

## NEW ISSUE—Book-Entry Only

In the opinion of Ballard Spahr LLP, interest on the Bonds is excludable from gross income for purposes of federal income tax, assuming continuing compliance with the requirements of the federal tax laws. Interest on the Bonds is exempt from individual and corporate federal alternative minimum tax ("AMT") and is not includable in adjusted current earnings for purposes of corporate AMT. In the opinion of Ballard Spahr LLP and Sutin Thayer & Browne A Professional Corporation, interest on the Bonds is exempt from State of New Mexico personal income taxes under currently existing law. See "TAX MATTERS" herein.



**\$198,700,000**  
**New Mexico Educational Assistance Foundation**  
(d/b/a New Mexico Student Loans)  
**Education Loan Bonds**  
*consisting of*

**\$86,000,000 Series 2010-1 A-1**  
(Tax-Exempt Non-AMT Fixed Rate Bonds)  
(See inside cover for maturity dates, prices and interest rates)

**\$73,000,000 Series 2010-1 A-2**  
(Tax-Exempt Non-AMT LIBOR Floating Rate Bonds)  
(See table below for maturity date, price and interest rate)

**\$39,700,000 Series 2010-1 A-3**  
(Tax-Exempt Non-AMT LIBOR Floating Rate Bonds)  
(See table below for maturity date, price and interest rate)

### Dated: Date of Delivery

The Education Loan Bonds, consisting of \$86,000,000 Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds) (the "Series 2010A-1 Bonds"), \$73,000,000 Education Loan Bonds, Series 2010-1 A-2 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) (the "Series 2010A-2 Bonds") and \$39,700,000 Education Loan Bonds, Series 2010-1 A-3 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) (the "Series 2010A-3 Bonds") and collectively with the Series 2010A-1 Bonds and Series 2010A-2 Bonds, the "Bonds", are being issued by the New Mexico Educational Assistance Foundation (the "Foundation"). The Bonds shall be in fully registered form only, without coupons, and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York. DTC is to act as securities depository of the Bonds. Individual purchases of the Bonds are to be made in book-entry form only, in the principal amount of \$5,000 and integral multiples thereof. Purchasers of the Bonds will not receive certificates representing their interest in the Bonds purchased.

The Bonds will be issued by the Foundation to refund certain outstanding obligations of the Foundation.

The Bonds will be issued pursuant to the Indenture of Trust dated as of September 1, 2010 (the "Indenture") by and between the Foundation and Wells Fargo Bank, National Association, as trustee (the "Trustee"). The principal of and interest on the Bonds will be payable by the Trustee to DTC, whose procedures provide for remittance of such principal and interest to its Participants, for subsequent disbursements to the Beneficial Owners of the Bonds. See "DESCRIPTION OF THE BONDS."

The Series 2010A-1 Bonds are being issued as fixed rate bonds, maturing on the dates and in the amounts and bearing interest at the rates shown on the inside cover page hereof. Interest on the Series 2010A-1 Bonds is payable on December 1, 2010 and semiannually thereafter on each June 1 and December 1.

The Series 2010A-2 Bonds and Series 2010A-3 Bonds are being issued as LIBOR floating rate bonds. Principal and interest will be payable on the Series 2010A-2 Bonds and Series 2010A-3 Bonds on the first Business Day of each March, June, September and December as described in this Official Statement, commencing December 1, 2010. The following table summarizes certain aspects of the Series 2010A-2 Bonds and Series 2010A-3 Bonds and reference is made to the more complete description set forth in this Official Statement.

Series	Interest Rate	Price to Public	Final Maturity Date	Expected Ratings	CUSIP*
2010-1 A-2	100% of Three-Month LIBOR plus 0.65%	100%	December 1, 2028	Aaa (sf)/AAA (sf)	647110 FB6
2010-1 A-3	100% of Three-Month LIBOR plus 1.20%	100%	December 1, 2038	Aaa (sf)/AAA (sf)	647110 FC4

The Bonds are subject to redemption by the Foundation prior to maturity as described herein. Amounts available for redemption of the Series 2010A-2 Bonds and Series 2010A-3 Bonds will be allocated for payment of the principal of the Series 2010A-2 Bonds and the Series 2010A-3 Bonds, in that order, until paid in full. See "DESCRIPTION OF THE BONDS."

Investment in the Bonds involves risk to the Bondowner. Each prospective investor should read this entire Official Statement and should give particular attention to the section entitled "RISK FACTORS."

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE FOUNDATION, AND DO NOT CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF THE STATE OF NEW MEXICO OR OF ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE STATE OF NEW MEXICO NOR THE FOUNDATION SHALL BE OBLIGATED TO PAY THE BONDS OR THE INTEREST THEREON EXCEPT, IN THE CASE OF THE FOUNDATION, FROM THE REVENUES AND ASSETS PLEDGED THEREFOR UNDER THE INDENTURE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS. THE FOUNDATION HAS NO TAXING POWER. SEE "SECURITY AND SOURCE OF PAYMENT FOR THE BONDS."

The Bonds are offered when, as and if issued by the Foundation and received by the Underwriters, subject to prior sale, withdrawal or modification of the offer without notice and the approval of legality by Ballard Spahr LLP and Sutin Thayer & Browne A Professional Corporation, Co-Bond Counsel. Certain legal matters will be passed upon for the Foundation and the New Mexico Student Loan Guarantee Corporation ("NMSLGC") by their General Counsel, and for the Underwriters by their counsel, Hogan Lovells US LLP. It is expected that the Bonds in definitive form will be available for delivery to DTC on or about September 22, 2010.

**BofA Merrill Lynch**

**RBC Capital Markets**

September 15, 2010.

\* The CUSIP numbers have been assigned by an independent company not affiliated with the Foundation and are included solely for the convenience of the owners of Bonds. The Foundation is not responsible for the selection or uses of the CUSIP numbers and no representation is made as to their correctness on the Bonds or as indicated above.

**New Mexico Educational Assistance Foundation  
(d/b/a New Mexico Student Loans)  
Education Loan Bonds**

**\$86,000,000 Series 2010-1 A-1  
(Tax-Exempt Non-AMT Fixed Rate Bonds)  
Expected Ratings: Aaa (sf)/AAA (sf)**

<u>Maturity Date (December 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>	<u>CUSIP**</u>
2014	\$8,000,000	4.00%	1.61%	109.648%	647110 ES0
2015	15,500,000	4.00	1.98	109.917	647110 ET8
2016	15,000,000	4.00	2.25	110.059	647110 EU5
2017	13,000,000	4.00	2.55	109.469	647110 EV3
2018	10,200,000	5.00	2.80	116.000	647110 EW1
2019	8,000,000	5.00	3.00	115.958	647110 EX9
2020	5,610,000	4.00	3.15	107.357	647110 EY7
2021*	4,190,000	5.00	3.29	114.700	647110 EZ4
2022*	3,100,000	5.00	3.46	113.126	647110 FA8
2023	1,700,000	3.25	3.54	96.961	647110 EP6
2024	1,200,000	3.50	3.60	98.892	647110 EQ4
2025	500,000	3.50	3.67	98.029	647110 ER2

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\* Priced to first optional call date of December 1, 2020.

\*\* The CUSIP numbers have been assigned by an independent company not affiliated with the Foundation and are included solely for the convenience of the owners of Bonds. The Foundation is not responsible for the selection or uses of the CUSIP numbers and no representation is made as to their correctness on the Bonds or as indicated above.

This Official Statement is submitted in connection with the sale of securities as referred to herein and may not be used, in whole or in part, for any other purpose. The delivery of this Official Statement at any time does not imply that information herein is correct as of any time subsequent to its date.

No dealer, broker, salesman or other person has been authorized by the Foundation or the Underwriters to give any information or make any representations, other than those contained in this Official Statement, and if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

This Official Statement is the Foundation's Official Statement, and the information set forth herein has been obtained from the Foundation, the New Mexico Student Loan Guarantee Corporation and other sources which the Foundation believes to be reliable. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Foundation. This Official Statement does not constitute a contract between the Foundation or the Underwriters and any one or more of the Registered Owners of the Bonds.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as a part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

This Official Statement contains "forward-looking statements" within the meaning of the federal securities laws. These forward-looking statements include, among others, statements concerning expectations, beliefs, opinions, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. When used in this Official Statement, the words "project," "estimate," "intend," "expect," "scheduled," "pro forma," and similar words identify forward-looking statements. Forward-looking statements are included in the Official Statement (among others) under the captions "PLAN OF FINANCING," "SECURITY AND SOURCE OF PAYMENT FOR THE BONDS—Cash Flow Assumptions," "RISK FACTORS" and "DESCRIPTION OF THE FOUNDATION'S ELIGIBLE LOAN FINANCING PROGRAM" and "DESCRIPTION OF THE NEW MEXICO GUARANTEED STUDENT LOAN PROGRAM." The forward-looking statements in this Official Statement are subject to risks and uncertainties that could cause actual results to differ materially from those expressed in or implied by such statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE PRICE AND OTHER TERMS RESPECTING THE OFFERING AND SALE OF THE BONDS MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS AFTER SUCH BONDS ARE RELEASED FOR SALE, AND SUCH BONDS MAY BE OFFERED AND SOLD TO CERTAIN DEALERS (INCLUDING DEALERS DEPOSITING BONDS INTO INVESTMENT ACCOUNTS) AND OTHERS AT PRICES LOWER THAN THE INITIAL PUBLIC OFFERING PRICE. IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICES OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

Upon issuance, the Bonds will not be registered under the Securities Act of 1933 and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency will have passed on the accuracy of this Official Statement or approved the Bonds for sale. The Indenture will not be qualified under the Trust Indenture Act of 1939.

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## SUMMARY OF TERMS

The following summary is a general overview of the terms of the Bonds and does not contain all of the information that you need to consider in making your investment decision. The offering of the Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds) (the “Series 2010A-1 Bonds”), the Education Loan Bonds, Series 2010-1 A-2 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) (the “Series 2010A-2 Bonds”) and the Education Loan Bonds, Series 2010-1 A-3 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) (the “Series 2010A-3 Bonds” and, collectively with the Series 2010A-1 Bonds and Series 2010A-2 Bonds, the “Bonds”) is made only by means of this entire Official Statement. Before deciding to purchase the Bonds, you should consider the more detailed information appearing elsewhere in this Official Statement. Certain terms used in this Official Statement are defined in the Indenture of Trust dated as of September 1, 2010 (the “Indenture”) attached as Appendix B hereto.

### Principal Parties and Dates

<b><i>Foundation</i></b>	New Mexico Educational Assistance Foundation
<b><i>Servicer</i></b>	New Mexico Educational Assistance Foundation
<b><i>Backup Servicer</i></b>	Great Lakes Education Loan Services, Inc.
<b><i>Guaranty Agency</i></b>	New Mexico Student Loan Guarantee Corporation
<b><i>Trustee</i></b>	Wells Fargo Bank, National Association
<b><i>Swap Counterparty</i></b>	Royal Bank of Canada

***Bond Payment Dates.*** The Bond Payment Date for any Bond shall mean any Interest Payment Date, its Stated Maturity or the date of any other regularly scheduled payment date with respect thereto.

***Interest Payment Dates.*** Interest Payment Dates for the Series 2010A-1 Bonds will be June 1 and December 1 of each year, commencing December 1, 2010. Interest Payment Dates for the Series 2010A-2 Bonds and Series 2010A-3 Bonds will be the first Business Day of each March, June, September and December as described in this Official Statement, beginning December 1, 2010. The Interest Rate Determination Date for the Series 2010A-2 Bonds and Series 2010A-3 Bonds will be the second Business Day before each Interest Payment Date.

***Interest Accrual Periods.*** The initial interest accrual period for the Bonds begins on the Date of Issuance (defined herein) and ends on November 30, 2010. For all other Interest Payment Dates for the Bonds, the interest accrual period will begin on the prior Interest Payment Date and end on the day before such Interest Payment Date.

***Swap Payment Date.*** With respect to the Interest Rate Swap (described below), the Swap Payment Date is the date specified in the Interest Rate Swap on which both or either of the Swap Payment and/or Swap Receipt is due and payable under the Interest Rate Swap.

***Cut-off Date.*** The cut-off date for the student loan portfolio to be pledged by the Foundation to the Trustee on the Date of Issuance is the Date of Issuance. The student loans pledged by the Foundation to the Trustee under the Indenture, and not released from the lien thereof or sold or transferred to the extent permitted by the Indenture, are sometimes referred to herein as the “Financed Eligible Loans.”

The information presented in this Official Statement under “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” relating to the Financed Eligible Loans the Foundation expects to pledge to the Trustee on the Date of Issuance is as of June 30, 2010, which is referred to herein as the “statistical cut-off date.” The Foundation believes that the information set forth in this Official Statement with respect to the Financed Eligible Loans as of the statistical cut-off date is representative of the characteristics of the Financed Eligible Loans as they will exist on the Date of Issuance for the Bonds.

***Date of Issuance.*** The date of issuance for this offering is expected to be on or about September 22, 2010 (the “Date of Issuance”).

## **Description of the Bonds**

**General.** The New Mexico Educational Assistance Foundation is offering \$86,000,000 of its Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds), \$73,000,000 of its Education Loan Bonds, Series 2010-1 A-2 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) and \$39,700,000 of its Education Loan Bonds, Series 2010-1 A-3 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds).

The Bonds are special, limited obligations of the Foundation payable solely from the Trust Estate pledged therefor under the Indenture and will be issued pursuant to the Indenture. The Bonds will receive payments primarily from collections on the Financed Eligible Loans held by the Foundation and pledged to the Trustee under the Indenture.

The Bonds will be issued in denominations of \$5,000 and in integral multiples of \$5,000 in excess thereof. Interest on the Bonds will be payable to the record owners of the Series 2010A-1 Bonds as of the 15th day of the calendar month preceding each Interest Payment Date and to the record owners of the Series 2010A-2 Bonds and Series 2010A-3 Bonds as of the 2nd Business Day preceding each Interest Payment Date.

**Interest on the Bonds.** The Bonds will bear interest at the following rates:

- Series 2010A-1 Bonds will bear interest at the fixed interest rates set forth on the inside front cover of this Official Statement. Interest on the Series 2010A-1 Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months.
- Series 2010A-2 Bonds will bear interest, except for the initial interest accrual period as described below, at an annual rate equal to the Three-Month LIBOR Rate plus 0.65%. The Trustee will calculate the rate of interest on the Series 2010A-2 Bonds on each Interest Rate Determination Date which shall take effect on the succeeding Interest Payment Date. Interest on the Series 2010A-2 Bonds will be calculated on the basis of the actual number of days elapsed during the interest accrual period and a 360 day year.
- Series 2010A-3 Bonds will bear interest, except for the initial interest accrual period as described below, at an annual rate equal to the Three-Month LIBOR Rate plus 1.20%. The Trustee will calculate the rate of interest on the Series 2010A-3 Bonds on each Interest Rate Determination Date which shall take effect on the succeeding Interest Payment Date. Interest on the Series 2010A-3 Bonds will be calculated on the basis of the actual number of days elapsed during the interest accrual period and a 360 day year.

The LIBOR Rate for the Series 2010A-2 Bonds for the initial interest accrual period will be calculated by reference to the following formula:  $x + [(a / b) \text{ multiplied by } (y - x)] \text{ plus } 0.65\%$ , as calculated by the Trustee, where  $x$  = Two-Month LIBOR;  $y$  = Three-Month LIBOR;  $a$  = 9 (the actual number of days from the maturity date of Two-Month LIBOR to the first Interest Payment Date for the Series 2010A-2 Bonds); and  $b$  = 30 (the actual number of days from the maturity date of Two-Month LIBOR to the maturity date of Three-Month LIBOR).

The LIBOR Rate for the Series 2010A-3 Bonds for the initial interest accrual period will be calculated by reference to the following formula:  $x + [(a / b) \text{ multiplied by } (y - x)] \text{ plus } 1.20\%$ , as calculated by the Trustee, where  $x$  = Two-Month LIBOR;  $y$  = Three-Month LIBOR;  $a$  = 9 (the actual number of days from the maturity date of Two-Month LIBOR to the first Interest Payment Date for the Series 2010A-3 Bonds); and  $b$  = 30 (the actual number of days from the maturity date of Two-Month LIBOR to the maturity date of Three-Month LIBOR).

Interest accrued on the outstanding principal balance of the Bonds during each interest accrual period will be paid on the following Interest Payment Date.

## **Redemption Provisions**

Quarterly Mandatory Redemption of Series 2010A-2 Bonds and Series 2010A-3 Bonds. The Series 2010A-2 Bonds and Series 2010A-3 Bonds are subject to mandatory redemption, in that order, on each Interest Payment Date, from moneys made available therefor as described below in “—Flow of Funds.”

Optional Redemption of Series 2010A-1 Bonds. The Series 2010A-1 Bonds maturing on and after December 1, 2021 are subject to redemption prior to maturity in whole or in part at the option of the Foundation on December 1, 2020 and on any date thereafter in such order of maturity as may be directed by the Foundation at the redemption price of one hundred percent (100%) of the principal amount thereof, plus accrued interest to the

redemption date. In order to exercise its right to optionally redeem the Series 2010A-1 Bonds pursuant to this paragraph, the Foundation shall be required to simultaneously terminate the related portion of the Interest Rate Swap and provide for the payment, if any, of the Parity Termination Payments with respect to such early termination.

Special Optional Redemption of Series 2010A-1 Bonds. The Foundation may direct that certain moneys in the Revenue Fund available for this purpose as described in “—Flow of Funds” below be used to redeem the Series 2010A-1 Bonds (including the Series 2010A-1 Bonds maturing prior to December 1, 2021) at par prior to maturity in whole or in part on any June 1 or December 1 commencing with the June 1 or December 1 on which, or after, the Series 2010A-2 Bonds and the Series 2010A-3 Bonds are paid in full. In order to exercise this right, the Foundation shall be required to simultaneously terminate the related portion of the Interest Rate Swap and provide for the payment, if any, of the Parity Termination Payments with respect to such early termination.

Mandatory Sinking Fund Redemption. The Series 2010A-3 Bonds shall be redeemed prior to maturity, in part, by lot, by payment of the sinking fund payments on each of the dates set forth below and in the respective principal amounts set forth opposite each such date, at a redemption price equal to the principal amount of the Series 2010A-3 Bonds being redeemed, plus accrued interest, if any, to the redemption date.

<u>Redemption Date</u>	<u>Principal Amount</u>
December 1, 2035	\$26,435,000
December 1, 2038†	13,265,000

† Final Maturity

At the option of the Foundation to be exercised by delivery of a written certificate to the Trustee not less than 45 days next preceding any sinking fund redemption date, it may (i) deliver to the Trustee for cancellation Bonds of the related series which are subject to sinking fund redemption on such date in an aggregate principal amount designated by the Foundation, or (ii) specify a principal amount of such Bonds which prior to said date have been redeemed in accordance with the terms described in “Optional Redemption of Series 2010A-1 Bonds,” “Special Optional Redemption of Series 2010A-1 Bonds” and “Quarterly Mandatory Redemption of Series 2010A-2 Bonds and Series 2010A-3 Bonds” hereof and cancelled by the Trustee and not theretofore applied as a credit against any sinking fund redemption obligation for such Bonds. Each Bond so delivered or previously redeemed in accordance with the terms described in “Optional Redemption of Series 2010A-1 Bonds,” “Special Optional Redemption of Series 2010A-1 Bonds” and “Quarterly Mandatory Redemption of Series 2010A-2 Bonds and Series 2010A-3 Bonds” hereof shall be credited by the Trustee at 100% of the principal amount thereof against the obligation of the Foundation on such sinking fund redemption date, and any excess shall be so credited against future sinking fund redemption obligations for Bonds as directed by the Foundation. If Bonds subject to mandatory sinking fund redemption have been redeemed in accordance with the terms described in “Optional Redemption of Series 2010A-1 Bonds,” “Special Optional Redemption of Series 2010A-1 Bonds” and “Quarterly Mandatory Redemption of Series 2010A-2 Bonds and Series 2010A-3 Bonds” hereof and the Foundation shall have failed to specify the manner in which such amounts are to be credited pursuant to (ii) above, then the Trustee shall apply such credits against sinking fund obligations for each such series in chronological order.

Notice; Selection upon Partial Redemption. Upon direction of the Foundation, the Trustee shall cause notice of any redemption to be given by mailing a copy of the redemption notice to the Registered Owner of any Bonds designated for redemption in whole or in part, at its address as the same shall last appear upon the registration books, not more than 60 days prior to the redemption date and in the case of the Series 2010A-1 Bonds, not less than 30 days prior to the redemption date, and in the case of the Series 2010A-2 Bonds and Series 2010A-3 Bonds, not less than 10 days prior to the redemption date; provided, however, that failure to give such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds for which no such failure or defect occurs.

If less than all of the Series 2010A-1 Bonds are to be optionally redeemed, the Foundation shall determine the Stated Maturity or Stated Maturities of the Series 2010A-1 Bonds to be redeemed after giving effect to expected cash flows in the Trust Estate. If less than all of the Bonds of any Stated Maturity of any series of the Bonds are to be redeemed and there is more than one Registered Owner of the Bonds of such Stated Maturity of such series, such Bonds of the same Stated Maturity to be redeemed shall be selected by lot in such manner as the Trustee shall determine.

See “DESCRIPTION OF THE BONDS—Redemption Provisions” in this Official Statement.

***Final Maturity.*** The Bond Payment Dates on which the Bonds are due and payable in full are as follows:

<u>Bonds</u>	<u>Maturity Date</u>
Series 2010A-1	As shown on the inside front cover
Series 2010A-2	December 1, 2028
Series 2010A-3	December 1, 2038

The final payment of any Bonds is expected to occur earlier if, for example:

- there are prepayments on the Financed Eligible Loans;
- the Foundation exercises its option to release the Financed Eligible Loans remaining in the Trust Estate from the lien of the Indenture (which will not occur until a date when the outstanding principal amount of the Financed Eligible Loans is 10% or less of the initial principal amount of the Financed Eligible Loans). See “—Release of Financed Eligible Loans” below; or
- the Foundation exercises its option to redeem the Series 2010A-1 Bonds.

### **Description of the Interest Rate Swap**

The Foundation intends to enter into an Interest Rate Swap with Royal Bank of Canada (the “Swap Counterparty”) pursuant to which the Foundation will pay to the Swap Counterparty floating amounts based on a floating rate equal to a percentage of LIBOR and the Swap Counterparty will pay to the Foundation fixed amounts. See “PLAN OF FINANCING—Interest Rate Swap” and “INTEREST RATE SWAP.”

Payment obligations, other than Subordinated Swap Payments, of the Foundation with respect to the Interest Rate Swap will be secured by a lien on the Trust Estate on a parity with the lien securing the Bonds. Subordinated Swap Payments will be secured under the Indenture by a subordinate lien on the Trust Estate.

### **Description of the Foundation and the Trust Estate**

***General.*** The Foundation is a nonprofit corporation organized and existing under the laws of the State of New Mexico, including particularly the Education Assistance Act. See “NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION.”

As described under “PLAN OF FINANCING—Sources and Uses of Funds,” the proceeds from the sale of the Bonds will be used to refund the Refunded Bonds outstanding under a certain indenture of trust of the Foundation. Upon the deposit of proceeds for such refunding, certain Eligible Loans pledged to secure the Refunded Bonds will be released and transferred to be held and pledged pursuant to the Indenture (referred to as the “Financed Eligible Loans”). Financed Eligible Loans expected to be so released and transferred have been identified and are described under “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS.” The Financed Eligible Loans will be credited to the Acquisition Fund described below. Certain cash will also be released from the trust estate for the Refunded Bonds and is expected to be deposited to the Debt Service Reserve Fund, the Acquisition Fund and the Administration Fund and as further described under “PLAN OF FINANCING” herein.

The only sources of funds for payment of the Bonds issued under the Indenture are the Financed Eligible Loans and investments pledged to the Trustee under the Indenture and the payments the Foundation receives on those Financed Eligible Loans and investments. After the issuance of the Bonds and the deposit of the proceeds thereof (together with the released cash) to the Debt Service Reserve Fund and the Administration Fund (as described under “PLAN OF FINANCING” herein); the deposit of the Financed Eligible Loans expected to be transferred and deposited to the Acquisition Fund on the Date of Issuance (as described under “PLAN OF FINANCING” herein); and the payment of the costs of issuance, the Aggregate Market Value of the assets in the Trust Estate on the Date of Issuance will be approximately 105.6% of the aggregate principal amount of the Bonds.

“Aggregate Market Value” means, on any calculation date, the sum of the values of all assets of the Trust Estate, excluding amounts required to be deposited in the Rebate Fund or deposited to an account for payment to the Department of Education which have not, as of any date of calculation, yet been deposited therein.

**Trust Estate Assets.** The assets of the Trust Estate securing the Bonds issued under the Indenture will be a discrete trust estate that will include:

- the Financed Eligible Loans originated under the Federal Family Education Loan Program (“FFELP” or “FFEL Program”) transferred and deposited to the Acquisition Fund on the Date of Issuance;
- collections and other payments received on account of the Financed Eligible Loans; and
- money and investments held in funds created under the Indenture, including the Acquisition Fund, the Revenue Fund, the Administration Fund and the Debt Service Reserve Fund.

The Financed Eligible Loans to be pledged under the Indenture will be transferred and deposited to the Acquisition Fund on the Date of Issuance, upon the refunding of the Refunded Bonds. All of the Financed Eligible Loans pledged to the Trustee under the Indenture will be, as of the time of such pledge, guaranteed by a guaranty agency and reinsured by the U.S. Department of Education (sometimes referred to herein as the “Department of Education”). See “THE NEW MEXICO STUDENT LOAN GUARANTEE CORPORATION” in this Official Statement.

Except under limited circumstances set forth in the Indenture, Financed Eligible Loans may not be transferred out of the Trust Estate. For example, in limited circumstances described herein, the Foundation or the Servicer may be required to purchase a Financed Eligible Loan out of the Trust Estate or replace such Financed Eligible Loan. See the Form of Indenture attached to this Official Statement as Appendix B.

The Foundation will also pledge to the Trustee all of the rights and remedies that it has under any servicing agreement or guarantee agreement relating to the Financed Eligible Loans.

**Acquisition Fund.** Eligible Loans that have been identified and are described under “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” herein are expected to be transferred and deposited to the Acquisition Fund on the Date of Issuance as described under “PLAN OF FINANCING.” An estimate of the amount of Eligible Loans to be transferred and deposited in the Acquisition Fund on the Date of Issuance is set forth under “PLAN OF FINANCING.”

**Revenue Fund.** The Trustee will deposit into the Revenue Fund all revenues derived from the Financed Eligible Loans and all other revenues derived from moneys or assets on deposit in the Revenue Fund, the Acquisition Fund, the Administration Fund and the Debt Service Reserve Fund, all Swap Receipts and any other amounts deposited thereto upon receipt of a Foundation Order. Money on deposit in the Revenue Fund will be used to make the deposits and distributions described in the chart below under “—Flow of Funds,” to the extent funds are available. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Flow of Funds” herein.

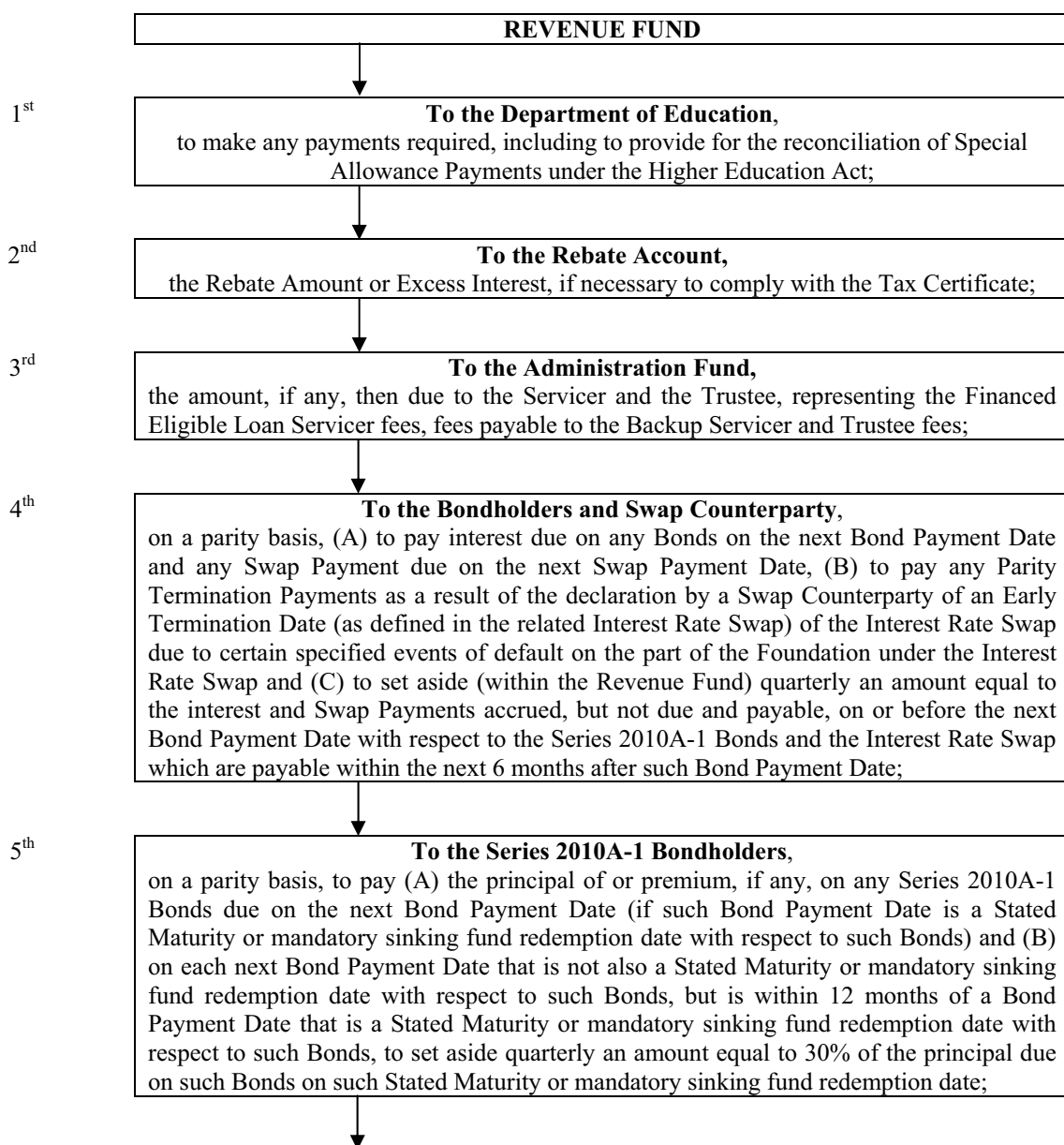
**Debt Service Reserve Fund.** Upon the issuance of the Bonds, a deposit of cash in an amount equal to 0.75% of the principal amount of the Bonds (the Debt Service Reserve Fund Requirement for the Bonds) is to be made to the Debt Service Reserve Fund. The Debt Service Reserve Fund Requirement shall be, as of any particular date of calculation, an amount equal to 0.75% of the principal amount of the Bonds then Outstanding; provided, however, that the Debt Service Reserve Fund Requirement shall not be reduced to less than \$750,000. Moneys in the Debt Service Reserve Fund are to be used in designated priorities, to cure insufficiencies of amounts in the Revenue Fund for the purposes described in the chart below under “—Flow of Funds” for the items designated as 1st through 5th. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Flow of Funds” herein.

