

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

When a debtor failed to support her claims of involuntary unemployment and financial hardship, the N.J. Higher Education Student Assistance Authority was entitled to an order directing the debtor's employer to deduct from her wages an amount equal to fifteen percent of her disposable wages and to remit this amount until such time as the debtor's student loan was repaid. She failed to provide any documentation to verify her claim that she was involuntarily separated from employment and was not re-employed continuously for twelve months, and she did not show that paying the loan would cause an extreme financial hardship without documentation of her income and expenses such as rent receipts, pay stubs, or income tax returns. N.J. Higher Educ. Student Assistance Auth., 2013 N.J. AGEN LEXIS 61, Final Decision (March 28, 2013).

N.J. Higher Education Student Assistance Authority was not entitled to an order for a wage garnishment because the debtor proved her claim of extreme financial hardship. She demonstrated that the amount of the costs incurred for basic living expenses for herself and her husband exceeded the income available from any source to meet those expense. N.J. Higher Educ. Student Assistance Auth., 2013 N.J. AGEN LEXIS 63, Final Decision (March 21, 2013).

Although student loan debtor submitted a letter stating that he would pay the principal of the debt, but not the interest and that "by cashing this check you accept my plan for repayment with no interest or collection costs," the letter was not sufficient to show settlement was reached between the debtor and the New Jersey Higher Education Student Assistance Authority (NJHESAA) or that the debt was unenforceable. Because the debtor failed to demonstrate that the debt did not exist, the amount was incorrect, the loan was an unenforceable debt, or that the loan should have been discharged, the NJHESAA was entitled to an order requiring the debtor's employer to deduct from his wages an amount equal to 15% of his disposable wages and to remit the amount to

the NJHESAA until such time as the student loan was repaid. *NJHESAA v. Travezano*, OAL Dkt. No. HEA 08787-10, 2010 N.J. AGEN LEXIS 579, Final Decision (October 14, 2010).

Although student loan debtor indicated that when she borrowed the money, she had a criminal record that prevented her from meeting state requirements for performing the occupation for which she received training at the school and, therefore, the loan should be discharged, she failed to provide proof or documentation in support of her claim. As such, the New Jersey Higher Education Student Assistance Authority (NJHESAA) was entitled to an order requiring the debtor's employer to deduct from her wages an amount equal to 15% of her disposable wages and to remit the amount to the NJHESAA until such time as the student loan was repaid. *Clark v. NJHESAA*, OAL Dkt. No. HEA 3676-10, 2010 N.J. AGEN LEXIS 356, Final Decision (July 12, 2010).

Student loan debtor's claim that her loans should have been discharged because the school she was attending closed was properly denied because the school did not close, but simply changed its name and the debtor actually graduated from the program. *Green v. NJHESAA*, OAL Dkt. No. HEA 3266-10, 2010 N.J. AGEN LEXIS 192, Final Decision (April 30, 2010).

Although a student loan debtor asserted that garnishment of 15% of his disposable pay would have resulted in an extreme financial hardship, he failed to appear at the scheduled hearing and failed to provide any documentation in support of his claim. *NJHESAA v. Pollock*, OAL Dkt. No. HEA 10716-09, 2010 N.J. AGEN LEXIS 87, Final Decision (February 26, 2010).

Authority's request for wage garnishment was granted because, although the student loan debtor claimed that a garnishment of 15% of her disposable pay would have resulted in an extreme financial hardship, her gross monthly income was \$2,500.00 and her monthly expenses were approximately \$1,975.00, which included luxury items, such as cell phones and cable television. As such, \$100 a month toward payment of her student loan debt was not a financial hardship. *NJHESAA v. Westcott*, OAL Dkt. No. HEA 10722-09, 2010 N.J. AGEN LEXIS 10, Final Decision (January 7, 2010).

Although a student loan debtor claimed that a garnishment should not have been imposed and that the loan obligation should have been discharged because of a prior criminal record the debtor had at the time of the application for the student loan, which would have prevented her from meeting state requirements for performing the occupation for which she received training at the school, the debtor provided no proof or documentation and thus failed to meet her burden of proof. *NJHESAA v. Brown*, OAL Dkt. No. HEA 10519-09, 2009 N.J. AGEN LEXIS 1104, Final Decision (December 15, 2009).

