

MINUTES

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

January 26, 2022

The Higher Education Student Assistance Authority (HESAA) Board held a remote teleconference meeting on January 26, 2021 at 10:00 am via GoTo Meeting.

PRESENT: HESAA Board Members: Dr. Brian Bridges, Secretary of Higher Education; Ms. Beatrice Daggett; Mr. Thyquel Halley; Dr. Jon Larson; Mr. Anton Lendor; Ms. Jean McDonald Rash; Mr. Scott Salmon; Mr. Robert Shaughnessy, Treasurer's Designee; Mr. David Socolow; and Ms. Christy Van Horn, Chair.

ABSENT: Ms. Isabella Berdugo-Hernandez.

CALL TO ORDER

Christy Van Horn called the meeting to order at 10:01 am. David Socolow stated that the meeting had been noticed in compliance with the requirements of the Open Public Meetings Act.

Ms. Van Horn welcomed the Board members and advised that since this meeting is being held remotely, Roseann Sorrentino would conduct a roll call for the resolutions.

Ms. Van Horn welcomed Joy Johnson, Associate Counsel from the Governor's Authorities Unit; Erin Herlihy, Deputy Attorney General from the New Jersey Division of Law

Ms. Van Horn asked Roseann Sorrentino to call the roll.

CONSIDERATION OF THE MINUTES OF THE OCTOBER 20, 2021 MEETING

A motion to approve the minutes of the October 20, 2021 meeting was made by Ms. Beatrice Daggett and seconded by Mr. Scott Salmon. The minutes were approved unanimously with two abstentions, Dr. Jon Larson and Ms. Jean McDonald Rash, who did not participate in the October meeting.

RESOLUTION 01:22 APPROVING SPECIAL COUNSEL TO ASSIST IN THE REVIEW OF MATERIALS RELATED TO 529 PLAN ANAD PROVIDING GENERAL TAX ADVICE

Marnie Grodman presented Resolution 01:22 to the Board.

HESAA engages outside counsel to provide general tax advice as well as to advise on the 529 plans Franklin Templeton administers on HESAA's behalf.

As the initial term of HESAA's most recent agreement expired, and the counsel with 529 experience left the firm, instead of exercising its options to extend the agreement, on December 9, 2021 HESAA issued a Request for Qualifications for a new firm to perform these services. HESAA sent the RFQ to 17 law firms found on the Attorney General's Approved Special Counsel lists, posted the RFQ on HESAA's website, and advertised the RFQ in the state's NJ Advance Media and Gannett newspapers.

HESAA received two proposals in response to the RFQ, neither of which were from HESAA's previous counsel.

An evaluation committee made up of HESAA's Chief Financial Officer, Controller, and Director of Legal and Governmental Affairs reviewed and scored the proposals. Based on the evaluation scoresheets that were included in the materials provided to the Board for this meeting, the committee recommends that the Board appoint Dilworth Paxson LLP ("Dilworth") as special counsel. Dilworth's proposal displayed a vast array of experience with regards to federal tax law generally, including experience in tax controversy work and representing the IRS in trials. While the proposal does not demonstrate experience representing 529 administrators, the firm has experience handling client inquiries concerning the taxation of 529 plans (both contributions and distributions) and the permissible uses of 529 plan assets. In addition, Dilworth's approach to communication with HESAA impressed the evaluation committee in that the firm is committed to a "plain English" theory of the practice of law, whereby they ensure that their legal advice is clearly understood.

Dilworth proposed a very reasonable blended hourly rate of \$280 per hour, which is \$140 less than HESAA's previous counsel charged.

The Evaluation Committee recommends that the Board appoint Dilworth Paxson LLP as Special Counsel to assist in the review of materials related to 529 plans and to provide general tax advice upon request for a term of two years with three optional one-year extensions.

A motion to approve Resolution 01:22 was made by Dr. Jon Larson and seconded by Mr. Robert Shaughnessy.

The motion passed unanimously.

RESOLUTION 02:22 APPROVING ADOPTION OF REGULATIONS GOVERNING THE NEW JERSEY BETTER EDUCATIONAL SAVINGS TRUST (NJBEST) PROGRAM, N.J.A.C. 9A:10-7.22

Marnie Grodman presented Resolution 02:22 to the Board.

At its July 26, 2021 meeting the HESAA Board approved the special adoption and concurrent proposal of new rules to implement the NJBEST Matching Grant Program. The special adoption and concurrent proposal of the new rules were published in the August 16, 2021 New Jersey Register and publicized throughout the State. The comment period for this rule expired on October 15, 2021 with no comments received.

In order to ensure the continued efficient administration of the NJBEST matching grant program, it is necessary to adopt the concurrent proposal prior to the expiration of the specially adopted rules.

A copy of the special adoption and concurrent proposal, as published in the New Jersey Register, is included in the materials. Upon the Board's approval, the adoption notices will be posted in the March 7, 2022 New Jersey Register.

A motion to approve Resolution 02:22 was made by Ms. Beatrice Daggett and seconded by Ms. Jean McDonald Rash.

The motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Executive Director David Socolow gave the following report:

Thank you Chair Van Horn, members of the Board, and members of the public; happy New Year to everyone. I appreciate the opportunity to provide a few updates on our work at HESAA over the past calendar quarter. I will briefly discuss a number of items.

Garden State Guarantee

The exciting news is that the Garden State Guarantee (GSG) has launched this month. As this Board is well aware, for the last three and-a-half years HESAA has been implementing the Community College Opportunity Grant (CCOG) program. Now, together with CCOG, the Garden State Guarantee creates New Jersey's College Promise – providing for the first time a tuition-free pathway to a bachelor's degree for New Jersey students whose family incomes are between \$0 and \$65,000 (adjusted gross income, or AGI).

The GSG will begin at all of the senior public institutions of higher education in New Jersey starting in the fall of 2022 as a last-dollar guarantee for the third and fourth year of a student's undergraduate academic program. The guarantee is available for eligible students regardless of whether they started their studies at the same school, or transferred in from a community college or another four-year school. For students in their third and fourth years of progress towards a bachelor's degree at a New Jersey senior public institution, the Garden State Guarantee ensures their net tuition and fee price will be \$0 if the student's AGI is between \$0 and \$65,000. The GSG also provides a benefit to students with incomes just slightly above that, between \$65,001 and \$80,000, who will receive a net price guarantee that their tuition and fees will not exceed \$7,500 (roughly half price when compared to the typical \$15,000 cost for in-state undergraduate tuition and fees at senior public colleges and universities).

We are very grateful to the working group of subject matter experts from the public colleges and universities who got together with HESAA and OSHE staff over the past summer and fall to work out important details of how this program will practically work in tandem with existing financial aid policies and parameters, to ensure that GSG is implemented in a fair and consistent way that students and institutions can clearly understand. One of the members of that committee was this Board's own Jean McDonald Rash, and I want to thank Jean for all of her thought leadership and partnership as we worked through tough edge cases and alternate scenarios to hammer out these

programmatic details. I also want to express my thanks for all the input that we received from the other experts in financial aid, enrollment management, and institutional research at the senior public colleges and universities. Our goal has been to align the GSG as much as possible with the Community College Opportunity Grant, to ensure we're consistent and benefit from our experience of implementing a similar last-dollar grant program based on adjusted gross income.

This information is now on our website at hesaa.org/Pages/GSG.aspx, where we have posted a statewide one-page fact sheet that mentions every one of the institutions that are implementing the Garden State Guarantee. At the bottom of that one-pager is a link to each of the individual institutions, which are doing their own outreach to promote the GSG. This flyer is now available to be distributed far and wide. We are getting the word out about the GSG to current students who may become third and fourth year students next fall, as well as new students who may think about enrolling or may be coming back to college, those with some prior college credits but no degree who might be encouraged to return to college by the GSG, and of course students who might be transferring in from community colleges. Expect to see a lot of additional outreach about the exciting launch of the Garden State Guarantee over the coming months.

NJBEST Matching Grant Program

Today this Board just voted to finalize the regulations for the NJBEST Matching Grant Program, which have been in place in an interim final rule. As mentioned at the October Board meeting, we got the matching grant program launched last fall, and I am happy to update you on the fact that our efforts to increase incentives for college savings are working. More people are saving for college in New Jersey. We received 64% more newly opened NJBEST accounts in 2021 compared to the number the year before. More than 6,500 new NJBEST accounts were opened in 2021, an impressive increase that can be attributed to people learning about the benefits of saving for college using the NJBEST 529 Program.

It is crucial to encourage college savings that help families reduce the amount of student loan debt that the student may have to borrow later. Saving now reduces debt later.

And our NJBEST matching grant is an important new incentive to save. To date HESAA has matched more than \$260,000 in contributions to more than 349 newly opened NJBEST accounts. The State program matches dollar-for-dollar the first contribution that is made to a newly opened NJBEST account by an account owner whose adjusted gross income is \$75,000 or less.

As a reminder, just six months ago HESAA announced the expansion of the NJBEST scholarship which is available for a beneficiary of a NJBEST account who enrolls at an institution of higher education here in New Jersey. These students can get a one-time scholarship in the amount of up to \$3000 as an incentive to NJBEST account holders to make consistent annual contributions.

Finally, as this month we begin calendar year 2022, the new State income tax deduction takes effect. Up to \$10,000 a year in contributions to an NJBEST account – that's any account, whether previously opened or new – is deductible from state income tax returns starting with tax year 2022.

With all of these initiatives we are increasing the incentive for saving for college and helping make college more affordable in the Garden State.

Outreach and Communications

Last fall, the PBS NJ show “One-On-One with Steve Adubato” taped a six-minute interview that gave me the opportunity to highlight the State’s efforts to improve access, affordability, and tax-advantaged college savings accounts. The program first aired in December and was re-run just last weekend. The video clip is archived on the PBS NJ website, and the HESAA website also has a link where you can watch the interview. We are always looking for ways to get out the word about HESAA’s message. During those six minutes I very briefly touched on the new College Promise of the Garden State Guarantee plus the Community College Opportunity Grant, the enhancements to the NJBEST College Savings Program, our efforts to encourage more students to complete the financial aid applications of the FAFSA or the New Jersey Alternative Application for Dreamers, as well as the impact of the pandemic on students and on their finances. While that was a bit of a whirlwind of an interview, it was a really good opportunity for our message to reach students and families.

