

**REQUEST FOR QUALIFICATIONS
FOR
Special Counsel: Student Loan Collections
Higher Education Student Assistance Authority**

**Issued by:
New Jersey Higher Education Student Assistance Authority**

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Question Cut-off Date:

August 24, 2020

Proposals Due:

September 15, 2020

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1.0 PURPOSE AND INTENT

The Higher Education Student Assistance Authority (“HESAA”) administers State and Federal student loan programs on behalf of the State as well as other student financial aid programs. HESAA is seeking proposals from qualified law firms to create a list of up to four firms to serve as Special Counsel for Student Loan Collections, to which HESAA can assign defaulted student loans and other educational receivables for collection. Additionally, the firms on the list will represent HESAA in contesting the discharge of a debtor from bankruptcy, in Administrative Wage Garnishment hearings, and in collection-related litigation and appellate work.

1.1 Minimum Requirements

HESAA seeks law firms with attorneys who have a minimum of three years’ experience in student loan collections. Failure to meet this minimum requirement will result in the immediate rejection of the proposal. This procurement is solely open to law firms. Proposals from other entities will be rejected.

Selected law firms must have the capability to encrypt all communications to HESAA that contain confidential information. Additionally, the firms must provide HESAA with remote access to HESAA’s files that are maintained on their computer systems.

2.0 SCOPE OF SERVICES

HESAA will assign defaulted student loan accounts to the selected firms for collection. While HESAA cannot guarantee the number of loans that will be placed in the future, for reference purposes, between April 1, 2019 and March 16, 2020, on average HESAA distributed 26 borrowers’ loans per month with an average loan balance of \$29,429 among the appointed firms.

2.1 Policy and Procedures Manuals

The selected firms must comply with the attached Higher Education Student Assistance Authority Defaulted NJCLASS Product Policy and Procedures Manual for Law Firms (“NJCLASS P&P”), which provides guidelines for the collections of all types of educational receivables administered by HESAA. The NJCLASS P&P also provides guidelines for the relationship between the Authority and the firm. The NJCLASS P&P may be updated from time to time. Such updates will be sent to the firms selected pursuant to this Request for Qualifications (RFQ). If your firm is selected, by submitting a proposal, you agree that your firm shall abide by the NJCLASS P&P as written, as well as any updates that may be made during the term.

Selected firms must comply with all local, State, and federal laws, rules, and regulations applicable to this engagement and to services performed thereunder. As a contractor to HESAA, firms will be subject to audits and reviews by State and Federal entities including, but not limited to, the Consumer Financial Protection Bureau, the U.S. Department of Education, and HESAA. Firms are expected to have up-to-date knowledge on all laws and regulations applicable to student loan debt collection, including but not limited to, the Higher Education Act, the Fair Debt Collection Practices Act, the Gramm-Leach-Bliley Act, the Servicemembers Civil Relief Act, and N.J.S.A. 18A:71C-31.8.

COMPLIANCE – MONITORING, TESTING and AUDIT – It is agreed and understood that the firm shall provide regular compliance reporting to HESAA, including specific reporting on the efficacy of the firm’s internal controls which impact any of the work done for HESAA. The firm shall participate in periodic telephone calls scheduled at HESAA’s discretion to review contract and regulatory compliance performance. HESAA shall have the right to conduct a compliance audit, including onsite visits at its discretion.

COMPLIANCE – ENFORCEMENT – It is agreed that the firm will be subject to penalty for regulatory compliance and/or internal control failures, up to and including termination of the contract.

COMPLIANCE – REMEDIATION - It is agreed that the firm shall be responsible to report any regulatory compliance failure to HESAA within three business days of discovery. The firm shall be responsible for promptly remediating any compliance failure and shall provide daily progress reports on remediation until the issue is resolved to HESAA’s satisfaction.

CFPB COMPLAINT PORTAL – The firm shall register and participate in the Consumer Financial Protection Bureau (“CFPB”) Complaint Portal system. Any complaints received by the firm related to HESAA or any work the firm is doing for HESAA shall be forwarded to HESAA within two business days of the date received.

2.2 Collection Work

Selected firms will perform collection activity for matters assigned to the firm pursuant to the NJCLASS P&P and the retainer agreement. At least one collection activity must be performed every 180 days on each non-paying account. Collection activities include, but are not limited to, locating the borrower, determining if the borrower has the means to repay the loan, entering good faith settlement negotiations, obtaining a judgment, collecting on the judgment, and providing timely reports to HESAA. Selected firms shall maintain accurate account balances and payments must be applied accurately and timely. Firms must have systems in place to monitor and charge the correct interest rate for all accounts. Interest must be calculated using the simple interest method and be based on a 365/366 day year.

