

Higher Education Student
Assistance Authority

NJCLASS Product Policy and Procedures
Manual
For Law Firms

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Purpose

This manual comprises the policies and procedures that law firms retained by the Higher Education Student Assistance Authority (“HESAA”) to recover monies owed to HESAA or its clients and to protect the interests of HESAA and its clients are required to follow. While this manual is a component of the retainer agreement between each law firm and HESAA, law firms should not rely upon this manual to provide interpretation of Federal or State laws or regulations. As HESAA’s legal representation, it is each firm’s duty to provide interpretations of Federal and State laws, rules and regulations for its client, HESAA. This manual pertains to the NJCLASS product and all other types of educational receivables referred to a law firm that are not related to defaulted FFELP loans. This manual does not apply to the collection of defaulted FFELP loans, as those matters are covered by the Defaulted FFELP Policy and Procedures manual.

Administrative Wage Garnishment (AWG)

AWG, if permitted by law, shall only be initiated by HESAA to collect a debt. A law firm may request that HESAA initiate AWG for a receivable placed with the firm where the firm is unable to obtain a judicial garnishment or when it is more expedient to use AWG. The use of AWG shall not weaken or hinder HESAA's ability to litigate against other parties to the loan(s) subject to AWG. In the event that a law firm requests that HESAA initiate AWG, and there is an Administrative Wage Garnishment hearing, the law firm shall represent HESAA at the hearing, but will not be compensated for representing HESAA at the hearing.

Administrative Wage Garnishment Hearings

HESAA may assign a receivable to a law firm for the sole purpose of representing HESAA in an Administrative Wage Garnishment hearing with the Office of Administrative Law ("OAL"). HESAA will provide the law firm with an AWG Hearing packet. The AWG Hearing packet will include at a minimum:

- A copy of the OAL transmittal form;
- HESAA's Affidavit of Statement of Facts;
- Individual's hearing request form;
- Documents supporting the existence of the debt, e.g. application and promissory notes;
- Correspondence from individual, if any;
- A screen print or access to HESAA's Financial Information screen;
- Tracking information compiled by HESAA;
- HESAA's record of payment;

The hearing will be scheduled by the Clerk of the Office of Administrative Law. The law firm shall bill HESAA, when permissible, on an hourly basis and submit invoice(s) to the Servicing/Collections Unit in accordance with the law firm's agreement with HESAA. The total costs expended in handling an administrative wage garnishment hearing shall not exceed 1/3 of the outstanding balance at the time the matter is referred to the law firm, unless expressly approved by HESAA in writing. Requests to exceed the 1/3 threshold must include a reason why an exemption is requested.

Appellate Work

From time to time it may be necessary to appeal a negative decision by the Court. When the law firm handling the receivable advises HESAA of a negative decision by the Court, the firm shall make a recommendation to HESAA on whether or not the matter should be appealed, including the reasons the firm believes HESAA will or will not prevail upon appeal. HESAA will then make a decision on whether or not it wishes to file

an appeal. HESAA will issue instructions on how to proceed with an appeal, if the decision is made to move forward.

On occasion, it is necessary for HESAA to utilize a collection law firm to file an appeal on behalf of HESAA for a matter the firm has not previously handled. HESAA will provide sufficient information to the law firm for the law firm to make a recommendation on whether or not HESAA's appeal would prevail. HESAA will then make a decision and issue instructions on how to proceed. In this instance, the law firm would bill HESAA on an hourly basis at the rate stated in the retainer agreement for handling appellate matters.

Application for Discharge by an Individual

The terms of the promissory note for the receivable outline the conditions upon which a loan or receivable may be discharged.

For NJCLASS loans, a loan may be discharged for death or total and permanent disability. Please review the sections of the Manual: Discharge Due to Death; Discharge Due to Total and Permanent Disability for information and guidance.

**In the event that a promissory note was not executed in the extension of credit, HESAA will be contacted for guidance.

Application of Payments

Unless prohibited by State or Federal law, defined by the terms and conditions of the receivable promissory note, or requested by the borrower, individual payments shall be applied in the following order:

- For receivables where judgments have been awarded payments are applied: first to post-judgment interest, then to the judgment amount, and then to costs. The underlying components of a judgment are satisfied in the following sequence: pre-judgment interest, principal balance, attorney fees and then costs.
- For receivables where no judgment has been awarded: first to unpaid interest, then to unpaid principal, attorney fees and then costs.

All funds shall be credited to the individual's receivable as of the date of receipt. Individuals paying by credit card should receive credit as of the transaction date on the report received from the credit card processor. The date of receipt is determined by the first entity (HESAA, the law firm or the associate law firm) to receive the funds. Funds received by any other entity are not credited as of when that entity received the funds, e.g. Bankruptcy Trustee, Sheriff, and Constable.

For post-dated checks, individuals are to receive credit for the payment as of the date on the face of the check. If the date falls on a weekend or a State observed holiday, then the next business day is used.

Funds that are held in escrow are credited once the conditions for holding the funds in escrow have been met, unless there is a prior written arrangement between the individual and the law firm.