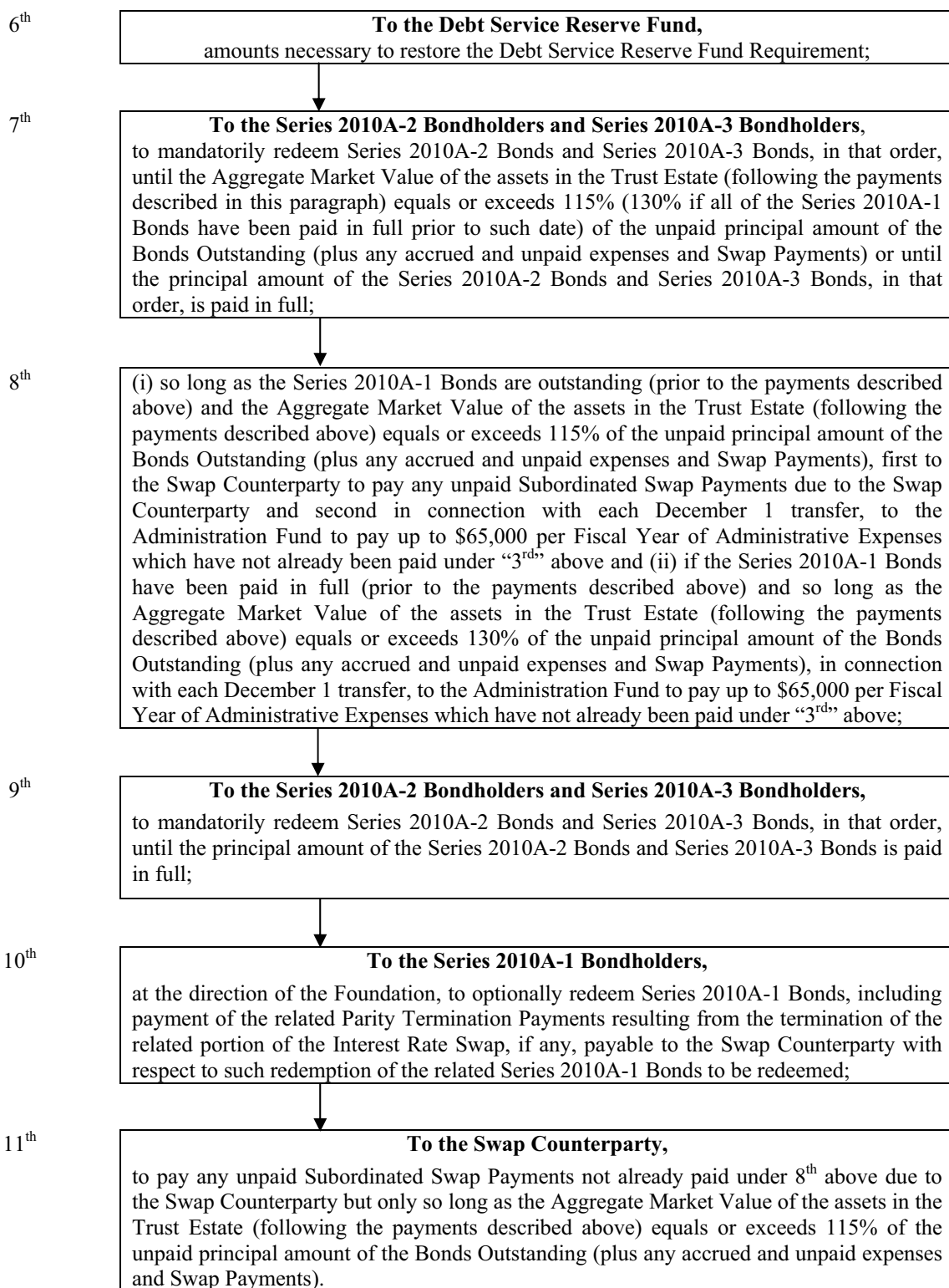
**Administration Fund.** On the Date of Issuance, cash will be deposited into the Administration Fund created under the Indenture as described in “PLAN OF FINANCING—Sources and Uses of Funds.” Moneys on deposit in the Administration Fund shall be used to pay Servicer and Trustee fees and the costs of issuance with respect to the Bonds.

***Rebate Fund.*** The Indenture creates a Rebate Fund to be held by the Trustee on behalf of the United States of America, in which the Registered Owners shall have no right, title or interest for the purpose of complying with Federal tax law.

***Characteristics of the Financed Eligible Loans.*** On the Date of Issuance, the Foundation will pledge to the Trustee under the Indenture a portfolio of student loans originated under the FFELP having, as of the statistical cut-off date, an aggregate outstanding principal balance of approximately \$204,294,793 (which does not include total accrued interest of approximately \$3,996,520, which is expected to be capitalized). The Financed Eligible Loans expected to be pledged by the Foundation to the Trustee on the Date of Issuance is described more fully below under “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” and in Appendix F to this Official Statement.

***Flow of Funds.*** On the first Business Day preceding each March 1, June 1, September 1 and December 1 commencing December 1, 2010 (each a “Payment Date”), money in the Revenue Fund will be used (or set aside) to make the following deposits and distributions, in the following order of priority:





In addition to the transfers described in above, moneys in the Revenue Fund may be transferred on the first Business Day of each month to the Administration Fund in order to pay Servicer fees.

## **Flow of Funds After Events of Default**

Following the occurrence of an event of default that results in an acceleration of the maturity of the Bonds and after the payment of certain fees and expenses, the Trustee shall apply the remainder of the money received by the Trustee first to the payment of the interest on the Bonds and all Swap Payments and Parity Termination Payments then due, in the order of the maturity of the installments thereof, with interest on overdue installments thereof at the same rates, respectively, as were borne by the Bonds on which such interest shall be in default and such Swap Payments and Parity Termination Payments as provided in the Interest Rate Swap then due, as the case may be, second, to the payment of the principal of all Bonds then due (pro rata among the series of the then Outstanding Bonds, if amounts are insufficient to pay all principal then due) and third to any Subordinated Swap Payments owed to the Swap Counterparty under the Interest Rate Swap. See “FORM OF THE INDENTURE” attached as Appendix B hereto.

## **Overcollateralization**

The security for the Bonds will include overcollateralization and cash on deposit in the Acquisition Fund and the Debt Service Reserve Fund as described herein. After the issuance of the Bonds, the acquisition of the Eligible Loans, the transfer and deposit of the Financed Eligible Loans expected to be transferred and deposited to the Acquisition Fund on the Date of Issuance as a result of the refunding of the Refunded Bonds (as described under “PLAN OF FINANCING” herein), and the deposit of cash to the Debt Service Reserve Fund (as described under “PLAN OF FINANCING” herein) and the payment of the costs of issuance, the ratio of the Aggregate Market Value to the aggregate principal amount of the Bonds outstanding on the Date of Issuance is expected to be approximately 105.6%.

## **Backup Servicer**

Pursuant to a backup servicing agreement to be effective on the Date of Issuance, Great Lakes Education Loan Servicing, Inc. will act as backup servicer with respect to the Financed Eligible Loans. See “DESCRIPTION OF THE FOUNDATION’S ELIGIBLE LOAN FINANCING PROGRAM—Backup Servicer and Backup Servicing Agreement” herein.

## **Release of Financed Eligible Loans**

The Foundation, or its assignee, shall have the option to release all of the Financed Eligible Loans free and clear of the lien of the Indenture on any date commencing with the Interest Payment Date on which the then outstanding principal amount of Financed Eligible Loans is equal to or less than 10% of the initial principal amount of Financed Eligible Loans on the Date of Issuance. To exercise this option, the Foundation or its assignee shall deposit in the Revenue Fund amounts sufficient to, and such amounts shall be used to, retire the Bonds then Outstanding and to terminate the Interest Rate Swap in whole and pay any Swap Payments, Parity Termination Payments and Subordinated Swap Payments and pay any fees due to the Servicer, the Foundation or the Trustee and any Rebate Amount or Excess Interest due and any amounts due to the Secretary with respect to such Financed Eligible Loans. Upon the exercise of such option, the Trustee shall, upon Foundation Order and subject to the provisions of the Indenture, take all actions reasonably necessary to effect the release of the Financed Eligible Loans from the lien of the Indenture.

The Indenture also provides that for administrative purposes, the Foundation may release Financed Eligible Loans free from the lien of the Indenture, so long as the Foundation deposits an amount equal to the principal amount of Financed Eligible Loans released and the collective aggregate principal balance of all such releases does not exceed 5.00% of the initial principal amount of the Financed Eligible Loans and the collective aggregate principal balance of all such releases in any calendar year does not exceed 1.00% of the principal amount of the Financed Eligible Loans as of January 1, of such calendar year (or as of the Date of Issuance with respect to the first calendar year). See “APPENDIX B—FORM OF THE INDENTURE” hereto.

## **Book-Entry Registration**

The Bonds will be delivered in book-entry form through The Depository Trust Company. Bondholders will not receive a certificate representing your Bonds except in very limited circumstances. See “DESCRIPTION OF THE BONDS—Book-Entry System.”



**Ratings**

Prior to the issuance and delivery of the Bonds, Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and Moody's Investors Service are expected to assign their bond ratings of "AAA (sf)" and "Aaa (sf)" respectively to the Bonds. A securities rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the assigning rating agency. See "RATINGS."

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## **OFFICIAL STATEMENT**

**\$198,700,000**

**New Mexico Educational Assistance Foundation**

**(d/b/a New Mexico Student Loans)**

**Education Loan Bonds**

**consisting of:**

**\$86,000,000 Series 2010-1 A-1**

**(Tax-Exempt Non-AMT Fixed Rate Bonds)**

**\$73,000,000 Series 2010-1 A-2**

**(Tax-Exempt Non-AMT LIBOR Floating Rate Bonds)**

**\$39,700,000 Series 2010-1 A-3**

**(Tax-Exempt Non-AMT LIBOR Floating Rate Bonds)**

## **INTRODUCTION**

### **General**

This Official Statement sets forth information concerning the issuance by the New Mexico Educational Assistance Foundation (the “Foundation”) of \$198,700,000 aggregate principal amount of Education Loan Bonds, consisting of \$86,000,000 Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds) (the “Series 2010A-1 Bonds”), \$73,000,000 Education Loan Bonds, Series 2010-1 A-2 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) (the “Series 2010A-2 Bonds”) and \$39,700,000 Education Loan Bonds, Series 2010-1 A-3 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) (the “Series 2010A-3 Bonds” and collectively with the Series 2010A-1 Bonds and the Series 2010A-2 Bonds, the “Bonds”). The Series 2010A-1 Bonds will be issued as fixed rate bonds and the Series 2010A-2 Bonds and Series 2010A-3 Bonds will be issued as LIBOR floating rate bonds. The information on the cover page and in the Appendices is part of this Official Statement.

The Bonds are to be issued pursuant to the Indenture of Trust dated as of September 1, 2010 (the “Indenture”), by and between the Foundation and Wells Fargo Bank, National Association, as trustee (the “Trustee”). The Bonds are authorized to be issued pursuant to the New Mexico Educational Assistance Act, Sections 21-21A-1 to 21-21A-23, NMSA 1978, as amended (the “Educational Assistance Act”) and the Indenture. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the form of Indenture attached hereto as “APPENDIX B—FORM OF THE INDENTURE.”

The Foundation is a nonprofit corporation organized and existing under the laws of the State of New Mexico (the “State”), including particularly the Educational Assistance Act.

The proceeds of the Bonds are to be applied by the Foundation to refund the Refunded Bonds (defined herein). Upon the issuance of the Bonds and provision for the refunding of the Refunded Bonds, certain student loans originated under the Federal Family Education Loan Program (“Eligible Loans”) and cash are expected to be released from the trust estates for the Refunded Bonds and transferred to and held pursuant to the Indenture. Such cash is expected to be used to pay costs of issuance, fund a deposit to a reserve fund, pay for certain Eligible Loans and certain other expenses as described under “PLAN OF FINANCING.”

The Bonds will be special obligations of the Foundation, payable only from the security therefor provided under the Indenture. The Bonds are the only bonds issued under the Indenture and no other bonds may be issued under the terms of the Indenture.

### **Interest Rate Swap**

In connection with the issuance of the Series 2010A-1 Bonds, the Foundation intends to enter into an interest rate exchange agreement (the “Interest Rate Swap”) with Royal Bank of Canada (the “Swap Counterparty”) pursuant to which the Foundation will pay to the Swap Counterparty floating amounts based on a floating rate equal to a percentage of LIBOR and the Swap Counterparty will pay to the Foundation fixed amounts based on a fixed rate. Payment obligations of the Foundation with respect to the Interest Rate Swap, other than Subordinated Swap Payments, will be secured by a lien on the Trust Estate on a parity with the lien securing the Bonds. Subordinated

Swap Payments will be secured under the Indenture by a subordinate lien on the Trust Estate. See “INTEREST RATE SWAP.”

## **Miscellaneous**

Descriptions of, among other things, the Bonds, the Foundation, the Interest Rate Swap, the Financed Eligible Loans and the Indenture are included in this Official Statement. The information and descriptions in this Official Statement do not purport to be complete, comprehensive or definitive. Statements regarding specific documents, including the Indenture, the Interest Rate Swap and the Bonds, are summaries of, and subject to, the detailed provisions of such documents and are qualified in their entirety by reference to each such document, which will be on file with the Foundation and the Trustee. This Official Statement does not constitute a contract between the Foundation, or the Underwriters, and any one or more owners of the Bonds.

## **DESCRIPTION OF THE BONDS**

### **General Terms of the Bonds**

The Bonds will be issued in fully registered form and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York. DTC will act as Securities Depository for the Bonds. Individual purchases of the Bonds will be made in Book-Entry Form only in the principal amount of authorized denominations. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds purchased. See “—Book-Entry System” below. The Bonds are issued as fully registered bonds in denominations of \$5,000 or any integral multiple thereof.

Series 2010A-1 Bonds. The Series 2010A-1 Bonds will be dated the date of their initial delivery and except as otherwise provided in the Indenture, shall bear interest from said date. Interest on the Series 2010A-1 Bonds will be payable on December 1, 2010 and each June 1 and December 1 thereafter. The Series 2010A-1 Bonds shall bear interest at the rates and shall mature on the dates as described on the inside cover page hereof. Interest on the Series 2010A-1 Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Series 2010A-2 Bonds. The Series 2010A-2 Bonds are to be issued as LIBOR floating rate bonds, shall be dated the date of initial delivery thereof and shall mature on December 1, 2028. Interest on the Series 2010A-2 Bonds will be payable on the first Business Day of each March, June, September and December, commencing December 1, 2010 (each an “Interest Payment Date”). Interest on the Series 2010A-2 Bonds will be computed for the actual number of days elapsed on the basis of a year consisting of 360 days.

The Trustee will calculate the rate of interest on the Series 2010A-2 Bonds on each Interest Rate Determination Date which shall take effect on the succeeding Interest Payment Date. The LIBOR Rate for the Series 2010A-2 Bonds for the initial interest accrual period will be calculated by reference to the following formula:

$$x + [(a / b \text{ multiplied by } (y - x)) \text{ plus } 0.65\%, \text{ as calculated by the Trustee,}$$

where:

x = Two-Month LIBOR;

y = Three-Month LIBOR;

a = 9 (the actual number of days from the maturity date of Two-Month LIBOR to the first Interest Payment Date for the Series 2010A-2 Bonds); and

b = 30 (the actual number of days from the maturity date of Two-Month LIBOR to the maturity date of Three-Month LIBOR).

Thereafter, the Series 2010A-2 Bonds shall bear interest at the Three-Month LIBOR plus 0.65%. The determination of the interest rate for the Series 2010A-2 Bonds by the Trustee shall be conclusive and binding absent manifest error. If not otherwise determined by the Trustee within 2 Business Days after any Interest Rate Determination Date, the LIBOR Rate shall be the rate established on the prior Interest Rate Determination Date.

Series 2010A-3 Bonds. The Series 2010A-3 Bonds are to be issued as LIBOR floating rate bonds, shall be dated the date of initial delivery thereof and shall mature on December 1, 2038. Interest on the Series 2010A-3 Bonds will be payable on each Interest Payment Date. Interest on the Series 2010A-3 Bonds will be computed for the actual number of days elapsed on the basis of a year consisting of 360 days.

The Trustee will calculate the rate of interest on the Series 2010A-3 Bonds on each Interest Rate Determination Date which shall take effect on the succeeding Interest Payment Date. The LIBOR Rate for the Series 2010A-3 Bonds for the initial interest accrual period will be calculated by reference to the following formula:

$x + [(a / b \text{ multiplied by } (y - x)) \text{ plus } 1.20\%, \text{ as calculated by the Trustee,}$

where:

$x = \text{Two-Month LIBOR;}$

$y = \text{Three-Month LIBOR;}$

$a = 9$  (the actual number of days from the maturity date of Two-Month LIBOR to the first Interest Payment Date for the Series 2010A-3 Bonds); and

$b = 30$  (the actual number of days from the maturity date of Two-Month LIBOR to the maturity date of Three-Month LIBOR).

Thereafter, the Series 2010A-3 Bonds shall bear interest at the Three-Month LIBOR plus 1.20%. The determination of the interest rate for the Series 2010A-3 Bonds by the Trustee shall be conclusive and binding absent manifest error. If not otherwise determined by the Trustee within 2 Business Days after any Interest Rate Determination Date, the LIBOR Rate shall be the rate established on the prior Interest Rate Determination Date.

“Interest Rate Determination Date” means the 2<sup>nd</sup> Business Day immediately preceding each Interest Payment Date or the date of issuance for the initial interest accrual period.

“Two-Month LIBOR” or “Three-Month LIBOR” means the London interbank offered rate for deposits in U.S. dollars having the applicable Index Maturity as it appears on Reuters Screen LIBOR01 Page, or another page of this or any other financial reporting service in general use in the financial services industry, as of 11:00 a.m., London time, on the related Interest Rate Determination Date as determined by the Trustee. If this rate does not appear on Reuters Screen LIBOR01 Page, or another page of this or any other financial reporting service in general use in the financial services industry, the rate for that day will be determined on the basis of the rates at which deposits in U.S. dollars, having the applicable Index Maturity and in a principal amount of not less than U.S. \$1,000,000, are offered at approximately 11:00 a.m., London time, on that Interest Rate Determination Date, to prime banks in the London interbank market by the Reference Banks. The Trustee will request the principal London office of each Reference Bank to provide a quotation of its rate. If the Reference Banks provide at least two quotations, the rate for that day will be the arithmetic mean of the quotations. If the Reference Banks provide fewer than two quotations, the rate for that day will be the arithmetic mean of the rates quoted by major banks in New York City, selected by the Trustee at approximately 11:00 a.m., New York City time, on that Interest Rate Determination Date, for loans in U.S. dollars to leading European banks having the applicable Index Maturity and in a principal amount of not less than U.S. \$1,000,000. If the banks selected as described above are not providing quotations, Three-Month LIBOR will be Three-Month LIBOR determined on the previous Interest Rate Determination Date.

“Index Maturity” means (i) for Two-Month LIBOR, two months and (ii) for Three-Month LIBOR, three months.

“Reference Banks” means the four largest United States banks by total consolidated assets listed by the Federal Reserve in its then most current statistical release on its website with respect thereto, with an office in London.

The Series 2010A-2 Bonds and Series 2010A-3 Bonds are subject to quarterly mandatory redemption on each Interest Payment Date, from moneys made available therefor as described below in “—Redemption Provisions.”

## **Release of Financed Eligible Loans**

The Foundation, or its assignee, shall have the option to release all of the Financed Eligible Loans free and clear of the lien of the Indenture on any date commencing with the Interest Payment Date on which the then outstanding principal amount of Financed Eligible Loans is equal to or less than 10% of the initial principal amount of Financed Eligible Loans on the Date of Issuance. To exercise this option, the Foundation or its assignee shall deposit in the Revenue Fund amounts sufficient to, and such amounts shall be used to, retire the Bonds then Outstanding and to terminate the Interest Rate Swap in whole and pay any Swap Payments, Parity Termination Payments and Subordinated Swap Payments and pay any fees due to the Servicer, the Foundation or the Trustee and any Rebate Amount or Excess Interest due and any amounts due to the Secretary with respect to such Financed Eligible Loans. Upon the exercise of such option, the Trustee shall, upon Foundation Order and subject to the provisions of the Indenture, take all actions reasonably necessary to effect the release of the Financed Eligible Loans from the lien of the Indenture.

The Indenture also provides that for administrative purposes, the Foundation may release Financed Eligible Loans free from the lien of the Indenture, so long as the Foundation deposits an amount equal to the principal amount of Financed Eligible Loans released and the collective aggregate principal balance of all such releases does not exceed 5.00% of the initial principal amount of the Financed Eligible Loans and the collective aggregate principal balance of all such releases in any calendar year does not exceed 1.00% of the principal amount of the Financed Eligible Loans as of January 1, of such calendar year (or as of the Date of Issuance with respect to the first calendar year). See “APPENDIX B—FORM OF THE INDENTURE” hereto.

## **Redemption Provisions**

Optional Redemption of Series 2010A-1 Bonds. The Series 2010A-1 Bonds maturing on and after December 1, 2021 are subject to redemption prior to maturity in whole or in part at the option of the Foundation on December 1, 2020 and on any date thereafter in such order of maturity as may be directed by the Foundation at the redemption price of one hundred percent (100%) of the principal amount thereof, plus accrued interest to the redemption date. In order to exercise its right to optionally redeem the Series 2010A-1 Bonds pursuant to this paragraph, the Foundation shall be required to simultaneously terminate the related portion of the Interest Rate Swap and provide for the payment, if any, of the Parity Termination Payments with respect to such early termination.

Special Optional Redemption of Series 2010A-1 Bonds. The Series 2010A-1 Bonds (including the Series 2010A-1 Bonds maturing prior to December 1, 2021) are subject to special redemption prior to maturity in whole or in part at the option of the Foundation on June 1 or December 1 commencing with the June 1 or December 1 on which, or after, the Series 2010A-2 Bonds and the Series 2010A-3 Bonds are paid in full, in such order of maturity as may be directed by the Foundation at the redemption price of one hundred percent (100%) of the principal amount thereof, plus accrued interest to the redemption date, from moneys in the Revenue Fund made available for that purpose pursuant to the Indenture. See “SECURITY AND SOURCE OF PAYMENT FOR THE BONDS—Revenue Fund; Flow of Funds” below. In order to exercise its right to optionally redeem the Series 2010A-1 Bonds pursuant to this paragraph, the Foundation shall be required to simultaneously terminate the related portion of the Interest Rate Swap and provide for the payment, if any, of the Parity Termination Payments with respect to such early termination.

Quarterly Mandatory Redemption of Series 2010A-2 Bonds and Series 2010A-3 Bonds. The Series 2010A-2 Bonds and Series 2010A-3 Bonds are subject to mandatory redemption, in that order, as a whole or in part, on any Interest Payment Date, at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption, from moneys in the Revenue Fund made available for that purpose pursuant to the Indenture. See “SECURITY AND SOURCE OF PAYMENT FOR THE BONDS—Revenue Fund; Flow of Funds” below.

“Aggregate Market Value” means, on any calculation date, the sum of the values of all assets of the Trust Estate, excluding amounts required to be deposited in the Rebate Fund or deposited to an account for payment to the Department of Education which have not, as of any date of calculation, yet been deposited therein.

Mandatory Sinking Fund Redemption. The Series 2010A-3 Bonds shall be redeemed prior to maturity, in part, by lot, by payment of the sinking fund payments on each of the dates set forth below and in the respective



principal amounts set forth opposite each such date, at a redemption price equal to the principal amount of the Series 2010A-3 Bonds being redeemed, plus accrued interest, if any, to the redemption date.

<u>Redemption Date</u>	<u>Principal Amount</u>
December 1, 2035	\$26,435,000
December 1, 2038†	13,265,000

† Final Maturity

At the option of the Foundation to be exercised by delivery of a written certificate to the Trustee not less than 45 days next preceding any sinking fund redemption date, it may (i) deliver to the Trustee for cancellation Bonds of the related series which are subject to sinking fund redemption on such date in an aggregate principal amount designated by the Foundation, or (ii) specify a principal amount of such Bonds which prior to said date have been redeemed in accordance with the terms described in “Optional Redemption of Series 2010A-1 Bonds,” “Special Optional Redemption of Series 2010A-1 Bonds” and “Quarterly Mandatory Redemption of Series 2010A-2 Bonds and Series 2010A-3 Bonds” hereof and cancelled by the Trustee and not theretofore applied as a credit against any sinking fund redemption obligation for such Bonds. Each Bond so delivered or previously redeemed in accordance with the terms described in “Optional Redemption of Series 2010A-1 Bonds,” “Special Optional Redemption of Series 2010A-1 Bonds” and “Quarterly Mandatory Redemption of Series 2010A-2 Bonds and Series 2010A-3 Bonds” hereof shall be credited by the Trustee at 100% of the principal amount thereof against the obligation of the Foundation on such sinking fund redemption date, and any excess shall be so credited against future sinking fund redemption obligations for Bonds as directed by the Foundation. If Bonds subject to mandatory sinking fund redemption have been redeemed in accordance with the terms described in “Optional Redemption of Series 2010A-1 Bonds,” “Special Optional Redemption of Series 2010A-1 Bonds” and “Quarterly Mandatory Redemption of Series 2010A-2 Bonds and Series 2010A-3 Bonds” hereof and the Foundation shall have failed to specify the manner in which such amounts are to be credited pursuant to (ii) above, then the Trustee shall apply such credits against sinking fund obligations for each such series in chronological order.

Notice of Redemption. Upon the direction of the Foundation, the Trustee is to cause notice of any redemption to be given by mailing or otherwise transmitting a copy of the redemption notice to the Registered Owner of any Bonds designated for redemption in whole or in part, at its address as the same shall last appear upon the registration books of the Trustee, not more than 60 days prior to the redemption date and in the case of the Series 2010A-1 Bonds, not less than 30 days prior to the redemption date, and in the case of the Series 2010A-2 Bonds and Series 2010A-3 Bonds, not less than 10 days prior to the redemption date; provided, however, that failure to give such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds for which no such failure or defect occurs.

Each notice of redemption is to set forth, among other things, the date fixed for redemption, the redemption price to be paid, the place or places where amounts due upon such redemption will be payable and, if less than all of the Bonds then Outstanding shall be called for redemption, the notice of redemption shall also specify the numbers of the Bonds or portions thereof to be redeemed.

No assurance can be given by the Foundation or the Trustee that DTC will distribute to the Participants or the Participants will distribute to the Beneficial Owners any redemption or other notices, or that DTC or the Participants will serve and act on a timely basis or in a manner described in this Official Statement.

Selection of Bonds for Redemption. If less than all of the Series 2010A-1 Bonds are to be optionally redeemed as described above, the Foundation is to determine the Stated Maturity or Stated Maturities of the Series 2010A-1 Bonds to be redeemed. If less than all of the Bonds of any Stated Maturity of any series of the Bonds are to be redeemed and there is more than one Registered Owner of the Bonds of such Stated Maturity of such series, such Bonds of the same Stated Maturity to be redeemed are to be selected by lot in such manner as the Trustee shall determine and in authorized denominations as described below.

In case a Bond is of a denomination larger than \$5,000, the Trustee shall treat such Bond as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000 and any such portion of such Bond may be redeemed. Except as otherwise described herein under “—Book-Entry System,” upon surrender of any Bond for redemption in part only, the Foundation shall execute and the Trustee shall authenticate

and deliver to the Registered Owner thereof, the cost of which shall be paid by the Foundation, a new Bond or Bonds of the same series and Stated Maturity and of authorized denominations, in an aggregate principal amount equal to the unredeemed portion of the Bonds surrendered.

**Purchase in Lieu of Redemption.** Any amounts held under the Indenture which are available to redeem Bonds may instead be used to purchase Bonds outstanding under the Indenture at the same times and subject to the same conditions (except as to price) as apply to the redemption of Bonds, except that such purchases made with amounts held under the Indenture shall be made only if the purchase price shall be less than the required redemption price and, with respect to the Series 2010A-1 Bonds, only if the related portion of the Interest Rate Swap can be simultaneously terminated and all amounts payable by the Foundation to the Swap Counterparty with respect thereto simultaneously paid.

### **Places of Payment**

So long as Cede & Co. is the Registered Owner of the Bonds, all payments of principal of and interest on the Bonds are to be made to Cede & Co. as nominee for DTC. Such payments are to be remitted by DTC to its Direct Participants for subsequent disbursements to the Beneficial Owners (defined below). See “—Book-Entry System” below.

The principal of all Bonds shall be payable at the designated office of the Trustee upon presentation and surrender of the Bonds, and payment of the interest on each Bond shall be made on each Interest Payment Date by the Trustee to the Person appearing on the registration records of the Foundation as the Registered Owner thereof, except as otherwise described below under “—Book-Entry System,” by check or draft mailed on the Interest Payment Date to the Registered Owner at such owner’s address as it appears on such registration records at the close of business on the respective Record Date for such Interest Payment Date. Registered Owners owning at least \$1,000,000 aggregate principal amount of the Bonds may arrange to be paid by wire transfer to the bank account number within the United States filed not later than five days prior to the Record Date with the Trustee for such purpose.

### **Exchange and Transfer of Bonds**

At the option of the Registered Owner, Bonds may be exchanged at the designated office of the Trustee for a like aggregate principal amount of fully registered Bonds of the same series, interest rate and Stated Maturity in authorized denominations. Upon surrender for transfer of any Bond at the designated office of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or his attorney duly authorized in writing, a new Bond or Bonds of the same interest rate and of like series and aggregate principal amount of the same maturity are to be delivered in the name of the transferee or transferees.

The Trustee shall require the payment by any Registered Owner requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

The Trustee shall not be required to transfer or exchange any Bond during the period of fifteen days next preceding the giving of notice of redemption. After the giving of such notice of redemption, the Trustee shall not be required to transfer or exchange any Bond, which Bond or portion thereof has been called for redemption.

Notwithstanding the above, it should be understood that while the Bonds are in the book-entry system, (i) all rights of ownership must be exercised through DTC and the book-entry system and (ii) notices that are to be given to Registered Owners by the Foundation or the Trustee will be given only to DTC. See “—Book-Entry System” below.

### **Book-Entry System**

The information in this section concerning DTC and DTC’s book-entry system has been obtained from DTC, and the Foundation takes no responsibility for the accuracy thereof.

DTC is to act as securities depository for the Bonds. The Bonds are to be issued as fully-registered bonds registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an

authorized representative of DTC. One fully-registered Bond certificate is to be issued for each series of the Bonds, each in the aggregate principal amount of such series, and is to be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's Ratings Service's ("S&P") highest rating: AAA. The DTC Rules applicable to its Direct Participants are on file with the Securities and Exchange Commission. Neither the Foundation nor the Underwriters make any representation about such information. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which are to receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices are to be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Foundation as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Foundation or the Paying Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Direct or Indirect Participants to Beneficial Owners are to be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Direct or Indirect Participant and not of DTC nor its nominee, the Paying Agent, or the Foundation, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Foundation or the Paying Agent, disbursement of such payments to Direct Participants is the responsibility of DTC, and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Foundation or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The Foundation may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates are to be printed and delivered to DTC.

NEITHER THE FOUNDATION NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO ANY DTC DIRECT OR INDIRECT PARTICIPANTS OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO (A) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC DIRECT OR INDIRECT PARTICIPANT, (B) THE PAYMENT BY DTC OR ANY DTC DIRECT OR INDIRECT PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT, REDEMPTION PRICE OF OR INTEREST ON THE BONDS, (C) THE DELIVERY BY ANY SUCH PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE INDENTURE TO BE GIVEN TO THE REGISTERED OWNER, (D) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS, OR (E) ANY OTHER ACTION TAKEN BY DTC AS THE REGISTERED OWNER OF THE BONDS.

So long as Cede & Co. or its registered assign is the Registered Owner of the Bonds, the Foundation and the Trustee will be entitled to treat Cede & Co., or its registered assign, as the absolute owner thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Foundation or the Trustee, and the Foundation and the Trustee will have no responsibility for transmitting payments to, communicating with, notifying or otherwise dealing with any Beneficial Owner of the Bonds.

When reference is made to any action which is required or permitted to be taken by the Beneficial Owners, such reference only relates to those permitted to act by statute, regulation or otherwise on behalf of such Beneficial Owners for such purposes. When notices are given, they are to be sent to DTC.