Student loan debtor failed to provide income documentation, such as tax returns or pay stubs, to support her contention that a garnishment of her income would have resulted in extreme financial hardship. Additionally, although the debtor contended that she was entitled to a discharge of the loans because she did not have a high school diploma or a GED before entering cosmetology school, and that she had not been tested properly, a diploma or GED was not required upon enrollment in cosmetology school, but only upon applying for a license as a cosmetologist. *NJHESAA v. Ogorek*, OAL Dkt. No. HEA 10522-09, 2009 N.J. AGEN LEXIS 1105, Final Decision (December 15, 2009).

Student loan debtor failed to establish a valid defense to a 15 percent wage garnishment on the basis that the garnishment of his disposable pay would result in financial hardship where the debtor earned nearly \$40,000 a year and his monthly total reasonable expenses for respondent were \$2,477 per month, or \$29,724 per year; although the debtor identified several creditors, he failed to explain the nature of those debts. *NJHESAA v. Carbonell*, OAL Dkt. No. HEA 6253-09, 2009 N.J. AGEN LEXIS 694, Final Decision (September 24, 2009).

Student loan debtor was subject to wage garnishment where she made a mere assertion of being injured with no proof of injury and cited no law excusing her from repayment of the loan even if she was, in fact,

injured. *Muniz v. NJHESAA*, OAL Dkt. No. HEA 10358-08, 2009 N.J. AGEN LEXIS 137, Final Decision (March 4, 2009).

Student loan debtor did not submit any evidence to support his claims that the loan was invalid because he did not receive the quality of product promised by the school with respect to instruction, class size, and materials used, the terms of the loan in regard to interest and disbursements were not explained to him prior to his signing the note, and the note contributed to his continuing financial hardship. *Iannetta v. NJHESAA*, OAL Dkt. No. HEA 10357-08, 2009 N.J. AGEN LEXIS 94, Final Decision (February 18, 2009).

Student loan debtor was subject to garnishment of wages where she submitted only a Discharge of Debtor Order from the bankruptcy court and no other evidence was introduced by the debtor; attached to the order was advice that student loans were not dischargeable in bankruptcy. *Wilson v. NJHESAA*, OAL Dkt. No. HEA 10262-08, 2009 N.J. AGEN LEXIS 134, Final Decision (February 17, 2009).

Student loan debtor did not submit any evidence to support her claims that a 15% wage garnishment would result in severe financial hardship, or that the debt was discharged in bankruptcy, or that an unidentified person signed her name to the loan documents. *McKenzie v. NJHESAA*, OAL Dkt. No. HEA 10263-08, 2009 N.J. AGEN LEXIS 135, Final Decision (February 17, 2009).

Student loan debtor failed to establish a valid defense to wage garnishment on the basis that the garnishment of her disposable pay would result in financial hardship because, despite her claim of financial hardship in her appeal letter, the debtor provided no evidence whatsoever to support such claim by a preponderance of credible evidence, nor did she provide a basis for her failure to submit any evidence to support her claim. *NJHESAA v. Setteducato*, OAL Dkt. No. HEA 13803-08, 2009 N.J. AGEN LEXIS 42, Final Decision (January 29, 2009).

Student loan debtor failed to establish a valid defense to wage garnishment on the basis that she had been involuntarily separated from employment and had not been re-employed continuously for twelve months where the debtor failed to supply the requisite documentary evidence from the employer or the state unemployment agency. *NJHESAA v. Clark*, OAL Dkt. No. HEA 11381-08, 2008 N.J. AGEN LEXIS 1035, Final Decision (December 30, 2008).

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 Con-

solidation 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

ally, as" for "As", inserted "also" following "loan may", deleted "any or all of the following: loss of Federal and State income tax refunds, property tax rebates or other governmental payments and lottery prize winnings," following "result in", and deleted "assessment of collection charges including attorney fees, loss of professional license," following "legal action, "; in (b), deleted the first sentence, deleted "also" preceding "participates", and inserted the last sentence; and in (c)3, inserted "HESAA" preceding "Appeals Committee", deleted "in care of the" preceding "Director" and "of the HESAA," following "Loans", and substituted "549" for "540" and "NJ 08625-0549" for "New Jersey 08625-0540".

