

the Higher Education Act of 1965, as amended, and its implementing regulations and rules. Key guarantor functions shall include, but not be limited to, the functions set forth in (b) below.

(b) Key guarantor functions are:

1. Financial aid awareness and related outreach activities: The Authority provides a toll-free number and web site with information on colleges, careers and financing of higher education. The Authority makes presentations about financial aid opportunities and financial literacy at middle schools, high schools and other sites, holds training workshops for high school guidance counselors and campus administrators, publishes materials on all of the above topics and provides assistance in completing financial aid forms;

2. Access to loans: The Authority furthers access to Federal loans by providing lenders with a guarantee against default, since students generally have no credit history or collateral and pose a risk to lenders absent such guarantee;

3. Application processing: The Authority validates application information on FFELP promissory notes submitted for guarantee by using information such as the Authority database of information provided by borrowers, schools, and lenders;

4. Loan status management: The Authority assists borrowers, schools, and lenders by providing information on loan accounts and borrower status;

5. Counseling borrowers about their loan obligations: The Authority provides information to borrowers directly and to borrowers through their schools on the loan process, such as loan availability, debt loads, and repayment options;

6. Default prevention: The Authority works with lenders, schools, and students to prevent defaults. The Authority provides default aversion assistance to lenders to help prevent delinquent borrowers from defaulting on their loans;

7. Payment of lender claims for insurance: When a loan goes into default, and a lender submits a claim for purchase by the Authority, the Authority reviews the claim for legitimacy, and verifies that the lender has complied with Federal and Authority requirements for preventing the default;

8. Collection on defaulted loans: If the Authority finds that lender default prevention or "due diligence" requirements are met and the Authority buys the loan from the lender, the Authority pursues a variety of efforts to collect on the debt, such as wage garnishment, offset of State and Federal income tax refunds, property tax rebates or other governmental payments, suspension of occupational and professional license and State lottery prize offset. This collection process is carried out in a manner designed to

provide the borrower with reasonable and affordable repayment options based on the borrower's income and ability to pay;

9. School and lender training and oversight: The Authority reviews, interprets, and disseminates information to schools and lenders about the requirements of the FFELP regulations and Federal subregulatory guidance (for example, Dear Colleague Letters from the United States Department of Education);

10. Maintaining and reporting of FFEL Program records: The Authority contributes to initiatives to protect the fiscal interest of the United States Department of Education and United States taxpayers by maintaining accurate records of the Authority's FFEL Program participants and reporting FFEL Program data to national databases, such as NSLDS; and

11. Other student financial aid related activities for the benefit of students, as selected by the Authority.

Amended by R.2000 d.92, effective March 6, 2000.

See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

Rewrote (b).

Amended by R.2003 d.465, effective December 1, 2003.

See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

In (b), rewrote 3, deleted "(collection assistance)" following "aversion assistance" in 6 and rewrote the first sentence in 8.

Amended by R.2009 d.180, effective June 1, 2009.

See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

In (b)1, inserted "and financial literacy", "middle schools," "training", "and campus administrators" and "and provides assistance in completing financial aid forms", and deleted "and" following "administrators,"; and in (b)2, inserted "Federal".

#### Case Notes

Wage garnishment granted on defaulted student loans in the amount of 7% of disposable wages, rather than the 15% requested by the agency; financial hardship warranted a lesser percentage (petitioner did not appear). *NJHESAA v. Viola*, OAL Dkt. No. HEA 791-08, 2008 N.J. AGEN LEXIS 384, Final Decision (June 20, 2008).

Judgment of absolute divorce obtained in North Carolina, which provided that student loan debtor and his former wife would each owe one half of the student loan indebtedness, was not binding on HESAA; because HESAA was not party to the proceeding in North Carolina, and had no notice of that pending court action, it could not now be bound by the judgment. To hold otherwise would be to allow the debtor to alter the terms of the promissory note without the agreement of the other party. *Dotson v. NJHESAA*, OAL Dkt. No. HEA 6559-07, 2007 N.J. AGEN LEXIS 783, Final Decision (December 5, 2007).

Although student loan debtor's financial resources appeared limited, his present wife's income had to be considered at least for purposes of whether a financial hardship existed sufficient to avoid wage garnishment; while significant adjustments had to be made, such a necessity does not equate with a financial hardship. *Dotson v. NJHESAA*, OAL Dkt. No. HEA 6559-07, 2007 N.J. AGEN LEXIS 783, Final Decision (December 5, 2007).

