proposal appeared to be very close. One of the more heavily weighted evaluation factors was the firm's relative experience in preparing student loan arbitrage calculations. In this area, BLX Group, formerly known as Bond Logistix, excelled. In addition, BLX Group, as the Authority's current provider of arbitrage calculation services, has established a track record of reasonable rates, quality service and open communication with HESAA.

The Committee also unanimously agreed that the BLX proposal provided the most appropriate level of detail in its answers to the RFP questions and was more understandable than the others.

BLX Group is owned by Orrick Herrington & Sutcliffe, LLP, a leading national firm with recognized expertise in tax law and arbitrage compliance in particular. On one occasion the resources of this firm were made available to HESAA on short notice to respond to a routine IRS audit request and a successful result was obtained.

Based on the factors cited above, the Arbitrage Calculation Consultant Evaluation Committee recommends the appointment of BLX Group as the Authority's provider of arbitrage calculation services for an initial contract period of three years, with up to three one year extensions at the option of the Authority.

It is recommended that the Board approve the attached Resolution 17:10 – Appointment of Arbitrage Calculation Consultant.

Motion to approve the resolution was made by Harvey Kesselman and seconded by Maria Torres. Harvey Kesselman asked whether HESAA had used BLX before and if HESAA was pleased with their services. Mr. Clark responded yes to both questions.

Resolution 17:10 was adopted by roll call unanimously.

RESOLUTION 18:10 APPOINTING SPECIAL COUNSEL TO ASSIST IN THE REVIEW OF MATERIALS RELATED TO 529 PLANS

Marnie B. Grodman, Esquire, presented Resolution 18:10 to the Board.

The Higher Education Student Assistance Authority (HESAA) administers the New Jersey Better Educational Savings Trust (NJBEST) program, New Jersey's State qualified tuition program under Section 529 of the Federal Internal Revenue Code of 1986, as well as the Franklin Templeton 529 College Savings Plan ("529 Plans"). On October 18, 2010, HESAA issued a Request for Qualifications (RFQ) seeking proposals from qualified law firms for the appointment of Special Counsel to assist in the review of materials related to the 529 Plans. The selected firm will serve for a term of 2 years with three optional one-year extensions.

The appointed firm will provide opinions and advice to HESAA on all documents prepared by HESAA's investment manager, Franklin Templeton, related to the 529 Plans. These documents include but are not limited to: investor handbook supplements, disclosure updates, contract amendments and supplements, and dealer program distribution agreements.

Additionally, if the special counsel engaged pursuant to this RFQ serves for the full five year term, with the optional extensions, then this counsel will be expected to assist HESAA in engaging the successive investment manager upon expiration of Franklin Templeton's engagement in three years.

HESAA mailed the RFQ to the law firm currently providing these services for HESAA as well as three other firms found on the Attorney General's Approved Special Counsel list for Alternative Investments, posted the RFQ on HESAA's website and advertised the RFQ in the Trenton Times, Star Ledger, Courier News, and Home News.

HESAA received proposals from four law firms.

An evaluation committee made up of HESAA's Chief Financial Officer, Acting Director of Legal and Governmental Affairs, and Controller met and reviewed each of the proposals.

As part of the Board mailing, each member received a summary of the scores each firm received from each member of the evaluation committee.

Based on a thorough review of the proposals the evaluation committee recommends appointing Obermayer Rebmann Maxwell & Hippel LLP as special counsel to assist in the review of materials related to 529 Plans and to assist in engaging the successive investment manager should the agreement with Franklin Templeton expire during the term of the agreement entered as a result of this RFQ. Obermayer's proposal displayed the most hands on experience with mutual funds generally and 529 plans specifically. While Obermayer's fees were not the lowest hourly rate proposed the fees were similar to the other firms' and Obermayer's previous experience with this type of work will reduce the hours spent on research.