#### Case Notes

When a debtor failed to support her claims of involuntary unemployment and financial hardship, the N.J. Higher Education Student Assistance Authority was entitled to an order directing the debtor's employer to deduct from her wages an amount equal to fifteen percent of her disposable wages and to remit this amount until such time as the debtor's student loan was repaid. She failed to provide any documentation to verify her claim that she was involuntarily separated from employment and was not re-employed continuously for twelve months, and she did not show that paying the loan would cause an extreme financial hardship without documentation of her income and expenses such as rent receipts, pay stubs, or income tax returns. N.J. Higher Educ. Student Assistance Auth., 2013 N.J. AGEN LEXIS 61, Final Decision (March 28, 2013).

N.J. Higher Education Student Assistance Authority was not entitled to an order for a wage garnishment because the debtor proved her claim of extreme financial hardship. She demonstrated that the amount of the costs incurred for basic living expenses for herself and her husband exceeded the income available from any source to meet those expense. N.J. Higher Educ. Student Assistance Auth., 2013 N.J. AGEN LEXIS 63, Final Decision (March 21, 2013).

New Jersey Higher Education Student Assistance Authority, as the guarantor and purchaser of a student loan, was entitled to the garnishment of three percent of the student's wages under N.J.A.C. 9A:10-1.14. Although the Authority requested a garnishment of the statutory maximum of 15 percent pursuant to 20 U.S.C.S. § 1095a(a)(1), that amount would have made the student's total expenses exceed her disposable income. N.J. Higher Educ. Student Assistance Auth. v. Martin, OAL Dkt. NO. HEA 16705-12, 2013 N.J. AGEN LEXIS 4, Final Decision (January 25, 2013).

Because student loan debtor diligently made payments over a period of several years on her Federal Direct Loans or received approval for specified deferment periods, and was found to have had a genuine, albeit mistaken, belief that the two smaller loans in question were part of that Direct Loan debt, principles of fundamental fairness applied to require that debtor be given credit on the smaller loans for the interest-free deferment periods she requested and supported on the majority of her deferred student loans. *Brownfield v. NJHESAA*, OAL Dkt. No. HEA 07849-07, 2008 N.J. AGEN LEXIS 882, Final Decision (October 28, 2008).

Student loan debtor demonstrated that garnishment of 15% of her disposable wages would create an extreme financial hardship; debtor had given birth and gone on maternity leave with her third child during the pendency of the proceeding, thus significantly reducing her present income from the part-time income she had been receiving. *Brownfield v. NJHESAA*, OAL Dkt. No. HEA 07849-07, 2008 N.J. AGEN LEXIS 882, Final Decision (October 28, 2008).

Student loan debtor failed to show that a wage garnishment would cause an undue hardship where 15 percent of his disposable pay of \$1,934 was \$290 per month and, after deducting his itemized expenses as well as the additional national average from his disposable pay, there remained a balance of \$285 per month. *NJHESAA v. Archibald*, OAL Dkt. No. HEA 07749-08, 2008 N.J. AGEN LEXIS 808, Final Decision (September 11, 2008).

Student loan debtor was subject to a wage garnishment where he failed to provide any documentation to support his claim that the loan

was somehow unenforceable. *NJHESAA v. Ransome*, OAL Dkt. No. HEA 01528-08, 2008 N.J. AGEN LEXIS 1266, Final Decision (August 22, 2008).

Although student loan debtor asserted that the school he attended closed while he was attending classes there and that he had no means of transportation to its new location, debtor provided no evidence to support this contention; the mere assertion of such claims, without documentary evidence to support them, is insufficient to establish any defense to the claim, and wage garnishment was proper. *NJHESAA v. Evans*, OAL Dkt. No. HEA 09098-07, 2007 N.J. AGEN LEXIS 696, Final Decision (October 15, 2007).

Student loan debtor failed to support claim of financial hardship where debtor asserted that due to acute depression, debtor had a difficult time remaining employed for any substantial time and had been institutionalized on several occasions, but provided no evidence to support this contention; the mere assertion of such claims, without documentary evidence to support them, is insufficient to establish any defense. *NJHESAA v. Kuri*, OAL Dkt. No. HEA 04584-07, 2007 N.J. AGEN LEXIS 638, Final Decision (September 18, 2007).

