

ITEM 138-110-R0308 Recommendations

Report and Recommendations to Board of Regents
Board of Regents Taskforce on Student Loan Issues
March, 2008

I. Purpose and Membership of Student Loan Taskforce

Questions raised at the October 16, 2007 Board of Regents (BOR) meeting regarding the relationship between the Montana Higher Education Student Assistance Corporation (MHESAC) and the BOR resulted in the appointment of a Regents' Student Loan Taskforce to evaluate Montana student loan industry relationships. Taskforce members are Regent Stephen Barrett, Chair, Regent Todd Buchanan, Commissioner of Higher Education Sheila M. Stearns, Student Assistance Foundation (SAF) President Jim Stipcich, and Montana Office of Budget and Program Planning Director David Ewer.

BOR Chairman Lynn Morrison-Hamilton charged the taskforce to make recommendations to the regents regarding: (1) MHESAC governance and accountability issues relative to MHESAC bond activity; (2) a process for monitoring and making policy adjustments relative to changes in student loan programs and financing issues at the federal level, in accordance with revised federal laws and the Montana Attorney General's report on student loans; and (3) improvements in communications between the regents, the Montana executive and legislative branches, and the SAF and MHESAC boards of directors.

The Taskforce noted BOR Policy 505.4, which allows MHESAC, acting as a non-profit corporation, to provide a secondary market for student loan and loan origination activity.

II. Taskforce Recommendations

The Taskforce met on November 7, 2007, November 30, 2007 and February 13, 2008. Numerous issues and options were discussed. Following are the report and recommendations of the Taskforce. It should be understood that many of these recommendations would benefit from continued discussion among the regents at later board meetings. As is clear from the report, it is expected that the Board of Regents will be more involved and informed in the future about financial aid matters, including matters involving the activities of MHESAC and SAF.

A. Accountability:

The Taskforce recommends that the BOR expand its oversight of student financial aid and student loan issues in the following ways:

1. Ensure consistent review, analysis and oversight by making student financial aid issues part of the regents' Administrative, Budget, & Audit Committee agenda for attention at every BOR meeting. *Being Implemented.*

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2. Adopt appropriate policies on program issues like lender lists and lender relationships with schools. *Being Implemented.*
3. Annually review capital availability for both Federal Family Education loan Program (FFELP) and private loans for Montana students.
4. Annually review the level of public benefits for Montana students provided by MHESAC, SAF and other student loan industry participants.
5. Receive annual business overview reports from MHESAC and other significant Montana student loan lenders.
6. Provide input annually on MHESAC's financing and business plans;
7. Support financing efforts to provide sufficient capital to allow Montana students to finance their education as is necessary.
8. As a guarantor of loans made under the FFELP Program and the agency charged with oversight of lender and school participation in FFELP): (1) exercise that oversight responsibility and (2) utilize the statutory Student Loan Advisory Council, to the extent allowed by law, to advise the board on policies related to the FFELP Program and to monitor the FFELP Program.
9. Given the importance of the MHESAC mission and the close relationship between the regents and MHESAC, the Commissioner of Higher Education (CHE) continue as the president of MHESAC and a CHE staff member continue as vice-president. This is authorized by BOR Policy 505.2.
10. MHESAC be requested to adopt the following process: "Future financing issuance activity will require a signed written certification from the Chairman of the Board of Regents that: (1) a communication of intent about the financing was provided by MHESAC to the BOR, the Governor's Office, and the members of CFAC prior to the MHESAC board's meeting at which the issuance of such financing was approved; (2) a properly noticed, public meeting was held to discuss the financing; (3) the financing was approved at a properly noticed, public MHESAC board meeting; (4) the BOR, Governor's Office and CFAC have been notified of the MHESAC approval of the impending financing; and (5) the president or vice-president of MHESAC has expressly approved the transaction."
11. MHESAC be requested to limit its *pre-October 1* national student loan activity to growth rate levels that are acceptable to its finance and credit providers and the rating agencies and that can be accomplished at economic return levels that justify the additional risk of MHESAC issuing bonds to support its non-Montana activity.

