

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law - 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
By: Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section
(973) 877-1280

FILED

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Division of Consumer Affairs

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

IN THE MATTER OF AN INVESTIGATION
BY THE NEW JERSEY DIVISION OF
CONSUMER AFFAIRS

of

New Jersey Higher Education Student
Assistance Authority

Administrative Action

**ASSURANCE OF
VOLUNTARY COMPLIANCE**

WHEREAS this matter was opened by the Office of the Attorney General of the State of New Jersey ("OAG") by and through the Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq. and other applicable State and Federal laws and regulations have been committed by participants in the student loan industry within the State of New Jersey ("New Jersey" or "State");

WHEREAS the New Jersey Higher Education Student Assistance Authority ("HESAA") is a body corporate and politic established by the Higher Education Student Assistance Authority Law, N.J.S.A. 18A-71A-1 et seq., which is allocated in but not of the Department of State and which maintains offices located at 4 Quakerbridge Plaza, Trenton, New Jersey 08625;

WHEREAS HESAA's statutory duties include administering the Federal Family Education Loan Program ("FFELP") for New Jersey and acting as a state guaranty agency for that program pursuant to 20 U.S.C. § 1071 et seq.;

WHEREAS through the course of the OAG's investigation, HESAA informed the OAG that, beginning in 2001, HESAA entered into certain "Marketing and Service" agreements with Lending Institutions whereby these Lending Institutions agreed to pay HESAA a fee equaling a percentage of the value of student loan applications originating from certain Colleges participating in the agency's HESAA as FFELP Sponsor program;

WHEREAS in exchange for these payments, HESAA marketed Lending Institutions to Colleges participating in the HESAA as FFELP Sponsor program. HESAA made available to these Colleges as well as other Colleges in the State certain benefits including staffing assistance;

WHEREAS HESAA cancelled the Marketing and Service agreements in April 2007;

WHEREAS the Treasury of the State of New Jersey currently maintains an account on HESAA's behalf, which contains funds that were derived from the HESAA as FFELP Sponsor program;

WHEREAS the OAG, Division and HESAA (collectively referred to as "Parties") have reached an amicable agreement resolving the issues in controversy and concluding this matter without the need for further action;

WHEREAS the Parties agree that as part of this Assurance of Voluntary Compliance ("AVC") HESAA shall agree to effectuate further changes to its business practices beyond those already instituted, including the adoption of a Code of Conduct that will eliminate conflicts of interest and the appearance of impropriety that may arise from certain relationships with Lending Institutions and to preserve a Borrowers' right to chose a student loan lender of his or her choice;

WHEREAS the Parties also agree that as part of this settlement, HESAA shall agree to use the remaining revenue from the HESAA as FFELP Sponsor program only for the direct benefit of student loan borrowers;

WHEREAS HESAA having voluntarily cooperated with the OAG's investigation and consented to the entry of this AVC without having admitted any violation of law or finding of fact, and for good cause shown:

IT IS on this 6 day of FEBRUARY, 2008 AGREED as follows:

I. DEFINITIONS

- A. "Borrower" means a student attending a College in New Jersey, or a parent or guardian of the student, who obtains a Student Loan from a Lending Institution to pay for or finance higher education expenses.
- B. "College" means a public or private institution of collegiate or higher grade in New Jersey licensed by the Commission on Higher Education or otherwise authorized to grant academic degrees under N.J.S.A. 18A:68-6 and accredited by the Middle States Association of Colleges and Schools or a post-secondary vocational institution or vocational school in New Jersey which is licensed or approved by the appropriate agency or department and accredited or pre-accredited by a nationally recognized accrediting association.
- C. "Lending Institution" means any entity that directly or through an affiliate engages in the business of making or securitizing Student Loans.
- D. "Gift" means any money or thing of more than nominal value including, but not limited to: (1) payment, in advance, by reimbursement or as a discount for or provision of any money, service, good (including computer equipment and

printing services) entertainment, honoraria, lodging, meals, registration fees, travel, a discount or forbearance on a loan or debt, or any promise to provide any of the preceding. The terms shall not include HESAA's own brochures or promotional literature, training or informational material and services furnished to a College employee during a training session and meals and refreshments that are reasonable in cost provided in the course of such training, where such training contributes to the professional development of the College employee, or otherwise provided in accordance with the provisions of 34 C.F.R. 682.401(e).