## **PLAN OF FINANCING**

In an effort to provide long-term financing, the Foundation will issue the Bonds at fixed and variable interest rates to refund certain outstanding bonds. The Foundation will also enter into the Interest Rate Swap in order to exchange its fixed rate obligations related to the Series 2010A-1 Bonds for variable rate obligations from their date of delivery through the final maturity of such obligations.

## Sources and Uses of Funds

The following tables show the estimated sources and uses of funds relating to the Bonds:

<b>Sources of Funds</b>	<b>Estimated Amounts</b>
Bond Proceeds	\$208,018,185
Eligible Loans and Accrued Interest Transferred from Prior Indentures	207,946,814
Cash Transferred from Prior 2008 Indenture	12,738,341
Cash Transferred from Prior 2009 Indenture	<u>40,000,000</u>
Total Sources of Funds .....	<u>\$468,703,340</u>
<b>Uses of Funds</b>	
Payment of Refunded Bonds	\$248,020,000
Acquisition of Eligible Loans	344,499
Deposit to Acquisition Fund: Eligible Loans (including accrued interest) and cash <sup>(1)</sup>	208,048,590
Deposit to Debt Service Reserve Fund <sup>(1)</sup>	1,490,250
Deposit to Administration Fund <sup>(1) (2)</sup>	<u>10,800,000</u>
Total Uses of Funds .....	<u>\$468,703,340</u>

(1) Cash made available upon the refunding of the Refunded Bonds is to be deposited as described above in the Debt Service Reserve Fund, Administration Fund and Acquisition Fund. Eligible Loans currently securing the Refunded Bonds will also be transferred and deposited in the Acquisition Fund and pledged to secure the Bonds. See “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS.”

(2) Such amounts are to be used to pay the costs of issuance of the Bonds.

## Refunded Bonds

The proceeds of the Bonds are expected to be used, along with certain cash currently held in the Prior Indentures (defined below), to refund approximately \$248,020,000 of bonds, \$208,020,000 of which were previously issued under the Foundation’s Trust Indenture dated as of June 1, 2008 (the “Prior 2008 Indenture”) and \$40,000,000 of which were previously issued under the Foundation’s Indenture of Trust dated as of August 1, 2009 (the “Prior 2009 Indenture” and, together with the Prior 2008 Indenture, the “Prior Indentures”), as shown in the following table (collectively, the “Refunded Bonds”):

<u>Series</u>	<u>Amount</u>	<u>Maturity</u>
Senior Series 2008A-1	\$104,020,000	4/1/2036
Senior Series 2008A-2	40,420,000	4/1/2036
Senior Series 2008A-3	63,580,000	4/1/2036
Senior Series 2009D	<u>40,000,000</u>	8/1/2039
	<u>\$248,020,000</u>	

The Series 2008A-1 Bonds, certain of which constitute a portion of the Refunded Bonds, were issued as variable rate bonds supported by a Letter of Credit from Bank of America, N.A. The Series 2008A-2 Bonds, certain of which also constitute a portion of the Refunded Bonds, were issued as variable rate bonds supported by a Letter of Credit from the Royal Bank of Canada. Merrill Lynch, Pierce, Fenner & Smith Incorporated and RBC Capital Markets Corporation, the Underwriters of the Bonds, are affiliates, respectively, of Bank of America, N.A., and Royal Bank of Canada.

## Interest Rate Swap

In connection with the issuance of the Series 2010A-1 Bonds, the Foundation will enter into the Interest Rate Swap with the Swap Counterparty in order to exchange its fixed interest rate obligation on the Series 2010A-1 Bonds for a variable interest rate obligation from the Date of Issuance of such Series 2010A-1 Bonds through their respective final maturities. See “INTEREST RATE SWAP” below.

## **SECURITY AND SOURCE OF PAYMENT FOR THE BONDS**

### **General**

The Bonds will be special obligations of the Foundation and will not constitute or give rise to a pecuniary obligation of or a charge against the general credit or revenue of the Foundation or give rise to a personal or pecuniary obligation of the officers, employees, agents or directors of the Foundation.

The Bonds will not constitute a debt, liability or obligation of the State of New Mexico (the “State”) or of any political subdivision thereof for any purpose whatsoever. Neither the full faith and credit nor the taxing power of the State or any political subdivision thereof is pledged for the payment of the principal of or interest on the Bonds. The Foundation has no taxing power.

### **The Trust Estate**

The Bonds and the obligation of the Foundation under the Interest Rate Swap will be secured by the assets pledged under the Indenture (collectively, the “Trust Estate”), which consist of (a) the Revenues (other than Revenues deposited in the Rebate Fund or otherwise released from the lien of the Indenture as provided therein); (b) all moneys and investments in the Acquisition Fund, the Revenue Fund, the Debt Service Reserve Fund and the Administration Fund; (c) the Financed Eligible Loans; (d) the rights of the Foundation in and to the Servicing Agreements and the Guarantee Agreements as the same relate to the Financed Eligible Loans; (e) the rights of the Foundation in the Interest Rate Swap, provided that such rights shall not be for the benefit of the Swap Counterparty with respect to the Interest Rate Swap; and (f) any and all other property, rights and interests of every kind or description that from time to time is granted, conveyed, pledged, transferred, assigned or delivered to the Trustee as additional security under the Indenture. The Indenture provides that the Trustee has a prior lien on the Trust Estate for payment of its fees and expenses. Pending application of moneys held under the Indenture for the purposes provided herein, the Trustee is directed by the Foundation to invest such moneys (other than moneys specifically to be held uninvested) in Investment Securities, as defined in the Indenture.

### **Initial Collateralization**

Security for the Bonds includes overcollateralization, expected excess interest and cash on deposit in the Debt Service Reserve Fund. After the issuance of the Bonds, the acquisition of Financed Eligible Loans, the transfer and deposit of the Financed Eligible Loans expected to be transferred and deposited as a result of the refunding of the Refunded Bonds to the Acquisition Fund on the Date of Issuance, and the deposit of cash to the Debt Service Reserve Fund and the payment of the costs of issuance, the ratio of the Aggregate Market Value to the aggregate principal amount of the Bonds outstanding on the Date of Issuance is expected to be approximately 105.6%. See “PLAN OF FINANCING” herein.

Excess interest is the positive difference between (i) the interest earnings on the loans from borrower interest payments, interest subsidy payments or special allowance payments and (ii) the interest on the Bonds and other expenses such as Servicing, Trustee and Administration Expenses. There can be no assurance as to the rate, timing or amount, if any, of excess interest.

The overcollateralization will not provide protection against all risks of loss and may not guarantee payment to Bondholders of all amounts to which they are entitled. If losses or shortfalls occur that exceed the amount covered by the security or that are not covered by the security, Bondholders will bear their allocable share of deficiencies. The Foundation is not issuing any subordinate bonds. To the extent that the security described above is exhausted, the Bonds will bear any risk of loss.

### **Cash Flow Assumptions**

The Foundation expects that Revenues and other available amounts will be sufficient to pay the principal of and interest on the Bonds and other amounts due and payable under the Indenture. Such expectation is based upon certain assumptions, believed by the Foundation to be reasonable, including the expected composition of the loan portfolio, interest rates for the Bonds, net payments under the Interest Rate Swap, general market conditions, the investment of certain funds held under the Indenture and the occurrence of certain events when anticipated. Actual events may not correspond to such assumptions. The provisions of the Higher Education Act (as defined below) as it relates to Eligible Loans have been amended in recent years. Certain of such amendments apply to loans the

Foundation has acquired. The Foundation has made certain assumptions with respect to such loans. The actual performance of such loans may not correspond to such assumptions. In addition, further changes in the Higher Education Act could also adversely affect the Foundation's ability to pay principal of and interest on the Bonds.

### **Acquisition Fund**

On the Date of Issuance, Eligible Loans and cash will be transferred into the Acquisition Fund created under the Indenture as described under "PLAN OF FINANCING—Sources and Uses of Funds." An estimate of the amount of the Financed Eligible Loans and cash to be deposited in the Acquisition Fund on the Date of Issuance is set forth under "PLAN OF FINANCING—Sources and Uses of Funds." The Financed Eligible Loans deposited in the Acquisition Fund shall be held by the Foundation (on behalf of the Trustee) or the Foundation's agent or bailee and accounted for as part of the Acquisition Fund. See "CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS" for information regarding the Financed Eligible Loans expected to be transferred to the Acquisition Fund.

### **Debt Service Reserve Fund**

The Bonds are additionally secured by the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement. Upon the issuance of the Bonds and the redemption of the Refunded Bonds, a deposit of cash in an amount equal to 0.75% of the principal amount of the Bonds (the Debt Service Reserve Fund Requirement for the Bonds) in the Debt Service Reserve Fund is to be made from cash released from the Prior Indentures. The Debt Service Reserve Fund Requirement shall be, as of any particular date of calculation, an amount equal to 0.75% of the principal amount of the Bonds then Outstanding; provided, however, that the Debt Service Reserve Fund Requirement shall not be reduced to less than \$750,000. Moneys in the Debt Service Reserve Fund are to be used in designated priorities, to cure insufficiencies of amounts in the Revenue Fund for the purposes described in the chart below under "Revenue Fund; Flow of Funds" for the items designated as 1st through 5th. See also "APPENDIX B—FORM OF THE INDENTURE." The Foundation shall also use amounts on deposit in the Debt Service Reserve Fund in order to make the final payments on the Bonds. At such time as all of the Bonds are subject to redemption and amounts on deposit in the Revenue Fund and the Debt Service Reserve Fund are sufficient to retire the Bonds and to pay all other amounts due and owing under the Indenture, amounts on deposit in the Debt Service Reserve Fund shall be used along with such other amounts for such purpose.

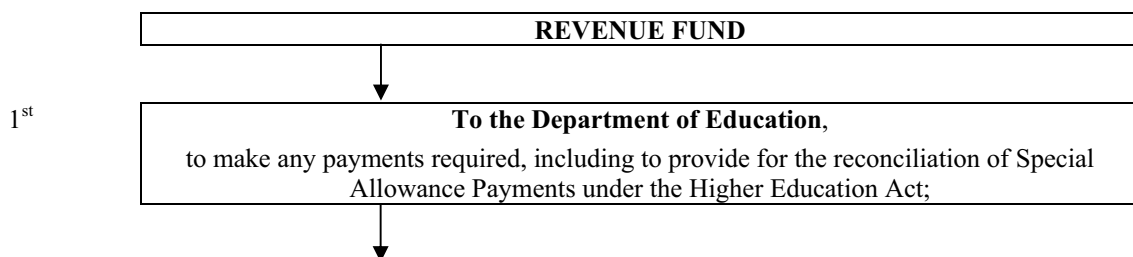
### **Rebate Fund**

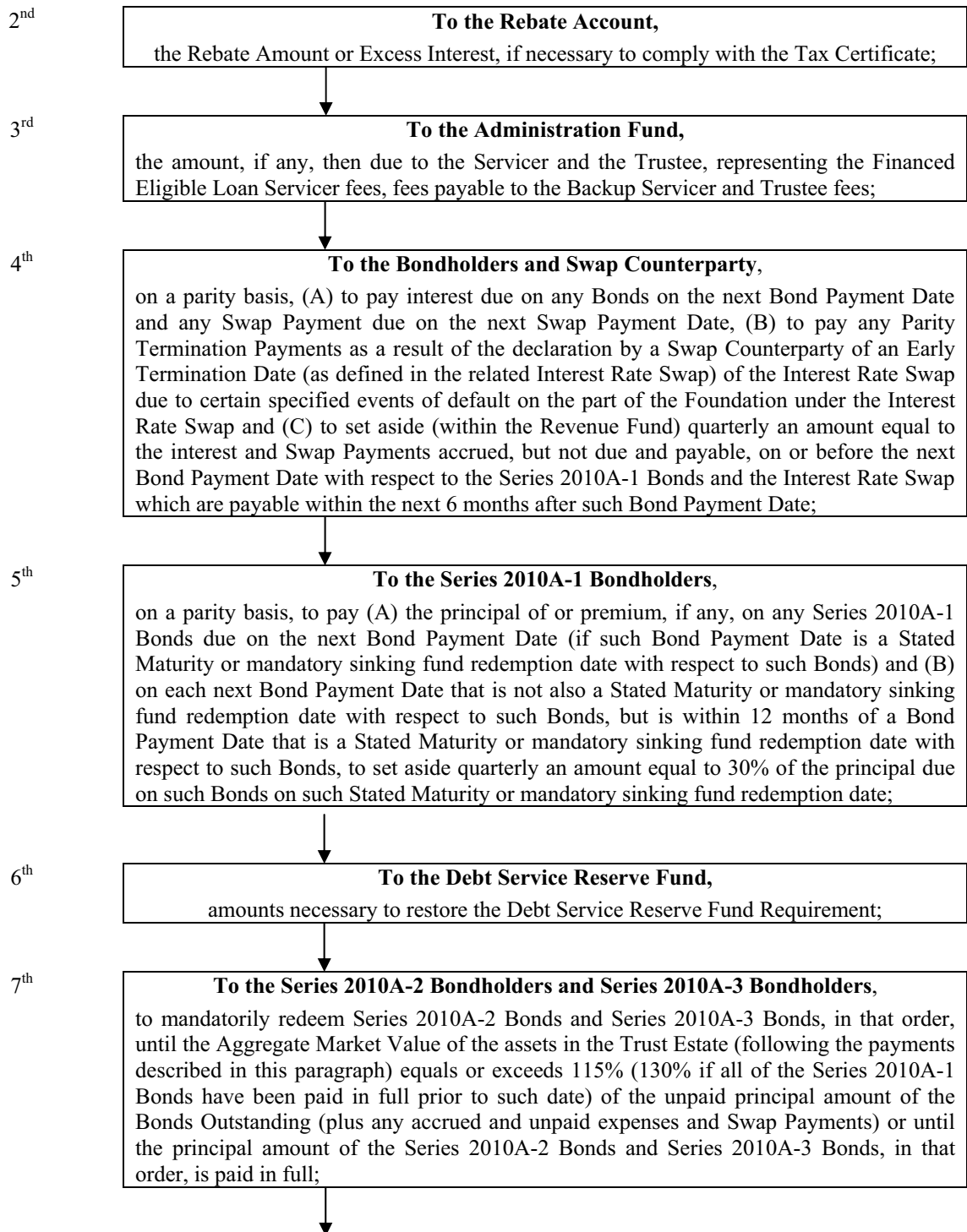
The Indenture creates a Rebate Fund to be held by the Trustee on behalf of the United States of America, in which the Bondholders shall have no right, title or interest for the purpose of complying with Federal tax law.

### **Revenue Fund; Flow of Funds**

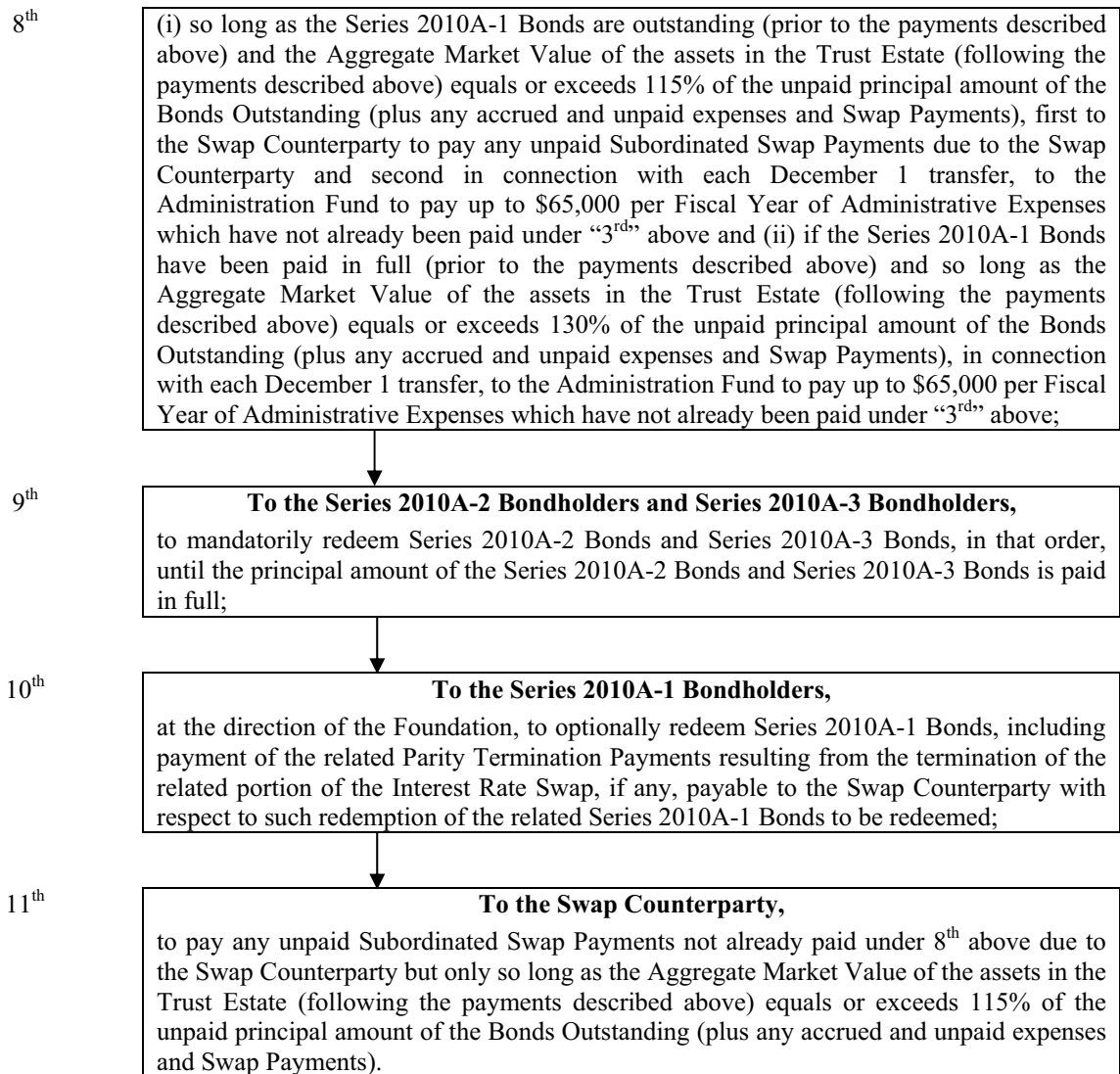
The Trustee will credit to the Revenue Fund all revenues derived from the Financed Eligible Loans and all other revenues derived from moneys or assets on deposit in the Acquisition Fund, the Debt Service Reserve Fund, the Administration Fund and the Revenue Fund and all Swap Receipts and any other amounts deposited thereto upon the direction of the Foundation.

On the first Business Day preceding each March 1, June 1, September 1 and December 1 commencing December 1, 2010 (each a "Payment Date"), money in the Revenue Fund will be used (or set aside) to make the following deposits and distributions, in the following order of priority:









In addition to the transfers described in above, moneys in the Revenue Fund may be transferred on the first Business Day of each month to the Administration Fund in order to pay Servicer fees.

#### **Flow of Funds After Events of Default**

Following the occurrence of an event of default that results in an acceleration of the maturity of the Bonds and after the payment of certain fees and expenses, the Trustee shall apply the rest and residue of the money received by the Trustee first to the payment of the interest on the Bonds and all Swap Payments and Parity Termination Payments then due, in the order of the maturity of the installments thereof, with interest on overdue installments thereof at the same rates, respectively, as were borne by the Bonds on which such interest shall be in default and such Swap Payments and Parity Termination Payments as provided in the Interest Rate Swap then due, as the case may be, second, to the payment of the principal of all Bonds then due (pro rata among the series of the then Outstanding Bonds, if amounts are insufficient to pay all principal then due) and third to any Subordinated Swap Payments owed to the Swap Counterparty under the Interest Rate Swap. See “FORM OF THE INDENTURE” attached as Appendix B hereto.

### **Administration Fund**

On the Date of Issuance, cash will be deposited into the Administration Fund created under the Indenture as described in “PLAN OF FINANCING—Sources and Uses of Funds.” Thereafter, amounts shall be transferred from the Revenue Fund to the Administration Fund as described above under “Revenue Fund; Flow of Funds.” Moneys on deposit in the Administration Fund shall be used solely to pay Administrative Expenses and the costs of issuance with respect to the Bonds. Amounts shall be disbursed from the Administration Fund for such purpose upon receipt by the Trustee of a direction from the Foundation.

### **Investment of Funds Held by Trustee**

The Trustee shall invest amounts credited to any Fund established under the Indenture in investment securities described in the Indenture pursuant to directions received from the Foundation. In the absence of a direction, the Trustee shall invest amounts held under the Indenture in a money market fund rated at least “Aa2” or “P-1” by Moody’s and, if rated by S&P, “AAAm” or “AAAm-G” by S&P. The Trustee is not responsible or liable for any losses on investments made by it or for keeping all funds held by it fully invested at all times. Its only responsibility is to comply with investment instructions of the Foundation in a non-negligent manner.

### **CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS**

Set forth below are certain characteristics of the portfolio of Financed Eligible Loans which will exist under the Indenture following the acquisition of Eligible Loans and the provision for the refunding of the Refunded Bonds and the transfer of such Financed Eligible Loans currently held under the Prior Indentures with respect to the Refunded Bonds. Such characteristics of the Financed Eligible Loans to be held under the Indenture are as of June 30, 2010.

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COMPOSITION OF THE FINANCED ELIGIBLE LOANS  
AS OF JUNE 30, 2010

Summary

Aggregate Outstanding Principal Balance:	\$204,294,793
Accrued Interest to be Capitalized:	\$3,996,520
Number of Borrowers: <sup>(1)</sup>	18,424
Average Outstanding Principal Balance Per Borrower:	\$11,089
Number of Loans:	44,994
Average Outstanding Principal Balance Per Loan:	\$4,540
Weighted Average Remaining Term to Scheduled Maturity (months): <sup>(2)</sup>	169
Weighted Average Payments Made (months):	14
Weighted Average Annual Borrower Interest Rate: <sup>(3)</sup>	5.03%
Weighted Average Special Allowance Payment Repayment Margin to 3-Month Commercial Paper:	2.44%
Weighted Average Special Allowance Payment Repayment Margin to 91-Day Treasury Bill:	3.03%

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- (1) A single borrower can have more than one account if such borrower had different types of underlying FFELP loans with certain characteristics.
- (2) The weighted average remaining term to scheduled maturity shown in the table above was determined from June 30, 2010 to the stated maturity date of the applicable student loan, including any current deferral or forbearance periods, but without giving effect to any deferral or forbearance periods that may be granted in the future.
- (3) The weighted average annual borrower interest rate shown in the table above was determined without including any special allowance payments or any rate reductions that may be earned by borrowers in the future.

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY LOAN TYPE  
AS OF JUNE 30, 2010

<u>Loan Type</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
Stafford - Subsidized	23,089	\$ 66,789,270	32.69%
Stafford - Unsubsidized	15,032	59,994,447	29.37
Consolidation - Subsidized	3,559	40,623,271	19.88
Consolidation - Unsubsidized	3,170	36,428,880	17.83
PLUS	141	449,734	0.22
SLS	<u>3</u>	<u>9,191</u>	<u>0.00</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY RANGE OF  
ANNUAL BORROWER INTEREST RATE  
AS OF JUNE 30, 2010

<u>Range of Annual Borrower Interest Rate</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
2.01% - 3.00%	17,753	\$50,200,574	24.57%
3.01% - 4.00%	1,961	11,392,392	5.58
4.01% - 5.00%	3,865	42,607,142	20.86
5.01% - 6.00%	1,501	16,011,720	7.84
6.01% - 7.00%	19,489	79,506,346	38.92
7.01% - 8.00%	292	3,299,999	1.62
Greater than 8.00%	<u>133</u>	<u>1,276,619</u>	<u>0.62</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY SCHOOL TYPE  
AS OF JUNE 30, 2010

<u>School Type</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
Four-Year Institution	29,511	\$151,721,508	74.27%
Two-Year Institution	13,751	44,540,506	21.80
Proprietary	1,662	6,832,245	3.34
Unknown	<u>70</u>	<u>1,200,533</u>	<u>0.59</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY SAP INTEREST RATE INDEX  
AS OF JUNE 30, 2010

<u>SAP Interest Rate Index</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
90-day CP Index	42,844	\$199,687,480	97.74%
91-day T-Bill Index	<u>2,150</u>	<u>4,607,313</u>	<u>2.26</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY BORROWER PAYMENT STATUS  
AS OF JUNE 30, 2010

<u>Borrower Payment Status</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
In School	6,088	\$22,664,666	11.09%
Grace	1,496	4,761,938	2.33
Deferment	12,535	59,429,003	29.09
Forbearance	2,447	15,392,233	7.53
Repayment (First Year)	8,851	41,991,751	20.55
Repayment (Second Year)	4,830	22,500,782	11.01
Repayment (Third Year)	3,408	15,752,672	7.71
Repayment (More than 3 Years)	5,330	21,780,350	10.66
Claims Filed	<u>9</u>	<u>21,399</u>	<u>0.01</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY RANGE OF DAYS DELINQUENT  
AS OF JUNE 30, 2010

<u>Range of Days Delinquent</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
Less than or equal to 30	39,209	\$180,177,990	88.20%
31 - 60	1,859	8,227,208	4.03
61 - 90	946	4,155,584	2.03
91 - 120	544	2,305,027	1.13
121 - 150	590	2,563,691	1.25
151 - 180	409	1,669,710	0.82
181 - 210	247	971,726	0.48
211 - 240	190	731,205	0.36
Greater than 240	<u>1,000</u>	<u>3,492,652</u>	<u>1.71</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY RANGE OF DATE OF DISBURSEMENT  
AS OF JUNE 30, 2010\*

<u>Range of Date of Disbursement</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
July 1, 2006 and after	24,026	\$133,418,777	65.31%
October 1, 1993 - June 30, 2006	20,774	70,504,674	34.51
Pre October 1, 1993	<u>194</u>	<u>371,341</u>	<u>0.18</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

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\* FFELP Loans disbursed prior to October 1, 1993, are 100% guaranteed by the guarantee agency. FFELP Loans disbursed on or after October 1, 1993, and before July 1, 2006, are 98% guaranteed by the guarantee agency. FFELP Loans disbursed on or after July 1, 2006, are 97% guaranteed by the guarantee agency. See "APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM."

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY RANGE OF DATE OF DISBURSEMENT  
AS OF JUNE 30, 2010\*

<u>Range of Date of Disbursement</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
Pre April 1, 2006	19,175	\$58,066,811	28.42%
April 1, 2006 - September 30, 2007	24,259	140,960,472	69.00
October 1, 2007 and after	<u>1,560</u>	<u>5,267,510</u>	<u>2.58</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

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\* For FFELP Loans disbursed on or after April 1, 2006, if the stated interest rate is higher than the rate applicable to such loan including Special Allowance Payments, the holder of the loan is to credit the difference to the Department of Education. FFELP Loans disbursed on or after October 1, 2007, have a higher SAP margin for eligible not-for-profit lenders such as the Foundation than for for-profit lenders, but a 40 bps to 70 bps lower SAP margin than loans originated on or after January 1, 2000 and before October 1, 2007.

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY RANGE OF  
OUTSTANDING PRINCIPAL BALANCE  
AS OF JUNE 30, 2010

<u>Range of Outstanding Principal Balance</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
Less than or equal to \$2,000.00	13,075	\$14,904,102	7.30%
\$2,000.01 - \$4,000.00	16,584	48,747,985	23.86
\$4,000.01 - \$6,000.00	7,435	36,765,019	18.00
\$6,000.01 - \$8,000.00	2,228	15,304,393	7.49
\$8,000.01 - \$10,000.00	2,216	19,388,993	9.49
\$10,000.01 - \$15,000.00	1,546	18,862,248	9.23
\$15,000.01 - \$20,000.00	734	12,746,523	6.24
\$20,000.01 - \$25,000.00	479	10,717,307	5.25
\$25,000.01 - \$30,000.00	254	6,905,425	3.38
\$30,000.01 - \$40,000.00	248	8,548,968	4.18
\$40,000.01 - \$50,000.00	92	4,095,601	2.00
\$50,000.01 - \$60,000.00	43	2,343,178	1.15
Greater than \$60,000.00	<u>60</u>	<u>4,965,051</u>	<u>2.43</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY RANGE OF REMAINING  
TERM TO SCHEDULED MATURITY  
AS OF JUNE 30, 2010

<u>Range of Remaining Term to Scheduled Maturity</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
Less than or equal to 24	442	\$ 254,386	0.12%
25 - 36	495	471,038	0.23
37 - 48	497	678,717	0.33
49 - 60	666	1,094,576	0.54
61 - 72	1,106	2,099,517	1.03
73 - 84	1,569	3,388,729	1.66
85 - 96	3,441	9,549,632	4.67
97 - 108	5,605	18,474,351	9.04
109 - 120	25,565	93,765,823	45.90
121 - 144	812	4,796,166	2.35
145 - 168	705	5,571,485	2.73
169 - 192	880	7,620,031	3.73
193 - 216	546	7,001,245	3.43
217 - 240	937	14,125,270	6.91
Greater than 240	<u>1,728</u>	<u>35,403,826</u>	<u>17.33</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>



DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY GEOGRAPHIC LOCATION  
AS OF JUNE 30, 2010

<u>Geographic Location</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
New Mexico	35,376	\$157,096,060	76.90%
Texas	2,237	9,650,170	4.72
Arizona	1,207	5,195,006	2.54
Colorado	968	4,855,351	2.38
California	944	4,441,781	2.17
Washington	347	2,064,078	1.01
Florida	304	1,588,176	0.78
Oregon	222	1,566,274	0.77
New York	187	1,141,718	0.56
Illinois	191	1,029,793	0.50
Nevada	194	928,566	0.45
Pennsylvania	147	928,138	0.45
Tennessee	107	821,313	0.40
North Carolina	143	763,519	0.37
Utah	131	692,941	0.34
Oklahoma	180	676,854	0.33
Virginia	173	654,371	0.32
Ohio	106	627,767	0.31
Maryland	123	600,949	0.29
Georgia	108	551,819	0.27
Other	<u>1,599</u>	<u>8,420,148</u>	<u>4.12</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY SERVICER  
AS OF JUNE 30, 2010

<u>Servicer</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
Foundation	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

DISTRIBUTION OF THE FINANCED ELIGIBLE LOANS BY GUARANTY AGENCY  
AS OF JUNE 30, 2010

<u>Guaranty Agency</u>	<u>Number of Loans</u>	<u>Outstanding Principal Balance</u>	<u>Percent of Loans by Outstanding Principal Balance</u>
NMSLGC	44,993	\$204,292,987	100.00%
Texas Guaranteed Student Loan Corporation	<u>1</u>	<u>1,806</u>	<u>0.00</u>
Total:	<u>44,994</u>	<u>\$204,294,793</u>	<u>100.00%</u>

## INTEREST RATE SWAP

### General

In connection with the issuance of the Series 2010A-1 Bonds, the Foundation will enter into the Interest Rate Swap with the Swap Counterparty, which Interest Rate Swap will result in a net floating rate obligation of the Foundation with respect to the Series 2010A-1 Bonds and thereby attempt to align the movements in the Foundation's borrowing costs with the return on the Eligible Loans, from the Date of Issuance of such bonds through their respective final maturity dates. The Foundation will pay to the Swap Counterparty floating amounts based on a floating rate equal to a percentage of LIBOR and the Swap Counterparty will pay to the Foundation fixed amounts based on a fixed rate, in each case based upon a notional amount equal to the scheduled principal amount outstanding from time to time of the Series 2010A-1 Bonds.

The Foundation has the option to terminate the Interest Rate Swap at any time, subject to the terms and conditions set forth in the Interest Rate Swap. The Interest Rate Swap is also subject to early termination by either the Foundation or the Swap Counterparty upon the occurrence of certain events set forth therein. In the event that the Interest Rate Swap terminates prior to its stated termination date (including any optional termination by the Foundation), either the Foundation or the Swap Counterparty may be required to make a termination payment to the other party, depending on market conditions at the time of such early termination. Termination payments may be substantial.

