



## Health Benefit Exchange Authority Executive Board Meeting

### MINUTES

**Date:** April 3, 2023  
**Time:** 5:00 PM  
**Location:** Via Web Ex/By Video or Conference Call Only  
**Call- in Number:** 1-202-860-2110; Access code: 2310 445 4217; Password: exchange  
**Join via Video:** [Join Meeting](#)

**Members Present:** Henry Aaron, Leighton Ku, Diane Lewis, Gabriela Mossi, Ramon Richards, Tamara Watkins, Sharon Lewis, Karima Woods.

**Members Absent:** Khalid Pitts, Wayne Turnage.

#### **I. Welcome, Opening Remarks and Roll Call, *Diane Lewis, Chair***

A roll call confirmed a quorum with four voting members present (Dr. Aaron, Dr. Ku, Ms. Diane Lewis, Ms. Mossi [joined after roll call vote], Mr. Richards, Ms. Watkins [joined after roll call vote]).

#### **II. Approval of Agenda, *Diane Lewis, Chair***

It was moved and seconded to approve the agenda.

The motion passed unanimously, with Dr. Aaron, Dr. Ku, Mr. Richards, and Ms. Lewis voting yes.

#### **III. Discussion Items**

Experian Identity and Credit Monitoring Services – *Mila Kofman, Executive Director*

Norton Rose Fulbright – *Mila Kofman, Executive Director*

**Mila Kofman:** Each of these contracts were first reviewed by the Finance Committee and the Finance Committee approved both of these moving forward for the full Board consideration and vote. The first one is a contract with Experian to provide this to approve up to \$3.5 million to provide three years of identity theft and credit monitoring protection for DC Health Link current and past customers. This is related to a recent data breach that we suffered. It will have to go to Council for their full review and approval. The second action is to approve a contract for legal services from Norton Rose Fulbright, a law firm that will represent HBX in data-breach-related work: the breach response, notifications, and litigation. The Finance Committee has reviewed this and approved it for the full Board consideration. The action needed is approval for a base year of up to \$2.6 million and 4 option years up to \$2 million. Again, should you approve it, it will have to go to Council for their review and approval. I'm happy to take any questions from board members.

**Diane Lewis:** Are there any questions?

**Leighton Ku:** I have two questions. The first is my understanding is we're using the law firm because the city attorney's office said they didn't have the expertise and so therefore we're referring this outside counsel. Presumably, if they thought they did have the expertise, then they would bear the cost of this. So, because they don't have the expertise, we need to pay for this. I suspect I know the answer to it. But anyway, I'm just raising the question. Why is the city attorney's office not paying for that?

**Mila Kofman:** Our General Counsel is on. Brian, I'm going to defer to you whether or not we need to go into Executive Session of the Board to have a full discussion around this.

**Brian Flowers:** We are working with the Office of the Attorney General and will continue as this progresses. So that I don't think that's been resolved yet. I mean, we're paying now because we needed the services immediately. And we think we have to defend ourselves. Because the one suit that was served today named all of the Board members. It remains to be seen what will happen in the long run, because there are going to be sources of funds that we may be able to draw upon. We just don't know yet.

**Leighton Ku:** If I understand what you're saying is it is conceivable that at some point, the General Counsel's Office, or some other source may be responsible for paying for the legal fees. But yes, as of yet, I've determined.

**Brian Flowers:** Yes, that's what I'm saying.

**Leighton Ku:** It would be to at least our interest to accept possible try to understand and this necessary, you know, see, can we find some other source to pay for this? Obviously, we still want the best counsel available. Second question: The total cost of this is pretty substantial and more than we

anticipated, in the budget that we have. What's the impact for the overall budget and for things like the assessment that we need to charge that helps pay for HBX in general?

**Mila Kofman:** The source of funding for this is our unassigned fund balance. So instead of investing in a three-year IT roadmap, we're paying for this.

**Leighton Ku:** Does this mean that we will spend less on IT development, or that we will need to increase the amount that we tap out of the assessment?

**Mila Kofman:** For now, it means that we're not spending as much on IT development. So, we can fund both the credit monitoring and identity protection, as well as the cost of defending ourselves in this litigation and the cost of the initial response as well.

**Leighton Ku:** Is there any hope of recovering some portion of the cost?

**Mila Kofman:** I think it's best to go into Executive Session and have the remainder of this conversation. We have been sued and the questions you're raising may impact some or all of those lawsuits. And what I would suggest is going into executive session to hold the conversation.

**Henry Aaron:** There's not a lack of clarity on the cost of defending ourselves, or the cost of the computer policing and correction that we're undertaking. That's what we're voting on today. For tomorrow, let's have a discussion in the appropriate venue on whether we can secure some outside funding to help bear that cost. But for today, there's no question in my mind, I doubt there is in yours either, that we need to complete these contracts in order to have appropriate legal defense. And in order to complete the accounting and computer steps necessary to assure safety are going ahead for anybody who does business with HBX. So, I want to urge that, first of all, we vote to approve these two contracts.

