

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” or “agency”) 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.

## **Confidentiality**

In the course of representing HESAA, outside attorneys frequently gain access to nonpublic and confidential information. HESAA requires outside counsel to maintain the confidentiality of such information both during and after the course of the firm’s representation of HESAA. Outside counsel must have in place appropriate procedures to ensure the protection of all such information. In the event the representation requires outside counsel to become privy to protected personally-identifiable information about any person, such as health or financial records, Social Security numbers or other such information, then this information must be handled with the utmost care both within facilities in outside counsel’s control, and when that information is being transported. Under no circumstances should such confidential information be transported outside of counsel’s offices--either physically or over the public internet-- unless the information is appropriately encrypted. In the event information is compromised or potentially compromised, outside counsel must notify HESAA immediately.

Outside counsel must follow all statutory, regulatory, and ethical provisions relating to privacy, confidentiality and nondisclosure of all privileged, proprietary and confidential information. Outside counsel must take appropriate measures to ensure that all legal and non-legal personnel are familiar with this requirement and are effectively supervised in this regard.

## **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 Customer Care Solutions 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 receivable 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.

\*\*In the event that a promissory note was not executed in the extension of credit, the law firm will contact HESAA for guidance.

## **Application of Payments**

Unless prohibited by State or Federal law, otherwise 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 were 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 are 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 be 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 the event that the funds are from an execution, they are to be applied to the loans included in the associated judgment.

Transactions that are classified as offsets (Set-off Individual Liability (SOIL) or Lottery), Agency, or other payoffs shall be posted using the effective date associated with the transaction on the report provided by HESAA. The report provided to HESAA 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 pursuant to the terms of the applicable settlement agreement.

## **Attorney Meeting**

In addition to Site Visits and Program Reviews, HESAA conducts periodic mandatory 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, as applicable:

- 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 as required under the bankruptcy code, 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. The firm shall suspend the file for the duration of the bankruptcy, unless otherwise directed by HESAA.

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 receivable 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/Security Plan**

A copy of the law firm's business continuity/disaster plan shall be submitted to HESAA 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. In the event that there are no changes to the plan for the year, the firm shall notify HESAA in writing that there are no changes.

A copy of the law firm's security policy(s) governing the information security program designed to protect any sensitive or confidential data shall be submitted to HESAA within 45 calendar days of signing a retainer agreement with HESAA, unless otherwise specified. The policy shall meet the requirements of NIST SP 800-53, NIST SP 800-161, and NIST SP 800-171 for data protection procedures.

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 HESAA 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 person, borrower, 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 any other guidelines or directives communicated by HESAA in writing to the law firm.

The law firm shall address and take corrective action for any finding of non-compliance 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 to 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 within 30 days of termination. The firm may not assert any attorney's lien for fees on those returned accounts.

## **Compromise/Write-offs**

All compromise and write/off instructions will be provided to selected firms under separate cover protected by attorney/client privilege. See also N.J.S.A. 18A:71C-31.8.

## **Credit Bureau Reporting**

On a monthly basis, the law firm will submit a file to HESAA, in a format prescribed by HESAA, to be used in reporting the receivable to credit reporting agencies.

## **Data Loss – Data Breach**

In the event that a law firm or 3<sup>rd</sup> party contractor engaged by the law firm experiences a loss of data or a breach of data involving matters placed by HESAA, the law firm shall notify HESAA 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 of a paper check or money order, law firms shall date stamp the front of the item and retain a copy 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 monthly basis, HESAA will provide the law firm with a Direct Payment report, identifying payments HESAA received directly from the individual during the preceding month. 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.

If the deceased individual was the student borrower or student beneficiary of the loan, the law firm shall close the file as the debt is forgiven under the provisions of N.J.A.C. 9A:10-6.17.

Any payments received after a discharge due to death should be refunded to the payee. If a contingency fee was paid to the firm on the payment, the refund of the payment and refund of the associated contingency fee should be reported on the remittance report.

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

If there is a judgment on the loan prior to discharge and HESAA advises that the debt is to be discharged, the judgment should be marked as satisfied with the court.

## **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.HESAA.org](http://www.HESAA.org)).

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. During the review process, HESAA may require the firm's assistance in contacting the individual for additional information. Upon completion of the review, HESAA will provide the law firm with instructions on whether or not the debt has been discharged or a party removed from the loan. 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 the disabled individual is the only obligor on the loan, the law firm shall close the file. If the disabled 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.