When a payment is received from an individual who has more than one receivable assigned to the law firm, the payment should be pro-rated against all the unpaid receivables in proportion to the unpaid balance of each individual receivable. Unless the individual directs the payment applied to a specific obligation. Payments should only be pro-rated across the loans to which the individual is obligated, not across all of the loans for a specific student, unless the individual directs the law firm to apply the payment in another manner or when the funds are from a result of an execution on a judgment. In event that the funds are from an execution, they are to be applied to associated judgment.

Transactions that are classified as offsets (Set-off Individual Liability (SOIL) or Lottery), Agency, or Consolidation payoffs shall be posted using the effective date associated with the transaction on the report provided by HESAA. These reports should show the transaction amount and to which loan(s) the transaction should be applied.

In the event of a compromise, the funds are applied first to principal, then to interest, then to costs and then to attorney fees.

Attorney Meeting

In addition to Site Visits and Program Reviews, HESAA conducts periodic meetings for all the law firms retained by HESAA to collect defaulted student loans and other types of receivables. The purpose of the meetings is to address the following topics:

- Program requirements;
- Federal updates;
- State updates;
- Review of reporting procedures with HESAA;
- Present status of the portfolio;
- Review performance;
- Review current policies and procedures;
- Compliance with State and Federal regulations; and
- Any pertinent issues.

Bankruptcy

When a law firm is notified of a debtor's bankruptcy filing, or any action filed through a bankruptcy court, the law firm is to immediately cease collections, notify HESAA of the

filing, provide HESAA with all relevant documentation and advise HESAA on how the firm recommends HESAA should proceed.

HESAA will review the bankruptcy documentation and determine how to proceed operationally.

If a law firm is asked to represent HESAA in the handling of a bankruptcy matter, the cost of handling the bankruptcy shall not exceed 1/3 of the outstanding balance at the time of the bankruptcy filing. When the costs are estimated to exceed the 1/3 threshold, HESAA must grant written approval prior to the threshold being exceeded. Requests to exceed the 1/3 threshold must include a reason why an exemption is requested.

Business Continuity/Disaster Plans

A copy of the law firm's business continuity/disaster plan shall be submitted to HESAA, in the format prescribed by HESAA in the Appendix, within 45 calendar days of signing a retainer agreement with HESAA, unless otherwise specified. The plan shall be reviewed and updated, if applicable, on an annual basis or when there has been a significant change in the law firm's management structure and/or business processes. A copy of the updated plan shall be sent to HESAA. If in the event there are no changes to the plan for the year, the firm shall notify HESAA in writing that there are no changes.

In the event business interruption experienced by a law firm or an associate law firm exceeds more than one business day, the law firm shall notify the HESAA Recovery Support Section of the outage as soon as practical and provide HESAA with the nature of the interruption, and the timeline to resume business.

Complaints

If any regulatory entity files or forwards a complaint against a law firm and/or any third party vendor utilized by the law firm involving a matter placed by HESAA, HESAA is to be notified of the complaint within two business days. The notification shall include the nature of the complaint and summary to date of the handling of the matter. HESAA will determine whether the complaint warrants a return of the file to HESAA.

If complaints are received from a customer or a customer's representative to or against a law firm and/or any third party utilized by the law firm involving a matter placed by HESAA, HESAA is to be notified of the complaint within two business days. The notification shall include the nature of the complaint and summary to date of the handling of the matter. HESAA will provide guidance, if needed, on the handling of the complaint and will determine if the complaint warrants a return of the file to HESAA.

Compliance

The law firm and/or any third party utilized by the law firm must be in compliance with all applicable State and Federal laws, rules and regulations, and HESAA's policies and procedures manual for law firms and the guidelines for law firms.

The law firm shall address and take corrective action for any finding identified by HESAA in the normal course of business, or any findings noted in any review conducted by HESAA or any Federal or State law enforcement, auditing or inspecting agency. If a law firm's non-compliance results in the loss of monies due HESAA or its clients, such as uncollected principal and interest, or a monetary loss to HESAA or its clients in the form of fines, penalties or other sanctions, the law firm shall indemnify and hold HESAA harmless for any liability and/or reimburse such amounts to HESAA within 10 business days after written notice of such liability is received from HESAA.

A law firm's repeated non-compliance may result in the immediate termination of its retainer agreement. Upon termination of the retainer agreement, the firm is required to return all HESAA files to HESAA at its own expense. The firm may not assert any attorney's lien for fees on those returned accounts.

Compromise/Write-offs

All compromises and write-offs are governed by HESAA and no case can be compromised or written-off except in accordance with this section of the manual. In all cases, the law firm must document the reasons for its actions in the individual's file. The following settlement guidelines shall apply to the compromise or write-off of any HESAA receivable referred to the law firm for collection:

- Offers for lump sum settlements where the offer is for 85% or more of the current outstanding judgment balance and does not compromise a portion of the unpaid principal that was referred for collection, may be accepted without prior authorization from HESAA. In these instances, HESAA shall be notified of the settlement immediately by fax or email.
- In the case of non-judgment matters, an offer for 85% or more of the outstanding balance (the sum of unpaid principal, unpaid interest, unpaid attorney fees and costs) that does not compromise a portion of the unpaid principal that was referred for collection, may be accepted without prior authorization from HESAA. In these instances, HESAA shall be notified of the settlement immediately by fax or email.
- All other offers for lump sum settlements shall be approved in writing by HESAA, prior to the law firm's acceptance. A financial statement form to obtain wage and expense information should be completed by the individual seeking settlement. See the Appendix for a sample financial statement form. To obtain HESAA's approval, the law firm shall submit to HESAA the financial statement form as well

as the law firm's recommendation on whether or not to accept the offer and the basis for the recommendation.

