



UTAH SYSTEM OF
HIGHER EDUCATION

MEMORANDUM

TAB N

September 14, 2022

UHEAA and my529

The Utah State Legislature passed S.B. 172 – Higher Education Student Assistance Amendments – during its 2022 General Session. Section 6 of the bill enacts new statutory language in 53B-12-109(2) that requires the Utah Higher Education Assistance Authority (“UHEAA”) Board of Directors to, “no later than November 1, 2022, prepare a written analysis and recommendations” for the following items:

1. The most efficient way to discontinue any authority loan servicing and administration.
2. Actions the authority will take to discontinue participation in federal programs guaranteeing, reinsuring, or otherwise supporting loans for postsecondary educational purposes.
3. A complete accounting of remaining authority assets, real property, outstanding bonds, and other obligations.
4. Efforts the board of directors is taking and will take toward the dissolution of the authority.
5. Recommendations for reorganizing the board of directors for purposes of administering the Utah Educational Savings Plan.

Commissioner’s Recommendation

This is a discussion item only; no action is required.

Attachments

EXHIBIT A

UTAH HIGHER EDUCATION ASSISTANCE AUTHORITY

Statement of Net Position

June 30, 2022

ASSETS

Cash and cash equivalents		
Investments in PTIF and checking accounts	10,661,699	UHEAA Asset - Guarantee Program - Agency Operating Fund
Investments in PTIF and checking accounts	52,798,687	U.S. Treasury Asset - Guarantee Program - Federal Reserve Fund
Investments in PTIF and checking accounts	19,751,322	UHEAA Asset - Loan Purchase Program - Legacy Fund
Total cash and cash equivalents	83,211,708	
Receivables		
Account maintenance fee	99,399	
Reinsurance of defaulted loans	6,547,133	
Student loans	1,982,691	Sold September 2022 - Complete Student Loans
Interest - student loans	17,006	Sold September 2022 - Complete Student Loans
Other receivables	116,572	
Total receivables	8,762,801	
Prepaid expenses		
Computer software and maintenance	163,458	
Lease and parking	1,356,276	
Total prepaid expenses	1,519,734	
Capital Assets, net		
Building	6,510,822	Transferred to OCHE - August 2022
Computer equipment	67,015	
Total capital assets, net	6,577,837	
TOTAL ASSETS	100,072,080	

DEFERRED OUTFLOWS OF RESOURCES

Deferred pension expense	125,985
TOTAL DEFERRED OUTFLOWS OF RESOURCES	125,985

LIABILITIES

Accounts payable and payable to affiliates	659,068	
Compensated absences and severance liability	765,502	
Defaulted loan claims due participating lenders	3,974,651	Guarantee Program - Federal Reserve Fund - Government Liability
Defaulted loan collections due Federal Government	203,719	Guarantee Program - Federal Reserve Fund - Government Liability
Loan sale warranty liability	984,198	Warranty period ends March 31, 2024
Net pension liability (asset)	(925,182)	
Other liabilities	74,137	
TOTAL LIABILITIES	5,736,093	

DEFERRED INFLOWS OF RESOURCES

Deferred pension income	1,145,306	
Deferred building maintenance	60,000	Transferred to OCHE - August 2022
TOTAL DEFERRED INFLOWS OF RESOURCES	1,205,306	

NET POSITION

Net investments in capital assets	6,577,837	Bulk transferred to OCHE - August 2022
Restricted for Agency Operating Fund activities	9,644,858	UHEAA Net Position - Guarantee Program - Agency Operating Fund
Restricted for Federal Reserve Fund activities	55,712,472	U.S. Treasury Net Position - Guarantee Program - Federal Reserve Fund
Unrestricted	21,321,499	UHEAA Net Position - Loan Purchase Program - Legacy Fund
TOTAL NET POSITION	\$ 93,256,666	