Recently Enacted State Laws

In the last few weeks at the very end of the 2020-21 legislative session, Governor Murphy signed four new laws relevant to our work here at HESAA.

The first one is P.L. 2021, c.341 which allows students from families holding certain immigration visas for Victims of Human Trafficking and Serious Crime Victims. These are called T and U visas. While only a very small number of students are covered by this new law, every one of them has lived through truly horrific events and now they are eligible for State-funded student aid. Just to clarify, the law made students from families with “O” visas eligible for public colleges’ in-state tuition rates, but they are not eligible for State student aid. In case you are wondering, the “O” visas are for individuals who are admitted to the United States due to extraordinary ability in the sciences, arts, education, business or athletics, or international recognition for extraordinary achievement in motion pictures or the television industry.

The second new law is P.L. 2021, c.349, which establishes a new requirement for disclosure of data on student loan debt, broken out by student demographics. New Jersey’s licensed degree-granting institutions of higher education are now required to annually publish information about student loan indebtedness and other data, both on their own websites and to a statewide website of the Office of the Secretary of Higher Education that will roll up a summary of the data. This requirement has been added to an existing law that for more than ten years had published a “Consumer Information Report” from only the senior public institutions, including graduation rates, costs, financial aid and other data. Now this law has been expanded to include the additional student loan information as well as demographic breakdowns, and the required disclosure requirement has also been extended to now include reports not just from the senior public institutions but also from the community colleges and the independent institutions as well.

The third law is P.L. 2021, c. 357, which will now require, as students reach their last semester before graduation, disclosures from schools about student loan repayment options that allow them to make monthly payments that are determined by a percentage of the borrower’s income, also known as income-based repayment options, or IBR. This will include not only federal student loan IBR programs but also information about HESAA’s RAP and HIARP programs that were approved by this Board initially through Board action and then codified in a law that Governor Murphy signed in 2019. The RAP and HIARP programs allow NJCLASS loan borrowers to make affordable monthly payments based on the incomes of all the parties to the NJCLASS loan.

Students will benefit from getting information about these helpful repayment plans right before they graduate.

Finally, P.L. 2021, c. 384 was signed into law last week, establishing a new loan redemption program here at HESAA for which we received a \$1 million appropriation in this fiscal year. This will now offer up to \$20,000 to pay off a portion of the balance on teachers' student loans, by providing \$5,000 a year in loan redemption for up to four years in exchange for each year of service by a newly hired teacher who teaches in a high-need field in a low-performing school district. HESAA will implement this program with assistance from our colleagues at the New Jersey Department of Education, who will define what qualifies as a high-need field in a low-performing school district.

Negotiated Rulemaking for Higher Education 2021-22

I wanted to briefly note the existing Federal Negotiated Rulemaking committee on Institutional and Programmatic Eligibility which is now underway. This committee is negotiating proposed rules and changes to the rules and regulations for the Federal Higher Education Act. Much of this touches on the work of the states and institutions. The federal government has convened a committee of 13 constituencies, each of which has a primary negotiator and an alternate negotiator. I am very honored to have been selected to be the alternate negotiator for State Higher Education Agencies, which is one of those 13 constituencies. Other constituencies include students and borrowers, consumer groups, accreditors, and various types of institutions, two-year, four-year, nonprofit independent, for-profit, public, etc.

All of the negotiators for these constituencies are convening with the U.S. Department of Education to talk about important regulatory issues including: the Gainful Employment rule regarding student outcomes from career education programs; proprietary school revenue from non-federal sources (the so-called "90/10" rule); access to federal financial aid for students without a high school diploma under certain circumstances (the so-called "Ability To Benefit" rule); and a number of matters related to federal oversight and accountability, including institutional financial responsibility, standards of administrative capability, and changes of ownership. I would call the Board's attention to the administrative capability regulations, which have a direct impact on schools' financial aid offices and on their student services and career placement efforts. We will bring back to our colleagues here in New Jersey the valuable information that we learn from this negotiation.

Backup Electric Power Generator

Thanks to this Board and the funding that you approved in the Capital Budgets over the last several years, we have nearly completed the installation of a backup power generator which will protect HESAA's data systems in cases where electric power fails. As this Board well knows, in the past storms or accidents have knocked out electric power lines or electric power service to our facility, and this has caused significant challenges to ensure an orderly shutdown of our computer systems, potentially jeopardizing HESAA's daily transactions affecting tens of thousands of students every day. Those transactional data are obviously extremely important to the lives of students and the operations of the programs that assist students. That is why we are so glad to finally get a back-up power generator, as shown in the photos show is installed between Buildings 4 and 6 here at Quakerbridge Plaza, and will be hooked up very soon. This important precaution against the weather and other interruptions to electric power means that the data systems will now have available backup power from natural gas.