2.3 Bankruptcy

Selected firms will represent HESAA in matters where borrowers are contesting whether their student loans are dischargeable in bankruptcy. For matters not specifically assigned to a firm as a bankruptcy matter, prior written approval from HESAA is required before representing HESAA on any bankruptcy matters.

2.4. Administrative Wage Garnishment

As permitted, student loan collection activities include administrative wage garnishments (“AWG”). HESAA may assign matters to selected firms for representation at AWG hearings held at the Office of Administrative Law (“OAL”). HESAA will assign AWG matters to firms based on the firm’s performance in collection matters and representation in previous AWG hearings.

2.5 Collection Related Litigation and Appellate Work

Above and beyond obtaining a judgment for the amount of the student loan, HESAA may request that a firm represent HESAA in collection-related litigation and appellate matters. The determination to request representation in collection-related appellate matters will be based on the firm's performance in collection matters referred by HESAA, representation in previous AWG hearings and previous appellate matters, if applicable.

2.6 Out-of-State Attorneys and Third-Party Vendors

Selected firms have primary responsibility for compliance with all terms and conditions of their engagement. In the event it is necessary for a selected firm to utilize out-of-state attorneys or third-party vendors to perform the required services, the selected firm will be responsible for ensuring compliance with all applicable State and Federal statutory and regulatory requirements, as well as the agreement between the selected firm and HESAA. In addition, the firm will be required to report the use of out-of-state attorneys to HESAA.

2.7 Attorney Meeting

At its discretion, HESAA may require all selected firms to attend a meeting at the HESAA offices once a year. Meetings may be conducted on a more frequent basis at the discretion of HESAA.

3.0 TERM

The firms selected pursuant to this RFQ will receive file referrals between January 1, 2021, and December 31, 2022. The term of the Special Counsel designation made pursuant to this RFQ will be for the period of time required to close all files assigned to the firm pursuant to this RFQ.

4.0 OUTSIDE COUNSEL GUIDELINES

Selected firms shall be required to comply with the attached Outside Counsel Guidelines ("Guidelines"). The Guidelines may be updated from time to time. Such updates will be sent to the firms. If your firm is selected, by submitting a proposal, you agree that your firm shall abide by the Guidelines as written, as well as any updates that may be made during the term. In the event that there is a conflict between this RFQ, the NJCLASS P&P, and the Guidelines, the RFQ and NJCLASS P&P shall govern.

5.0 REQUIRED COMPONENTS OF THE RFQ PROPOSAL

Proposals must respond to each of the following requests. Please provide the information requested below for all counsel who may perform any of the requested services.

5.1 Firm Profile and Experience

- A. Indicate whether you are a small firm. For the purposes of this RFQ, a small firm has less than twenty (20) full- or part-time attorneys. Any firm with twenty (20) or more full- or part-time attorneys will be deemed a medium/large firm.

- B. Describe the participation of women and minorities in your firm. Please note the number of partners and associates who are women, minorities or both, and indicate the percentage of your firm that is owned by women and by minorities.
- C. Describe any special training or experience members of your firm possess that may assist in providing the requested legal services.
- D. Provide a description of your firm's presence in New Jersey. Note the location of each office, the number of attorneys resident in each office, whether they are partners or associates, and whether attorneys not licensed in the State of New Jersey will be assigned to provide any of the requested legal services if your firm receives a designation pursuant to this RFQ.
- E. Identify the State agencies or departments represented by the firm during the last five (5) years. For each matter, provide the name of the State agency or department, a description of the matter, the dates of the engagement and the name and contact information of the State employee responsible for overseeing the work of the firm on that matter.
- F. Identify each State agency or department before or against which the firm has regularly appeared on behalf of other clients. Please note that HESAA, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See RPC 1.7 (a)(2), RPC 1.7 (b)(2), and RPC 1.8(l).
- G. Describe the firm's approach to maintaining responsive communication with HESAA, and keeping HESAA informed of problems and progress.
- H. Provide a representative listing of the firm's major private and public sector clients.
- I. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person at your firm.