- The law firm shall maintain a list of all settlements and write-offs. The list shall contain identification of the individual offering the settlement, the date and amount of the settlement and the amount written off and loan number. The report is submitted at the individual receivable level. A copy of this list must be provided to HESAA on an annual basis by January 15th using HESAA's Annual Compromise Report. See the Appendix for a sample Annual Compromise Report
- Without compromising the amount owed by the individual, HESAA permits installment payments as a method of settlement, provided such settlement is reasonable as to the amount of each installment payment and the projected duration of the arrangement. Unless prohibited by State or Federal law, or the terms and conditions of the receivable promissory note, the following repayment term ranges should be used as a guideline in establishing installment plans:

Balances less than \$15,000	5 Years
Balances between \$15,000 and \$30,000	10 Years
Balances greater than \$30,000	15 Years

- A compromise must be based on future payments (those made as of, or after the date of the compromise) and may not include any payments received by the law firm prior to the date of compromise; i.e. payments made from the date of placement with the law firm up to the date of compromise are not to be included in determining the amount compromised, unless the funds are being held in escrow.

In no event shall the arrangement consist of a monthly payment amount of less than \$50.00. Installment agreements should include language requiring the review of the installment amount annually and allow for increased payment amounts based on the individual's ability to pay, in order to ensure compliance with HESAA's repayment term guideline on installment settlements and the accrual of interest. In addition, the installment agreement shall include language requiring this immediate payment of the entire balance upon default of the installment payment agreement. When possible, installment settlement agreements shall be in the form of a consent judgment.

If there is a consent judgment, payments shall be applied in the manner described for judgments. Otherwise, payments shall be applied in accordance with the manner described in the Application of Payments section for non-judgment receivables of this manual. Any exceptions to the procedures specified in this section must be approved in advance, in writing by HESAA.

- A non-judgment receivable may be written-off without prior approval from HESAA if the outstanding balance is less than \$100 and no payments have been received within the last 60 calendar days. HESAA must be notified of any

receivable that is written-off. Where a judgment exists, the outstanding balance of the judgment is used when determining if it is permissible to write-off the remaining balance.

- Where there are multiple parties to a debt and a single party offers to settle for a portion of the debt, if the offer does not meet the above compromise guidelines, HESAA must approve the settlement. To obtain HESAA's approval, the law firm shall submit a written request to review the offer including the law firm's recommendation on whether or not to accept the offer and the basis for the recommendation. The law firm must retain HESAA's written approval in the individual's file.
- All other requests shall be submitted to HESAA for approval prior to processing the write-off. All requests shall include the law firm's recommendation on whether or not to accept the offer and the basis for the recommendation. HESAA must be notified of any receivable that is written-off.

Data Loss

In the event that a law firm or 3rd party contractor engaged by the law firm experiences a loss of data involving matters placed by HESAA, the law firm shall notify HESAA's Recovery Support Section and Chief Compliance Officer immediately by phone and email of the circumstances surrounding the loss of the data and the extent of the loss.

Deposits

All collections received on either the NJCLASS product or other educational receivables shall be deposited to the law firm's attorney trust account within one (1) business day of receipt. All payments received and deposited into the trust account must be cleared and remitted via ACH to HESAA within ten business days (or less) of collection.

In all instances, the individual is to be given credit for payments as of the date they are received in the law firm's office or subcontractor/associate's office. The only exceptions to this rule are when a post-dated check is received or when conditions for holding funds in escrow allow for different timing.

Upon receipt, law firms shall date stamp the front of any check received pertaining to a HESAA matter and should retain a copy of each payment received in the firm's files.

Post-dated checks should be stamped the date they are received and not the date they are deposited. A copy of the check shall be retained in the firm's files.

For payments received by credit card, the law firm must maintain transaction reports that provide the date the payment was received which is reconciled to bank statements. For ACH and wire payments, the law firm must maintain documentation of the transaction amount and transaction date as part of banking statements or other records.

When a law firm engages an associate law firm, the funds received by the associate law firm must meet HESAA's same requirements for handling of a deposit.

Questions regarding compliance with remittance policies and procedures should be directed to the Controller. Questions regarding operational issues, such as individual transactions, reconciliations, etc, should be directed to the Assistant Controller.

Direct Payment Reporting

On a periodic basis, HESAA will provide the law firm with a Direct Payment report, identifying payments HESAA received directly from the individual. Separate reports will be provided for offsets and other payments received by the agency. The law firm shall post these transactions to the law firm's system using the effective date associated with the transaction as stated on the report provided by HESAA.

The law firm shall send a notification to the borrower and cosigner whenever an offset is credited to the individual's receivable. The notification shall provide the individual with information detailing the offset credit and the individual's outstanding balance.