Where petitioner New Jersey Higher Education Student Assistance Authority failed to submit any supporting documentation with respect to its collection costs, collections costs were not allowed. *NJHESAA v. Kuri*, OAL Dkt. No. HEA 04584-07, 2007 N.J. AGEN LEXIS 638, Final Decision (September 18, 2007).

Wage garnishment ordered, as student loan debtor's claim that the loan should be forgiven because of debtor's status as a teacher in an urban area had not been supported by any testimony or documentation and was contrary to the records of the Authority; while 20 U.S.C.A. 1087ee allows for certain cancellations of student loans, particularly for those in the teaching profession, borrowers with outstanding loan balances prior to October 1, 1998, are precluded from the teacher loan forgiveness program. *NJHESAA v. Thomas*, OAL Dkt. No. HEA 05165-07, 2007 N.J. AGEN LEXIS 590, Final Decision (July 30, 2007).

Master promissory note that student loan debtor signed provided no relief from repayment upon his termination of studies, and debtor provided no evidence to show he could not pay 10% of his disposable income; therefore, wage garnishment ordered. *Bevilacqua v. NJHESAA*, OAL Dkt. No. HEA 9735-06, 2006 N.J. AGEN LEXIS 1047, Final Decision (December 6, 2006).

Student loan debtor, opposing wage garnishment, failed to present sufficient evidence that school closed during his enrollment or within 90 days of his separation; although HESAA had obtained information from the lender specifically showing that the school closed on March 28, 1990, debtor did not provide documentation concerning his attendance at the school. *NJHESAA v. Berry*, OAL DKT. NO. HEA 6506-06, 2006 N.J. AGEN LEXIS 815, Final Decision (September 26, 2006).

Student loan debtor sought to avoid collection by contending that he did not have a high school diploma or GED at the time of enrollment in the school he attended when receiving the student loan and that the school did not properly test his ability to benefit from the program; however, the record indicated that debtor's original loan application, signed and dated February 13, 1991, contained information that debtor did graduate from high school in 1979. The real issue of concern is whether the applicant graduated from high school or obtained a GED at the time the applicant enrolled at the school; a diploma simply memorializes the graduation event for the graduate. *NJHESAA v. Jackson*, OAL Dkt. No. HEA 05221-06, 2006 N.J. AGEN LEXIS 451, Final Decision (June 29, 2006).

Where student loan debtor declared she could not complete the LPN course in which she was enrolled because the Board of Nursing closed the LPN program, and, as a result, she went through a very difficult time in her life meeting her financial obligations, debtor's request for discharge based on school closing was properly denied; for a closed school discharge, the student must have been attending the school on the date it closed or must have withdrawn from the school no more than 90 days prior to the closing date. The school that debtor attended had not ceased

operations, and all documentation in the file indicated that it remained open. *Aubin v. NJHESAA*, OAL Dkt. No. HEA 1025-06, 2006 N.J. AGEN LEXIS 445, Final Decision (June 19, 2006).

Based on the failure to provide documentation of monthly expenses and on the ambiguity in the identification of the writer of the statement, student loan debtor failed to successfully challenge wage garnishment. *Morrow v. NJHESAA*, OAL Dkt. No. HEA 1026-06, 2006 N.J. AGEN LEXIS 446, Final Decision (June 19, 2006).

Wage garnishment ordered, where student loan debtor unsuccessfully contended that his obligation to repay should be cancelled because the school that he was attending filed for bankruptcy and he never completed his studies; debtor had the opportunity to transfer his credits to a comparable school nearby but apparently chose to drop out of the program. *NJHESAA v. Romero*, OAL DKT. NO. HEA 1803-2005, 2006 N.J. AGEN LEXIS 346, Final Decision (May 8, 2006).