Based upon the review and scoring by the evaluation committee, it is recommended that the Board approve Resolution 18:10 Appointing Obermayer Rebmann Maxwell & Hippel LLP as Special Counsel to Assist in the Review of Materials Related to 529 Plans and to assist in engaging the successive investment manager should the agreement with Franklin Templeton expire during the term of the agreement entered as a result of this RFQ at a rate of $225-300 per hour for attorneys and $100 per hour for paralegals.

Motion to approve the resolution was made by Harvey Kesselman and seconded by Jean Rash.

Resolution 18:10 was adopted by roll call unanimously.

RESOLUTION 19:10 APPROVING PURCHASE OF MAILROOM EQUIPMENT PURSUANT TO STATE CONTRACT

Marnie B. Grodman, Esq. presented Resolution 19:10 to the Board.

HESAA needs to purchase a feeder/folder attachment to work in-conjunction with the mailroom's Bowe, Bell & Howell Phillipsburg Mailstar 400 inserting machine in order to expedite HESAA's billing process. Outgoing mail totals have increased from over 2,300,000 pieces in FY 2006 to over 3,200,000 pieces in FY 2010. The attachment expedites the process by folding and inserting documents into the mailing.

HESAA staff recommend purchasing this needed equipment from Bowe, Bell & Howell because the Bowe, Bell & Howell 420T feeder/folder attachment is made to enhance a piece of equipment that already owned by HESAA. Additionally, Bowe, Bell & Howell's service department is always responsive when maintenance or repairs are required.

Pursuant to N.J.S.A. 18A:71A-10 d., HESAA, without advertising for bids, may purchase materials, supplies or equipment pursuant to a contract entered into on behalf of the State.

The Bowe, Bell & Howell Phillipsburg Mailstar 400 inserting machine is available for purchase pursuant to State Contract number 75252 for $76,513.15. HESAA does not need the full inserter. Accordingly the price for the feeder/folder attachment without the inserter interface control will be $49,355.

It is recommended that the Board approve Resolution 19:10 Approving Purchase of Mailroom Equipment Pursuant to State Contract which will enable staff to purchase the Bowe, Bell & Howell 420T feeder/folder attachment for the cost of $49,355.

Motion to approve the resolution was made by Wilma Harris and seconded by Rossy Matos.

Resolution 19:10 was adopted by roll call unanimously.

RESOLUTION 20:10 ADOPTION OF AMENDMENTS TO THE NEW JERSEY COLLEGE LOANS TO ASSIST STATE STUDENTS (NJCLASS) PROGRAM, N.J.A.C. 9A:10-6

Marnie B. Grodman, Esq. presented Resolution 20:10 to the Board.

HESAA is responsible for the administration of the NJCLASS Program pursuant to N.J.S.A. 18A:71C-21 et seq.

NJCLASS loans are funded by the sale of bonds and the interest rate on the NJCLASS loans is a pass through rate of the bond interest rate, associated costs of sale and other costs determined by the bond sale. In order to ensure the lowest possible interest rate for NJCLASS borrowers, as well as to reduce the number of borrowers defaulting on their loans, it is necessary to make changes to the NJCLASS program.

Additionally, for the 2009-2010 academic year the Authority implemented a pilot program to offer MedNJ Loans to medical and dental students working toward a MD, DO, DDS or DMD degree. The MedNJ loans offer a fixed interest rate, flexible repayment options, a 25-year repayment term and a special 3-year residency deferment. As this pilot loan program is succeeding in meeting the needs of medical and dental students to defer loans while engaged in residency programs, it is necessary to amend the regulations to include the provisions for MedNJ.

Other regulatory changes are necessitated due to references made to the recently eliminated Federal Family Education Loan Program (FFELP). The Health Care and Education Affordability Reconciliation Act of 2010, which was signed into law on March 30, 2010, eliminated any new loan originations under FFELP as of July 1, 2010.