HESAA Staff Updates

Finally I would like to note some important staff recognition and engagement efforts with our extraordinary dedicated team here at HESAA. At the end of last year we published a “Merit Award Rewind” showing a month-to-month highlight of all the teams’ accomplishments between April 2020 until December 2021. That covered the time when there was a hiatus in our in-person, on-site monthly merit award for individuals, because the staff were in various states of remote and on-site work over that period. The end of 2021 was the appropriate time to recognize all of the tremendous efforts of our team members throughout the unpredictable scheduling, the disruptive weather events, and of course the ongoing impact of the pandemic. We can never say enough about the extraordinary efforts of everyone across the Authority, but this publication was a great way to sum it all up through more than a year and-a-half’s worth of monthly postings for the achievements of HESAA people even while working remotely.

In December, the HESAA Staff Engagement Team (HSET) also facilitated a lovely holiday pop-up event that allowed our colleagues to pass through the Board Room in small groups, socially-distanced, and pick up a sweet treat (not to eat it on site, but to pick it up and take it back for eating later), and view a festive slide show that was running on a loop in the Board Room to show all kinds of terrific year-in-review photographs that gave just a glimpse of what it looked like to work from home and some nice photos with memories of pre-pandemic times when we celebrated together.

We are also very proud that our team remained as generous as ever, and exceeded past years’ goals, in participating in the holiday food drive, donating large amounts of food that we took to a local organization, HomeFront, which works to end homelessness in Central New Jersey. Even though we have been disconnected from one another in many ways, we stayed connected through these engagement methods.

Finally, I just want to thank Magda Torres, who retired at the end of November after serving HESAA for nearly 23 years, where she played a vital role in assisting financial aid officers at New Jersey’s higher education institutions with their interfaces and their operations of HESAA’s technology. By supporting our partners, those who are the champions of financial aid at our state’s colleges and universities, Magda’s crucial programmatic work helped countless students get the resources they needed to pursue their educational and career aspirations. We are grateful to Magda and wish her the best in retirement.

That concludes my report. Thank you again for your support of HESAA’s mission and many initiatives, all of which provide the valuable funding and counsel students and families need to pursue their dreams of postsecondary education.

Christy Van Horn commented that it is exciting to see the Garden State Guarantee grow from a good concept to where the State is with it now. She commended David Socolow and Jean McDonald Rash for providing their financial aid expertise as part of the Garden State Guarantee implementation committee.

Chairwoman Van Horn also commended HESAA’s year-end event. She stated the importance of such an event for staff after last year.

Additionally, Chairwoman Van Horn commended Magda Torres for over 22 years of service to HESAA. She commented that HESAA could not accomplish all that it does without the deep bench of people with institutional memories and stated that Ms. Torres was valued in the many aspects of her job.

With regards to the implementation of the College Affordability Act Chairwoman Van Horn commented on how valuable a \$10,000 tax deduction will be for New Jersey families.

Chairwoman Van Horn concluded her comments with the suggestion that HESAA look into utilizing Tik Tok to reach the student demographic when publicizing all of the financial aid opportunities available to them.

ADJOURNMENT

Ms. Van Horn advised that the next regularly scheduled Board meeting is Wednesday, April 20, 2022 at 10:00 am.

A motion to adjourn was made by Ms. Beatrice Daggett and seconded by Dr. Jon Larson. The motion passed unanimously.

The meeting adjourned at 10:39 am.



State of New Jersey

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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

DAVID J. SOCOLOW
Executive Director

MEMORANDUM

TO: Members, Higher Education Student Assistance Authority

THROUGH: David J. Socolow *DJS*
Executive Director

FROM: Marnie B. Grodman, Esq. *MBG*
Director, Legal & Governmental Affairs

SUBJECT: Resolution 01:22 Appointing Special Counsel to Assist in the Review of
Materials Related to 529 Plans and Provide General Tax Advice

DATE: January 26, 2022

Background

The Higher Education Student Assistance Authority (HESAA) administers the New Jersey Better Educational Savings Trust (NJBEST) program, New Jersey's State qualified tuition program under Section 529 of the Federal Internal Revenue Code of 1986, as well as the Franklin Templeton 529 College Savings Plan ("529 Plans"). On December 9, 2021, HESAA issued a Request for Qualifications (RFQ) seeking proposals from qualified law firms for the appointment of Special Counsel to assist in the review of materials related to the 529 Plans as well as to provide general tax advice as questions arise. The selected firm will serve for a term of two years with three optional one-year extensions.

The appointed firm will provide opinions and advice to HESAA on all documents prepared by HESAA's investment manager, Franklin Templeton, related to the 529 Plans. These documents include but are not limited to: investor handbook supplements, disclosure updates, contract amendments and supplements, and dealer program distribution agreements.

Additionally, HESAA requires responses to specific tax questions that may arise from time to time in relation to its business and program, including but not limited to issues related to student loans, student loan forgiveness, scholarships, and employee benefits.

HESAA sent the RFQ to 17 law firms found on the Attorney General's Approved Special Counsel lists, posted the RFQ on HESAA's website, and advertised the RFQ in the state's NJ Advance Media and Gannett newspapers.