#### **9A:10-1.15 Beyond default: rehabilitation and reinstatement**

The Authority encourages borrowers who have defaulted on their FFELP loan obligations to enter into repayment arrangements that qualify them for reinstatement of the ability to receive benefits, including FFELP loans, under Title IV of the Higher Education Act, and that rehabilitate their loans, thereby bringing the loans out of default. The requirements for reinstatement are set forth in 34 CFR 682.401 and more fully explained in subregulatory Federal guidance and the Common Manual. The requirements for rehabilitation are set forth in 34 CFR 682.405 and more fully explained in the Common Manual.

Amended by R.2003 d.465, effective December 1, 2003.  
See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).  
Deleted references to Chapter 8 throughout.

#### **9A:10-1.16 Loan transfer, refinance, and consolidation**

(a) If a lender sells a loan guaranteed by the Authority to another lender, the buying lender shall notify the Authority of the change, pursuant to 34 CFR part 682. If a lender transfers the servicing on a loan from one entity to another, the lender shall report the change to the Authority, pursuant to 34 CFR part 682. If a lender is acquiring an entire portfolio of another lender due to a merger, acquisition, bank closing or similar situation, the lender must notify the Authority of the change. The requirements for loan transfer reporting are more fully explained in the Common Manual.

(b) As permitted under 34 CFR 682.209, a borrower may refinance a PLUS or SLS loan. The three options for refinancing a PLUS or SLS loan are refinancing to secure a combined payment, refinancing to secure a variable interest rate, and refinancing to discharge a previous loan. These three options are set forth under 34 CFR 682.209 and more fully explained in the Common Manual, Appendix B.

(c) The Authority participates in the Federal Consolidation Loan Program in accordance with section 428C of the Higher Education Act of 1965, as amended, and its implementing regulations. To participate in the Authority's consolidation program, an eligible lender must be approved by the Author-

ity to enter into a Consolidation Participation Agreement with the Authority, and sign this Agreement. To qualify for the Authority's Consolidation Loan Program, a borrower must satisfy the eligibility criteria set forth in section 428C and implementing regulations, as well as satisfy Authority criteria which include not incorporating a defaulted loan in a Consolidation loan, and evidencing a connection to New Jersey, unless otherwise permitted by the Authority. Evidencing a connection to New Jersey shall mean that either at least one underlying loan to be consolidated was guaranteed by the Authority or that the borrower is a New Jersey resident at the time of consolidation. The Consolidation Loan Program is more fully explained in the Common Manual.

Amended by R.2003 d.465, effective December 1, 2003.  
See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

In (a), rewrote the third sentence; deleted Chapter references throughout.

Amended by R.2009 d.180, effective June 1, 2009.  
See: 40 N.J.R. 6721(b), 41 N.J.R. 2261(a).

In (c), inserted "Federal".

#### **9A:10-1.17 School and lender training and other services**

As permitted under the Higher Education Act of 1965, as amended, the Authority may use funds in the Authority's operating fund for application processing, loan disbursement, enrollment and payment status management, default aversion activities, default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other student financial aid and related activities as selected by the Authority. The Authority's outreach or "client services" activities shall include, but not be limited to, training of program participants and secondary school personnel, dissemination of FFELP-related information and materials to schools, loan holders, prospective loan applicants, and their parents, and training at workshops, conferences or other forums. The Authority issues a newsletter on student financial assistance topics, and maintains an internet website.

Amended by R.2000 d.92, effective March 6, 2000.  
See: 31 N.J.R. 3900(a), 32 N.J.R. 805(a).

Rewrote the section.  
Amended by R.2003 d.465, effective December 1, 2003.  
See: 35 N.J.R. 2770(b), 35 N.J.R. 5415(b).

Rewrote the 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).

Deleted "periodic" preceding "newsletter".

#### **9A:10-1.18 Authority guaranty agency enforcement requirements: program reviews**

(a) The Authority is required by FFELP regulations, 34 CFR Part 682, to conduct comprehensive biennial program reviews of certain schools and lenders participating in the FFELP. The Authority may collaborate with other guarantors in performing lender reviews pursuant to the Common Review Initiative. Program reviews are conducted to assess the

administrative and financial capability of schools and lenders with applicable requirements of the FFELP. These requirements are those of the Higher Education Act of 1965, as amended, the Federal regulations (34 CFR Parts 600, 668, and 682), and Authority policies and procedures. The Authority may elect to review third-party servicers of schools and lenders. The Authority may also elect to review other agents, such as special counsel performing litigation on defaulted FFELP loans. If the Authority elects to review third-party servicers, it shall follow the program review process for servicers outlined in the Common Manual.