5.2 Qualifications and Experience

- A. Describe your firm's experience in educational receivables collections, including average time it takes the firm to liquidate the debt and your recovery rate. Describe the methodology used to calculate your recovery rate.
- B. Describe your firm's experience in student loan bankruptcy matters.
- C. Describe your firm's experience in Administrative Wage Garnishment hearings.
- D. Describe your firm's particular experience in collection related litigation and appellate work.
- E. Describe your firm's approach to settlements with borrowers.
- F. Identify and describe the accounting software your firm uses for student loan collections and billing HESAA for services provided. Confirm that the accounting software is calculating accrued interest on a 365/366 day basis.

- G. Identify and give the office location of each attorney who you propose to work on HESAA's matters. For each attorney and professional employee of the firm that would be involved in handling HESAA's matters, provide a detailed resume including information as to:
 - a. Education, including advanced degrees;
 - b. Years and jurisdictions of admission to practice;
 - c. Number of years involved in student loan collections, student loan bankruptcies, and Administrative Law hearings;
 - d. General work experience;
 - e. Any professional distinctions (e.g. certifications, teaching experience); and
 - f. Areas of specialization.
- H. Describe the role each member listed in G. will play in handling HESAA's matters.
- I. Identify and provide the qualifications and general work experience for all firm personnel who will be responsible for providing accounting services for collections as well as preparing the invoices sent to HESAA for the firm's services. This response should include the firm's highest ranking financial officer and all personnel who will interact with HESAA on financial and billing issues.

5.3 Other Qualification Information

- A. Identify all adverse determinations against your firm or any of its partners, associates or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints of any kind under any local, State or Federal laws, regulations, court rules, or Rules of Professional Conduct.
- B. Identify and describe in detail any indictments, convictions or civil offenses arising directly or indirectly from the conduct of business by your firm or any of its partners.
- C. Identify any material arrangements, relationships, associations, employment or other contacts that may cause a conflict of interest or the appearance of a conflict of interest if your firm acts as counsel to HESAA.
- D. Identify all CFPB complaints filed against the firm during the last twelve months, including a summary of the complaint and the firm's response.
- E. Identify any investigations of the firm, including, but not limited to investigation by CFPB, the United States Attorney General or any State Attorney General, or any other state or federal agency.
- F. Identify your firm's malpractice insurer and describe the insurance limits. Provide proof of coverage with your proposal. Selected firms will be required to provide the proof of coverage annually by October 1.

- G. Confirm that your firm covers all costs in advance of payment.
- H. Confirm that your firm agrees to comply with Outside Counsel Guidelines.
- I. Confirm that your firm agrees to comply with the NJCLASS P&P.
- J. Provide a brief description of the policies, procedures, controls, and training materials, provided to employees or agents that have consumer contact or compliance responsibilities. All materials shall be made available for review by HESAA upon request.
- K. Confirm that your firm has performed an internal review using the most recent version of The CFPB Supervision and Examination Manual, found on the CFPB website at: <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/> and corrected any findings or provide an explanation as to why the firm has not performed such an audit.
- L. Confirm that your firm has performed an internal review using the Debt Collection Examination Procedures, as published by CFPB in October 2012, and corrected any findings or provide an explanation as to why the firm has not performed such a review.
- M. Confirm that your firm has performed internal risk assessments on an annual basis from 2015 and corrected any findings or provide an explanation as to why the firm has not performed such an assessment.

5.4 Financial Statements

Provide the latest audited financial statements, or financial comments if a privately held company, for the firm, or provide an explanation as to why such statements or comments are not provided.

5.5 Additional Requirements for Retention Agreements

The attached “Additional Requirements for All HESAA Retention Agreements” are material terms of any retention resulting from this RFQ. To facilitate proposal evaluation and contract award process, all forms required by the Additional Requirements shall be submitted with the proposal. In addition, all firms retained by HESAA must register with NJSTART at njstart.gov. If your firm is currently registered with NJSTART please provide your vendor ID number.