HESAA received proposals from two law firms.

Selection Process

An evaluation committee made up of HESAA's Chief Financial Officer, Controller, and Director of Legal and Governmental Affairs met and reviewed each of the proposals.

The selection criteria for reviewing Special Tax Counsel proposals are as follows:

- Knowledge and experience of the firm and the named attorneys with regards to federal tax law generally, and Section 529 plans specifically;
- Resources of the firm;
- Approach to communication with HESAA; and
- Fees.

Attached to this memo is a summary of the scores each firm received from each member of the evaluation committee.

Based on a thorough review of the proposals, the evaluation committee recommends appointing Dilworth Paxson LLP ("Dilworth") as special counsel to assist in the review of materials related to 529 Plans and to provide general tax advice upon request. Dilworth's proposal displayed a vast array of experience with regards to federal tax law generally, including experience in tax controversy work and representing the IRS in trials. While the proposal does not demonstrate experience representing 529 administrators, the firm has experience handling client inquiries concerning the taxation of 529 plans (both contributions and distributions) and the permissible uses of 529 plan assets. In addition, Dilworth's approach to communication with HESAA impressed the evaluation committee in that the firm is committed to a "plain English" theory of the practice of law, whereby they ensure that their legal advice is clearly understood.

It should also be noted, that HESAA's previous tax counsel charged a blended hourly rate of \$420 per hour while Dilworth will be charging a blended hourly rate of \$280 per hour.

Recommendation

It is recommended that the Board approve Resolution 01:22 Appointing Dilworth Paxson LLP as Special Counsel to Assist in the Review of Materials Related to 529 Plans and to provide general tax advice upon request at a blended hourly rate of \$280 per hour.

Attachments

EVALUATION SCORE SHEET **HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY**
(Tax Counsel Proposal Evaluation)

BIDDER
Dillworth Paxson LLP

DATE
1/14/2022

SUMMARY OF EVALUATION TEAM'S COMMENTS: This firm's proposal displayed a vast array of experience with regards to federal tax law generally, including experience in tax controversy work and representing the IRS in trials. While the proposal does not demonstrate experience representing 529 administrators, the firm has experience handling client inquiries concerning the taxation of 529 plans (both contributions and distributions) and the permissible uses of 529 plan assets.

Scoring 9-10 = Excellent 7-8 = Very Good 5-6 = Good 3-4 = Fair 1-2 = Poor 0 = No Response

CRITERIA	Score 1	Score 2	Score 3	WEIGHT	TOTAL
Knowledge and experience of the firm and the named attorneys with regards to federal tax law generally, and Section 529 plans specifically	6	9	7	25	550
Resources of the firm	7	9	8	25	600
Approach to communications with HESAA	8	9	9	25	650
The fee proposed	8	6	6	25	500
Total					2300

EVALUATION SCORE SHEET	HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY (Tax Counsel Proposal Evaluation)				
BIDDER Marmero Law LLC	DATE 1/14/2022				
SUMMARY OF EVALUATION TEAM'S COMMENTS: This proposal did not demonstrate any experience with regards to federal tax law generally or Section 529 plans specifically nor did it address approach to communication other than to say attorneys are reachable 24 hours a day.					
Scoring 9-10 = Excellent 7-8 = Very Good 5-6 = Good 3-4 = Fair 1-2 = Poor 0 = No Response					
CRITERIA	Score 1	Score 2	Score 3	WEIGHT	TOTAL
Knowledge and experience of the firm and the named attorneys with regards to federal tax law generally, and Section 529 plans specifically	3	3	2	25	200
Resources of the firm	1	4	4	25	225
Approach to communications with HESAA	1	4	4	25	225
The fee proposed	9	9	10	25	700
Total					1350

RESOLUTION 01:22

**APPOINTING SPECIAL COUNSEL TO ASSIST IN THE REVIEW OF MATERIALS
RELATED TO 529 PLANS and PROVIDE GENERAL TAX ADVICE**

Moved by: Dr. Jon Larson

Seconded by: Mr. Robert Shaughnessy

WHEREAS: On December 9, 2021, the Higher Education Student Assistance Authority (HESAA) issued a Request for Qualifications (RFQ) seeking proposals from qualified law firms for the appointment of Special Counsel to assist in the review of materials related to the 529 Plans and to provide general tax advice upon request; and

WHEREAS: HESAA sent the RFQ to 17 law firms found on the Attorney General's Approved Special Counsel lists, posted the RFQ on HESAA's website, and advertised the RFQ in the state's NJ Advance Media and Gannett newspapers; and

WHEREAS: Two firms submitted proposals; and

WHEREAS: An evaluation committee made up of HESAA's Chief Financial Officer, Controller, and Director of Legal and Governmental Affairs met and reviewed each of the proposals; and

WHEREAS: Dilworth Paxson LLP received the highest score as a result of such evaluation.

NOW, THEREFORE, LET IT BE:

RESOLVED: That the Board appoints Dilworth Paxson LLP as Special Counsel to Assist in the Review of Materials Related to 529 Plans and to provide general tax advice upon request at a blended hourly rate of \$280.