**Leighton Ku:** can I make a slight suggestion? I've not read the resolution in detail. But can we have a clause that basically says something along the lines of if we can figure out that have someone else pay for this, we should?

**Henry Aaron:** I think that goes without saying. That's not what the issue is. The issue is whether we proceed with these contracts. In my view, even if we get no outside financial help, we need to go ahead. So, let's do that business today. And address the other question, which is distinct and separate, hopefully in an executive session as soon as possible. Because I think the question you're raising is important. It's distinct, however, in my mind, from the issue that's before us today.

**Tamara Watkins:** I do think that we are in uncharted territory with this topic, and every board member has a right to a good understanding of what is in front of them. I don't know if there is a time

to address this topic in an executive session, and then bring it back in an expedited fashion. And I'm beyond our rules. I don't even know if we need to reconvene for that. But I certainly would hate for us to not have him have an opportunity to be 100% clear on what the recommendation and the rationale is. I respect that we want it to this an executive session to ensure that there is no barrier as it relates to any litigation that may be coming. But I want to support that if there is something that we can get this very quickly, that I want to support his right to ask as many questions and understanding as thoroughly as possible.

**Mila Kofman:** We have to observe now, these are not resolutions, these are contract approvals. In which case, what you are approving is the dollar amount and the description. I defer to the Chair and the Vice Chair.

**Leighton Ku:** I support the Board moving forward on voting for what we have before us, with the understanding that we will have further discussions on these issues. in Executive Session, as soon as we can have, we can schedule a meeting or other appropriate venue. The action doesn't change. It sounds like the source of the funding is the question. But to me, I think, you know, the action needs to happen. So, I would support voting on it today.

**Henry Aaron:** I just want to say I have been one in the past who has raised questions about the size of the unassigned funds that we had available, and felt it was important to have clear purposes. And actually, as Mila accurately said, these are uncertain times. We have a lot of computer work we need to do that we can easily spend these funds on. But who knows what's going to happen? This came as a great surprise. And I'm for one, I'm very glad the funds are available so that we can, if necessary, pay for this ourselves by but moving ahead expeditiously and without delay. That said, I think Leighton is 100%. right. To the extent that we can get as financial assistance, either from general counsel from insurance, or from some other source, we should pursue it vigorously. But again, my sentiment is let's proceed now and not delay at all on. And I think there's general consensus on that, and convening an executive session along the lines to discuss the issues that Leighton has raised. My view is let's vote to approve.

**Leighton Ku:** Yes, as long as people agree that there is an attempt, there is a good faith effort to find that we can find some other resources to pay for this, that I understand the necessity these contracts. I just want to make sure that we have that caveat that in the event that there is some other way that we can shift those costs away from us having to pay them.

**Mila Kofman:** All the staff here, including me, look for efficiencies, and opportunities to get reimbursed for services and opportunities to essentially offset any assessments. This is not being treated differently than our normal approach in how we budget and operate. I just want to be very clear. So, there's nothing different about the funding required for this, and potential availability for other ways to pay for it. Nothing different from the way we approach other spending. So, I don't

know if that answers your concerns. Leighton, I thought your questions were different from where this discussion landed. And that's why I thought it was appropriate to go into executive session to discuss specifics of the multiple lawsuits that have been filed. And, you know, defense posture and that funding of the lawsuits. So that's not it. If that's not the precise question, if it's really reconfirmation, that we're always looking for ways to fund our spending, then absolutely, I'm reconfirming that.

**Leighton Ku:** Okay, I will take that as sufficient. And if it is appropriate to have an executive board session to discuss some of the other things regarding, you know, the defense posture, etc. that's worth doing. And I understand why that cannot be done publicly. But that doesn't necessarily mean that needs to be done immediately. With that assurance, I'm satisfied.

#### **IV. Public Comment**

**Diane Lewis:** Thank you. Any other questions from board members? Thank you. Is there public comment? Hearing none, we can move to the vote.

#### **V. Vote**

- a. First is the vote on Experian Identity and Credit Monitoring Services contract.

It was moved and seconded to move to approve the Contract

The motion passed unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, Ms. Mossi, Mr. Richards, and Ms. Watkins voting yes.

- b. Second is the vote on the Norton Rose Fulbright contract.

It was moved and seconded to move to approve the Contract.

The motion passed unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, Ms. Mossi, Mr. Richards, and Ms. Watkins voting yes.

#### **VI. Closing Remarks and Adjourn, *Diane Lewis, Chair***

Thank you very much for joining us this evening and thank you Board members for participating. This concludes our business for today. The meeting stands adjourned at 5:26 pm on Monday, April 3, 2023. Our next meeting is scheduled for May 10, 2023.