Background

The Utah State Legislature passed S.B. 172 – Higher Education Student Assistance Amendments -- during its 2022 General Session. Section 6 of the bill enacts new statutory language in 53B-12-109(2) that requires the Utah Higher Education Assistance Authority (“UHEAA”) Board of Directors to, “no later than November 1, 2022, prepare a written analysis and recommendations” for the following items:

1. The most efficient way to discontinue any authority loan servicing and administration;
2. Actions the authority will take to discontinue participation in federal programs guaranteeing, reinsuring or otherwise supporting loans for postsecondary educational purposes;
3. A complete accounting of remaining authority assets, real property, outstanding bonds and other obligations;
4. Efforts the board of directors is taking and will take toward the dissolution of the authority; and
5. Recommendations for reorganizing the board of directors for purposes of administering the Utah Educational Savings Plan.

Efforts in each of these areas are well underway, and the remainder of this report details the status and future requirements to successfully complete the dissolution of the Utah Higher Education Assistance Authority (“UHEAA”) and the subsequent board reorganization in order to administer the Utah Educational Savings Plan (“UESP”) doing business as my529.

Area 1: Most efficient way to discontinue any authority loan servicing and administration

At the time this legislation was enacted, UHEAA was administering three loan-servicing programs; two that were part of the Federal Family Education Loan Program (“FFELP”); and Complete Student Loans (“CSL”), for private loans underwritten by UHEAA made to Utah residents for high-cost degree programs.

A. FFELP Loans.

The first FFELP program, the “Legacy” loan portfolio, included loans UHEAA originally serviced for Utah residents originated before 2010. The second FFELP program, the “Purchased” loan portfolio, included loans purchased from other servicers.

On March 30, 2022, UHEAA closed the sale of both the Legacy and Purchased loan portfolios. In June 2022, UHEAA transferred the net proceeds from the sale of the portfolios to the Office of the Commissioner of Higher Education (“OCHE”) to capitalize the Higher Education Student Success Endowment.

UHEAA is no longer servicing or administering any FFELP loans. However, it is important to understand that UHEAA has two ongoing commitments that will extend beyond its dissolution.

1. Two-year Warranty for Purchasers of the FFELP Loan Portfolios.

UHEAA is responsible for a two-year warranty covering purchasers of the FFELP loan portfolio. The warranty period expires on March 30, 2024. During the warranty period, UHEAA is required to make the loan purchaser whole for any prior loan servicing errors that UHEAA may have committed. Examples of

errors include but are not limited to: any action that invalidates the federal loan guaranty, misapplied interest rates and/or incorrect payment calculations.

The reimbursement to the purchaser could be full reimbursement of the loan principal or a small adjustment to interest paid. Through August 31, 2022, UHEAA has paid a total of \$162,884 on 145 disputed loans. Before paying a claim, UHEAA researches the loan to verify it is a legitimate warranty claim. The number of warranty claims is expected to be very low during the second year of the warranty, but after the dissolution of UHEAA, OCHE will still need to research and pay claims until the warranty period expires. UHEAA will implement a process for servicing these claims prior to its complete dissolution.

2. Records Retention Obligation

UHEAA has a five-year records retention requirement for all records created prior to March 30, 2022. This obligation ends March 30, 2027. Beginning September 30, 2022, UHEAA has contracted with the Pennsylvania Higher Education Assistance Authority (“PHEAA”) to use the PHEAA system to service the FFELP loans and hold all of the FFELP loan records on its systems. PHEAA will retain the records for two years. At the end of the two years, OCHE could contract with PHEAA to continue retention of the records for an additional three years (estimated at \$350,000 per year), or could explore another option such as converting the data to a SQL Database and storing the records on a local server. Accessing and pulling the information from that database, if required, will be problematic because employees with that expertise will have been terminated.

UHEAA will make a final record retention recommendation to OCHE prior to its closing date.

B. CSL.

UHEAA sold the CSL portfolio to the Kentucky Higher Education Student Loan Corporation (“KHESLC”) on September 1, 2022. All records were transferred to KHESLC. The sale agreement did not include a warranty period and no record retention obligation exists. Thus, UHEAA has no further obligations for these loans.