January 26, 2022



State of New Jersey

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

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PHILIP D. MURPHY
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SHEILA Y. OLIVER
Lt. Governor

DAVID J. SOCOLOW
Executive Director

MEMORANDUM

TO: Members, Higher Education Student Assistance Authority

THROUGH: David J. Socolow *DJS*
Executive Director

FROM: Marnie B. Grodman *MBG*
Director, Legal & Governmental Affairs
Administrative Practice Officer

SUBJECT: Resolution 02:22 Approving Adoption of Regulations Governing the New Jersey Better Educational Savings Trust (NJBEST) Program, N.J.A.C. 9A:10-7.22

DATE: January 26, 2022

Background

On June 29, 2021, Governor Murphy signed P.L. 2021, c. 128, which was effective immediately. Section 2.a. of this law established a one-time grant of up to \$750 in a dollar-for-dollar match of the initial deposit to a NJBEST account when the account is initially opened by a taxpayer with gross income of \$75,000 or less.

Section 2.b. of P.L. 2021, c. 128 authorizes the Authority to immediately adopt upon filing with the Office of Administrative Law, rules necessary for the “appropriate administration and implementation of the provisions of this section, including, a minimum length of time for participation in the NJBEST program in order to maintain eligibility for the credit established pursuant to this section, which rules shall be effective for a period not to exceed 360 days from the date of the filing.”

At its July 26, 2021 meeting the HESAA Board approved the special adoption and concurrent proposal of new rules to implement the NJBEST Matching Grant Program. The special adoption and concurrent proposal of the new rules, PRN 2021-080, were published in the August 16, 2021 New Jersey Register at 53 N.J.R. 1402, posted on the HESAA website at HESAA.org and sent to the Statehouse News Media and secondary notice was emailed to interested parties and a press release was distributed to the news media. The 60-day legislative review period for this rule

expired on September 24, 2021 with no comments received and the public comment period for this rule expired on October 15, 2021 with no comments received.

In order to ensure the continued efficient administration of the NJBEST matching program, it is necessary to adopt the concurrent proposal prior to the expiration of the specially adopted rules.

Recommendation

It is recommended that the Board approve Resolution 02:22 Approving Adoption of Regulations Governing the New Jersey Better Educational Savings Trust (NJBEST) Program, N.J.A.C. 9A:10-7.22.

Attachments

RESOLUTION 02:22

APPROVING THE ADOPTION OF REGULATIONS GOVERNING THE NEW JERSEY BETTER EDUCATIONAL SAVINGS TRUST (NJBEST) PROGRAM, N.J.A.C. 9A:10-7.22

Moved By: Ms. Beatrice Daggett
Seconded By: Ms. Jean McDonald Rash

WHEREAS: On June 29, 2021, Governor Murphy signed P.L. 2021, c. 128, section 2.a. of which established a one-time grant of up to \$750 in a dollar-for-dollar match of the initial deposit to a NJBEST account when the account is initially opened by a taxpayer with a gross income of \$75,000 or less; and

WHEREAS: Section 2.b. of P.L. 2021, c. 128 authorizes HESAA to immediately adopt upon filing with the Office of Administrative Law, rules necessary for the “appropriate administration and implementation of the provisions of this section, including, a minimum length of time for participation in the NJBEST program in order to maintain eligibility for the credit established pursuant to this section, which rules shall be effective for a period not to exceed 360 days from the date of the filing.”; and

WHEREAS: At its July 26, 2021 meeting the HESAA Board approved the special adoption and concurrent proposal of new rules to implement the NJBEST Matching Grant Program; and

WHEREAS: The special adoption and concurrent proposal, PRN 2021-080, were published in the August 16, 2021 New Jersey Register at 53 N.J.R. 1402, posted on the HESAA website at HESAA.org and sent to the Statehouse News Media and secondary notice was emailed to interested parties and a press release was distributed to the news media; and

WHEREAS: The 60-day legislative review period for this rule expired on September 24, 2021, with no comments received; and

WHEREAS: The public comment period for this rule expired on October 15, 2021 with no comments received.

NOW, THEREFORE, LET IT BE:

RESOLVED: That the Board approves the Adoption of Regulations Adopting the Governing of the New Jersey Better Educational Savings Trust (NJBEST) Program, N.J.A.C. 9A:10-7.22.

January 26, 2022

SPECIAL ADOPTION

HIGHER EDUCATION

(a)

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

Student Loan and College Savings Programs Policy Governing New Jersey Better Educational Savings Trust (NJBEST) Program

Special Adopted and Concurrently Proposed New Rule: N.J.A.C. 9A:10-7.22

Special Adopted and Concurrently Proposed New Rule Authorized:
July 21, 2021, by the Higher Education Student Assistance
Authority, Christy Van Horn, Chairperson
Filed: July 22, 2021, as R.2021 d.089.

Authority: N.J.S.A. 18A:71A-1 et seq., and 18A:71C-35 et seq.; and
P.L. 2021, c. 128.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Concurrent Proposal Number: PRN 2021-080.