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12. MHESAC be requested to limit its *post-October 1* national student loan activity to growth rate levels that are acceptable to its finance and credit providers and the rating agencies and that can be accomplished at economic return levels that justify the additional risk of MHESAC issuing bonds to support its non-Montana activity.
13. MHESAC be requested to limit its overall level of taxable-financed loans to levels that do not have a negative impact on its ability to provide tax-exempt funding for Montana loans.
14. MHESAC be requested to evaluate the merits of creation of a for-profit entity removed from MHESAC and the State of Montana to perform non-Montana student loan services currently performed by MHESAC and SAF.

B. Governance:

The Taskforce expressed general support for MHESAC's role and purpose and recognized that it is not an inherent conflict of interest for regents to serve on the board of directors of MHESAC. The Taskforce considered a number of MHESAC and SAF board appointment changes and makes the following recommendations:

1. Regents continue to serve on the MHESAC board.
2. The level of regent participation on the MHESAC board continue at three voting members.
3. The BOR chair continue to appoint the members of the board of directors of MHESAC, including the 3 regent members, in accordance with the current MHESAC Articles of Incorporation.
4. The BOR recommend that MHESAC continue its practice of having the CHE serve as an ex-officio non-voting member of MHESAC's board and as president of MHESAC.
5. The BOR recommend that the MHESAC board member selection process for the non-regent members involve a MHESAC nominating committee that provides a slate of qualified candidates for the appointing authority's use. *Being Implemented.*
6. The BOR recommend that a student member on the MHESAC board be retained but be selected from nominations provided by a designated Montana student organization in lieu of appointment of the student regent.

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C. Volume Cap:

The Taskforce recognized that use of volume cap to acquire Montana student loans is an appropriate and beneficial use of that resource and concluded that MHESAC needs stability and predictability with regard to Montana volume cap. Recommendations:

1. The BOR request that MHESAC continue working with the Board of Housing and the Governor's Office collaboratively to (1) allocate scarce resources fairly and (2) comply with all guidelines for requesting volume cap.
2. Since Montana's volume cap is a scarce resource, the BOR request that MHESAC work with the executive branch and other users of volume cap to develop a plan for updating the allocation of available volume cap and an overall review of Montana volume cap laws.
3. The BOR work cooperatively with MHESAC and the executive branch and other users of Montana volume cap concerning the allocation of available volume cap to ensure adequate volume cap for Montana's student loan programs.
4. The BOR work in concert with MHESAC to effect an increase in the amount of volume cap available in Montana by approaching and discussing the issue with the Montana congressional delegation.
5. The BOR and MHESAC jointly request the following of CFAC:
 - A. To provide recommendations on "conduct and reporting" expectations of Montana volume cap users.
 - B. To serve as the active repository for information sharing on all "state issuers" bonding plans.
6. MHESAC be requested to work with the executive branch and other users of volume cap to develop a plan for updating the allocation of available volume cap.
7. MHESAC and the BOR work with the executive branch to expand the membership of the CFAC to include a representative of MHESAC.

D. Communications:

1. The Governor, the CHE and the MHESAC board designate a person with responsibility for communications on student loan matters.
2. The BOR discuss student financial aid issues as part of the standing agenda of the Administration, Budget & Audit Committee of the BOR. *Being implemented.*

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3. The BOR explore the need for, and potential SAF funding for, a position in the CHE's office with responsibility to follow and understand the student loan industry in general and MHESAC's and MGSLP's businesses in particular, for the purpose of providing guidance and counsel to the CHE.

E. Communication of Risk Management:

1. The BOR request a current report from MHESAC on the steps it takes to manage the risks involved in MHESAC's business.
2. The BOR request that MHESAC report at least annually to the BOR and the Governor's Office on the risks associated with its business and the steps it is undertaking to manage such risks.