Area 2. Actions the authority will take to discontinue participation in federal programs guaranteeing, reinsuring or otherwise supporting loans for postsecondary educational purposes

On June 2, 2022, the Department of Education designated Educational Credit Management Corporation (“ECMC”) as the successor guarantor for UHEAA and the State of Utah. The transition date is targeted for March 1, 2023. Like the FFELP loan servicing programs, UHEAA contracted with PHEAA to use its loan guarantee systems. As a result, PHEAA is an important player in the transition because it holds all of the records for the guarantee program.

ECMC, PHEAA and UHEAA hold weekly transition update calls. All parties have committed to meeting the timeline in the project plan.

All current and archived data, even for inactive loans, will transition to the ECMC system.

UHEAA has a 60-day window to assist ECMC after the actual transition date but will have no additional commitments or obligations after that window closes.

Area 3. A complete accounting of remaining authority assets, real property, outstanding bonds and other obligations

Attached, as Exhibit A, is a UHEAA Statement of Net Position as of June 30, 2022. It provides a full accounting of all assets and liabilities as of that date.

As noted in the exhibit, UHEAA transferred any real property on its books to OCHE in August 2022. All bonds, notes and other significant financial liabilities are extinguished.

As discussed above, two obligations will extend beyond June 30, 2023: 1) the warranty period for the FFELP loan portfolio that ends on March 31, 2024; and 2) an ongoing records retention obligation through March 31, 2027. Contractually, PHEAA will cover two years of the records retention requirement beginning in October 2022. The remaining two and one-half years could be covered by extending the contract with PHEAA, or hosting the records locally in an archived form.

Area 4. Efforts the board of directors is taking and will take toward the dissolution of the authority

UHEAA has actively reduced its workforce. As of August 31, 2022, only 11 employees remain at UHEAA. On December 31, 2022, there will be a reduction in force of one employee. An additional five employees will leave on May 1, 2023. All but two accounting personnel will terminate on June 30, 2023. The remaining accounting personnel will complete the financial audit through September 30, 2023.

All accounting activity was combined into one financial statement for fiscal year 2023. The June 30, 2023, audited financials will be the final audited financials for UHEAA. All remaining assets and liabilities will transfer to OCHE by June 30, 2023. Any remaining payments for warranty claims or other bills will be paid by OCHE.

The UHEAA Board of Directors will coordinate with OCHE to modify or sunset relevant portions of the Utah Code including Title 53B Chapters 10, 11, 12, and 13.

Area 5. Recommendations for reorganizing the board of directors for purposes of administering the Utah Educational Savings Plan

A subcommittee of the UHEAA Board of Directors including Arthur Newell and Lori Chillingworth from the board, Palmer DePaulis as a public member, Juliette Tennert from OCHE staff, and Troy Runnells, Camille Anthony and Richard Ellis from my529 staff met to discuss reorganization of the board. Andrea Feirstein from AKF Consulting, who works with 529 plans across the country, joined one of the meetings. Andrea provided data on the main governance structures used in the industry and was available to answer questions of the subcommittee members.

The subcommittee looked at four different governance models.

1. my529 reporting through the Utah Board of Higher Education (“UBHE”) Finance and Facilities Committee and ultimately to the UBHE.

2. An independent board appointed by UBHE or set in statute that has full authority to administer the my529 program.
3. Establishing my529 as an independent state office similar to Utah Retirement Systems, State Institutional Trust Lands Administration or State Institutional Trust Fund Office, all of which administer trusts.
4. Moving my529 to the state treasurer's office.

While the subcommittee determined options three and four were not viable, the members had a robust discussion around options one and two. The discussion centered on two main questions: 1) How best to allocate the fiduciary duties associated with oversight of my529?; and 2) What is the UBHE oversight role?

Based on input from the subcommittee, the UHEAA Board of Directors makes the following recommendations to provide proper fiduciary oversight of my529 and other financial assistance programs.