Discharge Due to Death

When the law firm is notified that an obligor has died, the law firm shall attempt to obtain a certified and true copy of the death certificate or an accurate and complete photocopy of the original or certified copy of the death certificate. If successful in obtaining a certified and true copy of the death certificate or an accurate and complete photocopy of the original or certified copy, the law firm shall forward the document to HESAA.

If unsuccessful in obtaining a certified and true copy of the death certificate or an accurate and complete photocopy of the original or certified copy of the death certificate, the law firm may obtain a print out from the Social Security Death Index showing that the individual with that social security number is deceased. All attempts to obtain the certified copy or an accurate and complete photocopy of the original or certified copy of the death certificate shall be documented in the individual's file.

If the deceased individual is the only obligor on the loan, the law firm shall close the file. If the deceased individual is not the only obligor on the loan, and the terms and conditions of the promissory note do not provide for loan discharge, collection efforts will continue against the other parties to the loan, unless otherwise directed by HESAA.

Any closed files shall be forwarded to HESAA as outlined in the Receivable Transfers section.

Discharge Due to Total and Permanent Disability

If the law firm is notified by a NJCLASS borrower or cosigner of a medical condition that renders them totally and permanently disabled, the law firm shall provide the individual with the following discharge application for completion:

- Total and Permanent Disability- NJClass;

A copy of the discharge form is available on the HESAA website (www.NJCLASS.org) and a sample of the form is provided in the Appendix.

The law firm or the individual shall forward the completed discharge form to HESAA for review and processing. Once the discharge request forms are forwarded to HESAA, the law firm shall cease all collection activities pending the outcome of HESAA's review. Upon completion of the review, HESAA will provide the law firm with instructions on whether or not the debt has been discharged. HESAA will provide the necessary information to adjust the outstanding balance on the law firm's system and provide direction regarding the disposition of the judgment and receivable transfer instructions, if applicable.

If applicable, litigation may be suspended, provided the suspension of litigation will not harm/weaken HESAA's case.

In the event that an individual files an appeal regarding a denial of their application for Total and Permanent Disability discharge, the law firm shall immediately forward the appeal to HESAA for handling and continue attempting to collect on the receivable.

Due Diligence

A law firm must perform at least one activity to collect a debt, locate an individual or determine if the individual has the ability to repay the debt every 180 calendar days. Notices advising an individual of their balance and/or requiring payment can be counted as a collection attempt. Actions taken in the course of litigation count as collection activities.

If payments are being received from an individual, either voluntarily or through either an AWG or wage execution, the law firm is not required to perform a collection activity. When payments are being received, the 180 day period begins from the last payment received.

The law firm is not required to perform a collection activity when it is necessary to suspend collection activities, e.g. bankruptcy.

The obligation to perform a collection activity is not stayed while a law firm engages out-of-state counsel.

Electronic Payment File

The law firm's electronic payment file is used as the source data file for posting payments received by a law firm to the individual's HESAA receivable. It excludes offset payments and consolidation payments. Electronic payment files shall be forwarded to HESAA on a weekly basis under a preset schedule. A separate payment file is submitted at the receivable type level. If a law firm handles more than one product on behalf of HESAA, then a separate file shall be sent for each product.

The time period covered by the payment file is from the date of the last electronic file transmission to the last business day prior to the transmission. The payments contained in the electronic payment file transmission must also appear on the remittance report for the same period of time. The law firm's corresponding remittance report is used by HESAA to verify the electronic payment file. HESAA will prescribe the format to be used for the payment file and how the file is to be transmitted.

The payment file shall be transmitted to HESAA between the hours of 9:00 AM and 11:00 AM on the transmission date. In the event there is a problem with the transmission or if a law firm is unable to transmit a file, the law firm must notify HESAA's Finance Unit.

The file shall be submitted at a receivable (i.e., individual loan) level. In the event that a matter is consolidated by a judgment, the information still needs to be submitted at a receivable level.

HESAA System Access

At this time HESAA does not permit access to the servicing platform used to service the NJCLASS product or other educational receivables by law firms.

Interest Accrual

Unless the terms and conditions of the promissory note instrument provide for a different method of interest accrual, interest is calculated using the simple interest method and is based upon a 365 day year basis.

Costs assessed prior to the entry of a judgment may accrue interest if permitted by State law. Any costs assessed after the entry of a final judgment may not accrue interest, unless permitted by State law.

Interest Rate Adjustments/Notifications

If permitted by State or Federal law, on receivables where there is a judgment in place, the interest rate charged to the individual is the greater of the rate established by the terms of the individual's original promissory note or the judgment interest rate provided by State law. It is the law firm's responsibility to determine the judgment interest rate in

the firm's local jurisdiction to determine which is the greater rate and to adjust its system accordingly.

In those jurisdictions where the judgment rate of interest changes on an annual basis, at the time the judgment rate of interest changes the law firm will check to see which rate is higher and then apply the higher rate of interest. Current law does not provide for the greater interest rate for NJCLASS loans.

For non-judgment variable rate interest receivables that do not contain a default interest rate clause in the promissory note, HESAA will provide the law firm with interest rate information on all receivables impacted by the change in the variable interest rate. The law firm's system records shall be updated to reflect the new interest rate. Interest will begin accruing on the effective date of the new interest rate.