Effective Date: July 22, 2021.

Expiration Date: July 17, 2022.

Submit written comments by October 15, 2021, to:

Marnie B. Grodman, Esquire
Administrative Practice Officer
Higher Education Student Assistance Authority
PO Box 545
Trenton, NJ 08625-0545
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Take notice that in accordance with P.L. 2021, c. 128, the New Jersey Higher Education Student Assistance Authority adopted the following new rule for the implementation of the NJBEST Matching Grant Program. The special adopted new rule became effective on July 22, 2021, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rule shall be effective for a period not to exceed 360 days from the date from the date of the filing, that is, until July 17, 2022.

Concurrently, this new rule is being proposed for re-adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted new rule will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)), if filed on or before the 360-day expiration date from the date of the filing of this special adoption.

The agency special adoption and concurrent proposal follows:

Summary

The Higher Education Student Assistance Authority (Authority) is statutorily responsible for the administration of the State's higher education savings program, the New Jersey Better Educational Savings Trust (NJBEST) Program, and for the promulgation of all rules to that effect, pursuant to N.J.S.A. 18A:71B-35 et seq. NJBEST is administered in accordance with section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529.

Through the NJBEST Program, money saved by parents, grandparents, or others is invested for a designated beneficiary. When the designated beneficiary is ready to attend a postsecondary education institution, the principal and interest earned can be used for costs of attendance. The NJBEST Program offers favorable Federal and State income tax treatment of funds that are withdrawn from an NJBEST account and used to pay for certain education expenses, such as tuition, defined as a "qualified distribution" pursuant to 26 U.S.C. § 529 and N.J.S.A. 54A:6-25(3).

On June 29, 2021, Governor Murphy signed P.L. 2021, c. 128, which was effective immediately. Section 2.a. of this law established a one-time grant of up to \$750.00 in a dollar-for-dollar match of the initial deposit to

an NJBEST account when the account is initially opened by a taxpayer with gross income of \$75,000 or less.

Section 2.b. of P.L. 2021, c. 128 authorizes the Authority to immediately adopt, upon filing with the Office of Administrative Law, rules necessary for the "appropriate administration and implementation of the provisions of this section, including, a minimum length of time for participation in the NJBEST program in order to maintain eligibility for the credit established pursuant to this section, which rules shall be effective for a period not to exceed 360 days from the date of the filing."

The special adopted and concurrent proposed new rule governs the policy, administration, and procedures of the NJBEST Matching Program and are summarized below:

N.J.A.C. 9A:10-7.22(a) establishes the parameters for the matching grant program that the Authority will offer as part of the NJBEST 529 College Savings Plan. As P.L. 2021, c. 128 was effective immediately, upon execution on June 29, 2021, this section establishes that the NJBEST Matching Grant Program is available for accounts opened on or after June 29, 2021. Additionally, pursuant to P.L. 2021, c. 128, the rule establishes that account owners are eligible for a one-time grant of up to \$750.00, in a dollar-for-dollar match of their initial deposit to their NJBEST account. This means that if an account owner's initial deposit is \$500.00, the match will be \$500.00, if the initial deposit is \$750.00, the match will be \$750.00, and if the initial deposit is \$1,000, the match will be \$750.00.

N.J.A.C. 9A:10-7.22(a)1 provides that the matching grant program is available to account owners with adjusted gross income that does not exceed \$75,000.

Section 2.b. of P.L. 2021, c. 128 authorizes the Authority to set a minimum length of time that the account owner must participate in the NJBEST Program in order to maintain eligibility for the credit established pursuant to this section. To discourage contributors from closing the account soon after they have received the matching grant, N.J.A.C. 9A:10-7.22(a)2 requires that the NJBEST 529 College Savings Plan account remains open and maintains up to \$750.00 of the initial contribution, for a minimum of three years following the initial contribution into the contributor's account, or the matching grant funds will be forfeited back to the Authority.

N.J.A.C. 9A:10-7.22(a)3 provides that the NJBEST matching grants are subject to the availability of funds, either through appropriation or through administrative fees, as determined annually by the Authority Board. The rule further specifies that administrative fees cannot be increased to fund the NJBEST matching grants.

As P.L. 2021, c. 128 specifies that this is intended to be a one-time grant, N.J.A.C. 9A:10-7.22(b) limits the matching grants to no more than one account per beneficiary.

N.J.A.C. 9A:10-7.22(c) establishes the procedures to apply for the matching grant. In order to determine that the account owner's adjusted gross income does not exceed \$75,000, the subsection requires applicants to submit their Internal Revenue Service tax return transcripts for the year prior to the application year. Further, the subsection provides alternative documentation that applicants who are not required to file tax returns can submit. To ensure that the matching grants can be deposited into participants' accounts as early as possible to earn the maximum return, the subsection requires account holders to apply for the grant within one year of making their initial deposit.

N.J.A.C. 9A:10-7.22(c)1 sets forth the procedure for selecting participants if applications exceed available funds. To ensure that the matching grants can be deposited into participants' accounts as early as possible to earn the maximum return, in the event there are insufficient funds available to match the contributions of all applicants, the Authority will select participants for the matching grant program by the order of when the application was received.