At its July 22, 2010 meeting the HESAA Board approved the proposed amendments to N.J.A.C. 9A:10-6. The Proposed Rule No. PRN 2010-206, was published in the September 7, 2010 New Jersey Register at 42 N.J.R. 1953(a), on the HESAA website at HESAA.org, sent to the Statehouse News Media and Secondary notice was mailed to interested parties. The 60-day legislative review period for this rule expired on October 6, 2010, with no comments received and the public comment period for this rule expired on November 6, 2010 with no comments received. Accordingly, it is recommended that the Board approve Resolution 20:10, Adoption of Amendments to the New Jersey College Loans to Assist State Students (NJCLASS) Program Policies and Procedures, N.J.A.C. 9A:10-6.

The Rule Proposal, as published in the September 7, 2010 New Jersey Register is included in the materials that were sent to the Board.

Motion to approve the resolution was made by Nancy Style and seconded by Wilmot Wilson. Christy Van Horn asked for clarifications as to why the changes were made to N.J.A.C. 9A:10-6.12d. Ms. Grodman explained that the payment terms for some NJCLASS loans had been extended from 15 years to either 20, 25 or 30 years. Lengths of possible forbearance periods were extended to correspond with these extended repayment terms.

Resolution 20:10 was adopted by roll call unanimously

RESOLUTION 21:10 ADOPTION OF AMENDMENTS TO THE PRIMARY CARE PHYSICIAN AND DENTIST LOAN REDEMPTION PROGRAM, N.J.A.C. 9A:16

Marnie B. Grodman, Esq. presented Resolution 21:10 to the Board.

HESAA is responsible for the administration of the Primary Care Physician and Dentist Loan Redemption Program pursuant to N.J.S.A. 18A:71C-32 et seq.

P.L. 2009 c. 145 was enacted on November 20, 2009 providing amendments to the Primary Care Physician and Dentist Loan Redemption Program. Accordingly, it is necessary to amend N.J.A.C. 9A:16 to reflect the statutory amendments.

At its July 22, 2010 meeting the HESAA Board approved the proposed amendments to N.J.A.C. 9A:16. The most noticeable change is to the name of the program, from the Primary Care Physician and Dentist Loan Redemption Program to the Primary Care Practitioner Loan Redemption Program.

Additional changes to the program include: adding definitions for “approved site,” “primary care practitioner,” and “total and permanent disability”; allowing participants to serve on a part-time basis after completing the first two years of initial service on a full-time basis; and providing a mechanism by which HESAA can make payments to reimburse participants for all or part of their increased tax liability incurred pursuant to the New Jersey Gross Income Tax Act, if there are available funds.

The Proposed Rule No. PRN 2010-207, was published in the September 7, 2010 New Jersey Register at 42 N.J.R. 1957(a), on the HESAA website at HESAA.org, sent to the Statehouse News Media and Secondary notice was mailed to interested parties. The 60-day legislative review period for this rule expired on October 6, 2010, with no comments received and the public comment period for this rule expired on November 6, 2010 with no comments received. Accordingly, it is recommended that the Board approve Resolution 21:10, Adoption of Amendments to the Primary Care Physician and Dentist Loan Redemption Program, N.J.A.C. 9A:16.

The Rule Proposal, as published in the September 7, 2010 New Jersey Register is included in the materials that were sent to the Board.

Motion to approve the resolution was made by Wilma Harris and seconded by Jean Rash.

Resolution 21:10 was adopted by roll call unanimously

RESOLUTION 22:10 ADOPTION OF NURSING FACULTY LOAN REDEMPTION PROGRAM REGULATIONS, N.J.A.C. 9A:10-4

Marnie B. Grodman, Esq. presented Resolution 22:10 to the Board.

The Nursing Faculty Loan Redemption Program Act, P.L. 2009, c. 236, was signed into law on January 16, 2010 ("Act"). Pursuant to P.L. 2009, c. 236 §8, the Higher Education Student Assistance Authority (HESAA) is responsible for promulgating rules and regulations to implement the provisions of the Act.