Statutory Changes

1. Create a new Utah Education Assistance Board of Trustees ("UEAB") to act as trustees for the Utah Educational Savings Plan Trust (dba my529) [53B8a-105 – new] and to be administratively attached to the Utah System of Higher Education. [53B-8a-105 - new]
2. The Utah Board of Higher Education (UBHE) shall appoint a UEAB board of trustees, and designate its chair. [53B8a-105 – new]
3. The UEAB shall consist of seven trustees (members) appointed by the UBHE. [53B8a-105 – new]
 - a. Not more than three of whom may be members of the UBHE.
 - b. Not less than four of whom are public members possessing skills in investments, accounting, finance, banking, education, technology or financial operations.
 - c. UEAB members serve at the pleasure of the UBHE.
4. The UAEB powers and duties shall include:
 - a. Act as trustees for the Utah Educational Saving Plan Trust
 - b. Carry out and effectuate the purposes, objectives and provisions pertaining to the plan (53B-8a); [53B-8a-105 – existing]
 - c. Act as a fiduciary with a [53B-8a-105 – new]
 - i. duty of care to act solely in the best interest of my529's account owners and beneficiaries;
 - ii. a duty of loyalty putting the entity's interest ahead of personal or other interests;
 - iii. and to invest with the care, skill, prudence and diligence that a prudent person would use
 - d. Make policies governing the administration of the plan; [53B-8a-105 – existing]
 - e. Amend policies related to board governance; [53B-8a-105 – new]
 - f. Approve an annual budget; [53B-8a-105 – new]
 - g. Approve fees, fee changes and charges levied by the plan; [53B-8a-105 – new]
 - h. Approve investment managers and changes to investment options; [53B-8a-105]

- i. Receive reports on the financial status, audits, cybersecurity and operations of the plan; [53B-8a-105 – new]
- j. The UEAB may appoint advisory committees to aid it in fulfilling its duties and responsibilities; and [53B-8a-105 – existing]
- k. Report annually to the Legislature’s Education Interim Committee.
- l. All UEAB meetings shall be open to the public, except those meetings or portions of meetings that are closed as authorized by Sections 52-4-204 and 52-4-205, including to discuss fiduciary or commercial information. [53B-8a-105 – transferred]
 - i. Include definition of “fiduciary or commercial information discussions” [53B-8a-105 – transfer from 53B-12-102]

Polices, Rules and Bylaw Changes

R601, Board of Trustees of the Utah Higher Education Assistance Authority will require significant modification. Many sections may be deleted. A few items that should be retained or adjusted include:

1. UEAB Trustees and the Chair of the trustees are appointed by the UBHE Chair with the consent of the UBHE Executive Committee.
 - a. The chair shall consider recommendations for public trustees from
 - i. UBHE board members;
 - ii. UEAB trustees; and
 - iii. The my529 executive director.
2. UBHE members serving as UEAB trustees serve at the pleasure and direction of the UBHE Chair
3. Public member trustees:
 - a. Serve four-year terms;
 - b. May not serve more than two consecutive four-year terms unless they are appointed to fill a mid-term vacancy; and
 - c. Serve until a successor is appointed.
4. The UBHE board with input from the UEAB shall establish policies and procedures for selecting and appointing the my529 executive director.
5. The UEAB shall report, through my529’s executive director, to the UBHE Finance and Facilities committee, and to the UBHE board as a whole annually or as requested.
 - a. Items to report to the UBHE include:
 - i. Budget approved by the UEAB;
 - ii. Administrative fee changes;
 - iii. Changes to investment options;
 - iv. Addition or deletion of investment managers;
 - v. Audit findings
6. The UEAB may oversee other financial assistance programs as requested by the UBHE.

R602, Bylaws of the UEAB

The bylaws will also require some modification. Items to consider include:

1. Annual meeting schedule
2. Quorum for conducting business
3. Officers of the UEAB
4. Required standing committees
 - a. Audit committee to oversee the annual financial audit, internal audit and risk management, including cybersecurity.
 - b. Other standing committees

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