Student loan debtor failed to establish a valid defense to wage garnishment where she claimed that she had not been in the United States when the two loan application promissory notes were signed and that her ex-husband forged her signature on the notes. ALJ found that debtor had submitted no credible proof that the applications/promissory notes were executed by anyone other than debtor or someone on her behalf; and, if a third party, her ex-husband, did execute one or both of the notes, debtor submitted no credible proof that he did it without her authorization or

that she had not benefited from it in any way. *NJHESAA v. Gordon*, OAL Dkt. No. HEA 09102-07, 2007 N.J. AGEN LEXIS 750, Final Decision (November 30, 2007).

Student loan debtor demonstrated that garnishment of 15% of her wages would result in extreme financial hardship within the meaning of the federal regulations, where it appeared that debtor's monthly expenses would slightly exceed total income by about \$78, and the full 15% garnishment had a financial impact on a single mother of four working full time for a modest income; therefore, reduction to 10% ordered, despite the debtor's significant indebtedness to HESAA, as some adjustment to the garnishment order would ease the hardship yet continue the debt reduction. *NJHESAA v. Bieniasz*, OAL Dkt. No. HEA 01309-07, 2007 N.J. AGEN LEXIS 208, Final Decision (April 17, 2007).

Student loan debtor failed to meet burden of proof that wage garnishment would result in extreme financial hardship, within the meaning of the federal regulations, where debtor's net annual pay totaled \$27,806.74, debtor would have about \$4,350 for unenumerated expenses, and garnishment would approximate \$2,400 per year; although cable television and cell phones are common, they are not basic necessities of life. *NJHESAA v. Briggs*, OAL Dkt. No. HEA 01159-06, 2006 N.J. AGEN LEXIS 1045, Final Decision (December 7, 2006).

Student loan debtor failed to establish a valid defense to wage garnishment on the basis that the loan was discharged in bankruptcy; although the United States Bankruptcy Court for the District of New Jersey issued a Notice of Judgment that debtor's debts were being discharged in bankruptcy, debtor did not submit schedules to the Office of Administrative Law showing that the discharge order included the subject student loans which were presumptively not dischargeable. *NJHESAA v. McCollough*, OAL Dkt. No. HEA 05219-06, 2006 N.J. AGEN LEXIS 494, Final Decision (July 24, 2006).

Office of Administrative Law had no authority to order repayment of a student loan through garnishment or otherwise when respondent's student loans had been discharged in bankruptcy. *NJHESAA v. Wexler*, OAL DKT. NO. HEA 3005-06, 2006 N.J. AGEN LEXIS 449, Final Decision (June 5, 2006).

Although it was recognized that student loan debtor erroneously believed the Veterans Administration paid the note on his behalf, he did not demonstrate extreme financial hardship sufficient to avoid wage garnishment of 10% of his disposable income; there was no evidence that debtor submitted either a federal or state income tax return for the past several years, nor did he submit any written documentation to support his claims of unemployment generally or as the result of accidents. *NJHESAA v. Morong*, OAL DKT. NO. HEA 257-06, 2006 N.J. AGEN LEXIS 301, Final Decision (April 17, 2006).

When viewed in light of the student loan debtor's income and expenses, 10% wage garnishment amount appeared excessive; in an effort to assist debtor in meeting all obligations, garnishment was reduced to 7.5%, but not 5% as requested by debtor. *NJHESAA v. Chiles*, OAL Dkt. No. HEA 8835-05, 2006 N.J. AGEN LEXIS 81, Final Decision (February 14, 2006).

#### 9A:10-1.5 Authority as lender and secondary market

(a) The Authority, which qualifies as an eligible lender under the Higher Education Act of 1965, as amended, may serve as the State-designated lender of Federally guaranteed student and parent educational loans.

(b) The Authority, which is permitted to buy and sell notes evidencing loans as well as buy and sell participations in approved notes made under N.J.S.A. 18A:71A-1 et seq., may serve as the State-designated secondary market for Federally guaranteed student and parent educational loans and any other loans made under N.J.S.A. 18A:71A-1 et seq.

Amended by R.2000 d.92, effective March 6, 2000.

See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

In (b), changed N.J.S.A. references.

#### 9A:10-1.6 Types of FFELP loans

(a) A subsidized Federal Stafford loan is available to an eligible student attending a participating postsecondary school. A student who demonstrates financial need is eligible to have the Federal government pay the interest on the loan to the lender until repayment of the loan begins and during any deferment periods. The student is allowed a grace period (usually six months) after leaving school or dropping below half-time attendance before repayment begins. Repayment of the loan is scheduled over a maximum 10-year period according to the payment plan chosen by the borrower, except that borrowers may qualify for an alternate repayment plan with an extended repayment period pursuant to 34 CFR 682.209.