The Nursing Faculty Loan Redemption Program ("NFLRP") is intended to address the current and projected critical shortage of nurse faculty in the State by providing a loan redemption as an incentive for persons to enter graduate nursing education programs and for persons already trained as nurses to advance their training in the profession. In order to be eligible for the NFLRP, an applicant must be a resident of the state of New Jersey, have obtained a degree from an approved graduate degree program within a one year period prior to commencing full-time faculty employment at an eligible institution; have been initially hired for full-time faculty employment at an eligible institution on or after the date of program enactment; after being initially hired for full-time faculty employment at an eligible institution, maintained continuous full-time faculty employment at an eligible institution; have maintained a 3.0 grade point average on a scale of 4.0, or its equivalent, while enrolled in an approved graduate degree program; and have an outstanding balance with a State or Federal student loan program and not be in default on any student loan.

Each NFLRP participant is entitled to loan redemptions of up to $5,000 for the first and second year, up to $7,500 for the third year, up to $10,000 for the fourth year and up to $12,500 for the fifth year, not to exceed $40,000 over a five year time period. The NFLRP is funded by State appropriations. Of the funds annually appropriated for the Primary Care Physician and Dentist Loan Redemption Program, 25% is dedicated to the NFLRP.

HESAA met with representatives from the Robert Wood Johnson Foundation New Jersey Nursing Initiative to review and comment on the proposed regulations and their comments and suggestions were incorporated in the proposed rules.

At its July 22, 2010 meeting the HESAA Board approved the proposed new regulations. The Proposed Rule No. PRN 2010-205, was published in the September 7, 2010 New Jersey Register at 42 N.J.R. 1950(a), on the HESAA website at HESAA.org, sent to the Statehouse News Media and Secondary notice was mailed to interested parties. The 60-day legislative review period for this rule expired on October 6, 2010, with no comments received and the public comment period for this rule expired on November 6, 2010 with no comments received. Accordingly, it is recommended that the Board approve Resolution 22:10, Adoption of Nursing Faculty Loan Redemption Program Regulations, N.J.A.C. 9A:10-4.

The Rule Proposal, as published in the September 7, 2010 New Jersey Register was included in the materials sent to the Board.

Motion to approve the resolution was made by Harvey Kesselman and seconded by Christy Van Horn.

Resolution 22:10 was adopted by roll call unanimously

NEW BUSINESS

Engagement of Vendor to Provide Shredding Services

HESAA engages a vendor to shred confidential documents. The current contract with Reliable Computer Service recently expired. Accordingly, HESAA issued an RFP for a new contract for these services. Three companies responded to the RFP. Based on an estimated 6,310 pounds of materials to be shred each month, HESAA's current vendor, Reliable Computer Services, provided the lowest bid of approximately $236.63 a month. This would total $2,839.56 a year. Because the total cost of this contract is below the public bid threshold, pursuant to HESAA's procurement policy, staff has engaged this firm.

ADJOURNMENT

Chair Garcia announced after that after adjourning this Board Meeting the Board will enter a closed session, pursuant to the Open Public Meetings Act, to discuss with HESAA's counsel an issue that recently arose. This will be a closed session pursuant to N.J.S.A. 10:12-4b(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 matter is allowed to be made public. A motion to adjourn and go to closed session was made by Warren Smith and seconded by Nancy Style. Motion was approved unanimously. Chair Garcia announced the next HESAA Board meeting will be held on Tuesday, January 25, 2011 at 10:00 am.

Bob Messina asked whether HESAA received the letter from county college financial aid officers regarding an extension on time to file financial aid forms. Fran Andrea responded that the deadline to supply HESAA with the responses to the additional data request was extended and any information received and post marked by November 19 would be acceptable.

The meeting adjourned at 3:16pm.