The obligation of the Swap Counterparty to pay amounts to the Foundation under the Interest Rate Swap does not alter or affect the obligation of the Foundation under the Indenture to pay the principal of, interest on and redemption price of, the Bonds. The Swap Counterparty has no obligation to make any payments with respect to the principal of, interest on, or redemption price of, the Bonds. Neither the Registered Owners of the Bonds nor any other person other than the Foundation will have any rights under the Interest Rate Swap or against the Swap Counterparty.

The Swap Counterparty is not a bondholder under the Indenture, but amounts payable by the Foundation to the Swap Counterparty under the Interest Rate Swap are secured under the Indenture, as described herein.

The Swap Counterparty is an affiliate of RBC Capital Markets, an Underwriter, and could become a substantial creditor of the Trust Estate.

### Security for Foundation Obligations under the Interest Rate Swap

Scheduled periodic amounts required to be paid by the Foundation to the Swap Counterparty under the Interest Rate Swap are special, limited obligations of the Foundation payable solely from the Trust Estate on a parity with the Bonds. Amounts other than scheduled periodic amounts payable by the Foundation to the Swap Counterparty under the Interest Rate Swap, such as amounts payable upon the early termination of the Interest Rate Swap, are secured as described in the paragraph below.

### Termination Payments

Under certain circumstances, the Interest Rate Swap is subject to termination prior to its scheduled termination date and prior to the maturity of the Series 2010A-1 Bonds. Any termination payments will be secured

under the Indenture by either a parity or subordinate lien on the Trust Estate. In the event of an early termination of the Interest Rate Swap, there can be no assurance that (i) the Foundation will receive any termination payment payable to it by the Swap Counterparty, (ii) the Foundation will have sufficient amounts to pay a termination payment payable by it to the Swap Counterparty, and (iii) the Foundation will be able to obtain a replacement swap agreement with comparable terms. Payment due upon early termination may be substantial.

## **RISK FACTORS**

Ownership of the Bonds involves certain risks. Particular attention should be given to the factors described below which, among others, could materially and adversely affect the payment by the Foundation of debt service on the Bonds, and which could also materially and adversely affect the market price of the Bonds to an extent that cannot be determined.

This section of this Official Statement does not include all risks to which such repayment by the Foundation is subject, but is an attempt to summarize certain of such risks. Each prospective purchaser of the Bonds should read this Official Statement in its entirety.

### **Limited Obligations and Limited Trust Estate Assets**

The Bonds are special limited obligations of the Foundation, payable solely from the Trust Estate created under the Indenture and not from any other assets which the Foundation may have or from any other revenues to which the Foundation may be entitled. The Bonds are not insured or guaranteed by any government agency or instrumentality, including the NMSLGC (as defined herein) or the United States Department of Education (the “Department of Education”), or by any other person or entity. Payment on the Bonds will depend solely on the amount and timing of receipt of Revenues (including payments and collections in respect of the Eligible Loans and investment earnings on any Fund), amounts on deposit in the pledged Funds. Bondholders will have no additional recourse to the Foundation or any other person if the Trust Estate is insufficient. See “SECURITY AND SOURCE OF PAYMENT FOR THE BONDS.”

### **Factors Affecting Sufficiency and Timing of Receipt of Revenues in the Trust Estate**

The Foundation has performed an analysis of the portfolio of Financed Eligible Loans the Foundation will transfer to the Indenture upon the acquisition of Eligible Loans and provision being made for the refunding of the Refunded Bonds and certain amounts transferred to the Indenture upon the refunding of the Refunded Bonds. Based on this analysis and certain other assumptions, some of which are described in “SECURITY AND SOURCE OF PAYMENT FOR THE BONDS—Cash Flow Assumptions” and Appendix F, as well as various cash flow scenarios evaluated in connection with the issuance of the Bonds, the Foundation expects that the Trust Estate will be sufficient to meet principal and interest payments due on the Bonds. The analysis of the Financed Eligible Loan portfolio incorporated what are believed to be reasonable assumptions regarding the future composition of and yield on Financed Eligible Loans expected to be in the portfolio, the rate of return on moneys expected to be invested in various Funds under the Indenture, the borrower benefit programs expected to be applicable, and the occurrence of future events and conditions. However, there is no assurance that the Financed Eligible Loans actually included in the portfolio will perform in accordance with these assumptions. For example, there can be no assurance that interest and principal payments from Financed Eligible Loans in the portfolio will be received as anticipated, that the reinvestment rates assumed on the balances in various Funds will be realized, or that Special Allowance Payments will be received in the amounts and at the times anticipated. Moreover, future events over which the Foundation has no control may materially adversely affect the Foundation’s actual receipt of revenues in the Trust Estate.

### **Bondholders will Bear Prepayment and Extension Risk Due to Actions Taken by Individual Borrowers and other Variables Beyond the Foundation’s Control**

A borrower may prepay a Financed Eligible Loan in whole or in part at any time. The rate of prepayments on the Financed Eligible Loans may be influenced by a variety of economic, social, competitive and other factors, including changes in interest rates, the availability of alternative financings and the general economy. In addition, the Foundation may receive unscheduled payments on FFELP Loans due to defaults. It is impossible to predict the amount and timing of payments that will be received on the Financed Eligible Loans and paid to Bondholders in any

period. Consequently, the length of time that the Bonds are outstanding and accruing interest may be shorter than expected.

On the other hand, the Financed Eligible Loans may be extended as a result of grace periods, deferment periods and, under some circumstances, forbearance periods. In addition, scheduled payments with respect to the Financed Eligible Loans may be reduced and the maturities of the Financed Eligible Loans may be extended under certain repayment schedules available under the Higher Education Act, including income-sensitive and income-based repayment schedules. If a borrower uses any of these periods or schedules, it may lengthen the remaining term of the Financed Eligible Loans and delay principal payments. In addition, the amount available for distribution will be reduced if borrowers fail to pay timely the principal and interest due on the Financed Eligible Loans. Consequently, the length of time that the Bonds are outstanding and accruing interest may be longer than expected.

### **Release of the Financed Eligible Loans and Redemption of the Bonds**

The Bonds may be redeemed before expected in the event of an optional redemption (when the outstanding principal amount of Financed Eligible Loans is equal to or less than 10% of the initial principal amount of Financed Eligible Loans on the Date of Issuance) as described under “DESCRIPTION OF THE BONDS—Release of the Financed Eligible Loans.” Such event would result in the early retirement of the Bonds outstanding on that date. If this happens, the yield on the Bonds may be affected and Bondholders will bear the risk that they cannot reinvest the money received in comparable Bonds at an equivalent yield.

The Indenture also provides that for administrative purposes, the Foundation may release Financed Eligible Loans free from the lien of the Indenture, so long as the Foundation deposits an amount equal to the principal amount of Financed Eligible Loans released and the collective aggregate principal balance of all such releases does not exceed 5.00% of the initial principal amount of the Financed Eligible Loans and the collective aggregate principal balance of all such releases in any calendar year does not exceed 1.00% of the principal amount of the Financed Eligible Loans as of January 1, of such calendar year (or as of the Date of Issuance with respect to the first calendar year).

### **The Characteristics of the Portfolio of Financed Eligible Loans may Change**

The characteristics of the pool of student loans expected to be pledged to the Trustee on the Date of Issuance are described herein as of June 30, 2010. However, the actual characteristics of the student loans at any given time will change due to factors such as the repayment of the student loans in the normal course of business, the occurrence of delinquencies or defaults. The characteristics that may differ include the composition of the student loans, the distribution by loan type, the distribution by interest rate, the distribution by principal balance and the distribution by remaining terms. Investors should consider potential variances when making an investment decision concerning the Bonds. See “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” in this Official Statement.

### **The Series 2010A-2 Bonds and Series 2010A-3 Bonds are a Long-Term Investment but Based upon a Percentage of Three-Month LIBOR Plus a Spread**

The interest rates on the Series 2010A-2 Bonds and Series 2010A-3 Bonds are based on Three-Month LIBOR plus 0.65% and 1.20%, respectively, as described herein. As a result, the interest rates on the Series 2010A-2 Bonds and Series 2010A-3 Bonds are based on a short-term interest rate that is recalculated quarterly on each LIBOR determination date, as described herein, plus a fixed spread. See “DESCRIPTION OF THE BONDS—General Terms of the Bonds—Series 2010A-2 Bonds” and “—Series 2010A-3 Bonds” herein for more information on how interest payments on the Series 2010A-2 Bonds and Series 2010A-3 Bonds are calculated. Such interest rates on the Series 2010A-2 Bonds and Series 2010A-3 Bonds may fluctuate significantly over the life of the Series 2010A-2 Bonds and Series 2010A-3 Bonds. The Series 2010A-2 Bonds and Series 2010A-3 Bonds, however, are a long-term investment in that there is currently no secondary market for the Series 2010A-2 Bonds and Series 2010A-3 Bonds and they are not subject to any optional tender or liquidity devices. Furthermore, there are no assurances that any market will develop or, if it does develop, how long it will last as described below.

### **The Bonds are not a Suitable Investment for all Investors**

The Series 2010A-2 Bonds and Series 2010A-3 Bonds are not a suitable investment for investors who require a regular or predictable schedule of payments or payment on any specific date. The Bonds are complex investments that should be considered only by investors who, either alone or with their financial, tax and legal advisors, have the expertise to analyze the prepayment, reinvestment, default and market risk, the tax consequences of an investment, and the interaction of these factors.

### **Different Rates of Change in Interest Rate Indexes may Affect Trust Estate Cash Flow**

The interest rates on the Series 2010A-2 Bonds, the Series 2010A-3 Bonds and the payments to be made by the Foundation under the Interest Rate Swap may fluctuate from one interest accrual period to another in response to changes in the specified index rates. The Financed Eligible Loans bear interest either at fixed rates or at rates which are generally based upon the bond equivalent yield of the 91 day U.S. Treasury Bill rate. In addition, most of the Financed Eligible Loans may be entitled to receive special allowance payments from the Department of Education based upon a three-month commercial paper rate. See “APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM.” If there is a decline in the rates payable on Financed Eligible Loans, the amount of funds representing interest deposited into the Revenue Fund may be reduced. If the interest rate payable on the Series 2010A-2 Bonds, Series 2010A-3 Bonds and the payments to be made by the Foundation under the Interest Rate Swap do not decline in a similar manner and time, the Foundation may not have sufficient funds to pay interest on the Bonds when due. Even if there is a similar reduction in the rate applicable to the Series 2010A-2 Bonds, the Series 2010A-3 Bonds and the payments to be made by the Foundation under the Interest Rate Swap, there may not necessarily be a reduction in the other amounts required to be paid by the Foundation, such as administrative expenses, causing interest payments to be deferred to future periods. Similarly, if there is a rapid increase in the interest rate payable on the Series 2010A-2 Bonds, the Series 2010A-3 Bonds and the payments to be made by the Foundation under the Interest Rate Swap without a corresponding increase in rates payable on the Financed Eligible Loans, the Foundation may not have sufficient funds to pay interest on the Bonds when due. Sufficient funds may not be available in future periods to make up for any shortfalls in the current payments of interest on the Bonds or expenses of the Trust Estate.

### **Risk Relating to Interest Rate Swap**

In structuring the plan of finance for the issuance of the Bonds, the Foundation has assumed that the Swap Counterparty will meet its obligations under the Interest Rate Swap. While the Swap Counterparty is required to post collateral pursuant to the Interest Rate Swap under certain circumstances, including in the event that (i) its short-term counterparty rating from S&P falls below “A-1,” or if there is no short-term counterparty rating, its long-term counterparty rating from S&P falls below “A+,” (ii) its short-term counterparty rating from Moody’s Investors Service (“Moody’s”) falls below “P-1” and its long-term counterparty rating from Moody’s falls below “A2,” or (iii) it does not have a short-term counterparty rating from Moody’s and its long-term counterparty rating from Moody’s falls below “A1,” no assurance is made hereunder that the Swap Counterparty will be able to meet such obligations or what impact a failure by the Swap Counterparty to meet such obligations may have on the Foundation’s ability to pay debt service on the Bonds. Furthermore, there is no assurance that the Foundation will have the ability to replace the Swap Counterparty upon the termination of the Interest Rate Swap.

### **A Failure of the Department of Education to Make Reinsurance Payments may Adversely Affect Timely Repayment on the Bonds**

The financial condition of a guarantee agency may be adversely affected if it submits a large number of reimbursement claims relating to FFELP Loans to the Department of Education, which results in a reduction of the amount of reimbursement that the Department of Education is obligated to pay to the guarantee agency. The Department of Education may also require a guarantee agency to return its reserve funds to the Department of Education upon a finding that the reserves are unnecessary for the guarantee agency to pay its program expenses or to serve the best interests of the Federal Family Education Loan Program (the “FFEL Program”). The inability of any guarantee agency to meet its guarantee obligations could reduce the amount of principal and interest paid to the owners of the Bonds or delay those payments past their due date. If the Department of Education has determined that a guarantee agency is unable to meet its guarantee obligations relating to FFELP Loans, the loan holder may submit claims directly to the Department of Education and the Department of Education is required to pay the full

guarantee claim amount due with respect thereto. However, the Department of Education's obligation to pay guarantee claims directly in this fashion is contingent upon the Department of Education making the determination that a guarantee agency is unable to meet its guarantee obligations. The Department of Education may not ever make this determination with respect to a guarantee agency and, even if the Department of Education does make this determination, payment of the guarantee claims may not be made in a timely manner.

### **Consumer Protection Lending Laws**

Numerous federal and state consumer protection laws and related regulations impose substantial requirements upon lenders and servicers involved in consumer finance. Also, some state laws impose finance charge ceilings and other restrictions on certain consumer transactions and require contract disclosures in addition to those required under federal law. These requirements impose specific statutory liabilities upon creditors who fail to comply with their provisions. In some cases, this liability could affect an assignee's ability to enforce consumer finance contracts such as the Financed Eligible Loans.

Currently, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 preserves the changes made in the 1998 amendments to the Bankruptcy Code which had removed one of the two exceptions to non-dischargeability of Eligible Loans making it more difficult to discharge a Financed Eligible Loan in bankruptcy. Bankruptcy reform legislative proposals to alter the non-dischargeability of student loans have been discussed and/or introduced in the Congress of the United States among which include proposals to allow private student loans to be dischargeable in bankruptcy. No assurance can be given as to whether these or any alternative bankruptcy reform legislative proposals will be enacted at the federal level.

### **Default by a Servicer Could Adversely Affect the Bonds**

The Foundation will act as the Servicer with respect to the Financed Eligible Loans and Great Lakes Education Loan Services, Inc. will act as Backup Servicer with respect to the Financed Eligible Loans. If the Foundation defaults on its obligations to service the loans, the Backup Servicer would become the successor Servicer for the Financed Eligible Loans. If another third-party Servicer defaults on its obligations to service the loans serviced by it, the Foundation or the Trustee may remove the third-party Servicer without the consent of any other party, subject to satisfaction of the conditions set forth in the Indenture. In the event of the removal of a Servicer and the appointment of a successor servicer, there may be additional costs associated with the transfer of servicing to the successor servicer, including but not limited to, an increase in the servicing fees the successor servicer charges. In addition, the Foundation cannot predict the ability of the successor servicer to perform the obligations and duties under any servicing agreement. In the event of a default by the Servicer or a Backup Servicer resulting from events of insolvency or bankruptcy, a court, conservator, receiver or liquidator may have the power to prevent the appointment of a successor servicer and delays in collections in respect of those affected Financed Eligible Loans may occur. Any delay in the collections of Financed Eligible Loans may delay payments to Bondholders.

### **Failure to Comply with Loan Origination and Servicing Procedures**

The Higher Education Act of 1965, 20 U.S.C.A. § 1001 et seq. (the "Higher Education Act"), as amended, and the applicable regulations require the lenders making Eligible Loans, Guarantee Agencies guaranteeing Eligible Loans and Servicers servicing Eligible Loans to follow certain due diligence procedures in an effort to ensure that Eligible Loans are properly made and disbursed to, and timely repaid by, the borrowers. The procedures to make, guarantee and service Eligible Loans are specifically set forth in the Code of Federal Regulations, and no attempt has been made in this Official Statement to completely describe those procedures. Failure to follow such procedures may result in the Secretary's refusal to make reinsurance payments to the Guarantee Agency on such loans or in the Guarantee Agency's refusal to honor its guarantee on such loans to the Trustee. Failure of the Guaranty Agency to receive reinsurance payments from the Secretary could adversely affect its ability to honor guarantee claims by the Trustee and loss of guarantee payments to the Trustee by the Guaranty Agency could adversely affect the receipt of Revenues and the Foundation's ability to pay principal and interest on the Bonds. See "DESCRIPTION OF THE FOUNDATION'S ELIGIBLE LOAN FINANCING PROGRAM—Servicing and 'Due Diligence.'"

## **Elimination of FFEL Program and Changes to the Higher Education Act**

Beginning on July 1, 2010, FFELP Loans made pursuant to the Higher Education Act will no longer be originated and new federal student loans will be originated solely through the Federal Direct Student Loan Program (the “Direct Loan Program”). FFELP Loans originated under the Higher Education Act prior to July 1, 2010 which have been acquired by the Foundation (including the loans described herein under the caption “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS”) continue to be subject to the provisions of the FFEL Program. A description of the FFEL Program is provided in APPENDIX A hereto to explain certain of the provisions of the FFEL Program applicable to FFELP Loans made prior to July 1, 2010. Notwithstanding anything herein to the contrary, after June 30, 2010, no new FFELP Loans (including Consolidation Loans) may be made or insured under the FFEL Program and no funds are authorized to be appropriated, or may be expended, under the Higher Education Act to make or insure loans under the FFEL Program (including Consolidation Loans) for which the first disbursement is after June 30, 2010, except as expressly authorized by an Act of Congress enacted after the date of enactment of SAFRA (hereinafter defined). These changes, as described in more detail in “APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM,” have caused the Foundation and NMSLGC (defined herein) to examine alternative business opportunities, some of which would require legislative changes that may result in their continued existence, which continued existence for the term of the Bonds cannot be ensured.

Title IV of the Higher Education Act and the regulations promulgated by the Department of Education thereunder have been the subject of frequent amendments and federal budgetary legislation in recent years, the most significant of which has been the passage of H.R. 4872 (the “Health Care & Education Affordability Reconciliation Act of 2010” or “HCEARA”) which terminates originations of FFELP Loans under the FFEL Program after June 30, 2010 such that all new federal student loans will be originated under the Direct Loan Program on and after July 1, 2010. See “APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM” hereto for more information on the Higher Education Act and the various amendments thereto.

Certain other amendments to the Higher Education Act also authorize the Secretary to offer borrowers Consolidation Loans under the Direct Loan Program whereby a borrower may consolidate various student loans into a single loan with income sensitive repayment terms. See “APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM” hereto for more information on Consolidation Loans under the Direct Loan Program. The financing of such Consolidation Loans by the Secretary on a large scale basis may cause an increase in the number of prepayments of federal student loans and reduce the size of the Foundation’s student loan programs.

Furthermore, as a result of changes to the FFEL Program over the years, the net revenues resulting to holders of federal student loans have in many cases been reduced and may be reduced further in the future. As these reductions occur, cost increases and revenue reductions for guaranty agencies may occur. See “APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM.” The elimination of the FFEL Program through HCEARA has also impacted holders of federal student loans in that there will not be revenue to such holders from newly originated loans. The Foundation cannot predict all the effects of such revenue reductions on the Foundation, the servicer, the guaranty agency, the Financed Eligible Loans or the Foundation’s loan programs.

### **Military Events May Result in Delayed Payments From Borrowers Called to Active Military Service; Other Relief**

On December 19, 2003, President Bush signed into law the Servicemembers Civil Relief Act which was enacted in an effort to update and modernize the Soldiers’ and Sailors’ Civil Relief Act of 1940 and provides relief to borrowers who enter active military service and to borrowers in reserve status who are called to active duty after the origination of their student loans. Military action of the United States may increase the number of citizens who are in active military service, including persons in reserve status who have been called or will be called to active duty. The Servicemembers Civil Relief Act also limits the ability of a lender in the FFEL Program to take legal action against a borrower during the borrower’s period of active duty and, in some cases, during an additional three-month period thereafter. As a result, there may be delays in payment and increased losses on the student loans held in under the Indenture. The Foundation does not know how many students have been or may be affected by the

application of the Servicemembers Civil Relief Act and the recent guidelines of the Department. If a substantial number of borrowers of the student loans held under the Indenture become eligible for the relief provided under the Servicemembers Civil Relief Act, there could be an adverse effect on the total collections on the student loans and the ability of the Foundation to make payments on the Bonds.

The Higher Education Relief Opportunities for Students Act of 2003 (the “HEROES Act of 2003”) was signed into law on August 18, 2003 and authorizes the Secretary to waive or modify any statutory or regulatory provisions applicable to student financial aid programs under Title IV of the Higher Education Act as the Secretary deems necessary to ensure that student loan borrowers who: (i) are serving on active military duty during a war or other military operation or national emergency; (ii) are serving on National Guard duty during a war or other military operation or national emergency; (iii) reside or are employed in an area that is declared by any federal, state or local official to be a disaster area in connection with a national emergency; or (iv) suffered direct economic hardship as a direct result of war or other military operation or national emergency, as determined by the Secretary, to ensure that such recipients of student financial assistance are not placed in a worse financial position in relation to that assistance, to ensure that administrative requirements in relation to that assistance are minimized, to ensure that calculations used to determine need for such assistance accurately reflect the financial condition of such individuals, to provide for amended calculations of overpayment, and to ensure that institutions of higher education, eligible lenders, guaranty agencies and other entities participating in such student financial aid programs that are located in, or whose operations are directly affected by areas that are declared to be disaster areas by any federal, state or local official in connection with a national emergency may be temporarily relieved from requirements that are rendered infeasible or unreasonable. The number and aggregate principal balance of student loans that may be affected by the application of the HEROES Act of 2003 is not known at this time. Accordingly, payments received by the Foundation on student loans made to a borrower who qualifies for such relief may be subject to certain limitations. If a substantial number of borrowers under the student loans become eligible for the relief provided under the HEROES Act of 2003, there could be an adverse effect on the total collections on the student loans and the ability of the Foundation to pay interest on the Bonds.

#### **Financial Status of NMSLGC**

In the event the financial status of NMSLGC and its ability to honor guaranty claims were to deteriorate over time, such event may result in a failure to make guaranty payments to the Foundation. One of the primary reasons for a possible deterioration in a guaranty agency’s financial status is related to the default rate of loans guaranteed by the guaranty agency. Historically, loans to students attending proprietary or trade schools have defaulted at rates much higher than loans made to students or parents of students attending four-year schools. As described under the caption “DESCRIPTION OF THE NEW MEXICO GUARANTEED STUDENT LOAN PROGRAM,” higher than expected default claims against NMSLGC of Eligible Loans could reduce the amount of federal reimbursement to NMSLGC for such claims. Loss of reinsurance payments by the Secretary could adversely affect the ability of NMSLGC to honor guaranty claims by the Trustee, and loss of guaranty payments to the Trustee by NMSLGC could adversely affect the timing of the receipt of Revenues and the Foundation’s ability to make timely payment of principal and interest on the Bonds. Under Section 432(o) of the Higher Education Act, however, if the Secretary has determined that a guaranty agency is unable to meet its insurance obligations, the holder of loans insured by the guaranty agency may submit insurance claims directly to the Secretary for payment. There can be no assurance that the Secretary would make such determination with respect to any specific guarantor, or if such determination was made, whether payment of such guaranty claims would be made in a timely manner. See “DESCRIPTION OF THE NEW MEXICO GUARANTEED STUDENT LOAN PROGRAM—Secretary Review of Financial Solvency of Guaranty Agencies.”

#### **Certain Amendments to the Indenture and Other Actions may be Taken by Less than All of the Bondholders and Without Your Approval**

Under the Indenture, holders of specified percentages of the aggregate principal amount of the Bonds may consent to amend or supplement or waive provisions of the Indenture without the consent of the other holders. You have no recourse if the holders vote and you disagree with the vote on these matters. The holders may vote in a manner which impairs the ability to pay principal and interest on your Bonds.



## **The Ratings of the Bonds are Not a Recommendation to Purchase and may Change**

It is a condition to issuance of the Bonds that they be rated as indicated under “RATINGS.” Ratings are based primarily on the creditworthiness of the underlying Financed Eligible Loans, the amount of overcollateralization and the legal structure of the transaction. The ratings are not a recommendation to you to purchase, hold or sell the Bonds inasmuch as the ratings do not comment as to the market price or suitability for you as an investor. An additional rating agency may rate the Bonds, and that rating may not be equivalent to the initial rating described in this Official Statement. Ratings may be increased, lowered or withdrawn by any rating agency at any time if in the rating agency’s judgment circumstances so warrant. A downgrade in the rating of your Bonds is likely to decrease the price a subsequent purchaser will be willing to pay for your Bonds.

## **Market Disruptions**

Since the end of 2007, there have been severe disruptions in the United States financial markets. Certain aspects of this market disruption have negatively impacted issuers of bonds backed by student loans such as the Foundation, including the deterioration of the auction rate securities market, the downgrade of national bond insurers and the limited availability of credit support and liquidity in the market. These events have in some cases caused the Foundation to suffer increased debt service costs.

## **No Secondary Market for the Bonds**

There currently is no secondary market for the Bonds. There is no assurance that any market will develop or, if it does develop, that it will continue or will provide investors with a sufficient level of liquidity of investment. If a secondary market for the Bonds does develop, the spread between the bid price and the asked price for the Bonds may widen, thereby reducing the net proceeds to investors from the sale of Bonds. The Foundation does not intend to list the Bonds on any exchange, including any exchange in either Europe or the United States. Under current market conditions, investors may not be able to sell their Bonds when they want to do so (investors may be required to bear the financial risks of an investment in the Bonds for an indefinite period of time) or investors may not be able to obtain the price that they wish to receive. The market values of the Bonds may fluctuate and movements in price may be significant.

## **Enforceability of Remedies**

The remedies available to the Trustee, the Foundation or the owners of the Bonds upon an Event of Default under the Indenture are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code (the federal bankruptcy code), the remedies provided in the Indenture may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds and the Indenture will be qualified as to the enforceability of the various legal instruments, by, among other things, limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally. Such legal opinions will be rendered as of their date, and counsel will be under no obligation to update such legal opinions as of any future date.

## **Possible Loss of Tax Exemption of the Interest on the Bonds**

Provisions of the Internal Revenue Code of 1986, as amended (the “Code”) impose continuing requirements that must be met after the issuance of the Bonds for interest thereon to be and remain excludable from gross income for federal income tax purposes. Noncompliance with such requirements may cause the interest on the Bonds to be includable in gross income for such purposes, either prospectively or retroactively to the Date of Issuance of the Bonds. See “TAX MATTERS.”

## DESCRIPTION OF THE FOUNDATION'S ELIGIBLE LOAN FINANCING PROGRAM

### General

The Foundation was formed for the purpose of originating and establishing a secondary market for student loans within the State and operates to accomplish such purpose. In 2004, the Foundation's Board of Directors approved a business plan allowing for student loans to be made to non-residents attending out-of-state educational institutions. This plan was developed to allow the Foundation to better serve New Mexico residents who may attend qualifying institutions in other states. This plan necessitated certain amendments to the Educational Assistance Act; amendments which were passed by the New Mexico legislature and signed into law by the Governor in April, 2005. The Foundation has acquired student loans from lenders throughout the State, including banks, savings and loan associations, credit unions and educational institutions.

### Description of Financed Eligible Loans

Almost all of the Financed Eligible Loans are guaranteed by NMSLGC, although the Indenture permits Eligible Loans to be Guaranteed by any other entity authorized to guarantee student loans under the Higher Education Act. For a more detailed description of Guaranteed Loans under the Higher Education Act, see "APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM," and for a description of NMSLGC's guarantee and its Guarantee Program, see "DESCRIPTION OF THE NEW MEXICO GUARANTEED STUDENT LOAN PROGRAM."

The Financed Eligible Loans will consist of Eligible Loans as to which the borrower has not commenced repayment because he or she is in school, has commenced repayment of principal on a loan or is delinquent with respect to such repayments, or is in the grace period or a deferment period with respect to repayment. As more fully described in "APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM," borrowers are required to begin repaying student loans after a grace period following termination of at least half-time school enrollment; in addition, repayment may be delayed during any deferment period or period of forbearance occurring after termination of the grace period.

### Borrower Benefit Programs

The Foundation offers a variety of "borrower benefit" programs to borrowers whose loans are held by the Foundation. The programs could be changed in the future, and additional borrower benefits could be added. The Foundation's borrower benefit programs presently include the following:

Instant Savings Program. The Instant Savings Program provides for a one-half percent per annum reduction in the interest rate on a loan when the loan enters repayment with the Foundation. This benefit is effective for all Stafford and PLUS loans guaranteed on or after May 1, 1998. Loans disbursed on or after July 1, 2006 will not receive this benefit.

Easy Pay Program. The Easy Pay Program provides an interest rate reduction of  $\frac{1}{4}$  of one percent per annum if a borrower agrees to automatic debit payments with respect to his or her loan. This benefit is effective for all types of federal student loans.

Pot of Gold Program. The Pot of Gold Program provides a one time, 5% reduction in the principal balance of a loan. This benefit is available for all loans entering repayment with the Foundation after June 30, 1994, but only for borrowers who make their first 48 consecutive monthly payments on time.

Teachers for Tomorrow. The Teachers for Tomorrow Program provides that, when a loan is in repayment with the Foundation and the borrower is a full-time teacher in New Mexico, no interest is charged. This benefit applies to loans guaranteed by NMSLGC and disbursed by the Foundation or one of its participating lenders in the program from whom it acquires the student loan. It is effective for Stafford loans guaranteed on or after May 1, 2000. For Consolidation Loans otherwise eligible, the interest rate is reduced to 1.25%.

Nurses for New Mexico. The Nurses for New Mexico Program is modeled after the Teachers for Tomorrow Program and provides that, when a loan is in repayment with the Foundation and the borrower is a full-time practicing nurse in New Mexico, no interest is charged. This benefit applies to loans guaranteed by NMSLGC

and disbursed by the Foundation or one of its participating lenders in the program from whom it acquires the student loans. It is effective for Stafford Loans guaranteed on or after May 1, 2000. For Consolidation Loans otherwise eligible, the interest rate will be reduced to 1.25%.

**Zero Percent Interest Loans for Employees Program.** This program provides for educational loans incurred by current employees of the Foundation to receive a zero percent interest repayment benefit, so long as the employee remains employed by the Foundation. For Consolidation Loans otherwise eligible, the interest rate will be reduced to 1.25%.

**UNM Medical and Law School Programs.** The UNM Medical and Law School Programs were approved by the Foundation's Board of Directors in 2005. These programs provide the upfront benefit of a 0% origination fee and a 0% default fee. The Foundation pays the origination fee and the default fee on behalf of the borrower for Stafford loans guaranteed on or after January 1, 2005. Law school borrowers and medical school borrowers practicing medicine out of state are eligible for the Easy Pay program and for a 4.5% principal balance reduction after 33 on-time payments on Stafford loans guaranteed on or after January 1, 2005. The Medical school program provides that, if a Stafford loan was guaranteed on or after January 1, 2005, is in repayment with the Foundation and the medical school borrower is practicing medicine full-time in the state of New Mexico, no interest will be charged; and for Consolidation loans otherwise eligible, the interest rate is reduced to 1.25%.

### **Servicing and "Due Diligence"**

The Foundation has covenanted in the Indenture to administer and collect all Financed Eligible Loans in a diligent manner, and in accordance with all requirements of the Higher Education Act, the Secretary, the Educational Assistance Act, the Indenture, the Contract of Insurance, the Federal Reimbursement Contracts, the Guarantee Program and the Guarantee Agreement.