- E.** "Preferred Lender List" means any list of Lending Institutions published in any medium or form that recommends or suggests Lending Institutions to Borrowers or Colleges.
- F.** "Revenue Sharing" means any arrangement whereby HESAA pays a College or receives payment from a Lending Institution based on or related to loan application volume or loan origination volume.
- G.** "Student Loan" means any loan that is made, insured, or guaranteed under "Part B of Title IV of the Federal "Higher Education Act of 1965, as amended" ("HEA") or any private loan issued by a Lending Institution or any loan issued pursuant to a New Jersey statutorily established loan program for the purposes of paying for or financing higher education expenses but not including credit cards or home equity loans.
- H.** "Marketing Agreement" means any arrangement in which a Lending Institution provides compensation to HESAA in consideration for the promotion of the

Lending Institution's products including, but not limited to, lobbying efforts on the part of HESAA.

II. CODE OF CONDUCT

A. Prohibition Against Certain Remuneration From Lenders

1. HESAA shall not solicit, accept or agree to accept anything of value from any Lending Institution in exchange for providing a Lending Institution with an advantage in competition or any concession that may prejudice Borrowers or potential Borrowers or other Lending Institutions.
2. HESAA shall not engage in Revenue Sharing with a Lending Institution.
3. These prohibitions shall not be construed to prohibit HESAA from soliciting, accepting or agreeing to accept favorable terms or conditions for Student Loans which directly benefit Borrowers.

B. Prohibition Against Certain Remuneration or Gifts to Colleges

1. HESAA shall not, directly or indirectly, offer or provide any Gift to a College or a College employee.
2. HESAA shall not engage in Revenue Sharing with a College.
3. HESAA shall not provide any College employee any remuneration for serving as a member of or participant on a HESAA advisory board or committee nor will it provide any payment for or reimbursement of expenses incurred by any College employee for so serving, other than those specifically permitted by N.J.S.A. 18A:71A-7(c) and 34 C.F.R. 682.401(e).

4. HESAA shall not solicit, accept or agree to accept any Gifts or services on behalf of a College from a Lending Institution.
5. These prohibitions shall not be construed to prohibit HESAA from accepting or agreeing to accept favorable terms or conditions for Student Loans which directly benefit Borrowers.

C. Employee Assistance

1. No HESAA employee, representative or agent shall provide staffing services to a College, except on an occasional, short-term exigent basis, and in such cases such HESAA employee, representative or agent must be fully and conspicuously identified as an employee of HESAA, and not as an employee, agent or representative of the College or as permitted by 34 C.F.R. 682.401(e)(1)(i)(F) and 34 C.F.R. 682.401(e)(2)(xi).
2. Any staffing assistance provided by HESAA pursuant to this section shall require the written approval of HESAA executive management. In such cases, such HESAA employee shall be prohibited from the following activities:
 - a. Performing need analysis;
 - b. Determining student eligibility;
 - c. Packaging financial aid;
 - d. Completing case verification;
 - e. Acting as the certifying agent for any State or Federal aid program;
 - f. Approving or transmitting award data between institutional offices;
 - g. Disbursing Federal and State aid;
 - h. Processing output documents for payment;
 - i. Participating in a College's selection of its Lending Institutions; and
 - j. Performing loan certifications for Federal, State or private loans.

3. Nothing in this section shall prohibit HESAA from providing training, oversight, default aversion services and outreach services to Colleges.

D. Prohibitions Against Disparate Treatment

HESAA may not provide anything of value to a College without compensation at market value, unless it makes available such goods or services to all Colleges in the State. This restriction does not apply when such goods or services are provided as part of HESAA's statutory and regulatory responsibilities under the HEA and associated regulations and State statutes.

E. Participating Lenders

1. HESAA acknowledges that its website, namely www.hesaa.org (the "HESAA Website"), currently includes a list of HESAA participating lenders with which HESAA currently maintains a guaranty agreement.
2. HESAA further acknowledges that the HESAA Website page that generally references the participating lenders includes the following:

DISCLAIMER:

Borrowers have the right and ability to select the loan provider of their choice. HESAA makes no statement or implication that you should choose one lender over another. HESAA does not warrant or endorse loan products offered by those lenders.

3. HESAA also acknowledges that the HESAA Website pages that specifically reference the participating lenders includes the disclaimer referenced in subpart (2) above as well as the following:

Important Notice

This list of HESAA participating lenders reflects those FFELP lenders with which HESAA currently has a guaranty agreement and is not a

preferred lender list. This list was not provided to HESAA by any school and it does not constitute any school's recommended lender list.