For those receivables that carry a step-up interest rate after a set period of time of principal and interest payments and do not contain a default interest rate clause in the promissory note, the law firm will track and implement the interest rate increase based upon information provided to the law firm by HESAA at the time of assignment.

Upon the law firm's completion of the interest rate adjustment, the law firm shall send the individual a notification advising the individual of the interest rate change and their outstanding balance.

Interest Reporting

By January 10th of each year, the law firm will provided HESAA with an electronic file, in a format prescribed by HESAA, containing the amount of interest paid during the prior calendar year on each receivable placed with the law firm.

Law Firm Fees

General - Upon receipt of proper documentation, HESAA Recovery Support Section will pay all fees and expense reimbursements to the law firms after reviewing and approving the request for payment in accordance with the New Jersey Prompt Payment Act. Payment is made by HESAA once a monthly basis via ACH.

Contingency Fees – The law firm shall list contingency fees due to the firm on the remittance reports in accordance with the law firm's individual contract with HESAA. Fee amounts for offset payments shall be shown as zero on the Weekly Activity Report and Contingency Fee Invoice. HESAA pays the law firm contingency fees on amounts that the law firm collects directly from individuals, and from amounts HESAA receives on receivables assigned to the law firm. The law firm shall not receive contingency fees on monies offset by the State of New Jersey or the federal government. HESAA notifies each law firm of direct payments through a periodic report.

In order to qualify for an out-of-state contingency fee rate all defendants must be considered out-of-state as defined by the retainer agreement in effect at the time of placement.

Expense reimbursement – HESAA will reimburse the law firm for other legal disbursements incurred, such as deposition transcript costs, or transcript costs for supplementary proceedings against individuals if they were approved in writing, in advance by HESAA. Unless otherwise directed by HESAA, the law firm shall separately bill HESAA for reimbursement of the above-mentioned disbursements and the law firm shall not deduct such disbursements from monies collected from individuals. However, these costs may be added to the individuals' receivable as a cost receivable where permitted under applicable Federal and State law and regulations. Proper documentation, consisting of the invoice from the legal jurisdiction or other vendor shall accompany the invoice from the law firm seeking reimbursement.

As a state entity, HESAA is exempt from filing fees and court costs for matters filed in New Jersey state courts.

Lawsuits

In the event that an individual names the law firm in a lawsuit related to a receivable HESAA placed with the law firm, HESAA is to be notified of the suit. A decision will then be made by HESAA on whether or not the file should be returned to HESAA.

Non-Compliance

If HESAA learns of a law firm's non-compliance with Federal or State statutory or regulatory requirements or HESAA policy or procedures, HESAA staff will contact the law firm to rectify the situation. The Recovery Support Section within the Servicing and Collections Unit and the Audits and Quality Assurance Unit will be advised of occurrences of non-compliance and of HESAA's contact with the law firm to address the issue. If the issue is not resolved after the first contact, the matter will be referred to the management team of the Servicing and Collections Unit and the Audits and Quality Assurance Unit for further corrective action. The additional corrective action may include but is not limited to site visits, reviews, assessment of penalties, and termination of the retainer agreement. If termination is warranted, the firm is required to return all HESAA files to HESAA at its own expense. The firm may not assert any attorney's lien for fees on those returned accounts.

Notifications

A law firm shall generate a quarterly notification to the primary responsible party on a receivable. The notification shall include information regarding the outstanding balance and recent payment history. Notifications shall also be mailed to the primary responsible party when the receivable is initially referred to the law firm for collection, when the

interest rate is changed on the receivable, or when an offset is credited to a receivable. A bill statement can be counted as a notification.

If the address for primary responsible party is invalid, no notice is required. The basis for not sending a notice must be annotated in the individual's file.

Office Site Visits

On an annual basis, or more frequently, if needed, HESAA staff will visit a law firm to discuss and review the following topics:

- Present status of the portfolio;
- Performance;
- Current policies and procedures;
- Regulatory issues;
- Data system currently used by law firm; and
- Any issues requiring resolution.

Any corrective and/or follow-up actions will be identified in a written communication to the law firm.

Offset Appeals

An individual may file an appeal when an offset occurs. In event that the individual wishes to file an appeal, the following information is required to be provided to HESAA's Recovery Support Section:

1. Letter from the individual explaining the basis for the release/refund.
2. Supporting documentation(e.g. shut-off notice, foreclosure documentation, eviction notice, medical bills, tax returns, if available) for determining the basis for the release/refund.
3. Financial statement.

A filed tax return attributed to the offset is required in injured spouse claims.

HESAA will then make a determination whether or not the funds should be returned to the individual. HESAA will notify the law firm of the outcome of the appeal.

Paid-in-Full Receivables

Upon receipt of an individual's final payment, the law firm shall reconcile the individual's payment history to HESAA's system records to verify that all payments/adjustments have been properly applied. The law firm shall request a copy of HESAA's payment history records to insure all payments have been credited to the account. The law firm shall inform HESAA, in writing, on firm letterhead, that the receivable(s) is paid-in-full

within 20 business days from the date of receipt of the final payment. If there is more than one receivable for an individual that is being paid-in-full, the letter must list each receivable and the associated payoff amount for each receivable.