(b) The Authority shall perform a biennial program review of each school in any state in which the Authority is the primary guarantor that has had a cohort default rate exceeding 20 percent for either of the two most recent years for which rates have been calculated. A school shall be exempted from review if it meets the loan volume limit on the default reduction measures outlined in 34 CFR 682.410(c). The Authority may request that the United States Department of Education approve substitutions to its list of required school reviews. In addition to the Federal criteria used in selecting schools for review, the Authority may consider other factors, such as those listed in the Common Manual. These other factors are: loan volume trends, significant increases in cumulative or cohort default rates, evidence of regulatory violations, evidence of potential fraud or abuse in its FFELP participation, evidence that the school has been placed on the Pell reimbursement system for payment, complaints from lenders, borrowers, or students, evidence that the school has failed to adequately address deficiencies identified in prior program reviews, evidence that the school has failed to implement improvements to reverse negative financial trends, and weaknesses identified during the process by which schools first obtain FFELP eligibility.

(c) The Authority shall perform a biennial program review of each participating lender whose dollar volume of FFELP loans made or held by the lender and guaranteed by the Authority in the preceding year meet one or more of the volume criteria set forth in 34 CFR 682.410(c). The Authority may collaborate with other guarantors participating in the Common Review Initiative to conduct joint program compliance reviews of lenders. The Authority may request that the United States Department of Education approve substitutions to its list of required lender reviews. In addition to the Federal criteria used in selecting lenders for review, the Authority may consider other factors, such as those listed in the Common Manual. These other factors are: loan volume trends, significant increases in cumulative or cohort default rates, evidence of regulatory violations, evidence of potential fraud or abuse in its FFELP participation, and complaints from schools, students, or borrowers. The Authority may conduct compliance reviews in other areas of lender administration as long as, at a minimum, the scope includes NSLDS reconciliation.

(d) A program review begins when the school or lender is selected for review and ends when the Authority accepts a satisfactory response to the review findings from the school or lender and all close-out procedures are completed. The program review consists of four phases: the preliminary review, the on-site review, the issuance of a program review report, and the review close-out.

(e) Preparation for the review is as follows:

1. The Authority or CRI review team shall notify the school or lender to be reviewed, provide the date(s) of the on-site review, and request administrative and financial information related to the entity's eligibility and participation in the FFELP. Prior to the on-site review, the reviewer shall develop a profile of the school or lender from data maintained by the Authority or CRI participating guaranty agencies. For lenders, this data includes loan volume, student populations and sample, and lender search report. For schools, this data includes Stafford and PLUS loan volume for the period, training attendance record, and borrower complaints, if any. The reviewer may also require the school or lender to complete a questionnaire on internal control procedures and policies related to its administration of the FFELP.

2. The administrative and financial information normally required for the on-site visit includes, but is not limited to, the following for schools: school catalog, documentation from prior program reviews, independent audit results, student financial aid audit results, audited financial statements, program participation agreement, accreditation reports or certification, State licensing documentation, default management plan, if applicable, and individual borrower files. For lenders, this information includes, but is not limited to, FFELP lending policies, documentation from prior program reviews, independent audit results, information from the United States Department of Education Lender Reporting System (LaRS), documentation of loan transfers, and individual borrower files.

(f) The Authority or CRI review team shall provide the school or lender the opportunity to present questions or supply additional information. The school or lender being reviewed shall cooperate with the review team by making staff available to reviewers at entrance and exit interviews and by supplying additional material to reviewers if requested during the on-site visit.

(g) Program review follow up and other enforcement procedures are as follows:

1. The reviewer shall issue a program review report to the school or lender being reviewed.
2. The program review ends when all required actions are completed and all liabilities are paid by the school or lender being reviewed.

3. When the program review ends, the reviewer shall notify the school or lender in writing that the program review is closed. The reviewer shall also update the Post-secondary Education Participants System (PEPS) database. The reviewer shall at the same time notify the United

States Department of Education that the program review is closed.

4. If the Authority or CRI review team is unable to close a program review because the school or lender is