F. Conflict of Interest:

Montana law prohibits personal and financial conflicts of interest by persons acting in the public interest. There is no inherent illegality or impropriety in regents sitting on the boards of directors of MHESAC or SAF where there is no personal or financial interest which conflicts with that service. Recommendations:

1. Regents continue to serve on the boards of directors of MHESAC and SAF. Concerns about conflicting fiduciary responsibilities to more than one board may be managed through board orientation and written guidelines, as necessary.
2. To satisfy recommendations of the Montana Attorney General regarding the *appearance* of perceived conflicts of interest due to overlapping membership by members on student loan boards, and to alleviate the workload of regents, the BOR consider whether it would be beneficial to ask the SAF board to consider limiting the number of regent members serving on the SAF board to one or two.
3. The BOR recommend that MHESAC and SAF adopt as policy their practice of fully complying with Montana's conflict of interest law.

G. Transparency:

The Taskforce noted that MHESAC follows open meeting and public participation procedures that provide transparency and the opportunity for public participation. MHESAC makes its board meeting summaries available to the public. MHESAC provides public notice of its board meetings and uses its website to inform the public and interested government agencies of information related to its program, including its annual report, annual audits and tax returns. These recommendations, including Recommendation #10 under Accountability, would provide clear incentive for the MHESAC board to follow its public participation policies. Despite these measures, two

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members of the Taskforce believe that state law should require MHESAC to comply with the open meeting law.

1. MHESAC be requested to provide annual business overview reports to the BOR and the Governor's Office.
2. MHESAC be requested to communicate with the members of the Legislature concerning its services to Montana citizens.
3. MHESAC be requested to inform CFAC, the BOR and the Governor of its financing plans including plans for both taxable and non-taxable issuances.
4. MHESAC be requested to continue to make its program and operation reviews and audits, audited financial statements, tax returns, offering documents and continuing disclosure statements available to the Legislative Auditor.
5. MHESAC be requested to continue to operate in as open a manner as possible and encourage public participation.

H. Other student and lender issues:

1. Federal student aid programs:

Changes to the federal Higher Education Act, effective October 1, 2007, which affect the Federal Family Education Loan Program (FFELP) and new federal regulations, effective July 1, 2008, which address lender practices, are being reviewed and analyzed by GSL and the Commissioner's Office. Resulting changes to policy and procedure are expected to be in place before the July 1 deadline. The Board of Regents will be apprised of these changes and will be slated to act on any matters requiring board action.

2. Attorney General Recommendations:

Recommendation 1: Conflict of Interest

AG Report: Although the blatant conflicts of interest occurring elsewhere were not found in Montana, the potential for conflict is quite high due to these close and sometimes overlapping relationships. To avoid any potential for or appearance of conflict of interest, Montana's institutions of higher education need to build appropriate safeguards into the school loan system.

Response: This issue is addressed in Section 4, Conflict of Interest. The FFELP Program is subject to federal law, which does not prohibit the board governance structures found in Montana. Conflicts of interest among lenders and educational institutions are addressed in federal regulations and the Montana Guaranteed Student

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Loan Program and Commissioner of Higher Education, as the FFELP Program Administrator, monitor program participants for compliance on an on-going basis.

Recommendation 2: Preferred Lender Lists

AG Report: We recommend that each institution of higher education develop comprehensive guidelines explaining the criteria used to select lenders for inclusion on or removal from its preferred lender lists, as well as a clear, well-publicized disclosure that students can borrow from lenders who are not on the list.

Response: The campuses are developing guidelines governing preferred lender lists and taking steps to ensure disclosure to students that they may obtain student loans from lenders who are not on the list. The requirements for a school to use preferred lender lists are detailed in federal regulations and the Commissioner of Higher Education monitors compliance with these regulations.

IV. Conclusion

This report represents the work of the Student Loan Taskforce appointed last October. Many options for better communications, increased accountability and better checks and balances in the student loan industry were identified and discussed in the course of the past four months and the discussions were, in my opinion, useful and productive. I believe the recommendations contained in this report are the best and most workable of the options considered. It is my understanding that the other members of the Taskforce are satisfied with these recommendations. I recommend acceptance of the report and recommendations by the Board of Regents.

Submitted February 22, 2008 by Regent Stephen Barrett, Taskforce Chair.