If a judgment is being paid-in-full, the letter must list the receivables that are a part of the judgment. A Warrant of Satisfaction is to be filed within 30 calendar days from the date of the final payment.

When a refund occurs as a result of the processing of a transaction upon which a contingency fee was paid, the law firm shall refund to HESAA the contingency fee that was paid on that portion of the transaction being refunded. The law firm shall update its system to reflect that the refund was processed and returned to the individual (See Refunds).

When an offset is received on a recently paid-in-full account, the law firm must immediately notify HESAA to refund the amount of the offset. The notification will include customer's name, date of offset and amount of offset.

Privacy of Individual's Information

Pursuant to State and Federal law, an individual's social security number or any other personal identifying information shall not be displayed in any emails, unless the email is encrypted; nor shall it be used in any electronic files unless the file is encrypted or is sent via a secure connection to HESAA's system.

Only the last three digits of an individual's social security number are permitted to be displayed on correspondence to the individual.

An individual's personal identifying information shall not be disclosed to third parties, unless required by law, a court order or authorized in writing by the individual.

Receivable Placements

HESAA assigns receivables to contracted law firms based upon the firm's overall performance factors and retainer agreement. Receivables are generally placed with a law firm via an encrypted electronic file containing the necessary information to begin litigation. On occasion it is necessary to refer matters in a non-electronic manner, e.g. fax, over-night courier, etc.

At the time of placement (regardless of the method), HESAA shall provide the law firm with a copy of the individual's receivable summary. This information provides the current outstanding receivable balance and the underlying components, e.g. unpaid principal, unpaid interest, etc. The law firm is also provided with demographic information related to the individual. Included in the referral packet are the individual's payment history to-date, a copy of the application and promissory note(s), the names of any other parties to the debt and any other pertinent information. Unless directed otherwise, recovery of the

debt will be sought from all parties contractually obligated to the debt, unless prohibited by law to recover monies from a party.

Upon receiving new placements, the law firm shall load the receivables onto the law firm's system within five business days, or the number of business days specified in the law firm's retainer agreement. Interest shall accrue, if permitted, from the date provided by HESAA. The date of assignment is obtained from the assignment cover letter. The assignment communication will also provide any unique handling instructions.

At the time HESAA refers the receivable to the firm, the law firm's system becomes the system of record for the receivable and the law firm shall provide an acknowledgement letter, email or report to HESAA confirming the amount of the balance, the interest rate and the date that the receivable and balance were loaded onto the law firm's system within three business days of loading the receivable. The acknowledgement notification must include the law firm's reference number.

In the event that more than one receivable is submitted for an individual, in accordance with court rules, the receivables should be combined into a single file. The law firm's records must indicate which receivables comprise the file. The law firm shall notify HESAA of the file number used and the associated receivables that make up the consolidated file.

Within thirty calendar days of placement of a debt with the law firm, the law firm shall review the placement and send a written notification to the individual(s) of the placement. The notification shall contain at a minimum the following information:

1. The amount of the debt.
2. That the debt was placed by New Jersey Higher Education Student Assistance Authority (HESAA) with the law firm.
3. The type of debt that has been placed, e.g. student loan.

This notification does not replace the notification that is required under the Fair Debt Collections Act. The notification shall comply with all other requirements for communicating with an individual under the Fair Debt Collections Act. This notification may be combined with the notification that is required under the Fair Debt Collections Act, if it is done within thirty calendar days of placement.

If the receivable is placed by the law firm with an associate law firm during the first thirty calendar days an additional thirty calendar days is permitted before the notification is sent to the individual(s). The notification requirement is not waived if a law firm is unable to place the receivable with an associate law firm within thirty calendar days of placement.

If the law firm has questions and/or concerns regarding the placement, they need to be forwarded to HESAA's Recovery Support Section.

Receivable Transfers

If HESAA recalls or reassigns the receivable, the receivable shall be closed by the law firm and returned to HESAA. The law firm shall not be entitled to any future fees on monies received from the individual. The law firm shall obtain a copy of the payment history from HESAA and reconcile the individual's payment history to HESAA's system records to verify that all payments/adjustments have been properly posted prior to transferring the file. At the time the matter is closed, the following information shall be forwarded to HESAA:

- A copy of all pleadings;
- A copy of the judgment;
- A copy of the Statement of Docketing (if applicable);
- Collection history;
- Payment history showing the application of payments between interest, judgment and costs;
- Substitution of attorney, if applicable
- Exemplified judgment (if this is an out-of-state transfer)
- Documents provided at time of assignment
- The receivable balance (with a breakdown of the various components including principle, interest and costs) at the time of return;
- Any correspondence; and
- The individual's demographic information

In the event that a receivable is closed due to discharge of the debt based on total and permanent disability, bankruptcy or death, the file is to be returned to HESAA with the documents listed above.

Reconciliation of Law Firm Portfolios

On a periodic basis, HESAA performs a reconciliation of each law firm's portfolio by comparing open receivables from HESAA's system to each law firm's electronic status report.

Unmatched matters are identified as either:

1. Matters on HESAA's system, but not reported by the law firm; or
2. Matters on the law firm's report, but not on HESAA's system

HESAA confirms the discrepancy then contacts the law firm to resolve the disparities. Within fifteen business days of being provided a report, the law firm shall provide a response to HESAA either justifying the discrepancies, explaining how the firm will correct the discrepancies, or advising that the discrepancies have been corrected.