4. HESAA represents and warrants that it shall maintain on the HESAA Website the disclaimer and notice referenced in subparts (2) and (3) above, in identical or materially similar fashion.

F. Application of Other Law

1. Nothing in this Section shall in any manner alter or affect HESAA's statutory authority to administer the State loan program or originate or service FFELP loans.
2. Nothing in this Section shall in any manner prohibit College employees from participating on HESAA bodies as may be established by State law and which require pursuant to such law the participation of College employees including, but not limited to, the HESAA Board and the HESAA Student Advisory Committee and the New Jersey Advisory Committee on Student Aid ("NJACSA") as is currently allowable pursuant to 34 C.F.R. 682.200(b) and 682.401(e)(2)(vi).
3. Nothing in this Section shall supersede any applicable provision of the New Jersey Code of Ethics, N.J.S.A. 52:13D-23 et seq.

III. EXPENDITURE OF FFELP SPONSOR MONIES

- A. HESAA acknowledges and agrees that it currently maintains an account within the State of New Jersey Cash Management Fund which holds monies received by HESAA in connection with its HESAA as FFELP Sponsor program ("FFELP Sponsor Monies").

- B. Within ten (10) days of the effective date of this AVC, HESAA shall provide OAG with an accounting of the FFELP Sponsor Monies.
- C. HESAA shall only expend the FFELP Sponsor Monies, and any interest and income accrued thereon, in a manner which directly benefits Borrowers. By way of example, such appropriate expenditures may include student loan interest rate buydown, payment of default fees, scholarships, loan forgiveness programs and grants.
- D. HESAA shall make a good faith effort to expend the FFELP Sponsor Monies, and any interest and income accrued thereon, on behalf of Borrowers and consistent with this AVC on or before February 1, 2011.
- E. HESAA shall not expend FFELP Sponsor Monies, or any interest or income accrued thereon, to fund agency overhead, including employee salaries, rent, office equipment, vehicles, travel and entertainment expenses, or marketing expenses.
- F. Beginning on January 30, 2008, and continuing on a quarterly basis, HESAA shall submit a report as to all expenditures from its FFELP Sponsor Monies to the Division Director ("Director"). HESAA shall continue this reporting until such time as the FFELP Sponsor Monies, and all interest and income accrued thereon, are fully spent.

IV. "BEST PRACTICES" MANUAL

In addition to business practice changes already made, HESAA shall adopt a Best Practices Manual, which HESAA shall provide to the Director within thirty (30) days of the effective date of this AVC. Within sixty (60) days of the effective date of this AVC,

HESAA shall provide its employees with training as to the policies and procedures set forth in the Best Practices Manual.

V. CHIEF COMPLIANCE OFFICER

Within sixty (60) days of the effective date of this AVC, HESAA shall appoint a Chief Compliance Officer and charge him or her with the responsibility for ensuring compliance with all applicable State and Federal laws, regulations and guidelines as well as industry "best practices", ensuring standardized interpretation of such laws, regulations, guidelines and best practices, securing consistent interpretations of such laws, regulations, guidelines and best practices, and serving as the primary enforcement officer respecting compliance violations.

VI. REPORTING AND COMPLIANCE

A. Monitor

The OAG shall name a panel of three (3) persons independent of the Parties who will select and appoint a neutral agent referred to herein as the "Monitor". The Monitor will assess HESAA's compliance with this AVC. HESAA shall retain the Monitor and shall be responsible for compensating the Monitor for his or her reasonable time and expenses. The Monitor, however, shall be independent of HESAA. No attorney-client or agency relationship shall be formed between the Monitor and HESAA. HESAA shall retain the Monitor for a period of one (1) year.

B. Authority and Duties of the Monitor

1. The Monitor shall review HESAA's compliance with this AVC and report to the OAG as to HESAA's compliance on a semi-annual basis beginning

ninety (90) days after the effective date of this AVC. As part of his or her review, the Monitor shall confirm that HESAA has examined all relevant contracts with Lending Institutions and terminated or amended any such contract that is inconsistent with this AVC.

2. The Monitor shall have the authority to meet with any HESAA officer or employee that the Monitor reasonably believes necessary to assess compliance with this AVC including, but not limited to, meetings with the Chief Compliance Officer.
3. The Monitor shall have the authority to request and review all documents, books and records maintained by HESAA that the Monitor reasonably believes necessary to assess compliance with this AVC.
4. In furtherance of the Monitor's duties, HESAA shall provide access to all documents, books, records and personnel that the Monitor reasonably believes necessary to assess compliance with this AVC.
5. The Monitor shall issue to the OAG on a semi-annual basis, a concise report as to HESAA's compliance with this AVC, its implementation of the policies and procedures set forth in the Best Practices Manual and any failure or refusal of HESAA to cooperate with the review.