The Higher Education Act requires that the Trustee, the Foundation, a lender and their agents and employees exercise "due diligence" in the making, servicing and collection of Financed Eligible Loans and, with respect to Guaranteed Loans, that the Guaranty Agency exercise due diligence in collecting loans which it holds. The Higher Education Act defines "due diligence" as requiring the holder of a student loan to utilize collection practices at least as extensive and forceful as those generally practiced by financial institutions for the collection of consumer loans, and requires that certain specified collection actions be taken within certain specified time periods with respect to a delinquent loan or defaulted loan. Such due diligence procedures include certain loan application procedures, certain loan origination procedures and, when a student loan is delinquent or in default, certain loan collection procedures; the procedures to make, guarantee and service student loans are specifically set forth in the Code of Federal Regulations, and no attempt has been made in this Official Statement to completely describe those procedures. Pursuant to a waiver from the Department of Education, the Foundation satisfies certain of its "due diligence" obligations by pursuing legal proceedings against a defaulting borrower.

NMSLGC has established procedures and standards for due diligence to be exercised by NMSLGC and by lenders which hold loans that are guaranteed by NMSLGC. The Trustee, the Foundation, a lender or the Guaranty Agency may not relieve itself of its responsibility for meeting the applicable standards by delegation to any servicing agent. Accordingly, if the Foundation, a lender or any Servicer fails to meet such standards, the Foundation's ability to realize the benefits of Guarantee and Insurance payments, and (with respect to student loans eligible for such payments) interest subsidy payments and Special Allowance Payments may be adversely affected. If a Guaranty Agency fails to meet such standards, such Guaranty Agency's ability to realize the benefits of federal reinsurance payments may be adversely affected.

The Higher Education Act authorizes the Secretary to regulate student loan servicers. The regulations adopted pursuant to such authority establish requirements governing contracts between institutions and third-party servicers, provide sanctions against institutions for violations of the program requirements of the Higher Education Act, establish similar sanctions for third-party servicers and establish standards of administrative and financial responsibility for third-party servicers that administer any aspect of a Guaranty Agency's or lender's participation in the FFEL Program. Although the Foundation does not at present employ third-party servicers of Financed Eligible Loans, it does act as a third-party Servicer for certain other entities. See "NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION."

## **Backup Servicer and Backup Servicing Agreement**

Pursuant to a backup servicing agreement to be effective on the date of issuance of the Bonds (the “Backup Servicing Agreement”), Great Lakes Education Loan Servicing, Inc. (“GLELSI”) will act as backup servicer with respect to the Financed Eligible Loans presently serviced by the Foundation, which, pursuant to the Indenture, serve as security for the Bonds. If the Foundation decides to no longer service the Financed Eligible Loans, it will use its best efforts to notify GLELSI six months, but in any event no less than four months, prior to the initiation of GLELSI’s obligations to begin to perform servicing pursuant to the Backup Servicing Agreement. If the Foundation in the performance of its servicing obligations as to the Financed Eligible Loans fails to fully perform such obligations and this failure results in an event of default under the Indenture, and such event of default is not cured during any applicable cure period, then the Trustee will provide written notice to GLELSI of the determination that the Financed Eligible Loans serviced by the Foundation must be serviced by GLELSI under the Backup Servicing Agreement. The Trustee will use its best efforts to give such notice to GLELSI six months, but in any event no less than four months, prior to the initiation of GLELSI’s obligations to begin to perform servicing pursuant to the Backup Servicing Agreement.

## **NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**

The Foundation is a New Mexico nonprofit corporation established pursuant to the Educational Assistance Act to improve the educational opportunities of residents of New Mexico by providing financial assistance to qualified post-secondary students. The Foundation is empowered to issue revenue obligations, and, among other things, to make, finance, purchase, hold and sell student loans. The Foundation, together with the New Mexico Student Loan Guarantee Corporation, will, from time to time, act together and operate under the business name “New Mexico Student Loans”; however, the basic corporate structure of the Foundation has continued unchanged.

## **Board and Officers**

The affairs of the Foundation are governed by the Board of Directors and carried on by the officers of the Foundation. The Board of Directors consists of eleven members. Each of six directors is a member of and appointed by the Board of Regents of the institution each represents. The six institutions are the University of New Mexico, New Mexico State University, New Mexico Highlands University, New Mexico Institute of Mining and Technology, Western New Mexico University and Eastern New Mexico University. These six regent members serve the Foundation during their terms as regents, and elect three additional members for four year terms. These three additional members consist of an administrator of a private New Mexico college, university or vocational school and two officers or directors of financial institutions located in the State. The tenth director is a member of the governing board of a two-year public community or technical college that is not a branch of a university, and is appointed by a representative body of the community and technical colleges. The eleventh director is the State Treasurer or his designee. Members of the Board of Directors do not receive any compensation for their services as Board members but are reimbursed expenses incurred in the performance of their duties.

The President of the Foundation is appointed by the Board of Directors. The officers of the Foundation consist of a President who is also Executive Director, five Vice Presidents including the General Counsel, and such other officers and assistants as the President may appoint.

Present directors and officers of the Foundation and their affiliations are:

<u>Name</u>	<u>Position</u>	<u>Affiliation</u>
Eileen Givler	Director and Chairperson	Vice President, Bank of The West, Albuquerque, New Mexico
Paul Weaver	Director and Vice-Chairperson	Senior Vice-President, Bank of America, N.A. Albuquerque, New Mexico
Robert P. Matteucci	Director and Secretary/Treasurer	Member of Board of Trustees, Central New Mexico Community College
Chris Anaya	Director	Member of Board of Regents, New Mexico State University
Richard N. Carpenter	Director	Member of Board of Regents, New Mexico Institute of Mining and Technology
Randy Harris	Director	Member of Board of Regents, Eastern New Mexico University
James B. Lewis	Director	State Treasurer
Nancy R. Long	Director	Member of Board of Regents, New Mexico Highlands University
Bryan E. Valentine	Director	Treasurer, St. John's College, Santa Fe, New Mexico
Jerry A. Walz	Director	Member of Board of Regents, Western New Mexico University
Cate Wisdom	Director	Member of Board of Regents, University of New Mexico
Elwood G. Farber	President	New Mexico Educational Assistance Foundation
Cecilia Evjen	Vice President and COO	New Mexico Educational Assistance Foundation
Brad Allpass	Vice President, Finance	New Mexico Educational Assistance Foundation
Reginald J. Storment	Vice President, General Counsel	New Mexico Educational Assistance Foundation
Paul C. Padilla	Vice President, Information Technologies	New Mexico Educational Assistance Foundation
Gavin Gillette	Vice President, Administrative Services	New Mexico Educational Assistance Foundation

Elwood G. Farber is the President and Executive Director of both the Foundation and NMSLGC, and is responsible for all aspects of the Program. Mr. Farber has over 40 years of experience in the student loan industry, including more than thirteen years as either an executive director or senior vice president of secondary market organizations. Mr. Farber received a degree in Physics from Lemoyne College in New York, and a Master of Arts degree in Educational Administration from the University of Rhode Island.

Cecilia Evjen, Vice President and COO, is responsible for the proper administration of the operations area of the Foundation. Ms. Evjen has over 21 years of varied management and human resources experience, having worked in various capacities for employers ranging in size from less than 250 employees to greater than 11,000 employees. Ms. Evjen has served on executive management teams for over 15 years. She has a Bachelor of Arts degree in business administration from New Mexico Highlands University.

Brad Allpass, Vice President, Finance, is responsible for the proper administration of accounting and financial policies and procedures throughout the Foundation, including financial and trust activities, investments,

relations with commercial banks, budgets, annual financial audits by independent audit firms and financial and management reporting. Mr. Allpass received a Bachelors of Business Administration degree, accounting concentration, and a Masters of Business Administration degree in Financial Management from the University of New Mexico. Mr. Allpass is a Certified Public Accountant and has over 20 years of diversified accounting, auditing, tax, and financial management experience.

Reginald J. Storment, Vice President, General Counsel, is responsible for the proper administration and functioning of the litigation aspects of the Foundation's debt collection programs, as well as all legal aspects of the Foundation's and NMSLGC business operations, including regulatory/compliance issues involving the student loan program administered by both the Foundation and NMSLGC. Mr. Storment is admitted to practice before all New Mexico courts, including the United States District Court and Bankruptcy Court. Mr. Storment received his Juris Doctor degree from the University of New Mexico School of Law and has over 30 years of experience, including a diversified litigation and legal/financial background.

Paul C. Padilla, Vice President, Information Technologies, is responsible for the proper deployment, administration and functioning of technology-based solutions for the Foundation. Mr. Padilla received a Bachelors of Business Administration degree from the College of Santa Fe and a Masters of Business Administration degree, technology management concentration, from the University of Phoenix. Mr. Padilla has over 40 years of data processing/information technology experience in highly regulated industries including government, public utilities and banking.

Gavin Gillette, Vice President, Administrative Services, is responsible for the proper administration of the human resources, training, facilities management and document management functions for the Foundation and NMSLGC. Mr. Gillette has over 19 years of management and human resources experience. Mr. Gillette received a BBA and MBA in human resources from the University of New Mexico.

The Foundation's operations have consisted primarily of acquiring and originating student loans, providing information to and securing student loan purchase agreements from lenders throughout the State, administering and servicing its own student loan portfolios and certain loans of post-secondary educational institutions located in the State, and issuing and administering the bonds and notes described in the third succeeding paragraph. The Foundation also provides full portfolio servicing to several other lenders and provides interest subsidy and special allowance payment billing services to several lenders in the State. In addition, the Foundation services Perkins loans and performs accounts receivable collections under contract with the majority of the State's public and non-profit higher education institutions. See "DESCRIPTION OF THE FOUNDATION'S ELIGIBLE LOAN FINANCING PROGRAM—Servicing and Due Diligence."

The Foundation performs certain duties and functions of NMSLGC pursuant to a service agreement with NMSLGC. While most of NMSLGC's guarantee functions are performed by other parties, the service agreement accounts for approximately twelve to fifteen percent of the Foundation's annual operating fund revenue.

The Foundation began acquiring student loans in January 1982 and, as of June 30, 2010, had acquired and/or originated over \$2.9 billion in principal amount of such loans, of which approximately \$1.3 billion in principal amount remained outstanding as of such date. The Foundation is the secondary market for all lenders in the State which participate in the FFEL Program, with the exception of Wells Fargo Bank New Mexico N.A.

### **Outstanding Obligations**

The following obligations of the Foundation (as categorized pursuant to the indenture under which they were authorized and issued) will be outstanding as follows on the Date of Delivery of the Bonds and after giving effect to the refunding of the Refunded Bonds:

<u>Issue</u>	<u>Principal Amount Outstanding</u>
Education Loan Bonds issued under the 1998 Indenture:	
Senior Series 2001A-1	\$20,300,000
First Subordinate Series 2001B-1	6,715,000
Senior Series 2002A	70,000,000
Senior Series 2003A	70,000,000
Senior Series 2004A	109,750,000
Senior Series 2007A-1	112,620,000
Senior Series 2007A-2 (Taxable)	62,000,000
Senior Series 2009A	42,500,000
Senior Series 2009B	190,595,000
Senior Series 2009C	59,075,000
Education Loan Bonds issued under the June, 2008 Indenture	
Senior Series 2008A-1	88,745,000
Senior Series 2008A-2	34,485,000
Senior Series 2008A-3	<u>54,245,000</u>
TOTAL Foundation Bonds Outstanding	<u>\$921,030,000</u>

The Foundation may also from time to time issue additional obligations which will not be secured by the Indenture, and which will provide no security for the Bonds.

The Foundation has entered into a Master Loan Sale Agreement and Master Participation Agreement with the Secretary under the loan purchase program provided in the Ensuring Continued Access to Student Loans Act (ECASLA). As of June 30, 2010, the balance outstanding under the Master Participation Agreement was \$202,582,266.

The Foundation presently has a staff of approximately 148 full-time employees.

### **THE NEW MEXICO STUDENT LOAN GUARANTEE CORPORATION**

The New Mexico Student Loan Guarantee Corporation (“NMSLGC”) is designated as the single nonprofit corporation to provide a statewide guaranteed student loan program in the State of New Mexico, pursuant to the Educational Assistance Act. In 2004, NMSLGC’s Board of Directors approved a business plan that would allow for loans to non-residents attending out-of-state educational institutions to be guaranteed by NMSLGC. This plan was developed to allow the Foundation and NMSLGC to better serve New Mexico residents who may attend qualifying institutions in other states. This plan necessitated certain amendments to the Educational Assistance Act; amendments which were passed by the New Mexico legislature and signed into law by the Governor in April, 2005. Once a lender has been found eligible by NMSLGC, an Educational Loan Guarantee Agreement is entered into by both parties. Thereafter, NMSLGC guarantees the payment of (i) 100% with respect to loans first guaranteed on or before October 1, 1993, (ii) 98% with respect to loans first guaranteed after October 1, 1993 but before July 1, 2006, and (iii) 97% with respect to loans first guaranteed on or after July 1, 2006, of the unpaid balance of principal and accrued interest on qualifying loans made by the lender in accordance with the Educational Loan Guarantee Agreement and policies of NMSLGC and the Secretary. NMSLGC is also required by the Higher Education Act to ensure that due diligence is exercised by lenders in the origination, servicing and collection of student loans and is charged with promoting participation in the Federal Family Education Loan Program by private lenders in the State. The Foundation, together with the NMSLGC, will, from time to time, act together, and operate under the business name “New Mexico Student Loans”; however, the basic corporate structure of the Foundation and of NMSLGC will continue unchanged.

The affairs of NMSLGC are governed by the Board of Directors and carried on by the officers of NMSLGC. The Board of Directors consists of five members as follows: the Chairperson of the Board of Directors of the Foundation; the Secretary of the New Mexico Department of Higher Education; two members, appointed by the Board of Directors, who are officers or directors of financial institutions located in the State; and a representative of the general public, appointed by the Board of Directors. Members of the Board of Directors do not receive any

compensation for their services as Board members but are reimbursed for their actual and necessary expenses reasonably incurred in the performance of their duties.

The President of NMSLGC is appointed by the Board of Directors. Officers of NMSLGC consist of a President, who also is Executive Director, a Secretary, a Treasurer and such vice-presidents, including the General Counsel, as the President may appoint.

Present directors and officers of NMSLGC and their affiliations or principal occupations are:

<u>Name</u>	<u>Position</u>	<u>Affiliation</u>
Maria Griego-Raby	Director and Chairperson	Member of New Mexico Board of Finance and principal in Contract Associates, Inc.
Dion Kidd	Director	President, Western Commerce Bank, Alamogordo, New Mexico
Mark Pike	Director and Vice-Chairperson	Senior Vice President, Wells Fargo Bank New Mexico, N.A.
Eileen Givler	Director	Chairperson, Board of Directors, New Mexico Educational Assistance Foundation
Dr. Viola E. Florez	Director	Secretary, New Mexico Higher Education Department
Elwood G. Farber	President and Executive Director	NMSLGC
Cecilia Evjen	Vice President and Secretary	NMSLGC
Brad Allpass	Treasurer	NMSLGC
Reginald J. Storment	Vice President, General Counsel	NMSLGC
Paul C. Padilla	Vice President, Information Technologies	NMSLGC
Gavin Gillette	Vice President, Administrative Services	NMSLGC

NMSLGC's address is P.O. Box 27020, Albuquerque, New Mexico 87125, and its telephone number is 505-345-8821.

## **DESCRIPTION OF THE NEW MEXICO GUARANTEED STUDENT LOAN PROGRAM**

### **General**

The Educational Assistance Act authorizes NMSLGC to establish and contract for the operation of a guaranteed student loan program, and designates NMSLGC as the single nonprofit corporation authorized to provide a statewide educational loan program in New Mexico.

The legislature of the State is not obligated to appropriate any money to pay for guaranteed student loan defaults. NMSLGC may not obligate the credit of the State for the purpose of the guaranteed student loan program. NMSLGC is obligated to make payments under the Guarantee Agreement solely from the revenues or other funds in the Federal Student Loan Reserve Fund maintained by NMSLGC. Neither the State nor any political subdivision thereof is obligated to make such payments, and neither the faith and credit nor the taxing powers of the State or any of its political subdivisions is pledged to the payment to be made by NMSLGC under the Guarantee Agreement.

NMSLGC guarantees loans made to students or parents of students by lending institutions such as the Foundation, banks, credit unions, savings and loan associations, certain schools, pension funds and insurance companies. NMSLGC commenced its program of guaranteeing student loans in 1981.



NMSLGC purchases defaulted student loans which it has guaranteed from moneys in its Federal Student Loan Reserve Fund. A lender may submit a default claim to NMSLGC after the student loan has been delinquent for at least 270 days (180 days with respect to student loans made before October 7, 1998). NMSLGC will pay the lender principal and interest accrued on the loan. NMSLGC may not file a reimbursement claim with the Department of Education unless the defaulted student loan has been delinquent for at least 360 days (270 days with respect to student loans made before October 7, 1998).

NMSLGC must pay a lender for a default claim before NMSLGC is eligible to be reimbursed by the Secretary. For a description of the federal program of insurance and reinsurance provided by Title IV of the Higher Education Act pursuant to which NMSLGC is reimbursed by the Secretary for certain amounts paid by NMSLGC in connection with its guarantee of student loans, see “—Federal Agreements” and “—Effect of Annual Claims Rate” below. The guarantee volume and revenues of NMSLGC have been and are expected to continue to be adversely affected by implementation of the Direct Loan Program and certain other changes in the Higher Education Act and the curtailment of new FFEL Program Loans beginning July 1, 2010. See “RISK FACTORS—Elimination of FFEL Program and Changes to the Higher Education Act,” “APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM” and “—Federal Agreements” and “—Secretary Review of Financial Solvency of Guarantee Agencies” below.

### **Federal Agreements**

On July 1, 1981, NMSLGC and the Secretary entered into a contract pursuant to Section 428(c) of the Higher Education Act (as amended, the “428(c) Agreement”), which provides for NMSLGC to receive reimbursement of certain insurance payments that NMSLGC makes to eligible lenders with respect to loans insured by NMSLGC prior to termination of the 428(c) Agreement or the expiration of the authority of the Higher Education Act. The 428(c) Agreement provides that it may be terminated by the Secretary only for cause, and that a termination shall not affect the Secretary’s obligations incurred prior to the date of termination. The percentage of reimbursement for such amounts received by NMSLGC is set forth in the Higher Education Act and embodied in a supplemental guarantee agreement entered into by NMSLGC and the Secretary on July 1, 1981 pursuant to former Section 428A of the Higher Education Act (as amended, the “Supplemental Guarantee Agreement,” and, together with the 428(c) Agreement, the “Federal Reimbursement Contracts”). The Federal Reimbursement Contracts provide for termination under certain circumstances and also provide for certain actions short of termination by the Secretary to protect the Federal interests. In accordance with the Supplemental Guarantee Agreement and the 1998 Amendments, the Secretary is to reimburse NMSLGC between 75% and 100% of the amount expended by NMSLGC in connection with defaults, depending on NMSLGC default claims rate and the type of loan. If NMSLGC fails to maintain required reserve levels for two consecutive years, the maximum reinsurance payment rate is reduced to 85%. In addition, the reinsurance fee paid by NMSLGC to the Secretary is to be increased if NMSLGC default claims rate exceeds 5%. See “APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM” and “Effect of Annual Claims Rate” under this caption.

In addition to insurance or guarantee benefits, qualified student loans acquired under the Program benefit from certain Federal subsidies. On July 1, 1981, NMSLGC and the Secretary entered into an interest subsidy agreement under Section 428(b) of the Higher Education Act (as amended, the “Interest Subsidy Agreement”), which entitles the holders of loans insured by NMSLGC (other than PLUS/SLS Loans) to receive interest subsidy payments from the Secretary on behalf of certain students while the student is in school, during a six to nine month grace period after the student leaves school, and during certain deferment periods, subject to the holders’ compliance with all requirements of the Higher Education Act. See “APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM” for a more detailed description of the interest subsidy payments.

United States Courts of Appeals have held that the Federal government, through subsequent legislation, has the right unilaterally to amend portions of the contracts between the Secretary and Guaranty Agencies similar to NMSLGC described herein. Prior amendments to the Higher Education Act (a) abrogated certain rights of guarantee agencies such as NMSLGC under contracts with the Secretary relating to the repayment of certain advances from the Secretary, (b) authorized the Secretary to withhold reimbursement payments otherwise due to such guarantee agencies until certain specified amounts of such guarantee agencies’ reserves had been eliminated, (c) added new reserve level requirements for such guarantee agencies, (d) authorized the Secretary to terminate the

Federal Reimbursement Contracts under circumstances that did not previously warrant such termination and (e) expanded the Secretary's authority to seize guaranty agencies' reserves. There can be no assurance that future legislation will not adversely affect the rights of NMSLGC, or holders of loans guaranteed by NMSLGC, under such contracts.

NMSLGC's Federal Student Loan Reserve Fund is the property of the Federal government. Neither the Federal Student Loan Reserve Fund nor operating funds nor any other assets or revenues of NMSLGC, including amounts payable to NMSLGC by the Secretary, as described herein, are pledged as security for the Bonds. Amounts paid by NMSLGC to the Foundation in fulfillment of NMSLGC insurance obligations may be so pledged. See "SECURITY AND SOURCE OF PAYMENT FOR THE BONDS."

Recent legislation has the effect of reducing default collection retention and increasing the costs paid by NMSLGC. See "APPENDIX A—DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM."

### **Secretary Review of Financial Solvency of Guaranty Agencies**

Annually, the Secretary is to collect information from each guaranty agency to determine the guaranty agency's solvency. Pursuant to the Higher Education Act, if (a) the guaranty agency's current reserve level falls below the federally required minimum for any two consecutive years, (b) the guaranty agency's federal reimbursement payments are reduced to 85%, or (c) the Secretary determines that the guaranty agency's administrative or financial condition jeopardizes the guaranty agency's ability to fulfill its responsibilities as a guarantor, the Secretary must require the guaranty agency to submit and implement a management plan acceptable to the Secretary. The guaranty agency must submit its management plan to the Secretary within 45 business days of any one of the above-listed conditions. The management plan must identify the means by which the guaranty agency will improve its financial and administrative conditions to the required level within 18 months. The Higher Education Act further provides that if the Secretary has determined that a guaranty agency is unable to meet its insurance obligations, the holder of loans insured by the guaranty agency may submit insurance claims directly to the Secretary and the Secretary is to pay to the holder the full insurance obligation of the guaranty agency, in accordance with insurance requirements no more stringent than those of the guaranty agency. Such arrangements are to continue until the Secretary is satisfied that the insurance obligations have been transferred to another guaranty agency which can meet those obligations or a successor will assume the outstanding insurance obligations. In addition, the Secretary is authorized, on terms and conditions satisfactory to the Secretary, to make advances to a guaranty agency in order to assist the guaranty agency in meeting its immediate cash needs and to ensure uninterrupted payment of default claims by lenders, including the guaranty agency.

### **Effect of Annual Claims Rate**

NMSLGC's ability to meet its obligation to pay default claims on Financed Eligible Loans will depend on the adequacy of its Federal Student Loan Reserve Fund and, under the current federal reinsurance arrangement, the default experience of all lenders under NMSLGC's Guaranty Program. A high default experience among lenders participating in NMSLGC's Guaranty Program may cause NMSLGC's Claims Rate (as defined below) for its Guaranty Program to exceed the 5% and 9% levels described below, and result in the Secretary reimbursing NMSLGC at less than (i) 100% with respect to loans first guaranteed before October 1, 1993, (ii) 98% with respect to loans first guaranteed on or after October 1, 1993 but before July 1, 2006, and (iii) 97% with respect to loans first guaranteed on or after July 1, 2006, of default claims payments made by NMSLGC.

NMSLGC is currently entitled to receive reimbursement payments under the Federal Reimbursement Contracts of between 75% and 100% of the amount expended by NMSLGC, depending on the Claims Rate experience of NMSLGC. NMSLGC is currently entitled to at least 75% (78% for loans made on and after October 1, 1993 but before October 1, 1998, and 80% for loans made before October 1, 1993) reimbursement from the Secretary on default claims that it purchases regardless of its Claims Rate. The "Claims Rate" is computed by dividing total default claims since the previous September 30 by the total original principal amount of NMSLGCs guaranteed loans in repayment on such September 30. On October 1 of each year the Claims Rate begins at zero, regardless of the experience in preceding years. If the Claims Rate remains equal to or below 5% within a given federal fiscal year (October 1 through September 30), the Secretary is currently obligated to provide reimbursement at the highest level shown below; if and when the Claims Rate exceeds 5% and until such time, if any, as it exceeds

9% during the fiscal year, the reimbursement rate drops as shown below; if and when the Claims Rate exceeds 9% during the fiscal year, the reimbursement rate for the remainder of the fiscal year is at the lowest level shown below.

The insurance or reimbursement payment formulas with respect to defaults on loans made (a) on or after October 1, 1993 but before October 1, 1998 and (b) on or after October 1, 1998, are summarized below:

<u>Default Claims Rate</u>	<u>Default Claims Rate (loans prior to 10/1/98)</u>	<u>Default Claims Rate (loans on or after 10/1/98)</u>
0% up to 5%	98%	95%
5% up to 9%	98% of claims up to 5%; 88% of claims 5% and over up to 9%	95% of claims up to 5%; 85% of claims 5% and over up to 9%
9% and over	98% of claims up to 5%; 88% of claims 5% and over up to 9%; and 78% of claims 9% and over	95% of claims up to 5%; 85% of claims 5% and over up to 9%; and 75% of claims 9% and over

Loans made pursuant to the lender-of-last resort program and loans transferred by an insolvent guarantor continue to be reimbursed at 100%. For loans made prior to October 1, 1993, and for other loans transferred from an insolvent guarantor, the basic reimbursement percentage is 100%, reduced to 90% and 80%, respectively, for claims 5% and over up to 9%, and for claims 9% and over. For loans made pursuant to the lender-of-last resort program, the reimbursement percentage is 100%, regardless of guarantee agency's default claims rate. If a guarantee agency fails to maintain required reserve levels for two consecutive years, the maximum reinsurance payment percentage is reduced to 85%. There can be no assurance that future legislation or regulations will maintain these reimbursement percentages or will not impose additional restrictions on receipt of such percentages.

The following table lists NMSLGC's Claims Rates for each of the last five fiscal years and a projection for the current fiscal year.

<u>Year Ended</u>	<u>Claims Rate</u>
September 30, 2005	1.36%
September 30, 2006	1.64
September 30, 2007	1.57
September 30, 2008	1.88
September 30, 2009	2.42
September 30, 2010 (projected)	2.68

Higher than expected default claims against NMSLGC of Eligible Loans could reduce the amount of federal reimbursement to NMSLGC, thus possibly causing NMSLGC to reduce its reserve fund below desired levels in order to pay guaranty claims. See "Secretary Review of Financial Solvency of Guarantee Agencies" above.

### **The Federal Student Loan Reserve Fund and the Guarantee Agreement**

NMSLGC maintains a Federal Student Loan Reserve Fund for the purpose of purchasing student loans in default. In the Educational Loan Guarantee Agreement dated August 18, 1981 (the "Guarantee Agreement") between NMSLGC and the Foundation, NMSLGC agrees to maintain at all times assets for payment of claims in the amount required by the Higher Education Act (presently, 0.25% of the principal amount of loans guaranteed and outstanding), and NMSLGC is in compliance with this requirement. The amount in the Federal Student Loan Reserve Fund includes insurance premiums paid by lenders (the cost of which may be passed on to borrowers) and reinsurance payments received from the Secretary as reimbursement for a portion of the claims paid by NMSLGC. The 2005 HERA Amendment requires NMSLGC to charge a onetime Federal Default Fee of 1% of the principal amount of each student loan that it guarantees. NMSLGC is allowed to retain 27% of its post-reimbursement collections on defaulted loans received on or after October 1, 1993 and prior to October 1, 1998, 24% of such collections on defaulted loans received on or after October 1, 1998 but prior to October 1, 2003, 23% of such collections on defaulted loans received on or after October 1, 2003 but prior to October 1, 2007, and 16% of its post-reimbursement collections received on or after October 1, 2007.

If the financial status of NMSLGC and its ability to honor guarantee claims were to be materially adversely affected over time, such changes could result in a failure to make guarantee payments to the Foundation. The adequacy of the Federal Student Loan Reserve Fund to meet its guarantee obligations with respect to existing student loans depends, in significant part, on its ability to collect revenues generated by new loan guarantees and reinsurance payments. A curtailment of new loan guarantees or too high of a default rate could materially adversely affect its ability to meet its guarantee obligations. There are no assurances as to the Secretary's actions if NMSLGC encounters administrative or financial difficulties or as to whether the Secretary will demand that NMSLGC transfer all or a portion of its Federal Student Loan Reserve Fund to the Secretary.

The Higher Education Act provides that if the Secretary has determined that a guaranty agency is unable to meet its guarantee obligations, the holder of loans guaranteed by the guaranty agency may submit claims directly to the Secretary and the Secretary shall pay to the holder the full guarantee obligation of the guaranty agency, in accordance with guarantee requirements no more stringent than those of the guaranty agency. Such arrangements are to continue until the Secretary is satisfied that the guarantee obligations have been transferred to another guaranty agency which can meet these obligations or a successor will assume the outstanding guarantee obligations. In addition, the Secretary is authorized, on terms and conditions satisfactory to the Secretary, to make advances to a guaranty agency in order to assist the guaranty agency in meeting its immediate cash needs and to ensure uninterrupted payment of default claims by lenders.

The obligations of NMSLGC do not constitute debts of the Foundation or of the State. The New Mexico legislature is not in any way obligated to make any appropriations to NMSLGC.

## **TAX MATTERS**

Excludability of Interest. In the opinion of Ballard Spahr LLP, interest on the Bonds is excludable from gross income for purposes of federal income tax under existing laws as enacted and construed on the date of initial delivery of the Bonds, assuming the accuracy of the certifications of the Foundation and continuing compliance by the Foundation with the requirements of the Internal Revenue Code of 1986 (the "Code"). Interest on the Bonds is exempt from individual and corporate federal alternative minimum tax ("AMT") and is not includable in adjusted current earnings for purposes of corporate AMT.

Original Issue Premium. The Series 2010A-1 Bonds may be offered at a premium ("original issue premium") over their principal amount. For federal income tax purposes, original issue premium is amortizable periodically over the term of a Bond through reductions in the holder's tax basis for the Bond for determining taxable gain or loss from sale or from redemption prior to maturity. Amortization of premium does not create a deductible expense or loss. Holders should consult their tax advisers for an explanation of the amortization rules.

Original Issue Discount. The Series 2010A-1 Bonds may be offered at a discount ("original issue discount") equal generally to the difference between public offering price and principal amount. Original issue discount on a Bond accrues as tax-exempt interest periodically over the term of the Bond. The accrual of original issue discount increases the holder's tax basis in the Bond for determining taxable gain or loss from sale or from redemption prior to maturity. Bondholders should consult their tax advisors for an explanation of the accrual rules.

State of New Mexico Income Tax. In the opinion of Ballard Spahr LLP and Sutin Thayer & Browne A Professional Corporation, interest on the Bonds is exempt from State of New Mexico personal income taxes under currently existing law.

No Further Opinion. Co-Bond Counsel expresses no opinion regarding any other tax consequences relating to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

Complete copies of the proposed forms of opinions of Co-Bond Counsel are set forth in Appendix D hereto.

## **UNDERWRITING**

The Bonds are to be purchased by Merrill Lynch, Pierce, Fenner & Smith Incorporated and RBC Capital Markets Corporation (together, the “Underwriters”) pursuant to a Bond Purchase Agreement (the “Bond Purchase Agreement”). The Underwriters will purchase the Series 2010A-1 Bonds at a price equal to the face amount thereof, plus \$9,318,184.70 of premium. The Underwriters will purchase the Series 2010A-2 Bonds at a price equal to the face amount thereof. The Underwriters will purchase the Series 2010A-3 Bonds at a price equal to the face amount thereof. The Bond Purchase Agreement provides that the Underwriters will purchase all of the related Bonds if any are purchased. The obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions set forth in the Bond Purchase Agreement. In connection with the issuance of the Bonds, the Underwriters will be paid an underwriting fee of \$842,333.