Records Retention

Unless State or Federal law requires more stringent retention periods, law firms shall retain and maintain current, complete, and accurate records of each loan referred by HESAA for a period of not less than three years following the date the loan is repaid in full by the individual, or for not less than five years following the date of receipt of payment in full from any other source. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every ten business days. The following items must be maintained in the file:

- Notices of changes in an individual's address;
- A payment history showing the date and amount of each payment received from or on behalf of a individual, and the amount of each payment that was attributed to principal, accrued interest, and collection charges;
- A collection history showing the date and subject of each communication with the individual relating to collection on a defaulted loan, and each effort to locate a individual whose address was unknown at any time, and each communication with HESAA;
- Documentation regarding any wage garnishment actions initiated on the receivable;
- Documentation of any matters relating to the collection of the loan by tax-refund offset; and
- Documentation relating to the litigation of the receivable, e.g. pleadings, etc.

Original promissory notes should not be destroyed and are to be returned to HESAA. If the borrower requests the original promissory note at the point of satisfaction then the original shall be sent to the borrower with a copy sent to HESAA.

Refunds

Prior to requesting a refund for an individual, the law firm shall first reconcile the individual's payment history to HESAA's system records to verify that all payments/adjustments have been properly applied. The law firm shall request a copy of HESAA's payment history records to insure all payments have been credited to the account. The law firm shall inform HESAA, in writing, on firm letterhead, of the amount due to the individual within 20 business days of the transaction causing the overpayment/refund. When the refund occurs as a result of the processing of a transaction upon which a contingency fee was paid, the law firm shall refund to HESAA the contingency fee that was paid on that portion of the transaction being refunded. The law firm shall update its system to reflect that the refund was processed and returned to the individual.

Remittance Forwarding and Reporting

The law firm shall provide a single remittance report, Weekly Activity Report and Contingency Fee Invoice, by product in the format prescribed by HESAA (Appendix A), which reflects the transactions posted to an individual's receivable. The report shall cover the time period from the last report to the last business day prior to transmission of the current report. The report shall also contain contingency fee information relating to the transactions on the report and will serve as a weekly invoice for contingency fees.

The remittance report shall provide the detail to support the electronic payment file. The report is submitted at a receivable level and on a gross dollar basis. In the event that a matter is consolidated due to a judgment, the information still needs to be submitted at a receivable level. If a law firm handles more than one product on behalf of HESAA, then a separate Weekly Activity Report and Contingency Fee Invoice shall be sent for each product.

The Weekly Activity Report and Contingency Fee Invoice shall include payments contained in the payment file for the same time period. The corresponding remittance report is used to verify the payment file.

When reporting dishonored payments to HESAA, the original payment date must be provided on the Weekly Activity Report and Contingency Fee Invoice, and used as the reversal date of record on the attorney's accounting system, regardless of the date on which the payment is actually being reversed.

A copy of the Weekly Activity Report and Contingency Fee Invoice is sent to both the Finance and Servicing and Collections units.

HESAA presently accepts remittances from special counsel law firms by four different methods, check delivered by courier, wire transfer and ACH.

Regardless of the payment method chosen by the law firm, all funds being remitted to HESAA from collections on defaulted NJCLASS accounts must be received by HESAA promptly after the week during which the payments were posted to the "Weekly Activity Report and Contingency Fee Invoice." The following rules apply to specific payment methods:

- If paying HESAA by check, you must remit all NJCLASS student loan monies contained on the Weekly Activity Report and Contingency Fee Invoice in a single check payable to "HESAA-NJCLASS," addressed to the attention of the HESAA Finance/Accounting Unit, so that the payment reaches HESAA no later than the first business day following the date of the Weekly Activity Report and Contingency Fee Invoice. Due to this requirement, check payments should not be sent to HESAA by regular mail. In order to ensure compliance with the required deposit timing, the firm may employ a courier at its own expense to

deliver the check to HESAA's offices.

- The firm may make arrangements to deposit the weekly check in the Authority's NJCLASS account at a branch location convenient to its offices, after obtaining account information from the HESAA Finance Unit.
- If paying HESAA by wire transfer, you must wire the reported collections to the HESAA designated NJCLASS account so as to ensure the funds are received by HESAA no later than the first business day of the week following the date of the Weekly Activity Report and Contingency Fee Invoice.
- If paying HESAA by ACH, you must schedule the transfer of the reported collections to the HESAA designated NJCLASS account sufficiently in advance to ensure the funds are received by HESAA no later than the second business day following the date of the Weekly Activity Report and Contingency Fee Invoice.

Requests for Information

When HESAA requests information about a receivable that has been referred to a law firm for collection, the law firm shall provide the information requested within one business day, unless otherwise specified. The law firm must notify HESAA if it cannot supply the requested information within the requested time. The law firm must provide the reason for the delay and the expected date the information will be provided. The information from the law firm should include a summary to date of the handling of the matter, current outstanding balance and information about how payments were applied to principal/judgment, interest, costs.