If the disabled individual was the student borrower or student beneficiary of the loan, the law firm shall close the file as the debt is forgiven under the provisions of N.J.A.C. 9A:10-6.17.

Any payments received after discharge due to a disability determination should be refunded to the payee. If a contingency fee was paid to the firm on the payment, the refund of the payment and refund of the associated contingency fee should be reported on the remittance report.

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

If there is a judgment on the loan prior to discharge and HESAA advises that the debt is to be discharged, the judgment should be marked as satisfied with the court.

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. In addition, the law firm may suspend collection efforts on an individual who is incarcerated, provided the collection history is documented with the source of information regarding incarceration.

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 must use Collection-Master as the accounting software for HESAA's files. 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. 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 (i.e., individual loan) 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 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.

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 within 48 hours.

## **Gratuities**

State officers and employees are prohibited from accepting any gift, favor, service or other thing of value related in any way to the State official's public duties. In addition, Executive Order No. 189 (Kean) prohibits a vendor to the State from offering a gift or other thing of value to a State officer or employee or special State officer in an agency with which the vendor transacts business or offers to transact business. This Executive Order also prohibits any State employee from soliciting a gift or thing of value from a State vendor. This includes charitable donations made in the name of a State employee.

## **HESAA System Access**

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

HESAA is in the process of migrating files to a new servicing platform. HESAA will notify the law firms if the migration alters firms' access to HESAA's platform..

## **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 365/366 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. However, it should be noted that for NJCLASS loans there is no State law allowing creditors to charge the higher of the judgment rate of interest or the note rate of interest once a judgment has been entered.

In those jurisdictions where the judgment rate of interest changes on an annual basis, the law firm must annually check the judgment interest rate and adjust their collection system records accordingly.

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, 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, as stated in the electronic assignment file.

Whenever the law firm processes an interest rate adjustment, the law firm shall send the individual a notification advising the individual of the interest rate change and their outstanding balance.

## **Law Firm Fees**

General - Upon receipt of proper documentation, HESAA 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 on a monthly basis via ACH.

Contingency Fees – The law firm shall list the applicable percentage contingency fees for each loan and the contingency amount 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. Law firms are only entitled to contingency fees of payments actually received, not future expected/anticipated/or not yet realized payments. 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 parties to the loan must be considered out-of-state, as defined by the retainer agreement, 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. HESAA will not reimburse any such fees. HESAA will reimburse the actual cost of any approved court filings in any jurisdiction where the State is not exempt from paying applicable filing fees.

## **Lawsuits**

In the event that an individual names the law firm in a lawsuit related to a receivable HESAA placed with the law firm, the firm shall notify HESAA of the suit within two (2) business days of knowledge, notice, and/or service. HESAA will decide whether or not the file should be returned to HESAA. If the file is not returned to HESAA, the law firm should investigate the claim and provide HESAA with a written report describing the factual basis of the issue and how the firm will respond within ten (10) business days. Thereafter, the firm shall keep HESAA updated and informed regularly regarding the lawsuit/claim; including but not limited to any subsequent internal changes or potential exposure.

## **Lawsuit Tracking**

In accordance with P.L. 2017, c. 129, HESAA is required to provide information to the Governor and Legislature on the volume of lawsuits filed for the NJCLASS Loan Program. As a result, the law firm shall report to HESAA on a quarterly basis the number of lawsuits filed during the preceding quarter (January-March, April-June, July-September, October-December) concerning receivables placed with the firm. The law firm will use HESAA's prescribed format for reporting lawsuit information and will at a minimum contain the following information:

1. Number of lawsuits filed in the year;
2. Of the suits filed in the year, the number of lawsuits filed that defaulted within the same year;
3. The number of Judgments obtained that year;
4. Of the Judgments obtained that year, the number for which the complaint was filed that same year;
5. The number of accounts closed within the year (death, disability, Bankruptcy, paid, satisfied, etc.);
6. Of the number of accounts closed within the year, the number for which the account also defaulted within the same year.

HESAA requires additional lawsuit tracking pursuant to N.J.S.A. 18A:71C-31.8. HESAA provides the firms separate guidance on this tracking in the form of written guidance letters that are protected under the attorney client privilege and may be changed or updated by HESAA and communicated to the firms in writing as needed.