6.0 FEES

6.1 Collection Work

All Collection accounts will be handled on a contingent fee basis. The fee will be calculated on the basis of monies collected by the firm from debtors referred to the firm by HESAA for handling. The amount of the contingency fee for accounts assigned pursuant to this RFQ will be as follows:

- A. HESAA will pay a contingency fee for collection/litigation services for NJCLASS and all other educational receivable collections at a rate of 20% for matters in New Jersey and 22% for matters outside of New Jersey.
- B. There will be no fee paid on funds received under Federal Treasury Offset Payment (“TOP”) programs, the New Jersey Set-off of Individual Liability (“SOIL”) program or Lottery Offset program, or via Administrative Wage Garnishment.
- C. HESAA pays fees in accordance with the New Jersey Prompt Payment Act, which permits State entities to pay vendors for services within 60 days of receipt of services; however, HESAA will make best efforts to pay fees on a monthly or more frequent basis. All collections should be deposited in gross dollars with payments made subsequently by HESAA to the selected firms.
- D. Contingency fees shall be paid for actual amounts received, NOT for future expected payments. Firms will not be entitled to contingency fees for any monies recovered after the firm’s contract with HESAA ends.

6.2 Bankruptcy Matters

The fee for handling bankruptcy matters, specifically contesting the dischargeability of a debtor from bankruptcy, shall be calculated at a rate of \$129.00 per hour. The total costs expended in handling a bankruptcy matter shall not exceed one third of the outstanding balance at the time the matter is referred unless expressly approved by HESAA in writing. HESAA is to be billed separately for collection matters and bankruptcy matters. HESAA is to be provided an itemized invoice for the work and/or costs incurred in handling bankruptcy matters on a monthly basis, or upon HESAA’s request.

6.3 Administrative Wage Garnishment Hearings

The rate for representation in administrative wage garnishment hearings will be \$129.00 per hour. The total costs expended in handling an administrative wage garnishment hearing shall not exceed one third of the outstanding balance at the time the matter is referred to you unless expressly approved by HESAA in writing. HESAA is to be provided an itemized invoice for the work and/or costs incurred in handling administrative wage garnishment hearings on a monthly basis or upon HESAA’s request.

6.4 Collection Related Appellate Work

The rate for representation in collection related litigation and appellate work will be \$129.00 per hour. The total costs expended in handling a collection related appellate matter shall not exceed one third of the outstanding balance at the time the matter is referred to you unless expressly approved by HESAA in writing. HESAA is to be provided an itemized invoice for the work and/or costs incurred in handling these matters on a monthly basis or upon HESAA’s request.

7.0 ADDITIONAL TERMS

- A. No endorsement: Designation as special counsel does not constitute an endorsement by the State of New Jersey or HESAA.

- B. Effect of RFQ response: A response to this RFQ will not bind or otherwise obligate HESAA to include the responding firm on the list of special counsel.
- C. Effect of Inclusion on List: Inclusion of a firm on the list of designated counsel will not bind or otherwise obligate HESAA to retain the listed firm for legal services. Inclusion on the list of designated counsel will not guarantee any other form of employment or engagement.

8.0 PROPOSAL SUBMISSION

8.1 Delivery

An original and five copies of the proposal must be marked "Special Counsel RFQ – Collection Attorneys" and delivered no later than 4:00 pm on September 15, 2020 to following:

Marnie B. Grodman, Esquire
4 Quakerbridge Plaza
P.O. Box 545
Trenton, NJ 08625

Proposals **overnighted to the Authority must use the local address zip code of 08619.** Proposals may not be delivered by fax.

In addition, a PDF of the proposal must be emailed to rsorrentino@hesaa.org no later than September 15, 2020. Both print and email versions of the proposal must be received by the deadline to be considered.

8.2 Questions

HESAA will accept questions pertaining to this RFQ from all potential bidders electronically. Questions shall be directed to Roseann Sorrentino at the following email address:

rsorrentino@hesaa.org

Questions will be accepted until 4:00 pm on August 24, 2020. In the event that it becomes necessary to clarify or revise this RFQ, such clarifications or revisions will be by addendum. Any addendum to this RFQ will become part of this RFQ and part of any designation of a firm as special counsel as a result of this RFQ.

ALL RFQ ADDENDA WILL BE POSTED ON THE HESAA WEBSITE.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this RFQ.

HESAA reserves the right to reject any and all proposals received in response to this RFQ, when determined to be in HESAA's best interest, and to waive any minor noncompliance in a proposal. HESAA further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all firms submitting proposals in response to this RFQ. In the event that all proposals are rejected or if HESAA at any time deems the number of qualified firms receiving

designations as the result of this RFQ to be insufficient to meet its potential needs, HESAA reserves the right to re-solicit proposals.

HESAA will not be responsible for any expenses in the preparation and/or presentation of the proposals and oral interviews, if any, or for the disclosure of any information or material received in connection with the solicitation, whether by negligence or otherwise.