The Underwriters may offer and sell the Bonds to certain dealers (including underwriters and other dealers depositing the Bonds into unit investment trusts) and others at prices lower than the public offering prices stated on the cover page hereof. The initial offering prices may be changed from time to time by the Underwriter.

## **INTEREST RATE SWAP ADVISOR**

Starshak Winzenburg & Co., Chicago, Illinois (the “Swap Advisor”), is serving as advisor to the Foundation in connection with the execution and delivery of the Interest Rate Swap described in “INTEREST RATE SWAP,” which is being entered into in connection with the issuance of the Series 2010A-1 Bonds. The Swap Advisor neither has nor assumes any responsibility with respect to the information contained in this Official Statement (including all Appendices hereto), and has not reviewed or undertaken to verify any of the information contained therein.

## **CONTINUING DISCLOSURE UNDERTAKING**

In connection with the issuance of the Bonds, the Foundation will deliver a Continuing Disclosure Undertaking in the form as set forth in Appendix E hereto, wherein the Foundation will agree for the benefit of the owners of the Bonds to provide certain annual financial information and operating data and to provide notices of occurrence of certain enumerated events relating to the Bonds, if material. The Continuing Disclosure Undertaking is being executed by the Foundation to assist the Underwriters in complying with Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “Rule”). The Bonds are the initial and only Bonds which will be issued under the Indenture and the Foundation does not have any prior continuing disclosure obligations with respect to the Indenture. Since 1997, the Foundation has complied with the Rule in all material respects with regard to its previous undertakings.

## **ABSENCE OF LITIGATION**

There is no controversy or litigation of any nature now pending or threatened to restrain or enjoin the issuance, sale, execution or delivery of the Bonds, or in any way contesting or affecting the validity of the Bonds, any proceedings of the Foundation taken with respect to the issuance or sale thereof, the pledge or application of any moneys or security provided for the payment of the Bonds, or the existence or powers of the Foundation.

## **CERTAIN LEGAL MATTERS**

Opinions as to the validity of the Bonds (in substantially the forms set forth in Appendix D hereto) are to be delivered by Ballard Spahr LLP and Sutin Thayer & Browne A Professional Corporation, Co-Bond Counsel. Certain legal matters will be passed on for the Foundation and NMSLGC by their General Counsel, and for the Underwriters by their counsel, Hogan Lovells US LLP.

## **AGREEMENT OF STATE**

Pursuant to the Educational Assistance Act and the Indenture, the State of New Mexico pledges to and agrees with the Bondowners that the State will not limit or alter the rights vested by the Educational Assistance Act in the Foundation and NMSLGC to fulfill the terms of any agreements made with the Bondowners or in any way impair the rights and remedies of the Bondowners until the Bonds, together with the interest thereon, with interest

on any unpaid installment of interest and all costs and expenses in connection with any action by or on behalf of the Bondowners, are fully met and discharged.

### **LEGALITY FOR INVESTMENT AND DEPOSIT IN NEW MEXICO**

The Bonds are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians and for the sinking funds of political subdivisions, departments, institutions and agencies of the State of New Mexico. The Bonds are sufficient security for all deposits of State of New Mexico funds and of all funds of any New Mexico board in control of public money, at the par value of the Bonds.

### **FINANCIAL STATEMENTS OF THE FOUNDATION**

The financial statements of the Foundation as of June 30, 2009, and for the year then ended, included in Appendix C in this Official Statement, have been audited by Moss Adams LLP, independent public accountants, as stated in their report appearing herein. Moss Adams LLP has not been engaged to perform and has not performed, since the date of the report included herein, any procedures on the financial statements addressed in that report. Moss Adams LLP also has not performed any procedures relating to this Official Statement.

Since the Bonds are special obligations of the Foundation, payable solely from the Trust Estate, the overall financial status of the Foundation does not indicate, and will not necessarily affect, whether amounts will be available in the Trust Estate to pay the principal of and interest when due on the Bonds. No financial statements are available for the Funds and assets comprising the Trust Estate.

### **RATINGS**

The Bonds are expected to be given the rating of “Aaa (sf)” by Moody’s Investors Service (“Moody’s”) and “AAA (sf)” by Standard & Poor’s Ratings Group (“S&P”). No application was made to any other rating agency for the purpose of obtaining additional ratings of the Bonds.

Any ratings reflect only the view of the rating agency. Any explanation of the significance of the ratings may be obtained only from the rating agency. There can be no assurance that ratings will continue for any given period of time or that they will not be lowered or withdrawn entirely by a rating agency if in its judgment circumstances so warrant. Any such downward change in or withdrawal of a rating may have an adverse effect on the marketability or market price of the Bonds.

The Foundation expects to furnish each rating agency information and materials that it may request. However, the Foundation assumes no obligation to furnish requested information and materials, and may issue additional obligations for which a rating is not requested. Failure to furnish requested information and materials, or the issuance of debt for which a rating is not requested, may result in the suspension or withdrawal of a rating agency’s ratings on the Bonds.

### **MISCELLANEOUS**

All quotations from, and summaries and explanations of, the Higher Education Act, the Indenture and other documents contained herein do not purport to be complete, and reference is made to such laws and documents for full and complete statements of their provisions.

The information contained in this Official Statement is subject to change without notice, and no implication should be derived therefrom or from the sale of the Bonds that there has been no change in the affairs of the Foundation, NMSLGC or others, from the date hereof. Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Foundation and the purchasers or owners of any of the Bonds. The statements of the Foundation herein are not to be construed as statements by any member of the Board or any employee of the Foundation.

The Trustee did not participate in the preparation of this Official Statement and makes no representations concerning the Bonds, the collateral or any other matter stated in this Official Statement. The Trustee has no duty or

obligation to pay the Bonds from its own funds, assets or corporate capital or to make inquiry regarding, or investigate the use of, amounts disbursed from the accounts held under the Indenture.

This Official Statement, its distribution and use by the Underwriters have each been duly authorized and approved by the Foundation.

NEW MEXICO EDUCATIONAL ASSISTANCE  
FOUNDATION

By: /s/ Eileen Givler  
Chairperson

By: /s/ Elwood G. Farber  
President

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## **APPENDIX A**

### **DESCRIPTION OF CERTAIN PROVISIONS OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM**

The Higher Education Act provides for several different educational loan programs (collectively, “Federal Family Education Loans” or “FFELP Loans” and, the program with respect thereto, the “Federal Family Education Loan Program” or the “FFEL Program”). Under these programs, state agencies or private nonprofit corporations administering student loan insurance programs (“Guarantee Agencies” or “Guarantors”) are reimbursed for portions of losses sustained in connection with FFELP Loans, and holders of certain loans made under such programs are paid subsidies for owning such loans. Certain provisions of the Federal Family Education Loan Program are summarized below.

The Higher Education Act has been subject to frequent amendments, including several amendments that have changed the terms of and eligibility requirements for the FFELP Loans. The Higher Education Act will likely be the subject of further legislation during the time the Bonds are Outstanding. There can be no assurance that the Higher Education Act, or other relevant federal or State laws, rules and regulations will not be changed in the future in a manner that will adversely impact the programs described below and the student loans made thereunder. Generally, this Official Statement describes only the provisions of the Federal Family Education Loan Program that currently apply to loans made on or after July 1, 1998 and prior to July 1, 2010. The following summary of the Federal Family Education Loan Program as established by the Higher Education Act does not purport to be comprehensive or definitive and is qualified in its entirety by reference to the text of the Higher Education Act and the regulations thereunder.

#### **Recent Federal Legislation Affecting the FFEL Program**

On March 30, 2010, President Obama signed into law H.R. 4872 – the Health Care and Education Reconciliation Act of 2010 (“HCERA”). HCERA provides that after June 30, 2010, no new student loans will be made under the FFEL Program. Beginning July 1, 2010, all subsidized and unsubsidized Stafford loans, PLUS loans, and Consolidation loans can only be made under the government’s Federal Direct Loan Program (“FDLP”).

The elimination of the FFEL Program could have a material adverse impact on the Servicer, the Foundation and the Guarantors. For example, the Servicers may experience increased costs due to reduced economies of scale to the extent the volume of loans serviced by the Servicers is reduced. Those cost increases could affect the ability of the Servicers to satisfy their obligations to service the student loans held in the Trust Estate securing the Bonds, which is being addressed by putting in place a backup servicer. Student loan volume reductions could further reduce revenues received by the Guarantors available to pay claims on defaulted FFELP Loans. In addition, the level of competition currently in existence in the secondary market for FFELP Loans could be reduced, resulting in fewer potential buyers of FFELP Loans and lower prices available in the secondary market for those loans.

HCERA also allows, from July 1, 2010 through June 30, 2011, certain borrowers who are in-school or in-grace to obtain a Federal Direct Consolidation Loan. In order to qualify, the borrower must meet the following conditions: the borrower must have a loan in at least two of the following categories: FDLP, FFELP Loans held by a lender or FFELP Loans held by the Secretary of Education and the borrower has not entered repayment on at least one of the loans being consolidated.

On July 31, 2008, the United States House of Representatives and United States Senate took separate action to approve the Conference Report on the Higher Education Opportunity Act (HR 4137). HR 4137, which the President signed into law on August 14, 2008, provides for various revisions to and reauthorizations of the Higher Education Act.

Among other things HR 4137 provides for: (i) lender and school “codes of conduct” applicable to both FFELP and private loans; (ii) the Secretary in coordination with the Federal Reserve to determine minimum reporting requirements for lenders and schools participating in preferred lending arrangements; (iii) effective July 1, 2010, excluding certain veteran’s educational benefits from the definition of a student’s “estimated financial assistance;” (iv) extending the prohibited inducement provisions applicable to guarantors and lenders to prohibit, among other things, unsolicited mailings of loan applications by electronic means and various payments to other parties; (v) extending certain provisions of the Servicemembers Civil Relief Act to FFELP Loans providing that

eligible servicemembers may request that the rates on FFELP Loans be reduced to 6%; (vi) extending consolidation loan program authority to September 30, 2014; (vii) expanding loan forgiveness programs applicable to both FFELP and direct loans, subject to appropriations, for borrowers employed full time in an area of national need; (viii) providing for certain disclosures to be made to borrowers by lenders prior to disbursements, prior to repayment, during repayment and for loans in default and (ix) extending prohibitions on inducements, limiting payments to certain persons and requiring additional disclosures with respect to private loans.

In May, 2008, the President signed into law HR 5715 (P.L. 110-227) referred to as the “Ensuring Continued Access to Student Loans Act of 2008” or “ECASLA,” which authorized the Secretary to advance loans to guarantors and to purchase FFELP Loans (including from lenders such as the Foundation). ECASLA also amended other provisions of the Higher Education Act raising loan limits, providing for additional repayment terms on PLUS loans and easing certain credit criteria.

The Higher Education Reconciliation Act of 2005 (the “2005 HERA Amendment”) contained many new provisions which took effect on July 1, 2006 and extended various provisions of the FFEL Program through September 30, 2012 and includes, but is not limited to, provisions that (i) reduce student loan insurance from 98% to 97% for loans for which the first disbursement is made after July 1, 2006, (ii) reduce the reimbursement available for student loans serviced by servicers designated for exceptional performance from 100% to 99%, (iii) permanently eliminate recycling of 9.5% floor loans on student loans first disbursed on or after April 1, 2006, (iv) require payment by lenders to the Department of Education of any interest paid by borrowers which is in excess of the special allowance payment rate and (v) phased out certain borrower origination fees.

The College Cost Reduction and Access Act (the “CCRA Act”), signed by the President on September 27, 2007, made significant changes to (among other things) the FFEL Program. The CCRA Act (among other things) (i) decreases lender Special Allowance Payments for eligible non-profit lenders and holders such as the Foundation by 0.40% for Stafford and Consolidation Loans and by 0.70% for PLUS Loans (effective for loans first disbursed on or after October 1, 2007); (ii) increases the lender paid origination fee for loans first disbursed on or after October 1, 2007 to 1.0 percent of the principal amount of the loan; (iii) requires a program to auction all FFELP Parent PLUS loans beginning July 1, 2009; (iv) effective after October 1, 2012, decreases lender insurance to 95% for loans made on or after that date (with certain exceptions); (v) eliminates exceptional performer designations for lenders, servicers and guarantors; (vi) reduces guaranty agency collection retention allowance from 23% to 16% beginning October 1, 2007; (vii) reduces the student loan interest rates for undergraduate subsidized FFELP Loans (as well as Direct Loans) over four years from 6.8% (for loans first disbursed prior to July 1, 2008) to 3.4% (for loans first disbursed prior to July 1, 2012), reverting back to 6.8% for loans first disbursed on or after July 1, 2012; and (viii) makes other changes to qualification, repayment and deferment provisions. The CCRA Act also expands certain grant programs and provides for forgiveness of Direct Loans for certain borrowers.

### **Federal Family Education Loans**

Several types of loans were authorized as Federal Family Education Loans pursuant to the Federal Family Education Loan Program: (a) loans to students meeting certain financial needs tests with respect to which the federal government makes interest payments available to reduce student interest cost during certain periods (“Subsidized Stafford Loans”); (b) loans to students made without regard to financial need with respect to which the federal government does not make such interest payments (“Unsubsidized Stafford Loans” and, collectively with Subsidized Stafford Loans, “Stafford Loans”); (c) loans to graduate students and to parents of dependent students (“PLUS Loans”); and (d) loans available to borrowers with certain existing federal educational loans to consolidate repayment of such loans (“Consolidation Loans”).

### **Subsidized Stafford Loans**

The Higher Education Act provided for federal (a) insurance or reinsurance of eligible Subsidized Stafford Loans, (b) interest subsidy payments to eligible lenders with respect to certain eligible Subsidized Stafford Loans, and (c) special allowance payments representing an additional subsidy paid by the Secretary of the U.S. Department of Education (the “Secretary”) to such holders of eligible Subsidized Stafford Loans.

Subsidized Stafford Loans are eligible for reinsurance under the Higher Education Act if the eligible student to whom the loan is made has been accepted or is enrolled in good standing at an eligible institution of higher education or vocational school and is carrying at least one-half the normal full-time workload at that

institution. In connection with eligible Subsidized Stafford Loans there are limits as to the maximum amount which may be borrowed for an academic year and in the aggregate for both undergraduate and graduate/professional study. The Secretary has discretion to raise these limits to accommodate students undertaking specialized training requiring exceptionally high costs of education.

### **Unsubsidized Stafford Loans**

Unsubsidized Stafford Loans were available for students (i) who do not qualify for Subsidized Stafford Loans due to parental and/or student income or assets in excess of permitted amounts or (ii) who do qualify for Subsidized Stafford Loans, but not in an amount sufficient to cover amounts needed. In other respects, the general requirements for Unsubsidized Stafford Loans are essentially the same as those for Subsidized Stafford Loans other than that there is no need requirement. The interest rate (except that Unsubsidized Stafford Loans are not subject to the interest rate reductions applicable to Subsidized Stafford Loans beginning July 1, 2008), the annual loan limits, the loan fee requirements and the special allowance payment provisions of the Unsubsidized Stafford Loans are the same as the Subsidized Stafford Loans. However, the terms of the Unsubsidized Stafford Loans differ materially from Subsidized Stafford Loans in that the Secretary does not make interest subsidy payments and the loan limitations are determined without respect to the expected family contribution. The borrower is required to pay interest from the time such loan is disbursed or capitalize the interest until repayment begins.

### **PLUS Loan Program**

The Higher Education Act authorized PLUS Loans to be made to graduate and professional students and parents of eligible dependent students. Only parents who do not have an adverse credit history, which has been revised by Pub. L. 110-227, are eligible for PLUS Loans. Graduate students who apply for a PLUS loan may use an endorser if they have adverse credit history. The basic provisions applicable to PLUS Loans are similar to those of Stafford Loans with respect to the involvement of Guarantee Agencies and the Secretary in providing federal reinsurance on the loans. However, PLUS Loans differ significantly from Subsidized Stafford Loans, particularly because federal interest subsidy payments are not available under the PLUS Program and special allowance payments are more restricted. Pub. L. 110-227 also provided for the deferral of principal and interest payments on loans first disbursed on or after July 1, 2008 until 6 months after the dependent for whom the loan was obtained for becomes less than a half-time student.

### **The Consolidation Loan Program**

The Higher Education Act authorized a program under which certain borrowers may consolidate their various student loans into a single loan insured and reinsured on a basis similar to Subsidized Stafford Loans. Consolidation Loans may be made in an amount sufficient to pay outstanding principal, unpaid interest and late charges on certain federally insured or reinsured student loans incurred under and pursuant to the Federal Family Education Loan Program (other than PLUS Loans made to “parent borrowers”) selected by the borrower, as well as loans made pursuant to the Perkins (formally “National Direct Student Loan”) Loan Program, the Health Professional Student Loan Programs and the William D. Ford Federal Direct Loan Program (the “Direct Loan Program”). The borrowers may be either in repayment status or in a grace period preceding repayment. Delinquent or defaulted borrowers are eligible to obtain Consolidation Loans if they agree to re-enter repayment through loan consolidation. Borrowers may add additional loans to a Consolidation Loan during the 180-day period following origination of the Consolidation Loan. A Consolidation Loan will be federally insured or reinsured only if such loan is made in compliance with requirements of the Higher Education Act.

### **Interest Rates**

Prior to July 1, 2006. Subsidized and Unsubsidized Stafford Loans disbursed on or after October 1, 1998 and prior to July 1, 2006 which are in in-school, grace and deferment periods bear interest at a rate equivalent to the 91-day T-Bill rate plus 1.7%, or, if in repayment, plus 2.30%, in either case with a maximum rate of 8.25%. Subsidized Stafford Loans and Unsubsidized Stafford Loans in all other periods bear interest at a rate equivalent to the 91-day T-Bill rate plus 2.3%, with a maximum rate of 8.25%. The rate is adjusted annually on July 1. PLUS Loans bear interest at a rate equivalent to the 91-day T-Bill rate plus 3.1%, with a maximum rate of 9%. Consolidation Loans for which the application was received by an eligible lender on or after October 1, 1998, bear

interest at a rate equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest one-eighth of 1%, with a maximum rate of 8.25%.

Commencing July 1, 2006. The Higher Education Act provides that for Subsidized and Unsubsidized Stafford Loans for which a first disbursement is made on or after July 1, 2006, the interest rate will be equal to 6.8% per annum and for PLUS Loans made on or after July 1, 2006, the interest rate will be equal to 8.5% per annum. Amendments to the Higher Education Act provide for a lowering of the interest rate to be charged undergraduate students on Subsidized Stafford Loans from such 6.8% to be phased in over time until such rate is to be 3.4% in July 2011 (for loans first disbursed on or after July 1, 2011), reverting back to 6.8% thereafter (for loans made after June 30, 2012). Consolidation Loans for which the application was received by an eligible lender on or after July 1, 2006, will bear interest at a rate equal to the weighted average of the loans consolidated, rounded to the nearest higher one-eighth of one percent, with a maximum rate of 8.25%.

## Loan Limits

The Higher Education Act requires that Subsidized and Unsubsidized Stafford Loans made to cover multiple enrollment periods, such as a semester, trimester or quarter be disbursed by eligible lenders in at least two separate disbursements. A Stafford Loan borrower may receive a subsidized loan, an unsubsidized loan, or a combination of both for an academic period. The Secretary has discretion to raise these limits by regulation to accommodate highly specialized or exceptionally expensive courses of study.

The total amount of all PLUS Loans that (i) graduate students or parents may borrow on behalf of each dependent student or (ii) graduate or professional students may borrow for any academic year may not exceed the student's cost of attendance minus other estimated financial assistance for that student or graduate borrower.

The following are certain loan limits:

Borrower's Academic Level	Dependent Students		Independent Students		Maximum Total Amount
	Subsidized and Unsubsidized from October 1, 1993 to June 30, 2007	Subsidized and Unsubsidized on or after July 1, 2007 <sup>(1)</sup>	Additional Unsubsidized from July 1, 1994 to June 30, 2007	Additional Unsubsidized only on or after July 1, 2007 <sup>(2)</sup>	
Undergraduate (per year)					
1 <sup>st</sup> Year	\$2,625	\$3,500	\$4,000	\$4,000	\$7,500
2 <sup>nd</sup> Year	3,500	4,500	4,000	4,000	8,500
3 <sup>rd</sup> Year	5,500	5,500	5,000	5,000	10,500
Graduate (per year)	8,500	8,500	10,000	12,000	20,500
Aggregate Limit:					
Undergraduate	23,000	23,000	23,000	23,000	46,000
Graduate (including undergraduate)	65,500	65,500	73,000	73,000	138,500

<sup>(1)</sup> Pub. L. 110-227 increases these amounts by \$2,000 per year for loans first disbursed on or after July 1, 2008. The aggregate limit for undergraduate students is increased to \$31,000, with the subsidized limit remaining at \$23,000.

<sup>(2)</sup> Pub. L. 110-227 increases the unsubsidized amounts by \$2,000 per year for loans first disbursed on or after July 1, 2008 for the undergraduate study and increases the aggregate maximum amounts for independent undergraduate students and dependent students whose parents cannot borrow under the PLUS program to \$57,500, with no more than \$23,000 being subsidized.

## Repayment

Repayment of principal on a Stafford Loan does not commence while a student remains a qualified student, but generally begins not more than six months after the borrower ceases to pursue at least a half-time course of study (the six month period is the "Grace Period"). Grace Periods may be waived by borrowers. Repayment of interest on an Unsubsidized Stafford Loan begins immediately upon disbursement of the loan, however the lender may capitalize the interest until repayment of principal is scheduled to begin. Except for certain borrowers as described below, each loan generally must be scheduled for repayment over a period of not more than ten years after the commencement of repayment. The Higher Education Act currently requires minimum annual payments of \$600, including principal and interest, unless the borrower and the lender agree to lesser payments. Regulations of the Secretary require lenders to offer standard, graduated, income sensitive, or income-based (effective July 1, 2009) repayment schedules to borrowers. Use of income sensitive repayment plans may extend the ten-year maximum term for up to five years.

PLUS Loans enter repayment on the date the last disbursement is made on the loan. Interest accrues and is due and payable from the date of the first disbursement of the loan. The first payment is due within 60 days after the loan is fully disbursed, except for loans first disbursed on or after July 1, 2008 which are eligible for deferment until 6 months after the student leaves school. Repayment plans are the same as in the Subsidized and Unsubsidized Stafford Loan Program.

Consolidation Loans enter repayment on the date the loan is disbursed. The first payment is due within 60 days after that date. Consolidation Loans must be repaid during a period agreed to by the borrower and lender, subject to maximum repayment periods which vary depending upon the principal amount of the borrower's outstanding student loans (but no longer than 30 years).

FFELP borrowers who accumulate outstanding FFELP Loans totaling more than \$30,000 may receive an extended repayment plan, with a fixed or graduated payment amount paid over a longer period of time, not to exceed 25 years. A borrower may accelerate principal payments at any time without penalty. Once a repayment plan is established, the borrower may annually change the selection of the plan. The extended repayment plan only applies to individuals who have no outstanding principal or interest balance on any FFEL Program loan as of October 7, 1998, or on the date he or she obtains a FFEL Program loan after October 7, 1998.

*Deferment and Forbearance Periods.* No principal repayments need to be made during certain periods prescribed by the Higher Education Act ("Deferment Periods") but interest continues to accrue. Generally, Deferment Periods include periods (a) when the borrower has returned to an eligible educational institution on at least a half-time basis or is pursuing studies pursuant to an approved graduate fellowship or rehabilitation training program; (b) not exceeding three years while the borrower is seeking and unable to find full-time employment; and (c) not in excess of three years for any reason which the lender determines, in accordance with regulations, has caused or will cause the borrower economic hardship. Deferment Periods extend the maximum repayment periods. Under certain circumstances, a lender may also allow periods of forbearance ("Forbearance") during which the borrower may defer payments because of temporary financial hardship. The Higher Education Act specifies certain periods during which Forbearance is mandatory. Mandatory Forbearance periods exist when the borrower is impacted by a national emergency, military mobilization, or when the geographical area in which the borrower resides or works is declared a disaster area by certain officials. Other mandatory periods include periods during which the borrower is (a) participating in a medical or dental residency and is not eligible for deferment; (b) serving in a qualified medical or dental internship program or certain national service programs; or (c) determined to have a debt burden of certain federal loans equal to or exceeding 20% of the borrower's gross income. In other circumstances, Forbearance may be granted at the lender's option. Forbearance also extends the maximum repayment periods.

### **Interest Subsidy Payments**

The Secretary is to pay interest on Subsidized Stafford Loans while the student is a qualified student, during a Grace Period or during certain Deferment Periods. In addition, those portions of Consolidation Loans that repay Subsidized Stafford Loans or similar subsidized loans made under the Direct Loan Program are eligible for Interest Subsidy Payments during qualifying Deferment Periods. The Secretary is required to make interest subsidy payments to the holder of Subsidized Stafford Loans in the amount of interest accruing on the unpaid balance thereof prior to the commencement of repayment or during any Deferment Period. The Higher Education Act provides that the holder of an eligible Subsidized Stafford Loan, or the eligible portions of Consolidation Loans, shall be deemed to have a contractual right against the United States to receive interest subsidy payments in accordance with its provisions.

### **Special Allowance Payments**

The Higher Education Act provides for Special Allowance Payments to be made by the Secretary to eligible lenders. The rates for Special Allowance Payments are based on formulae that differ according to the type of loan, the date the loan was first disbursed, the interest rate and the type of funds used to finance such loan (tax exempt or taxable).

Subject to the foregoing, the formulae for Special Allowance Payment rates for Stafford and Unsubsidized Stafford Loans are summarized in the following chart. The term "T-Bill" as used in this table and the following table, means the average 91-day Treasury bill rate calculated as a "bond equivalent rate" in the manner applied by

the Secretary as referred to in Section 438 of the Higher Education Act. The term “3-Month Commercial Paper Rate” means the 90-day commercial paper index calculated quarterly and based on an average of the daily 90-day commercial paper rates reported in the Federal Reserve’s Statistical Release H-15.

<u>Date of Loans</u>	<u>Annualized SAP Rate</u>
On or after October 1, 1992 to June 30, 1995	T-Bill Rate less Applicable Interest Rate + 3.1%
On or after July 1, 1995 to June 30, 1998	T-Bill Rate less Applicable Interest Rate + 3.1% <sup>(1)</sup>
On or after July 1, 1998 to December 31, 1999	T-Bill Rate less Applicable Interest Rate + 2.8% <sup>(2)</sup>
On or after January 1, 2000 to June 30, 2006	3 Month Commercial Paper Rate less Applicable Interest Rate + 2.34% <sup>(3)</sup>
On or after July 1, 2006	3-Month Commercial Paper Rate less Applicable Interest Rate + 2.34% <sup>(3)(4)</sup>
On or after October 1, 2007 (for lenders such as the Foundation)	3-Month Commercial Paper Rate less Applicable Interest Rate + 1.94% <sup>(5)</sup>

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- (1) Substitute 2.5% in this formula while such loans are in the in-school or grace period.  
(2) Substitute 2.2% in this formula while such loans are in the in-school or grace period.  
(3) Substitute 1.74% in this formula while such loans are in the in-school or grace period.  
(4) If the applicable interest rate is less than the 3-Month Commercial Paper Rate + 2.34%, the lender must refund the difference to the U.S. Department of Education.  
(5) Substitute 1.34% in this formula while such loans are in the in-school, grace or deferment period.

The formula for Special Allowance Payment rates for PLUS and Consolidation Loans are as follows:

<u>Date of Loans</u>	<u>Annualized SAP Rate</u>
On or after October 1, 1992 to December 31, 1999	T-Bill Rate less Applicable Interest Rate + 3.1%
On or after January 1, 2000	3-Month Commercial Paper Rate less Applicable Interest Rate + 2.64% <sup>(1)</sup>
On or after July 1, 2006	3-Month Commercial Paper Rate less Applicable Interest Rate + 2.64% <sup>(2)</sup>
On or after October 1, 2007 (for lenders such as the Foundation)	3-Month Commercial Paper Rate less Applicable Interest Rate + 1.94% (PLUS) and 2.24% (Consolidation) <sup>(3)</sup>

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- (1) For PLUS loans disbursed on or after January 1, 2000 but prior to July 1, 2006, Special Allowance will not be paid unless the calculated interest rate exceeds the 9% cap.  
(2) If the applicable interest rate is less than 3-Month Commercial Paper Rate + 2.64%, the lender must refund the difference to the U.S. Department of Education.  
(3) If the applicable interest rate is less than 3-Month Commercial Paper Rate + 1.94% (PLUS) or 2.24% (Consolidation), the lender must refund the difference to the U.S. Department of Education.

Special Allowance Payments are generally payable, with respect to variable rate FFELP Loans to which a maximum borrower interest rate applies, only when the maximum borrower interest rate is in effect. The Secretary offsets Interest Subsidy Payments and Special Allowance Payments by the amount of Origination Fees and Lender Loan Fees described in the following section.

The Higher Education Act provides for certain loans first disbursed on or after April 1, 2006, if the interest on such loan at the stated interest rate is higher than the rate applicable to such loan including Special Allowance Payments, the holder of the loan is to credit the difference to the United States Government quarterly.

The CCRA Act provides that a holder of a qualifying loan who is entitled to receive Special Allowance Payments has a contractual right against the United States to receive those payments during the life of the loan. Receipt of Special Allowance Payments, however, is conditioned on the eligibility of the loan for federal insurance or reinsurance benefits. Such eligibility may be lost due to violations of federal regulations or Guarantee Agency requirements.

## **Loan Fees**

Insurance Premium/ Federal Default Fee. Prior to July 1, 2006, a Guarantee Agency is authorized to charge a premium, or guarantee fee, of up to 1% of the principal amount of the loan, which may be deducted proportionately from each installment of the loan. Effective for loans for which the date of guarantee of principal is on or after July 1, 2006, the optional 1% fee is eliminated and a Federal default fee of 1% of the principal amount of the loan must be charged.

Origination Fee. The lender is required to pay to the Secretary an origination fee equal to a certain percentage of the principal amount of each Subsidized and Unsubsidized Stafford and PLUS Loan. The lender may charge these fees to the borrower by deducting them proportionately from each disbursement of the loan proceeds. The origination fee for PLUS Loans is 3% and the origination fee for Subsidized and Unsubsidized Stafford Loans ranged from 3% for loans disbursed before July 1, 2006 to 0.5% ending July 1, 2010.

Lender Loan Fee. The lender of any FFELP Loan is required to pay to the Secretary an additional origination fee equal to 1.00% of the principal amount of the loan on all loans for which the first disbursement occurred on or after October 1, 2007.

The Secretary collects from the lender or subsequent holder the maximum origination fee authorized and the lender loan fee, either through reductions in Interest Subsidy or Special Allowance Payments or directly from the lender or holder.

Rebate Fee on Consolidation Loans. The holder of any Consolidation Loan is required to pay to the Secretary a monthly fee equal to .0875% (1.05% per annum) of the principal amount of, plus accrued interest on the loan. For Consolidation Loans based on applications received during the period of October 1, 1998 to January 31, 1999, the requirement annual payment is 0.62% of the principal amount of, plus accrued interest on the loan.

## **Insurance and Guarantees**

A Federal Family Education Loan is considered to be in default for purposes of the Higher Education Act when the borrower fails to make an installment payment when due, or to comply with other terms of the loan, and if the failure persists for 270 days in the case of a loan repayable in monthly installments or for 330 days in the case of a loan repayable in less frequent installments. If the loan is guaranteed by a guarantor in accordance with the provisions of the Higher Education Act, the guarantor is to pay the holder a percentage of such amount of the loss subject to reduction as described in the following paragraphs within 60 days of such notification of such default.