N.J.A.C. 9A:10-7.22(d) establishes the procedure the Authority will follow for disbursing the matching grants. In order to ensure that the account holders maintain their NJBEST accounts for three years, while also ensuring that account owners receive any interest earned on the matching grants over those three years, the Investment Manager will

deposit the matching grant into an escrow account. If the account owner maintains their account for three years, then the matching grant balance and any earned interest will be transferred from the escrow account to the account holder's account.

To ensure New Jersey government resources are being spent on New Jersey residents, N.J.A.C. 9A:10-7.22(e) requires account owners to be New Jersey residents in order to be eligible for the matching grant.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The special adopted and concurrent proposed new rule will have a positive effect on families by providing an additional incentive to save for post-secondary education and encourage long-term savings.

Economic Impact

The special adopted and concurrent proposed new rule will have a positive economic impact on the families that open an NJBEST account and receive the matching grant of up to \$750.00, as they will double their initial deposit, and will earn interest on a larger principal investment. These savings will positively impact the families by reducing the amount the beneficiary's family will have to borrow to earn a degree or credential. The cost to the State will be \$10 million as section 7. of P.L. 2021, c. 128 included a \$10 million appropriation for the NJBEST matching program. Additional matching grants will be financed through excess NJBEST administrative fees only if the Authority's Board determines that sufficient funds are available from NJBEST's administrative fee revenue without increasing fees.

Federal Standards Statement

A Federal standards analysis is not required because the special adopted and concurrent proposed new rule is not intended to exceed the statutory requirements for a state college savings program to receive favorable Federal tax treatment under section 529 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 529, and are consistent with administrative guidance from the Internal Revenue Service.

Jobs Impact

The special adopted and concurrent proposed new rule provides incentives for saving for postsecondary education expenses, which promotes economic development by encouraging more individuals to attain the industry-recognized postsecondary degrees and credentials needed for many high-quality employment opportunities. The special adopted and concurrent proposed new rule will not result in the loss or generation of jobs, but does offer an additional incentive to save for postsecondary education, thereby adding to the skilled workforce to meet employer needs.

Agriculture Industry Impact

The special adopted and concurrent proposed new rule will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the special adopted and concurrent proposed new rule does not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The participants in this program are individuals, not businesses.

Housing Affordability Impact Analysis

The special adopted and concurrent proposed new rule will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the special adopted and concurrent proposed new rule would evoke a change in the average costs associated with housing because the special adopted and concurrent proposed new rule concerns higher education savings plans, which have no impact on housing.

Smart Growth Development Impact Analysis

The special adopted and concurrent proposed new rule will have an insignificant impact on smart growth and there is an extreme unlikelihood that the special adopted and concurrent proposed new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The special adopted and concurrent proposed new rule concerns higher education savings plans, which have no impact on housing.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The special adopted and concurrent proposed new rule will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the special adopted and concurrently proposed new rule follows:

SUBCHAPTER 7. POLICY GOVERNING NEW JERSEY BETTER EDUCATIONAL SAVINGS TRUST (NJBEST) PROGRAM

9A:10-7.22 Eligibility for NJBEST Matching Grant Program

(a) For accounts opened on or after June 29, 2021, the Authority will provide a one-time grant of up to \$750.00 in a dollar-for-dollar match of an account owner's initial deposit into an NJBEST 529 College Savings Plan account provided:

1. The account owner's household adjusted gross income does not exceed \$75,000;

2. The NJBEST 529 College Savings Plan account remains open and maintains up to \$750.00 of the initial contribution for a minimum of three years following initial contribution into the contributor's account, or the matching grant funds will be forfeited back to the Authority; and

3. Sufficient funds are available to finance the matching grants from direct State appropriations to the Authority or from NJBEST administrative fees, the availability of which shall be determined annually by the Authority Board. The amount of the administrative fees shall not be increased to fund the matching grants.

(b) The Authority will match contributions into no more than one account per beneficiary.

(c) To receive matching grants from the Authority, account owners must apply online on the Authority's website within one year of opening their NJBEST account and must submit their Internal Revenue Service tax return transcripts for the year prior to the application year to verify income. If no tax returns were filed for the year requested, account owners may provide the Authority with documented proof, received through a Federal or State agency, of taxable and/or untaxed income, including, but not limited to, an IRS tax and wage transcript, receipt of unemployment insurance benefit payments, child support, alimony, welfare payments, Social Security benefits, SSI, or one benefit from any of the following Federal programs: SNAP, TANF, WIC, or housing assistance.

1. In the event there are insufficient funds available to match the contributions of all applicants, the Authority will select participants for the matching grant program by order of when the application was received.

(d) Within 60 days of approving an account owner's application, the Authority will provide the NJBEST Investment Manager with the matching NJBEST Grant. The Investment Manager will deposit those funds into an escrow account. After three years if the account holder meets the requirements at (a)2 above, then the balance of the matching grant and any earned interest will be transferred from the escrow account to the account holder's account.

(e) To be eligible for the matching grant program, the account owner must be a New Jersey resident.