## **Non-Compliance**

In the event that a firm is the subject of an inquiry or investigation by a Federal or State regulatory agency related to a receivable HESAA placed with the law firm, the firm shall notify HESAA of the inquiry or investigation within two (2) business days of knowledge, or notice. If HESAA independently 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 document, address, and rectify the situation. If necessary, HESAA will take corrective action, including but not limited to: site visits, reviews, assessment of penalties, and termination of the retainer agreement with or without cause. If HESAA determines that termination is warranted, the firm is required to return all files on HESAA matters to HESAA at its own expense within 30 days. The firm may not assert any attorney's lien for fees on those returned accounts. No attorney lien will attach to any future payments the firm did not prior to the termination date under ANY circumstances. Contingency fees are only earned on payments actually received by the firm prior to termination.

## **Notifications**

Law firms shall send a quarterly notification to all parties on each receivable via U.S. Mail. The notification shall include information regarding the outstanding balance, settlement information or offers, and recent payment history. Notifications shall also be mailed to the



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

For a defaulted responsible party represented by counsel, quarterly notifications shall be sent to the party's attorney.

## **Office Site Visits**

On a periodic basis, 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 the law firm; and
- Any issues requiring resolution.

HESA will identify any required corrective and/or follow-up actions in a written communication to the law firm.

## **Offset Appeals**

Upon notification from the firm that a borrower is in a current payment arrangement, HESAA will release offsets.

Additionally, an individual may file an appeal when an offset occurs. In the event that the individual wishes to file an appeal, the following information is required to be provided to HESAA:

1. Letter from the individual explaining the basis for the request for a 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/offsets were properly applied. The law firm shall request a copy of HESAA's payment history records to insure all payments were 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 all 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, and the account should be removed from the monthly status report upon filing this Warrant.

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**

All law firms must conform all Federal and State laws and regulations, including NIST 800-53, NIST 800-161, and NIST 800-171 standards for protecting data. This additionally includes verifying phone numbers pursuant to the TCPA.

Firms must regularly conduct vulnerability scans for their computer and information systems for security assessments pursuant to Regulation F and the CFPB guidelines.

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, required by court order or as authorized in writing by the individual.

## Receivable Placements

HESAA assigns receivables to contracted law firms based upon the firm's overall performance factors, firm's responsiveness to HESAA directives and initiatives, and retainer agreement. Receivables are initially placed with a law firm via an encrypted electronic file containing the necessary information to setup the account on their loan collection software. Usually within 7-10 days, the law firm will receive a hard-copy referral packet which includes a copy of the loan application and note, along with other pertinent information. On occasion it is necessary to refer matters in a non-electronic manner, e.g., fax, over-night courier, etc.

The referral packet provided to the law firm also contains demographic information related to the individual, 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 it is prohibited by law to recover monies from a party.

Upon receiving new placements (electronic file), 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 date of the email transmitting the electronic file. The email 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. Within three business days of loading the receivable 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. The acknowledgement notification must include the law firm's reference number.

Within thirty calendar days of receipt of the hard-copy referral packet, the law firm shall review the placement and send a written notification to the obligor(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 with the law firm by New Jersey Higher Education Student Assistance Authority (HESAA).
3. The type of debt that has been placed, e.g., student loan.

This letter must meet borrower notification requirements under the Fair Debt Collections Act.

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.

Any questions and/or concerns on the part of the law firm regarding the placement should be directed to HESAA.

## **Receivable Transfers**

If HESAA recalls or reassigns the receivable, the receivable shall be closed by the law firm and the full file shall be returned to HESAA within 5 business days. 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 were 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 settlement agreement in place and its status, i.e. Remaining Balance
- 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 within 5 business days with the documents listed above.

## **Reconciliation of Law Firm Portfolios**

On a monthly 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 explaining the reason for the discrepancies, and the plan of action to correct the discrepancies, including a timeline for completing the plan.

## **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 an 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 an individual whose address was unknown at any time, and each communication with HESAA;
- Documentation regarding any wage garnishment actions initiated on the receivable;
- Documentation regarding any settlement discussions, agreements, breaches, or payments received pursuant to such settlement agreement;
- 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 were properly applied. The law firm shall request a copy of HESAA's payment history records to insure all payments were 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. The firm will send the overpayment/refund to the individual. 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, 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.

HESAA will instruct the firms as to which email addresses to submit the Weekly Activity Report and Contingency Fee Invoice.