9.0 SELECTION PROCESS

- A. All proposals will be reviewed for responsiveness. HESAA reserves the right to reject non-responsive proposals without evaluation, but may waive minor non-compliance. An Evaluation Committee, made up of no less than three HESAA employees, will evaluate responsive proposals.
- B. The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFQ:
- Knowledge and experience of attorneys in educational receivables, collections, bankruptcy, and Administrative hearings and appellate work;
 - Knowledge and experience of the firm in student loan collections, bankruptcy, and Administrative hearings and appellate work;
 - The firm's recovery performance;
 - Average time it takes the firm to liquidate debt;
 - Resources of the firm;
 - Responsiveness to HESAA directives and other initiatives;
 - Timely and accurate reporting;
 - Approach to, and effective results of, settlements with borrowers;
 - Approach to communication with HESAA; and
 - Past experience of HESAA with the firm and/or attorneys if applicable.
- C. Proposals will be ranked on technical merit. Of the firms that meet the Evaluation Committee's minimum threshold, the four firms with the highest scores will be recommended to the HESAA Board for conditional placement on the list of attorneys to which HESAA assigns educational receivable files, contingent on a recommended firm passing the site visit from HESAA staff, if a site visit has not previously taken place.
- D. HESAA staff will perform at least one physical site visit of each recommended firm that has not previously provided similar services for HESAA. The site visit will allow HESAA to evaluate the firm's ability to comply with the NJCLASS P&P, observe the firm's security and data systems, and

evaluate historical student loan collections recovery and activity data. On the site visit, at a minimum, HESAA staff will review:

- a. Office Organization
- b. Facilities
- c. Computer System
 - o System used
 - o System Security
- d. Disaster Recovery
- e. How the law firm plans to handle the initial placement of files.

At the conclusion of the visit, the HESAA staff members that performed the visit will prepare a document that summarizes the visit. The document will be circulated to the evaluation committee with a pass/fail recommendation. A copy of the visit notes will become a part of the law firm's operational file maintained by the Servicing and Collections unit.

- E. Firms recommended by the Evaluation Committee and, if applicable, receiving favorable site visit recommendations will be selected for designation as special counsel.

10.0 OUTSIDE COUNSEL DESIGNATIONS

A firm selected pursuant to this RFQ for designation as special counsel, with the approval of the HESAA Board, will be the subject of a special counsel designation. In selecting a firm to be assigned a particular receivable, HESAA will choose a firm from the list based on the following factors, not necessarily listed in order of significance:

- The background, qualifications, skills, and experience of the firm and its staff with specific reference to educational receivables collections practice;
- The quality of the firm's policies, procedures, training and compliance materials;
- The firm's degree of expertise in all facets of providing legal services relating to educational receivables collections;
- The Authority's prior experiences with the firm, if applicable;
- The firm's recovery performance;
- The average time it takes the firm to liquidate debt;
- The firm's handling of customer service issues, including settlement agreements;
- The firm's familiarity with the work, requirements, and systems of New Jersey State Authorities and those of the Higher Education Student Assistance Authority; and
- Geographical location of the firm's offices; and

11.0 EVALUATIONS

During the course of the engagement, HESAA will conduct evaluations of each firm's performance. The evaluation will focus on responsiveness, quality of work, adequacy and appropriate utilization of resources, state and federal compliance, implementation of HESAA directives, reporting, and recovery performance. HESAA will advise each firm of any problem areas. It is the firm's responsibility to correct all problems at the firm's expense. If, as a result of one or more evaluations, HESAA determines that a firm should be removed from the list of designated counsel, the firm may be removed from the list after written notice is provided to the firm. Other than this written notice, nothing in the RFQ creates any rights, entitlements, privileges, or presumptions in favor of a law firm that would constrain HESAA's authority to remove a firm from the list of designated counsel.

Should a firm be removed from the list, or terminated for any reasons, a fee is only payable upon collection and deposit of outstanding monies prior to the removal and/or termination.

No attorney's lien shall attach to a file exceeding the corresponding contingency fee otherwise provided for in this RFQ. No contingency fee will be paid for monies collected or received after the termination of the agreement between HESAA and firm. The firm will return all referred files to HESAA upon removal or termination at the firm's expense.

Attachments: Additional Requirements for All HESAA Retention Agreements
Outside Counsel Guidelines
NJCLASS P&P