(b) An unsubsidized Federal Stafford loan is available to an eligible student attending a participating postsecondary school. A student who does not demonstrate sufficient financial need, or who requires additional funds above the Federal subsidized loan limits, is typically eligible for an unsubsidized Stafford loan. The Federal government does not pay the interest on an unsubsidized Stafford loan. An unsubsidized Stafford loan borrower is responsible for paying to the lender all interest that accrues on the loan from the time the loan is disbursed until it is paid in full.

(c) A Federal PLUS loan is available to an eligible parent (as defined in 34 CFR 682.201(b)(2)) of a dependent undergraduate student or a graduate or professional student attending a participating postsecondary school. A PLUS loan borrower must not have adverse credit or otherwise must obtain an endorser on the loan. The parent is responsible for paying to the lender the interest that accrues on the loan from the time the loan is disbursed until it is paid in full. Repayment of the loan is scheduled over a maximum 10-year period according to the payment plan chosen by the borrower, except that borrowers may qualify for an alternate repayment plan with an extended repayment period pursuant to 34 CFR 682.209.

(d) A Federal Consolidation loan is available to a borrower who wants to combine his or her outstanding education loans into a single loan with a single monthly payment. In most cases, the borrower is responsible for paying to the lender the interest that accrues on the loan until the loan is paid in full. Consolidation loans usually have a longer repayment period and a lower monthly payment than is available on the underlying education loans.

Amended by R.2000 d.92, effective March 6, 2000.

See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

In (a) and (c), rewrote the last sentences.

Amended by R.2003 d.465, effective December 1, 2003.

See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

In (c), substituted "(as defined in 34 C.F.R. 682.201(b)(2))" for "or legal guardian" following "eligible parent".

Amended by R.2009 d.180, effective June 1, 2009.

See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

In (a), deleted "qualifying under section 428(b)(9) of the Higher Education Act of 1965, as amended (20 U.S.C. § 1078(b)(9))," following "borrowers", substituted "qualify for an alternate" for "select a", substituted "an extended" for "up to a 25-year maximum", and inserted "pursuant to 34 CFR 682.209"; in (b), inserted ", or who requires additional funds above the Federal subsidized loan limits, ", substituted "The Federal government does not pay the interest on an" for "An", substituted ". An unsubsidized Stafford loan" for "borrower does not have any interest paid on his or her behalf by the Federal government; such a", and deleted the last sentence; in (c), inserted "or a graduate or professional student", deleted "qualifying under section 428(b)(9) of the Higher Education Act of 1965, as amended (20 U.S.C. § 1078(b)(9))," following "borrowers", substituted "qualify for an alternate" for "select a", substituted "an extended" for "up to a 25-year maximum", and inserted "pursuant to 34 CFR 682.209".

#### 9A:10-1.7 Lender participation and lender of last resort

(a) To participate in any of the loan programs for which the Authority serves as guarantor, a lender is required to submit evidence acceptable to the Authority that it is an eligible lender under the Higher Education Act of 1965, as amended. If the Authority is satisfied that a lender meets the requirements for eligibility and participation under the Higher Education Act of 1965, as amended, the Authority may offer a participation agreement to that lender. A lender cannot participate in the Authority's programs without a participation agreement with the Authority. There are three principal types of Authority participation agreements: a participation agreement for lenders originating Stafford and PLUS loans, a participation agreement for lenders serving as secondary markets or holders of Stafford and PLUS loans, and a participation agreement for lenders originating Consolidation loans. The borrower eligibility criteria incorporated

in participation agreements for lenders originating Consolidation loans is set forth in N.J.A.C. 9A:10-1.16(c).

(b) The Authority shall ensure that it or a participating lender shall serve as lender of last resort in the State of New Jersey. The lender of last resort shall make a FFELP loan to an otherwise eligible borrower who has been unable to obtain a loan from an otherwise eligible lender and who satisfies both the Federal regulatory criteria for eligibility and any further eligibility criteria provided in the lender of last resort policies and procedures cited in 34 CFR 682.401(c).

Amended by R.2000 d.92, effective March 6, 2000.

See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

In (a), changed N.J.A.C. reference; and in (b), inserted a reference to unsubsidized Stafford loans in the second sentence, and deleted a former third sentence.

Amended by R.2009 d.180, effective June 1, 2009.

See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

In (b), substituted "FFELP" for "subsidized or unsubsidized Stafford" and "obtain" for "find a lender willing to make", and inserted "from an otherwise eligible lender".

#### 9A:10-1.8 School participation

(a) To participate in any Title IV, Higher Education Act program, a school must establish its eligibility under the Higher Education Act of 1965, as amended, by following the procedures specified by the United States Department of Education. Upon being approved to participate in Title IV programs by the United States Department of Education, a school becomes eligible to apply for participation in the FFELP with the guarantor, such as the Authority. For any school, the Authority must be satisfied that the school has the ability to properly administer the FFELP according to Federal regulations and this chapter before it will approve the school