### **Federal Insurance**

The Higher Education Act provides that, subject to compliance with such Act, the full faith and credit of the United States is pledged to the payment of insurance claims and ensures that such reimbursements are not subject to reduction. In addition, the Higher Education Act provides that if a guarantor is unable to meet its insurance obligations, holders of loans may submit insurance claims directly to the Secretary until such time as the obligations are transferred to a new guarantor capable of meeting such obligations or until a successor guarantor assumes such obligations. Federal reimbursement and insurance payments for defaulted loans are paid from the Student Loan Insurance Fund established under the Higher Education Act. The Secretary is authorized, to the extent provided in advance by appropriations acts, to issue obligations to the Secretary of the Treasury to provide funds to make such federal payments.

### **Guarantees**

If the loan is guaranteed by a guarantor in accordance with the provisions of the Higher Education Act, the eligible lender is reimbursed by the guarantor for a statutorily-set percentage (98% for loans first guaranteed prior to July 1, 2006 and 97% for loans first guaranteed on or after July 1, 2006 and prior to October 1, 2012; however, under HCERA no loans will be disbursed after June 30, 2010) of the unpaid principal balance of the loan plus accrued unpaid interest on any loan defaulted so long as the eligible lender has properly serviced such loan. Under the Higher Education Act, the Secretary enters into a guarantee agreement and a reinsurance agreement (the "Guarantee Agreements") with each guarantor which provides for federal reimbursement for amounts paid to eligible lenders by the guarantor with respect to defaulted loans.

Guarantee Agreements. Pursuant to the Guarantee Agreements, the Secretary is to reimburse a guarantor for the amounts expended in connection with a claim resulting from the death, bankruptcy or total and permanent disability of a borrower, the death of a student whose parent is the borrower of a PLUS Loan, certain claims by borrowers who are unable to complete the programs in which they are enrolled due to school closure, borrowers whose borrowing eligibility was falsely certified by the eligible institution, or the amount of an unpaid refund due from the school to the lender in the event the school fails to make a required refund. Such claims are not included in calculating a guarantor's claims rate experience for federal reimbursement purposes. Generally, educational loans are non-dischargeable in bankruptcy unless the bankruptcy court determines that the debt will impose an undue hardship on the borrower and the borrower's dependents. Further, the Secretary is to reimburse a guarantor for any amounts paid to satisfy claims not resulting from death, bankruptcy, or disability subject to reduction as described below.

The Secretary may terminate Guarantee Agreements if the Secretary determines that termination is necessary to protect the federal financial interest or to ensure the continued availability of loans to student or parent borrowers. Upon termination of such agreements, the Secretary is authorized to provide the guarantor with additional advance funds with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to meet the immediate cash needs of the guarantor, ensure the uninterrupted payment of claims, or ensure that the guarantor will make loans as the lender-of-last-resort.

If the Secretary has terminated or is seeking to terminate Guarantee Agreements, or has assumed a guarantor's functions, notwithstanding any other provision of law: (a) no state court may issue an order affecting the Secretary's actions with respect to that guarantor; (b) any contract entered into by the guarantor with respect to the administration of the guarantor's reserve funds or assets acquired with reserve funds shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of funds or assets or is inconsistent with the terms or purposes of the Higher Education Act; and (c) no provision of state law shall apply to the actions of the Secretary in terminating the operations of the guarantor. Finally, notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a guarantor (other than outstanding student loan guarantees under the Higher Education Act), the functions of which the Secretary has assumed, shall not exceed the fair market value of the reserves of the guarantor, minus any necessary liquidation or other administrative costs.

Reimbursement. The amount of a reimbursement payment on defaulted loans made by the Secretary to a guarantor is subject to reduction based upon the annual claims rate of the guarantor calculated to equal the amount of federal reimbursement as a percentage of the original principal amount of originated or guaranteed loans in repayment on the last day of the prior fiscal year. The claims experience is not accumulated from year to year, but is determined solely on the basis of claims in any one federal fiscal year compared with the original principal amount of loans in repayment at the beginning of that year. The formula for reimbursement amounts is summarized below:

<u>Claims Rate</u>	<u>Guarantor Reinsurance Rate for Loans made prior to October 1, 1993</u>	<u>Guarantor Reinsurance Rate for Loans made between October 1, 1993 and September 30, 1998<sup>(1)</sup></u>	<u>Guarantor Reinsurance Rate for Loans made on or after October 1, 1998<sup>(1)</sup></u>
0% up to 5%	100%	98%	95%
5% up to 9%	100% of claims up to 5%; and 90% of claims 5% and over	98% of claims up to 5% and 88% of claims 5% and over	95% of claims up to 5% and 85% of claims 5% and over
9% and over	100% of claims up to 5%; 90% of claims 5% up to 9%; 80% of claims 9% and over	98% of claims up to 5%; 88% of claims 5% up to 9%; 78% of claims 9% and over	95% of claims up to 5%; 85% of claims 5% up to 9%; 75% of claims 9% and over

<sup>(1)</sup> Other than student loans made pursuant to the lender of last resort program or student loans transferred by an insolvent guarantor as to which the amount of reinsurance is equal to 100%.



The original principal amount of loans guaranteed by a guarantor which are in repayment for purposes of computing reimbursement payments to a guarantor means the original principal amount of all loans guaranteed by a guarantor less: (a) guarantee payments on such loans; (b) the original principal amount of such loans that have been fully repaid; and (c) the original amount of such loans for which the first principal installment payment has not become due.

In addition, the Secretary may withhold reimbursement payments if a guarantor makes a material misrepresentation or fails to comply with the terms of its agreements with the Secretary or applicable federal law. A supplemental guarantee agreement is subject to annual renegotiation and to termination for cause by the Secretary.

Under the Guarantee Agreements, if a payment on a Federal Family Education Loan guaranteed by a guarantor is received after reimbursement by the Secretary, the Secretary is entitled to receive an equitable share of the payment. Guarantor retentions remaining after payment of the Secretary's equitable share on such collections on consolidations of defaulted loans were reduced to 18.5% from 27% effective July 1, 1997 and for other loans were reduced from 27% to 24% (23% effective October 1, 2003). Beginning October 1, 2007, Guarantor retentions are limited to 16%. The Higher Education Act provides that on or after October 1, 2006 a guarantor may not charge a borrower collection costs in an amount in excess of 18.5% of the outstanding principal and interest of a defaulted loan that is paid off through consolidation by the borrower, provided that the guarantor must remit to the Secretary a portion of the collection charge equal to 8.5% of the outstanding principal and interest of the defaulted loan. In addition, on or after October 1, 2009 a guarantor must remit to the Secretary any collection fees on defaulted loans paid off through consolidation by the borrower in excess of 45% of the guarantor's total collections on default loans in any one federal fiscal year.

**Lender Agreements.** Pursuant to most typical agreements for guarantee between a guarantor and the originator of the loan, any eligible holder of a loan insured by such a guarantor is entitled to reimbursement from such guarantor of any proven loss incurred by the holder of the loan resulting from default, death, permanent and total disability or bankruptcy of the student borrower at the rate of 100% of such loss, subject to certain limitations and exceptions, (98% for loans in default made on or after October 1, 1993 but prior to July 1, 2006 or 97% for loans in default made on or after July 1, 2006). Guarantors generally deem default to mean a student borrower's failure to make an installment payment when due or to comply with other terms of a note or agreement under circumstances in which the holder of the loan may reasonably conclude that the student borrower no longer intends to honor the repayment obligation and for which the failure persists for 270 days in the case of a loan payable in monthly installments or for 330 days in the case of a loan payable in less frequent installments. When a loan becomes at least 60 days past due, the holder is required to request default aversion assistance from the applicable guarantor in order to attempt to cure the delinquency. When a loan becomes 240 days past due, the holder is required to make a final demand for payment of the loan by the borrower. The holder is required to continue collection efforts until the loan is 270 days past due. At the time of payment of insurance benefits, the holder must assign to the applicable guarantor all rights accruing to the holder under the note evidencing the loan. The Higher Education Act requires a guarantor to file a claim for reimbursement with respect to losses within 30 days after the guaranty agency discharges its insurance obligation on the loan.

Any holder of a loan is required to exercise due care and diligence in the servicing of the loan and to utilize practices which are at least as extensive and forceful as those utilized by financial institutions in the collection of other consumer loans. If a guarantor has probable cause to believe that the holder has made misrepresentations or failed to comply with the terms of its agreement for guarantee, the guarantor may take reasonable action including withholding payments or requiring reimbursement of funds. The guarantor may also terminate the agreement for cause upon notice and hearing.

### **Guarantor Reserves**

Each guarantor is required to establish a Federal Student Loan Reserve Fund (the "Federal Fund") which, together with any earnings thereon, are deemed to be property of the United States. Each guarantor is required to deposit into the Federal Fund any reserve funds plus reinsurance payments received from the Secretary, default collections, insurance premiums, 70% of payments received as administrative cost allowance after October 7, 1998 for loans insured prior to that date and other receipts as specified in regulations. A guarantor is authorized to transfer up to 180 days' cash expenses for normal operating expenses (other than claim payments) from the Federal Fund to the Operating Fund (described below) at any time during the first three years after establishment of the fund.

The Federal Fund may be used to pay lender claims and to pay default aversion fees into the Operating Fund. A guarantor is also required to establish an operating fund (the "Operating Fund"), which, except for funds transferred from the Federal Fund to meet operating expenses during the first three years after fund establishment (which amount may not be more than 45% of the balance of the guarantor's Federal Fund), is the property of the guarantor. A guarantor may deposit into the Operating Fund loan processing and issuance fees equal to 0.40% of the total principal amount of loans insured during the fiscal year, 30% of payments received after October 7, 1998 for the administrative cost allowance for loans insured prior to that date and the retention of collections on defaulted loans and other receipts as specified in regulations. An Operating Fund must be used for application processing, loan disbursement, enrollment and repayment status management, default aversion, collection activities, compliance monitoring, and other student financial aid related activities. For Subsidized and Unsubsidized Stafford Loans disbursed after July 1, 2006, guarantors must collect and deposit a federal default fee to the Federal Fund equal to 1% of principal of the loan.

The guarantor's required reserve ratio has been reduced from 1.1% to .25%.

The Secretary is authorized to enter into voluntary, flexible agreements with guarantors under which various statutory and regulatory provisions can be waived. In addition, under the Higher Education Act, the Secretary is prohibited from requiring the return of all of a guarantor's reserve funds unless the Secretary determines that the return of these funds is in the best interest of the operation of the FFELP Program, or to ensure the proper maintenance of such guarantor's funds or assets or the orderly termination of the guarantor's operations and the liquidation of its assets. The Higher Education Act also authorizes the Secretary to direct a guarantor to: (a) return to the Secretary all or a portion of its reserve fund that the Secretary determines is not needed to pay for the guarantor's program expenses and contingent liabilities; and (b) cease any activities involving the expenditure, use or transfer of the guarantor's reserve funds or assets which the Secretary determines is a misapplication, misuse or improper expenditure. Under current law, the Secretary is also authorized to direct the guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the guaranty agency, or which are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

## **APPENDIX B**

### **FORM OF THE INDENTURE**

The following form of the Indenture is substantially final, but is subject to completion prior to the issuance of the Bonds.

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INDENTURE OF TRUST

by and between

NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Trustee

\$198,700,000  
New Mexico Educational Assistance Foundation  
Education Loan Bonds  
Series 2010-1

Dated as of September 1, 2010

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## INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of September 1, 2010 (this “Indenture”), is by and between the NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION, a nonprofit corporation duly organized and existing under the laws of the State of New Mexico (the “Foundation”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States having its principal trust office in Denver, Colorado (together with its successors, the “Trustee”), as trustee hereunder (all capitalized terms used in these preambles, recitals and granting clauses are not defined therein shall have the same meanings assigned thereto in Article I hereof);

## WITNESSETH:

WHEREAS, the Higher Education Act provides that the Secretary may enter into a reinsurance agreement with a state agency or private nonprofit corporation which operates a state student loan insurance program; and

WHEREAS, until July 1, 1978, the State of New Mexico (the “State”) was a state in which no state agency or private nonprofit corporation operated a student loan insurance or guarantee program; and

WHEREAS, as of July 1, 1978, a State student loan insurance program was established in the State by the State Legislature in the Student Loan Guarantee Act, Sections 21-21-14 to 21-21-24, NMSA 1978, and such program was transferred to and assumed by the New Mexico Student Loan Guarantee Corporation as of July 1, 1981, pursuant to Sections 21-21A-4 and 21-21A-23 of the Educational Assistance Act; and

WHEREAS, the Foundation is the single private nonprofit corporation designated by the State for the purpose of being an eligible lender in the State under the Higher Education Act; and

WHEREAS, the Foundation and the Secretary have entered into a certain Agreement for Participation in the Guaranteed Loan Program, dated as of January 4, 1982; and

WHEREAS, the Foundation and the New Mexico Student Loan Guarantee Corporation have entered into a certain Educational Loan Guarantee Agreement dated as of August 18, 1981; and

WHEREAS, the Foundation and the Secretary of Education have entered into a certain Contract of Federal Loan Insurance, dated February 12, 1982; and

WHEREAS, the Educational Assistance Act expressly authorizes the Foundation to make contracts and incur liabilities, borrow money at such rates of interest as the Foundation may determine, issue its notes, bonds and other obligations, and secure the same by a pledge of all or any of its assets and revenues; and

WHEREAS, the Foundation is an organization described in Section 501(c)(3) of the Code, and is exempt from Federal income tax under Section 501(a) of the Code and has received a determination letter from the Internal Revenue Service to this effect; and

WHEREAS, the Foundation represents that by proper action of its governing body it has duly authorized the issuance of its education loan bonds, in the aggregate principal amount of \$198,700,000, consisting of \$86,000,000 of Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds) (the "Series 2010A-1 Bonds"), \$73,000,000 of Education Loan Bonds, Series 2010-1 A-2 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) (the "Series 2010A-2 Bonds") and \$39,700,000 of Education Loan Bonds, Series 2010-1 A-3 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) (the "Series 2010A-3 Bonds" and together with the Series 2010A-1 Bonds and Series 2010A-2 Bonds, the "Bonds"), and, to secure the payment of the Bonds and the execution and delivery of this Indenture; and

WHEREAS, in connection with the issuance of the Bonds, the Foundation anticipates entering into an interest rate swap agreement (the "Interest Rate Swap") with Royal Bank of Canada; and

WHEREAS, the Trustee has agreed to accept the trusts herein created upon the terms herein set forth; and

WHEREAS, it is hereby agreed between the parties hereto, the Registered Owners of the Bonds (the Registered Owners evidencing their consent by their acceptance of the Bonds) and the Swap Counterparty (defined herein) (the Swap Counterparty evidencing its consent by execution and delivery of the Interest Rate Swap) that in the performance of any of the agreements of the Foundation herein contained, any obligation it may thereby incur for the payment of money shall not (except as specifically provided herein) be a general debt on its part, but shall be secured by and payable solely from the Trust Estate, payable in such order of preference and priority as provided herein;

NOW, THEREFORE, the Foundation, in consideration of the premises and acceptance by the Trustee of the trusts herein created, of the purchase and acceptance of the Bonds by the Registered Owners thereof, of the execution and delivery of the Interest Rate Swap by the Swap Counterparty and the Foundation and the acknowledgement thereof by the Trustee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, CONVEY, PLEDGE, TRANSFER, ASSIGN AND DELIVER to the Trustee, for the benefit of the Registered Owners of the Bonds and the Swap Counterparty (to secure the payment of any and all amounts which may from time to time become due and owing to the Swap Counterparty pursuant to the Interest Rate Swap), all of the moneys, rights, and properties described in the granting clauses A through F below (the "Trust Estate"), as follows:

#### GRANTING CLAUSE A

The Revenues (other than Revenues deposited in the Rebate Fund or otherwise released from the lien of the Trust Estate as provided herein);

#### GRANTING CLAUSE B

All moneys and investments held in the Funds created under Section 5.1(a) hereof;

#### GRANTING CLAUSE C

The Financed Eligible Loans;

#### GRANTING CLAUSE D

The rights of the Foundation in and to the Servicing Agreements and the Guarantee Agreements as the same relate to Financed Eligible Loans;

#### GRANTING CLAUSE E

The rights of the Foundation in and to the Interest Rate Swap; provided, however, that this Granting Clause E shall not be for the benefit of the Swap Counterparty with respect to the Interest Rate Swap; and

#### GRANTING CLAUSE F

Any and all other property, rights and interests of every kind or description that from time to time hereafter is granted, conveyed, pledged, transferred, assigned or delivered to the Trustee as additional security hereunder.

TO HAVE AND TO HOLD the Trust Estate, whether now owned or held or hereafter acquired, unto the Trustee and its successors or assigns,

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit and security of all present and future Registered Owners of the Bonds, without preference of any Bond over any other, except as provided herein, and for enforcement of the payment of the Bonds in accordance with their terms, and all other sums payable hereunder (including all payments due and payable to the Swap Counterparty) or on the Bonds, and for the performance of and compliance with the obligations, covenants, and conditions of this Indenture and the Interest Rate Swap, as if all the Bonds and the Interest Rate Swap at any time Outstanding had been executed and delivered simultaneously with the execution and delivery of this Indenture;

PROVIDED, HOWEVER, that if the Foundation, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Bonds and the interest due and to become due thereon, or provide fully for payment thereof as herein provided, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall make all required payments into the Funds as required under Article V hereof, including without limitation into the Rebate Fund, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient to pay or to provide for payment of the entire amount due and to become so due as herein provided (including the termination of the Interest Rate Swap and the payment in full of all amounts due and payable to the Swap Counterparty in connection therewith), then this Indenture (other than Sections 4.13 and 7.4 hereof) and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall be and remain in full force and effect;

NOW, THEREFORE, it is mutually covenanted and agreed as follows:



## ARTICLE I

### DEFINITIONS AND USE OF PHRASES

In addition to the words and terms defined elsewhere in this Indenture, the following terms have the following meanings unless the context clearly requires otherwise:

“Account” shall mean any of the accounts created and established within any Fund by this Indenture.

“Acquisition Fund” shall mean the Fund by that name created in Section 5.1(a)(i) hereof and further described in Section 5.2 hereof, including any Accounts and Subaccounts created therein.

“Administration Fund” shall mean the fund by that name created in Section 5.1(a)(iv) and hereof further described in Section 5.6 hereof.

“Administrative Expenses” shall mean (a) the fees and expenses of the Trustee and any paying agent, registrar or fiduciary; (b) the fees of the Servicer under any servicing agreement; (c) the fees and expenses of the Foundation incurred in connection with the preparation of legal opinions and other authorized reports or statements attributable to the Bonds and the Financed Eligible Loans; (d) fees and expenses in connection with the Foundation’s plan for doing business and complying therewith; (e) fees and expenses incurred in connection with calculating rebate and Excess Interest amounts relating to the Bonds; and (f) expenses incurred for the Foundation’s maintenance and operation of this Indenture and as a direct consequence of this Indenture, the Bonds, the Interest Rate Swap or the Financed Eligible Loans, including the reasonable fees and expenses of attorneys, agents, financial advisors, rebate analysts, consultants, accountants and other professionals, attributable to such maintenance and operation, marketing expenses for the Program and a prorated portion of the cost of renting, paying for or otherwise occupying building space, personnel compensation, office supplies and equipment, insurance costs, travel expenses and other lawful payments made to members of the Board.

“Aggregate Market Value” shall mean on any calculation date the sum of the Values of all assets of the Trust Estate, excluding amounts required to be deposited in the Rebate Fund or the account described in Section 5.3(b)(i) which have not, as of any date of calculation, yet been deposited therein.

“Authorized Officer” shall mean, when used with reference to the Foundation, the Chairman of the Board, the Vice Chairman of the Board, the President, any Vice President, or any other person authorized in writing by the Board to act on behalf of the Foundation.

“Backup Servicer” means Great Lakes Education Loan Services, Inc.

“Board” or “Board of Directors” shall mean the Board of Directors of the Foundation.

“Bond Counsel” shall mean counsel of nationally recognized standing in the field of law relating to municipal bonds selected by the Foundation and reasonably acceptable to the Trustee.

“Bond Payment Date” shall mean, for any Bond, any Interest Payment Date, its Stated Maturity or the date of any other regularly scheduled principal payment with respect thereto.

“Bond Yield” shall mean the yield on the Bonds computed in accordance with the Tax Certificate.

“Bonds” shall mean, collectively, the Series 2010A-1 Bonds, the Series 2010A-2 Bonds and the Series 2010A-3 Bonds.

“Business Day” shall mean any day other than (i) a Saturday, Sunday or holiday, (ii) a day on which banks located in the City of New York, New York and banks located in the city in which the Principal Office of the Trustee is located are required or authorized by law to remain closed, or (iii) a day on which The New York Stock Exchange is closed.

“Certificate of Insurance” shall mean any Certificate evidencing that a Financed Eligible Loan is Insured pursuant to a Contract of Insurance.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations, including temporary and proposed regulations, relating to such section which are applicable to the Bonds or the use of the proceeds thereof. A reference to any specific section of the Code shall be deemed also to be a reference to the comparable provisions of any enactment which supersedes or replaces the Code thereunder from time to time.

“Contract of Insurance” shall mean the Contract of Federal Loan Insurance, dated February 12, 1982, between the Foundation and the Secretary and any amendment thereof which is hereafter entered into.

“Date of Issuance” shall mean the date of original issuance and delivery of the Bonds to the Underwriters.

“Debt Service Reserve Fund” shall mean the Fund by that name created in Section 5.1(a)(iii) hereof and further described in Section 5.4 hereof, including any Accounts and Subaccounts created therein.

“Debt Service Reserve Fund Requirement” shall mean an amount equal to 0.75% of the principal amount of the Bonds then Outstanding; provided, however, that the Debt Service Reserve Fund Requirement shall not be less than \$750,000.

“Educational Assistance Act” shall mean Sections 21-21A-1 to 21-21A-23 NMSA 1978, as amended from time to time.

“Electronic Means” means telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission.

“Eligible Lender” shall mean any “eligible lender,” as defined in the Higher Education Act, and which has received an eligible lender designation from the Secretary with respect to Eligible Loans made under the Higher Education Act.

“Eligible Loan” shall mean any loan made to finance post-secondary education that is made under the Higher Education Act and is Guaranteed or Insured and has not been tendered to the Guaranty Agency or the Secretary for payment (unless the situation giving rise thereto has been cured).

“Event of Bankruptcy” shall mean (a) the Foundation shall have commenced a voluntary case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its property, or shall have made a general assignment for the benefit of creditors, or shall have declared a moratorium with respect to its debts or shall have failed generally to pay its debts as they become due, or shall have taken any action to authorize any of the foregoing; or (b) an involuntary case or other proceeding shall have been commenced against the Foundation seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its property provided such action or proceeding is not dismissed within 60 days.

“Event of Default” shall have the meaning specified in Article VI hereof.

“Excess Interest” shall mean, as of the date of computation, the amount, if any, equal to the amount which, if used to forgive principal of or interest on Financed Eligible Loans on such date allocable to Bonds, would be necessary to cause the Portfolio Yield with respect thereto to be equal to or less than the Bond Yield plus the spread designated in the Tax Certificate as permitted by Treasury Regulation § 1.148-2(d)(2) (such spread being referred to as the “Permitted Spread”); in any event together with any additional amounts as shall be required by the provisions of the Tax Certificate or as shall otherwise be necessary, in the opinion of Bond Counsel, to prevent the Bonds from being “arbitrage bonds” within the meaning of Section 148 of the Code. All determinations of Excess Interest shall be made in accordance with the provisions of the Tax Certificate.

“Favorable Opinion” shall mean an opinion of Bond Counsel addressed to the Foundation and the Trustee to the effect that the action proposed to be taken is authorized or permitted by this Indenture and will not adversely affect any exclusion from gross income for federal income tax purposes of interest on the Bonds.

“Financed Eligible Loans” means Eligible Loans deposited in or accounted for in the Acquisition Fund or otherwise constituting a part of the Trust Estate, but does not include Eligible Loans released from the lien of this Indenture as provided herein.

“Fiscal Year” shall mean the fiscal year of the Foundation as established from time to time.

“Foundation” shall mean the New Mexico Educational Assistance Foundation, a nonprofit corporation organized and existing under the laws of the State, and any successor thereto.

“Foundation Order” shall mean a written order signed in the name of the Foundation by an Authorized Officer.

“Funds” shall mean each of the Funds created pursuant to Section 5.1(a) and (b) hereof.

“Guarantee” or “Guaranteed” shall mean with respect to an Eligible Loan, the insurance or guarantee by the Guaranty Agency pursuant to such Guaranty Agency’s Guarantee Agreement of the maximum percentage of the principal of and accrued interest on such Eligible Loan allowed by the terms of the Higher Education Act with respect to such Eligible Loan at the time it was originated and the coverage of such Eligible Loan by federal reimbursement contracts, providing, among other things, for reimbursement to the Guaranty Agency for payments made by it on defaulted Eligible Loans insured or guaranteed by the Guaranty Agency of at least the minimum reimbursement allowed by the Higher Education Act with respect to a particular Eligible Loan.

“Guarantee Agreements” shall mean a guaranty or lender agreement with any Guaranty Agency, and any amendments thereto.

“Guaranty Agency” shall mean the New Mexico Student Loan Guarantee Corporation, a nonprofit corporation duly organized and existing under the laws of the State, and any other entity authorized to guarantee student loans under the Higher Education Act, and their respective successors and assigns.

“Higher Education Act” shall mean the Higher Education Act of 1965, as amended or supplemented from time to time, or any successor federal act and all regulations, directives, bulletins, and guidelines proposed or promulgated from time to time thereunder.

“Indenture” shall mean this Indenture of Trust, including all supplements and amendments hereto.

“Index Maturity” shall mean (i) for Two-Month LIBOR, two months and (ii) for Three-Month LIBOR, three months.

“Insurance” or “Insured” or “Insuring” means, with respect to an Eligible Loan, the insuring by the Secretary (as evidenced by a Certificate of Insurance or other document or certification issued under the provisions of the Higher Education Act) under the Higher Education Act of all or a portion of the principal of and accrued interest on such Eligible Loan.

“Interest Benefit Payment” shall mean an interest payment on Eligible Loans received pursuant to the Higher Education Act and an agreement with the federal government, or any similar payments.

“Interest Payment Date” shall mean (a) with respect to the Series 2010A-1 Bonds, June 1 and December 1 of each year, commencing December 1, 2010 and (b) with respect to the Series 2010A-2 Bonds and the Series 2010A-3 Bonds, the first Business Day of March, June, September and December, commencing December 1, 2010.

“Interest Rate Determination Date” shall mean the 2<sup>nd</sup> Business Day immediately preceding (i) each Interest Payment Date or (ii) the date of issuance for the initial interest accrual period.

“Interest Rate Swap” means the ISDA Master Agreement, dated as of September 14, 2010, between Royal Bank of Canada and the Foundation including the schedule thereto and the Credit Support Annex to the Schedule, and the related Confirmation dated September 14, 2010, between the Royal Bank of Canada and the Foundation, as such may be amended and supplemented from time to time.

“Investment Securities” shall mean:

(a) direct obligations of, or obligations on which the timely payment of the principal of and interest on which are unconditionally and fully guaranteed by, the United States of America;

(b) deposits that are fully insured by the FDIC;

(c) interest-bearing time or demand deposits, certificates of deposit or other similar banking arrangements with a maturity of 12 months or less with any bank, trust company, national banking association or other depository institution, including those of the Trustee, provided that, at the time of deposit or purchase such depository institution has commercial paper which is rated “A-1+” by S&P and has the required ratings from Moody’s corresponding to the duration of such investment set forth below;

(d) interest-bearing time or demand deposits, certificates of deposit or other similar banking arrangements with a maturity of 24 months or less, but more than 12 months, with any bank, trust company, national banking association or other depository institution, including those of the Trustee, provided that, at the time of deposit or purchase such depository institution has senior debt rated “A” or higher by S&P and, if commercial paper is outstanding, commercial paper which is rated “A-1+” by S&P and has the required ratings from Moody’s corresponding to the duration of such investment set forth below;

(e) interest-bearing time or demand deposits, certificates of deposit or other similar banking arrangements with a maturity of more than 24 months with any bank, trust company, national banking association or other depository institution, including those of the Trustee, provided that, at the time of deposit or purchase such depository institution has senior debt rated “AA” or higher by S&P and, if commercial paper is outstanding, commercial paper which is rated “P-1” by Moody’s and, if rated by S&P, “A-1+” by S&P, and has the required ratings from Moody’s corresponding to the duration of such investment set forth below;

(f) bonds, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following agencies: Federal Farm Credit Banks, Federal Home Loan Mortgage Corporation; the Export-Import Bank of the United States; the Federal National Mortgage Association; the Student Loan Marketing Association; the Farmers Home Administration; Federal Home Loan Banks provided such obligation is rated

“Aaa” by Moody’s and, if rated by S&P, “AAA” by S&P; or any agency or instrumentality of the United States of America which shall be established for the purposes of acquiring the obligations of any of the foregoing or otherwise providing financing therefor;

(g) repurchase agreements and reverse repurchase agreements, other than overnight repurchase agreements and overnight reverse repurchase agreements, with banks, including the Trustee, which are members of the Federal Deposit Insurance Corporation or firms which are members of the Securities Investors Protection Corporation, in each case whose outstanding, unsecured debt securities are rated “AA” by S&P or higher and, if commercial paper is outstanding, commercial paper which is rated “A-1+” by S&P and has the required ratings from Moody’s corresponding to the duration of such investment set forth below;

(h) overnight repurchase agreements and overnight reverse repurchase agreements at least 101% collateralized by securities described in subparagraph (a) of this definition and with a counterparty, including the Trustee, that has senior debt rated “A” or higher by S&P and, if commercial paper is outstanding, commercial paper which is rated “A-1+” by S&P and has the required ratings from Moody’s corresponding to the duration of such investment set forth below, or a counterparty approved in writing by Moody’s and S&P, respectively;

(i) investment agreements or guaranteed investment contracts, which may be entered into by and among the Foundation and/or the Trustee and any bank, bank holding company, corporation or any other financial institution, including the Trustee, whose outstanding (i) commercial paper is rated “A-1+” by S&P for agreements or contracts with a maturity of 12 months or less and has the required ratings from Moody’s corresponding to the duration of such investment set forth below; (ii) unsecured long-term debt is rated “A” or higher by S&P and, if commercial paper is outstanding, commercial paper which is rated “A-1+” by S&P for agreements or contracts with a maturity of 24 months or less, but more than 12 months and has the required ratings from Moody’s corresponding to the duration of such investment set forth below, or (iii) unsecured long-term debt which is rated “AA” or higher by S&P and, if commercial paper is outstanding, commercial paper which is rated “A-1+” by S&P for agreements or contracts with a maturity of more than 24 months and has the required ratings from Moody’s corresponding to the duration of such investment set forth below, or, in each case, by an insurance company whose claims-paying ability is so rated;

(j) collateralized investment agreements or collateralized guaranteed investment agreements, which may be entered into by and among the Foundation, the Trustee and any bank, bank holding company, corporation or any other financial institution, including the Trustee, so long as (i) the collateral consists of securities of the types specified in (a) or (e) above, at the levels shown below under (v) below; (ii) the Trustee has possession of the collateral; (iii) the Trustee has a perfected first priority security interest in the collateral; (iv) the collateral is free and clear of third party liens and, in the case of a SIPC broker, was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (v) the collateral shall be valued (based upon current

market price plus accrued interest) weekly and shall be equal to not less than 103% of the amount of the deposit (or 105% in the case where the collateral consists of obligations of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation);

(k) “Tax exempt bonds” as defined in Section 150(a)(6) of the Code, other than “specified private activity bonds” as defined in Section 57(a)(5)(C) of the Code, that are rated in the highest category by S&P for long term or short-term debt or shares of a so-called money market or mutual fund rated “AA/A-1” or higher by S&P and has the required ratings from Moody’s corresponding to the duration of such investment set forth below, that do not constitute “investment property” within the meaning of Section 148(b)(2) of the Code, provided that the fund has all of its assets invested in obligations of such rating quality;

(l) commercial paper, including that of the Trustee, which is rated in the single highest classification, “A-1+” by S&P and has the required ratings from Moody’s corresponding to the duration of such investment set forth below, and which matures not more than 270 days after the date of purchase; and

(m) investments in a money market fund rated at least “Aaa” or “P-1” by Moody’s and, if rated by S&P, “AAAm” or “AAAm-G” by S&P, including funds for which the Trustee or an affiliate thereof acts as investment advisor or provides other similar services.