Retaining Other Attorneys

The firms retained by HESAA are to be the sole point of contact with regard to the matters herein. In the event that a firm is authorized by HESAA to utilize other attorneys to perform the services outlined in the retainer agreement, the firm is responsible for assuring the other attorneys are in compliance with all State and Federal laws and regulations, the terms and conditions of the retainer agreement, this Manual, and the Guidelines for Law Firms.

A law firm has ninety calendar days in which to retain an associate law firm to collect on a receivable placed by HESAA, when an associate law firm is needed. During this time the status report will reflect that firm is retaining associate counsel.

HESAA maintains a listing of individuals/firms that are not permitted to be used to

represent HESAA. This list should be consulted prior to referring a matter to an associate law firm.

Return of Portfolio

If a law firm is returning its portfolio to HESAA, the law firm shall meet with HESAA to develop a schedule for the return of the files being handled by the law firm. The schedule, once developed, will be distributed to all parties involved in the return of the portfolio to HESAA. HESAA will assign a staff member(s) to monitor the return of the portfolio. The documentation required for each individual file being returned is listed in the Receivable Transfer Section of this manual.

Returned Items

If a financial instrument deposited to HESAA's trust account is not honored by the financial institution that it is drawn upon, it is the policy of HESAA's bank to automatically redeposit it a second time. If it is not honored on redeposit, HESAA's Finance Unit will notify the law firm of the dishonored item and will reverse the associated financial transaction on HESAA's system. The law firm shall do likewise and reverse the transaction, including the contingency fee, on its system. The law firm must notify individuals of the dishonored item.

Reviews by HESAA Staff

Pursuant to State and Federal law, HESAA is responsible for its agent's compliance with Federal and State regulatory and statutory requirements. Accordingly, HESAA will conduct reviews of HESAA-referred collection matters and bankruptcy matters. The law firm will receive prior written notice of the review and will be expected to provide HESAA staff with access to the requested files and records.

HESAA will issue a written review report to the law firm upon completion of the review. If HESAA identifies any findings, the law firm will have an opportunity to respond to the findings. The law firm's response to the draft report will be included in the final report issued by HESAA.

HESAA's Recovery Support Section will periodically sample a small number of receivables referred to the law firm to verify interest accruals, payment posting, balance amortization and due diligence, and/or verification of compliance with a limited number of collection servicing requirements. The law firm shall cooperate with HESAA staff in providing copies of all records pertaining to receivables selected for review. HESAA will inform the law firm of the results of the review and any corrective action necessary.

Each law firm is responsible for remaining up to date on State and Federal statutes and regulations.

Status Reporting

The law firm shall send HESAA a monthly electronic status report for each product type, in the format prescribed by HESAA, indicating each receivable's status as of the end of the month. HESAA uses two different status report formats, one for non-judgment placements and one where a judgment has been obtained.

The status report is due by the 5th of each month. The status report shall list the status of all the receivables being handled by the law firm on HESAA's behalf. The report shall include: individual's SSN, HESAA file number, law firm's file number, the status of the receivable, the status date, judgment information (if applicable), name of associate attorney (if applicable) and current financial balances.

HESAA requires that associate law firms submit a status report on a monthly basis to the law firm. The firm does not need to forward the report to HESAA. However, the law firm is required to update their system with the information from the associate firm's status report. The status report from the associate law firm must be available for HESAA's review.

After obtaining judgment on a receivable, the law firm must remove the receivable from the Non-Judgment Status report and report the judgment on the Judgment Status report within 30 days.

Once a receivable has reached a final status, e.g. paid-in-full, discharged, etc., the receivable will be removed from the status report once HESAA has been notified and Warrant of Satisfaction filed, if applicable.

Termination

Should a retainer agreement be terminated by either party, a fee is only payable to a law firm upon collection and deposit of outstanding monies earned prior to the termination of the agreement.

No attorney's lien shall attach to a file exceeding the corresponding contingency fee otherwise earned as provided for in the retainer agreement. Law firms shall return all HESAA referred files to HESAA upon termination of the retainer agreement. The documentation required for each individual file being returned is listed in the Receivable Transfer Section of this manual.

In the event that a law firm was/is non-compliant with applicable Federal or State regulations/guidelines with respect to specific receivables, and such non-compliance is not timely cured, resulting in the return of those specific receivables to HESAA, then the law firm shall not assert any attorney's lien for fees on those returned receivables.

Third Party Vendors

The law firm is responsible for the activities performed or not performed by the third party vendors that the law firm utilizes. HESAA is required by regulatory agencies, including the Consumer Financial Protection Board, to monitor third party vendors utilized by a law firm. HESAA will periodically request a list of vendors utilized by the law firm for matters placed by HESAA. The list shall contain the name of the entity, the address of the entity, a telephone number for the entity, a point of contact for the entity and a description of the service being provided. HESAA reserves the right to contact any entity listed to discuss how it handles work placed by the law firm related to matters placed by HESAA.

Law firms are required to provide HESAA with a listing of the vendors used by the firm within 45 calendar days of signing of the retainer agreement.

APPENDIX

NJClass Loan Discharge Application: Total and Permanent Disability

Business Continuity Template

Financial Statement – Form FINAN

HESAA's Annual Compromise Report

Weekly Activity Report and Contingency Fee Invoice Form