HESAA presently accepts remittances from special counsel law firms by three different methods: check delivered directly to HESAA, 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.
- 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 was 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. Requests may include the current status of the file, a summary to date of the handling of the matter, current outstanding balance of the account, and information about how payments were applied to principal/judgment, interest, and costs.

## **Retaining Other Attorneys**

The firms retained by HESAA are the sole point of contact with regard to the matters herein. In the event a firm engages out-of-state counsel, or is authorized by HESAA to refer matters to associate counsel 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. Firms shall prepare and maintain a separate spreadsheet showing to which law firm each matter is referred.

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. Any copying costs incurred in returning the portfolio shall be at the law firm's expense.

## **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 must 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 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 verify compliance with HESAA directives, policy, guidance, or applicable law. 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.

## **Servicemembers Civil Relief Act (SCRA) & Default Judgement**

SCRA is a Federal law designed to ease the financial burden on service members during periods of military service. This Federal law provides protections for military members during active duty service. SCRA protects service members from the entry of a default judgment while they are active duty. This protection applies to all civil actions



concerning any loan, regardless of whether the loan is incurred before or during military service.

Prior to placing a loan with a law firm, HESAA will perform a lookup on the Defense Manpower Data Center (DMDC) for all contractual parties to the loan. If any individual is found to be on active duty, the loan is not placed with a law firm.

For loans placed with a law firm, the firm must also perform a DMDC look-up, both at the time of placement and also when preparing an Affidavit of Non-Military Service for any pleadings, to confirm that none of the defendants are on active duty.

The law firm shall notify HESAA if an individual is found to be on active duty and shall not pursue a default judgment against that party. If a judgement was not previously entered against other parties to the loan, the law firm shall return the loan to HESAA for servicing.

When sending the Affidavit of Non-Military Service to HESAA for signature, the firm must attach the DMDC certificate. HESAA will independently perform another DMDC lookup to confirm that the individual is not on active duty before signing and returning the Affidavit. HESAA will not sign the Affidavit if the individual is on active duty and the loan shall be returned to HESAA for follow-up.

Additionally, firms shall complete the HESAA provided SCRA training for all staff annually and submit to HESAA Certifications of completion.

### **Settlement Reporting**

A settlement report is required each month. The settlement report must contain the following information; Attorney File Number, Borrower Name, HESAA Account Number, Account Status (Judgment, Non-Judgment), Weighted Average Interest Rate or Judgement Interest Rate, Unpaid Principal Balance Due, Unpaid Interest Due, Current Balance (P&I), Collection Costs, Attorney Balance with Collection Costs, Judgment Balance (If applicable), Settlement Balance, the Percentage of the settlement compromise form balance, whether the settlement required HESAA approval, Repayment Term, Monthly Payment Amount, Date Settlement Finalized, Settlement Status Number of Payments Made to Date, whether the Borrower adhering to settlement terms.

### **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 5<sup>th</sup> 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, in the format prescribed by HESAA: 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 assigned to the file (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 upon request.

Within 30 calendar days 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.

Once a receivable reaches a final status, e.g., paid-in-full, discharged, etc., the firm shall notify HESAA and file a Warrant of Satisfaction, if applicable. The firm may then remove the receivable from the status report.

HESAA requires additional lawsuit tracking pursuant to N.J.S.A. 18A:71C-31.8. HESAA provides the selected firms with separate guidance on this tracking in the form of written guidance letters that are protected under the attorney client privilege and that may be changed or updated by HESAA and communicated to the firms in writing as needed.

## **Step-up Interest Rate Requirements**

The promissory notes for some NJCLASS loans contain a provision for an interest rate step-up. The step-up occurs either after the 12<sup>th</sup> month of repayment, after the 48<sup>th</sup> month of repayment, or upon default, depending on the terms of the promissory note.

## **Tax Information**

By January 10<sup>th</sup> of each calendar year, the law firm shall report to HESAA the amount of student loan interest paid by a borrower during the preceding calendar year. Additionally, if required by federal law, the law firm shall report by January 10<sup>th</sup> of each calendar year, the amount of loan principal in excess of the IRS reporting minimum (currently \$600) that was written off or forgiven, e.g., due to discharge of the debt due to death or total and permanent disability, during the preceding calendar year. The information shall be reported in a format prescribed by HESAA.

## **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 collected 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 within 30 days of termination of the retainer agreement.

### **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 Bureau and NIST SP 800-53, to monitor third party vendors utilized by a law firm. HESAA may request a list of vendors utilized by the law firm for matters placed by HESAA. If requested, 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.