VII. DUTY TO COOPERATE

- A. HESAA shall continue to provide assistance and/or information as requested by the OAG in connection with the Student Loan industry. HESAA shall also continue to cooperate in any inquiry, investigation or hearing conducted by the

OAG or the Director in connection with the advertising, selling or making of Student Loans within the State.

- B. Failure by HESAA to comply with any of the requirements of this AVC shall constitute grounds for breach of this AVC and allow for the OAG to seek alternative remedies, including injunctive relief.

VIII. VIOLATIONS

Should the OAG determine that HESAA has knowingly and materially breached any provision of this AVC, the OAG shall provide written notice to HESAA of the alleged breach and provide HESAA with ten (10) days to respond to the OAG to demonstrate that no breach occurred, or that the breach was not material or knowingly committed or has been cured. The Parties understand and agree that if HESAA fails to respond within ten (10) days of its receipt of written notice of an alleged breach, the OAG may take appropriate action to enforce this AVC which may include filing an action in Superior Court for specific performance and/or injunctive relief.

IX. GENERAL PROVISIONS

- A. Nothing contained in this AVC shall be construed to limit or affect the rights of any persons or entities who are not parties to this AVC with respect to any of the matters contained herein.
- B. If any provision of this AVC or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this AVC or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected

thereby and each provision of this AVC shall be valid and enforced to the fullest extent permitted by law.

- C. Subject to HESAA's compliance with this AVC, this AVC will resolve any and all claims and causes of action that the OAG investigated against HESAA for violation of the CFA arising from the marketing of Student Loans within this State up to the effective date of this AVC.
- D. The Parties represent that an authorized representative of each has signed this AVC with full knowledge, understanding and acceptance of its terms and that this person has done so with the authority to legally bind the respective Parties.
- E. This AVC constitutes the entire agreement between the Parties hereto and shall bind the Parties hereto and their representatives, officers, directors, agents, employees, successors and assigns.
- F. All notices to the OAG required by this AVC shall be addressed to The Office of the Attorney General of the State of New Jersey; c/o Lorraine K. Rak, Deputy Attorney General, Chief, Consumer Fraud Prosecution Section, New Jersey Department of Law and Public Safety, Division of Law, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07101.
- G. All notices to the Director required by this AVC shall be addressed to Lawrence DeMarzo, Acting Director, New Jersey Division of Consumer Affairs, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.
- H. All notices to HESAA required by this AVC shall be addressed to Vincent P. Sarubbi, Esq., Archer and Greiner, One Centennial Square; Haddonfield, New Jersey 08033-0968.

- I. The Parties acknowledge that for purposes of enforcement of this AVC, New Jersey law shall govern the terms and provisions herein.
- J. HESAA acknowledges that this AVC is a public document subject to the New Jersey Open Public Records Act.

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS AVC ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Lawrence DeMarzo
Lawrence DeMarzo, Acting Director
Division of Consumer Affairs

Dated: 2-6-08

FOR THE DIVISION:

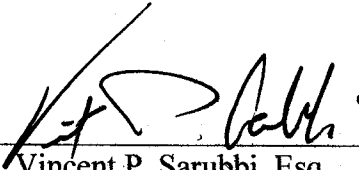
ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Lorraine K. Rak
Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 877-1280

Dated: February 6, 2008

FOR NEW JERSEY HIGHER EDUCATION
STUDENT ASSISTANCE AUTHORITY

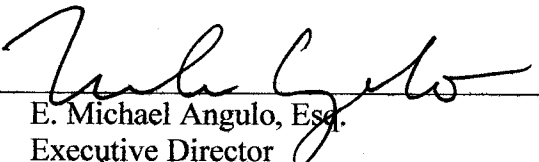
ARCHER & GREINER, P.C.

By: 

Vincent P. Sarubbi, Esq.
One Centennial Square
Haddonfield, New Jersey 08033-0968
(856) 795-2121

Dated: 2/5/08

NEW JERSEY HIGHER EDUCATION
STUDENT ASSISTANCE AUTHORITY

By: 

E. Michael Angulo, Esq.
Executive Director
4 Quakerbridge Plaza
Trenton, New Jersey 08619
(609) 588-7113

Dated: 2/5/08