Each Investment Security or the provider of such Investment Security (other than those described in paragraphs (a), (b), (c) and (m) of this definition) shall have the following Moody’s long-term and or short-term ratings corresponding to the duration of such investment:

<u>Maximum Maturity</u>	<u>Minimum Ratings</u>
One Month	“A2” or “Prime-1”
Three Months	“A1” and “Prime-1”
Six Months	“Aa3” and “Prime-1”
Greater than Six Months	“Aaa” and “Prime-1”

“LIBOR Rate” shall mean, all as determined by the Trustee, (i) with respect to the Series 2010A-2 Bonds, the Three-Month LIBOR plus 0.65% and (ii) with respect to the Series 2010A-3 Bonds, the Three-Month LIBOR plus 1.20%.

The initial LIBOR Rate shall be determined by reference to the following formula:

$x + [9/30 * (y-x)]$  plus 0.65% in the case of the Series 2010A-2 Bonds and 1.20% in the case of the Series 2010A-3 Bonds, all as determined by the Trustee.

where:

x = Two-Month LIBOR, and

y = Three-Month LIBOR.

“Moody’s” shall mean Moody’s Investors Service, Inc., a Delaware Corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall not longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Foundation.

“Obligations” shall mean the Bonds and the Interest Rate Swap.

“Outstanding” shall mean, when used in connection with any Bond, a Bond which has been executed and delivered pursuant to this Indenture which at such time remains unpaid as to principal or interest, and when used in connection with the Interest Rate Swap, the Interest Rate Swap which has not expired or been terminated, unless in all cases provision has been made for such payment pursuant to Section 9.2 hereof.

“Parity Termination Payments” means amounts owed by the Foundation as a result of the declaration by the Swap Counterparty of an Early Termination Date (as defined in the Interest Rate Swap) of the Interest Rate Swap due to an event of default on the part of the Foundation described in Sections 5(a)(i) and 5(a)(vii) or a termination event described in Section 5(b)(i) of the ISDA Master Agreement (referred to in the definition of Interest Rate Swap), or an amount owed by the Foundation as a result of the Foundation’s election to optionally terminate (in whole or in part) the Interest Rate Swap.

“Participant” means any direct or indirect participant in the book-entry system of a Securities Depository.

“Person” shall mean an individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or agency or political subdivision thereof.

“Portfolio Yield” shall mean, with respect to Financed Eligible Loans, the composite yield on the date of calculation of the portfolio of such Financed Eligible Loans computed in accordance with the Tax Certificate, assuming no additional Eligible Loans are acquired or originated and allocable to the Bonds.

“Principal Office” shall mean the principal office of the party indicated, as set forth in Section 10.1 hereof or elsewhere in this Indenture.

“Program” shall mean the Foundation’s program for the origination and the purchase of Eligible Loans as the same may be modified from time to time.

“Rating” shall mean one of the rating categories of Moody’s or S&P or any other Rating Agency, provided Moody’s or S&P or any such other Rating Agency, as the case may be, is currently rating any of the Bonds.

“Rating Agency” shall mean Moody’s and S&P and their successors and assigns so long as any such entity is rating any of the Bonds, or any other rating agency requested by the Foundation to maintain a Rating on any of the Bonds.

“Rating Confirmation” shall mean a communication or a process demonstrating that a proposed action, failure to act, or other event specified therein will not, in and of itself, result in a downgrade of Moody’s Ratings then applicable to the Bonds, or cause Moody’s to suspend, withdraw or qualify its Ratings then applicable to the Bonds; including, but not limited to, the delivery of a written communication to Moody’s ten Business Days prior to a proposed action or other event specified therein and the failure of Moody’s, after confirmation of receipt of the notice, to respond to the notice within the ten Business Day period.

“Rebate Amount” shall mean the amount computed in accordance with the Tax Certificate to be deposited in the Rebate Fund.

“Rebate Fund” shall mean the Fund by that name created in Section 5.1 hereof and further described in Section 5.5 hereof.

“Record Date” shall mean (a) with respect to the Series 2010A-1 Bonds, the 15th day of the calendar month preceding each Interest Payment Date and (b) with respect to the Series 2010A-2 Bonds and Series 2010A-3 Bonds, the 2<sup>nd</sup> Business Day preceding each Interest Payment Date.

“Recoveries of Principal” shall mean all amounts received by the Trustee from or on account of any Financed Eligible Loan as a recovery of the principal amount thereof, including scheduled, delinquent and advance payments, payouts or prepayments, proceeds from insurance or from the sale, assignment, transfer, reallocation or other disposition of a Financed Eligible Loan and any payments representing such principal from the guarantee or insurance of any Financed Eligible Loan.

“Reference Banks” shall mean the four largest United States banks by total consolidated assets listed by the Federal Reserve in its then most current statistical release on its website with respect thereto, with an office in London.

“Refunded 2008 Bonds” shall mean, collectively, \$104,020,000 of the Series 2008A-1 Bonds, \$40,420,000 of the Series 2008A-2 Bonds and \$63,580,000 of the Series 2008A-3 Bonds.

“Refunded 2008 Bonds Indenture” shall mean the Trust Indenture, dated as of June 1, 2008, between the Foundation and the Trustee, as supplemented and amended.

“Refunded 2009 Bonds” shall mean \$40,000,000 of the Foundation’s Education Loan Private Placement Bonds, Senior Series 2009D.

“Refunded 2009 Bonds Indenture” shall mean the Indenture of Trust, dated as of August 1, 2009, between the Foundation and the Trustee, as supplemented and amended.

“Refunded Bonds” shall mean, collectively, the Refunded 2008 Bonds and the Refunded 2009 Bonds.

“Registered Owner” shall mean the Person in whose name a Bond is registered on the Bond registration books maintained by the Trustee, and shall also mean with respect to the Interest Rate Swap, the Swap Counterparty.

“Revenue” or “Revenues” shall mean all payments, Recoveries of Principal, proceeds, charges and other income received by the Trustee or the Foundation from or on account of any Financed Eligible Loan (including scheduled, delinquent and advance payments of and any insurance proceeds with respect to, interest, including Interest Benefit Payments, on any Financed Eligible Loan and any Special Allowance Payment received by the Foundation with respect to any Financed Eligible Loan) and all interest earned or gain realized from the investment of amounts in any Fund or Account or Subaccount and all Swap Receipts received by the Foundation pursuant to the Interest Rate Swap.

“Revenue Fund” shall mean the Fund by that name created in Section 5.1(a)(ii) hereof and further described in Section 5.3 hereof.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., its successors and assigns, and if such corporation shall be dissolved or liquidated or shall not longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Foundation.

“Secretary” shall mean the Secretary of the United States Department of Education or any successor to the pertinent functions thereof under the Higher Education Act.

“Securities Depository” or “Depository” shall mean The Depository Trust Company and its successors and assigns or if (a) the then Securities Depository resigns from its functions as depository of the Bonds or (b) the Foundation discontinues use of the Securities Depository pursuant to Article II hereof, any other securities depository which agrees to follow the procedures required to be followed by a securities depository in connection with the Bonds and which is selected by the Foundation with the consent of the Trustee.

“Series 2008A-1 Bonds” shall mean the Foundation’s Education Loan Bonds, Senior Series 2008A-1.

“Series 2008A-2 Bonds” shall mean the Foundation’s Education Loan Bonds, Senior Series 2008A-2.

“Series 2008A-3 Bonds” shall mean the Foundation’s Education Loan Bonds, Senior Series 2008A-3.

“Series 2010A-1 Bonds” shall mean the Foundation’s Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds) issued pursuant to this Indenture in the aggregate principal amount of \$86,000,000.

“Series 2010A-2 Bonds” shall mean the Foundation’s Education Loan Bonds, Series 2010-1 A-2 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) issued pursuant to this Indenture in the aggregate principal amount of \$73,000,000.

“Series 2010A-3 Bonds” shall mean the Foundation’s Education Loan Bonds, Series 2010-1 A-3 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) issued pursuant to this Indenture in the aggregate principal amount of \$39,700,000.

“Servicer” shall mean the Foundation, the Backup Servicer (when applicable) and any other servicer (including a subservicer or backup subservicer) so long as the Foundation shall have received a Rating Confirmation from Moody’s that the designation of such other entity as a “Servicer” hereunder will not, at the time of such designation, adversely affect its Ratings then applicable to any of the Bonds, and their respective successors and assigns.

“Servicing Agreement” shall mean the servicing agreements with any Servicer relating to Financed Eligible Loans, as amended from time to time.

“Special Allowance Payments” shall mean the special allowance payments authorized to be made by the Secretary by Section 438 of the Higher Education Act, or similar allowances, if any, authorized from time to time by federal law or regulation.

“State” shall mean the State of New Mexico.

“Stated Maturity” shall mean the date specified in the Bonds as the fixed date on which principal of such Bonds is due and payable.

“Subaccount” shall mean any of the subaccounts which may be created and established within any Account by this Indenture.

“Subordinated Swap Payments” means any amounts owed by the Foundation under the Interest Rate Swap, other than Swap Payments and Parity Termination Payments.

“Supplemental Indenture” shall mean an agreement supplemental hereto executed pursuant to Article VIII hereof.

“Swap Counterparty” means Royal Bank of Canada and its successors or assigns or eligible replacement swap counterparty as provided in the Interest Rate Swap.

“Swap Payment” shall mean a regularly scheduled payment required to be made by or on behalf of the Foundation to the Swap Counterparty pursuant to the Interest Rate Swap. Swap Payments do not include any Parity Termination Payments or Subordinated Swap Payments.

“Swap Payment Date” shall mean, with respect to the Interest Rate Swap, any date specified in the Interest Rate Swap on which both or either of the Swap Payment and/or a Swap Receipt is due and payable under the Interest Rate Swap.

“Swap Receipts” shall mean any payment to be made to, or for the benefit of, the Foundation under the Interest Rate Swap. Swap Receipts do not include amounts received with respect to the early termination or modification of the Interest Rate Swap.

“Tax Certificate” shall mean the Tax Certificate of the Foundation dated as of the Date of Issuance, as amended.

“Two-Month LIBOR” or “Three-Month LIBOR” shall mean the London interbank offered rate for deposits in U.S. dollars having the applicable Index Maturity as it appears on Reuters Screen LIBOR01 Page, or another page of this or any other financial reporting service in

general use in the financial services industry, as of 11:00 a.m., London time, on the related Interest Rate Determination Date as determined by the Trustee. If this rate does not appear on Reuters Screen LIBOR01 Page, or another page of this or any other financial reporting service in general use in the financial services industry, the rate for that day will be determined on the basis of the rates at which deposits in U.S. dollars, having the applicable Index Maturity and in a principal amount of not less than U.S. \$1,000,000, are offered at approximately 11:00 a.m., London time, on that Interest Rate Determination Date, to prime banks in the London interbank market by the Reference Banks. The Trustee will request the principal London office of each Reference Bank to provide a quotation of its rate. If the Reference Banks provide at least two quotations, the rate for that day will be the arithmetic mean of the quotations. If the Reference Banks provide fewer than two quotations, the rate for that day will be the arithmetic mean of the rates quoted by major banks in New York City, selected by the Trustee at approximately 11:00 a.m., New York City time, on that Interest Rate Determination Date, for loans in U.S. dollars to leading European banks having the applicable Index Maturity and in a principal amount of not less than U.S. \$1,000,000. If the banks selected as described above are not providing quotations, Three-Month LIBOR will be Three-Month LIBOR determined on the previous Interest Rate Determination Date.

“Trust Estate” shall mean the property described as such in the granting clauses hereto.

“Trustee” shall mean Wells Fargo Bank, National Association, acting in its capacity as Trustee under this Indenture, or any successor trustee designated pursuant to this Indenture.

“Underwriters” shall mean Merrill Lynch Pierce, Fenner & Smith Incorporated and RBC Capital Markets Corporation.

“Value” on any calculation date when required under this Indenture shall mean the value of the Trust Estate calculated by the Foundation as to (a) below and by the Trustee as to (b) through (e), inclusive, below, as follows:

(a) with respect to any Eligible Loan, the unpaid principal amount thereof plus any accrued but unpaid interest, Interest Benefit Payments and Special Allowance Payments (less any amounts required to be repaid to the Secretary as an overpayment of Special Allowance Payments), except with respect to Eligible Loans in default, in which case the federally insured unpaid principal amount shall be substituted for the unpaid principal amount above (and in determining such, the reports of the Servicer may be relied upon);

(b) with respect to any funds of the Foundation held under this Indenture and on deposit in any commercial bank or as to any banker’s acceptance or repurchase agreement or investment contract, the amount thereof plus accrued but unpaid interest;

(c) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times) or by a nationally recognized pricing service: with respect to The Wall Street Journal publication, the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination plus accrued but unpaid interest, or

with respect to the pricing service publication, the bid price published plus accrued but unpaid interest; and

(d) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times and are not available from a nationally recognized pricing service: the lower of the bid prices at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Foundation in its absolute discretion) at the time making a market in such investments.

Words importing the masculine gender include the feminine gender, and words importing the feminine gender include the masculine gender. Words importing persons include firms, associations and corporations. Words importing the singular number include the plural number and vice versa. Additional terms are defined in the body of this Indenture.

## ARTICLE II

### BOND DETAILS, FORM OF BONDS, REDEMPTION OF BONDS

#### AND USE OF PROCEEDS OF BONDS

##### Section 2.1 Bond Details.

(a) Except for Bonds authenticated and delivered upon transfer of, or in exchange for, Bonds pursuant to Section 2.4 or 2.5 hereof, the aggregate principal amount of the Bonds which may be authenticated and delivered under this Indenture is limited to \$198,700,000, consisting of \$86,000,000 Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds), \$73,000,000 Education Loan Bonds, Series 2010-1 A-2 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) and \$39,700,000 Education Loan Bonds, Series 2010-1 A-3 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds). No other Bonds shall be issued hereunder. The Bonds of each series or subseries shall each be lettered "R" and shall be numbered separately from 1 upwards. The Bonds shall be issuable only as fully registered bonds in the denominations of \$5,000 and integral multiples thereof. Payments of the principal of and interest on all Bonds shall be made in lawful money of the United States.

(b) The Series 2010A-1 Bonds shall be dated as of the Date of Issuance, and shall mature on the dates and in the years and in the amounts and shall bear interest from the Interest Payment Date next preceding their date of authentication thereof unless authenticated as of an Interest Payment Date, in which event such Bonds shall bear interest from such date, or unless such Bonds are authenticated prior to the first Interest Payment Date, in which event such Bonds shall bear interest from the Date of Issuance or unless, as shown by the records of the Trustee, interest on the Series 2010A-1 Bonds shall be in default, in which event such Bonds shall bear interest from the date to which interest has been paid in full, or unless no interest shall have been paid on such Bonds, in which event such Bonds shall bear interest from the Date of Issuance, payable on each Interest Payment Date, at the rates per annum as set forth below:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
December 1, 2014	\$8,000,000	4.00%
December 1, 2015	15,500,000	4.00
December 1, 2016	15,000,000	4.00
December 1, 2017	13,000,000	4.00
December 1, 2018	10,200,000	5.00
December 1, 2019	8,000,000	5.00
December 1, 2020	5,610,000	4.00
December 1, 2021	4,190,000	5.00
December 1, 2022	3,100,000	5.00
December 1, 2023	1,700,000	3.25
December 1, 2024	1,200,000	3.50
December 1, 2025	500,000	3.50

Interest shall be calculated on the basis of a year of 360 days comprised of twelve 30-day months.

(c) The Series 2010A-2 Bonds and Series 2010A-3 Bonds shall be dated as of the Date of Issuance, shall mature on December 1, 2028 in the case of the Series 2010A-2 Bonds and December 1, 2038 in the case of the Series 2010A-3 Bonds, and shall bear interest at the respective LIBOR Rate from the Interest Payment Date next preceding their date of authentication thereof unless authenticated as of an Interest Payment Date, in which event such Bonds shall bear interest from such date, or unless such Bonds are authenticated prior to the first Interest Payment Date, in which event such Bonds shall bear interest from the Date of Issuance or unless, as shown by the records of the Trustee, interest on the Series 2010A-2 Bonds or Series 2010A-3 Bonds shall be in default, in which event such Bonds shall bear interest from the date to which interest has been paid in full, or unless no interest shall have been paid on such Bonds, in which event such Bonds shall bear interest from the Date of Issuance, payable on each Interest Payment Date. Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days.

The initial LIBOR Rate shall be determined on the Date of Issuance, as provided herein. Thereafter, the LIBOR Rate shall be determined by the Trustee on each Interest Rate Determination Date and shall take effect on the succeeding Interest Payment Date. The determination of the interest rate for the Series 2010A-2 Bonds or Series 2010A-3 Bonds by the Trustee shall be conclusive and binding absent manifest error. If not otherwise determined by the Trustee within 2 Business Days after any Interest Rate Determination Date, the LIBOR Rate shall be the rate established on the prior Interest Rate Determination Date.

(d) The Bonds and the Interest Rate Swap are special limited obligations of the Foundation payable solely from the Trust Estate and are not general obligations of the Foundation.

#### Section 2.2 Redemption of the Bonds.

(a) Optional Redemption. The Series 2010A-1 Bonds maturing on or after December 1, 2021 are subject to redemption prior to maturity in whole or in part at the option of the Foundation on December 1, 2020 or on any date thereafter in such order of maturity as may be directed by the Foundation at the redemption price of one hundred percent (100%) of the principal amount thereof, plus accrued interest to the redemption date. In order to exercise its right to optionally redeem the Series 2010A-1 Bonds pursuant to this paragraph (a), the Foundation shall be required to simultaneously terminate the related portion of the Interest Rate Swap and provide for the payment, if any, of the Parity Termination Payments with respect to such early termination as required by Section 3.3.

(b) Special Optional Redemption. The Series 2010A-1 Bonds (including the Series 2010A-1 Bonds maturing prior to December 1, 2021) are subject to special

redemption prior to maturity in whole or in part at the option of the Foundation on any June 1 or December 1 commencing with the June 1 or December 1 on which, or after, the Series 2010A-2 Bonds and the Series 2010A-3 Bonds are paid in full, in such order of maturity as may be directed by the Foundation at the redemption price of one hundred percent (100%) of the principal amount thereof, plus accrued interest to the redemption date, from moneys in the Revenue Fund made available for that purpose pursuant to Section 5.3(b)(ix) hereof. In order to exercise its right to optionally redeem the Series 2010A-1 Bonds pursuant to this paragraph (b), the Foundation shall be required to simultaneously terminate the related portion of the Interest Rate Swap and provide for the payment, if any, of the Parity Termination Payments with respect to such early termination as required by Section 3.3.

(c) Mandatory Sinking Fund Redemption. The Series 2010A-3 Bonds are subject to mandatory sinking fund redemption in part by lot on the dates in each of the years set forth below, at a redemption price equal to the principal amount thereof, plus accrued interest thereon to the date fixed for redemption, in the principal amount and on the dates as follows:

<u>Redemption Date</u>	<u>Principal Amount</u>
December 1, 2035	\$26,435,000
December 1, 2038*	13,265,000

\*Final Maturity

At the option of the Foundation to be exercised by delivery of a written certificate to the Trustee not less than 45 days next preceding any sinking fund redemption date, it may (i) deliver to the Trustee for cancellation Bonds which are subject to sinking fund redemption on such date in an aggregate principal amount designated by the Foundation, or (ii) specify a principal amount of such Bonds which prior to said date have been redeemed pursuant to Section 2.2(a), (b) or (d) hereof and cancelled by the Trustee and not theretofore applied as a credit against any sinking fund redemption obligation for such Bonds. Each Bond so delivered or previously redeemed pursuant to Section 2.2(a), (b) or (d) hereof shall be credited by the Trustee at 100% of the principal amount thereof against the obligation of the Foundation on such sinking fund redemption date, and any excess shall be so credited against future sinking fund redemption obligations for Bonds as directed by the Foundation. If Bonds subject to mandatory sinking fund redemption have been redeemed pursuant to Section 2.2(a), (b) or (d) hereof and the Foundation shall have failed to specify the manner in which such amounts are to be credited pursuant to (ii) above, then the Trustee shall apply such credits against sinking fund obligations for each such series in chronological order.

(d) Mandatory Redemption. The Series 2010A-2 Bonds and Series 2010A-3 Bonds are subject to mandatory redemption as a whole or in part, on any Interest Payment Date for the Series 2010A-2 Bonds and Series 2010A-3 Bonds, at a redemption price equal to 100% of the Outstanding principal amount thereof, plus accrued interest to the date fixed for redemption, from moneys in the Revenue Fund made available for that



purpose pursuant to Section 5.3(b)(vii) and Section 5.3(b)(viii) hereof. In selecting Bonds to be redeemed pursuant to this paragraph (d), Series 2010A-2 Bonds shall be redeemed first and then Series 2010A-3 Bonds following payment of all Series 2010A-2 Bonds.

(e) Notice of Redemption. Upon Foundation Order, the Trustee shall cause notice of any redemption to be given by Electronic Means or by mailing a copy of the redemption notice to the Registered Owner of any Bonds designated for redemption in whole or in part, at its address as the same shall last appear upon the registration books, not more than 60 days prior to the redemption date and in the case of the Series 2010A-1 Bonds, not less than 30 days prior to the redemption date, and in the case of the Series 2010A-2 Bonds and Series 2010A-3 Bonds, not less than 10 days prior to the redemption date; provided, however, that failure to give such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds for which no such failure or defect occurs.

Each notice of redemption shall state the following: (A) the full designated name of the issue, including the series or subseries designation, (B) the CUSIP number, (C) the date of redemption, (D) the redemption price, (E) the name of the Trustee and the address and phone number of the Trustee's office handling the redemption, (F) the date of the Bonds, (G) the maturity date, (H) the publication date of the notice, (I) the place or places of payment, (J) that payment will be made upon presentation and surrender of the Bonds to be redeemed, and (K) that on and after said date interest thereon will cease to accrue. If less than all the Outstanding Bonds of any series or subseries are to be redeemed, the notice of redemption shall also specify the numbers of the Bonds or portions thereof to be redeemed.

If at the time of giving any notice of optional redemption there shall not be on deposit with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice shall state that such redemption shall be conditioned upon receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of and interest on such Bonds to be redeemed and that if such moneys shall not have been so received said notice shall be of no force and effect and the Foundation shall not be required to redeem such Bonds. In the event that such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, one time, in the same manner in which the notice of redemption was given, that such moneys were not so received.

Any notice mailed shall be conclusively presumed to have been duly given, whether or not the owner of such Bonds receives the notice. Receipt of such notice shall not be a condition precedent to such redemption, and failure so to receive any such notice by any of such Registered Owners shall not affect the validity of the proceedings for the redemption of the Bonds.

(f) Partial Redemption of Bonds.

(i) If less than all of the Series 2010A-1 Bonds are to be redeemed pursuant to Section 2.2(a) or (b) hereof, the Foundation shall determine the Stated Maturity or Stated Maturities of the Bonds to be redeemed (and the Foundation shall provide the Trustee with a Foundation Order with respect thereto) after giving effect to expected cash flows in the Trust Estate. If less than all of the Bonds of any Stated Maturity of any series or subseries of the Bonds are to be redeemed and there is more than one Registered Owner of the Bonds of such Stated Maturity of such series or subseries, such Bonds of the same Stated Maturity to be redeemed shall be selected by lot in such manner as the Trustee shall determine.

(ii) In case a Bond is of a denomination larger than \$5,000 the Trustee shall treat such Bond as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000 and any such portion of such Bond may be redeemed. Upon surrender of any Bond for redemption in part only, the Foundation shall execute and the Trustee shall authenticate and deliver to the Registered Owner thereof, the cost of which shall be paid by the Foundation, a new Bond or Bonds of the same series, subseries, if any, Stated Maturity and of authorized denominations, in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

Section 2.3 Execution of Bonds. The Bonds shall be executed in the name and on behalf of the Foundation by the manual or facsimile signature of the Chairman of the Board and the President (or in lieu of either of the foregoing the Vice Chairman), and its corporate seal or a facsimile thereof shall be thereunto affixed, imprinted, engraved or otherwise reproduced thereon and attested by the manual or facsimile signature of the Secretary or Assistant Secretary of the Board. Any Bond may be signed (manually or by facsimile), sealed or attested on behalf of the Foundation by any person who, at the date of such act, shall hold the proper office, notwithstanding that at the date of authentication, issuance or delivery, such person may have ceased to hold such office.

Section 2.4 Registration, Transfer and Exchange of Bonds; Persons Treated as Registered Owners. The Foundation shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee which is hereby appointed the transfer agent of the Foundation for the Bonds. Notwithstanding such appointment, the Trustee is hereby authorized to make any arrangements with other institutions which it deems necessary or desirable in order that such institutions may perform the duties of transfer agent for the Bonds. Upon surrender for transfer of any Bond at the Principal Office of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or his attorney duly authorized in writing, the Foundation shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same interest rate and for a like series, subseries, if any, and aggregate principal amount of the same Stated Maturity.

Bonds may be exchanged at the Principal Office of the Trustee for a like aggregate principal amount of fully registered Bonds of the same series, subseries, if any, interest rate and Stated Maturity in authorized denominations. The Foundation shall execute and the Trustee shall

authenticate and deliver Bonds which the Registered Owner making the exchange is entitled to receive, bearing numbers not contemporaneously outstanding. The execution by the Foundation of any fully registered Bond of any authorized denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such fully registered Bond.

The Trustee shall not be required to transfer or exchange any Bond during the period of 15 business days next preceding the mailing of notice of redemption as herein provided. After the giving of such notice of redemption, the Trustee shall not be required to transfer or exchange any Bond, which Bond or portion thereof has been called for redemption.

As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either principal or interest on any fully registered Bond shall be made only to or upon the written order of the Registered Owner thereof or his legal representative but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums paid.

The Trustee shall require the payment by any Registered Owner requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

Notwithstanding the foregoing, the provisions of this Section are subject to subsections (b) and (c) of Section 2.1 hereof.

Section 2.5 Lost, Stolen, Destroyed and Mutilated Bonds. Upon receipt by the Trustee of evidence satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Bond and, in the case of a lost, stolen or destroyed Bond, of indemnity satisfactory to it, and upon surrender and cancellation of the Bond, if mutilated, (a) the Foundation shall execute, and the Trustee shall authenticate and deliver, a new Bond of the same series, subseries, if any, interest rate, Stated Maturity and denomination in lieu of such lost, stolen, destroyed or mutilated Bond or (b) if such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the Foundation may pay such Bond. Any such new Bond shall bear a number not contemporaneously outstanding. The applicant for any such new Bond may be required to pay all taxes and governmental charges and all expenses and charges of the Foundation and of the Trustee in connection with the issuance of such Bond. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds, negotiable instruments or other securities.

Section 2.6 Delivery of Bonds. Upon the execution and delivery of this Indenture, the Foundation shall execute and deliver to the Trustee and the Trustee shall authenticate the Bonds and deliver them to The Depository Trust Company as hereinafter in this Section provided.

Prior to the delivery by the Trustee of any of the Bonds, there shall have been filed with or delivered to the Trustee the following:

(a) Resolutions duly adopted by the Foundation, certified by the Secretary or Assistant Secretary of the Board or other Authorized Officer thereof, authorizing the refunding of the Refunded Bonds in accordance with this Indenture, the execution and delivery of this Indenture, the Tax Certificate and the Interest Rate Swap, and the issuance of the Bonds.

(b) Duly executed copies of this Indenture, the Tax Certificate and the Interest Rate Swap.

(c) The written order of the Foundation as to the delivery of the Bonds, signed by an Authorized Officer.

Section 2.7 Trustee's Authentication Certificate. The Trustee's authentication certificate upon the Bonds shall be substantially in the forms provided in Exhibits A and B hereof. No Bond shall be secured hereby or entitled to the benefit hereof, or shall be valid or obligatory for any purpose, unless a certificate of authentication, substantially in such form, has been duly executed by the Trustee; and such certificate of the Trustee upon any Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder. The Trustee's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder.

Section 2.8 Cancellation and Destruction of Bonds by the Trustee. Whenever any Outstanding Bonds shall be delivered to the Trustee for the cancellation thereof pursuant to this Indenture, upon payment of the principal amount and interest represented thereby, or for replacement pursuant to Section 2.4 hereof, such Bonds shall be promptly cancelled and cremated or otherwise destroyed by the Trustee and counterparts of a certificate of destruction evidencing such cremation or other destruction shall be furnished by the Trustee to the Foundation.

Section 2.9 Application of Proceeds. Upon delivery of the Bonds, the Trustee shall deposit the proceeds of the Bonds (\$\_\_\_\_\_) to the Acquisition Fund and shall make such other deposits and transfers as follows:

(a) an amount equal to \$\_\_\_\_\_ shall be transferred from the Acquisition Fund to the trustee for the Refunded 2008 Bonds (and shall receive in exchange the cash and loans described in the following paragraph from a portion of cash and loans held under the Refunded 2008 Bonds Indenture), with the instruction from the Foundation that the trustee for the Refunded 2008 Bonds apply such amounts to the payment of principal of and interest on the Refunded 2008 Bonds.

The Trustee shall receive from the trustee under the Refunded 2008 Bonds Indenture, Eligible Loans, plus accrued interest, in a principal amount equal to \$\_\_\_\_\_ (as more fully set forth in a written instruction from the Foundation) and cash in the amount of \$\_\_\_\_\_. On the Date of Issuance, the Trustee shall deposit (x) said loans to the Acquisition Fund and (y) said cash as follows:

(i) an amount equal to \$\_\_\_\_\_ shall be deposited to the Debt Service Reserve Fund;

(ii) an amount equal to \$\_\_\_\_\_ representing equity of the Foundation from the Refunded 2008 Bonds Indenture shall be deposited to the Administration Fund and \$\_\_\_\_\_ used to pay costs of issuing the Bonds and \$\_\_\_\_\_ used to pay the Swap Counterparty; and

(iii) an amount equal to \$\_\_\_\_\_ shall be deposited to the Acquisition Fund.

(b) an amount equal to \$\_\_\_\_\_ shall be transferred from the Acquisition Fund to the trustee for the Refunded 2009 Bonds (and shall receive in exchange \$\_\_\_\_\_ of cash), with the instruction from the Foundation that the trustee for the Refunded 2009 Bonds apply such amounts to the payment of principal of the Refunded 2009 Bonds. The \$\_\_\_\_\_ of cash received from the Refunded 2009 Bonds Indenture shall be transferred to the trustee for the Refunded 2008 Bonds to be used immediately upon receipt to affect the release of \$\_\_\_\_\_ of additional Eligible Loans from the Refunded 2008 Bonds Indenture, which Eligible Loans shall be deposited to the Acquisition Fund.

Section 2.10 Forms of Bonds. The Series 2010A-1 Bonds and the Series 2010A-2 Bonds shall be in substantially the forms set forth in Exhibits A and B hereto, respectively, with such variations, omissions and insertions as may be necessary.

Section 2.11 Book-Entry Bonds.

(a) The Bonds shall be initially issued in the form of a separate single certificated fully registered Bond for each of the maturities set forth in Section 2.1 hereof. Upon initial issuance, the ownership of each Bond shall be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC. Except as provided in Section 2.11(d) hereof, all of the Outstanding Bonds shall be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC.

(b) With respect to Bonds registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, the Foundation and the Trustee shall have no responsibility or obligation to any Participant or to any person on behalf of which a Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the Foundation and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Participant with respect to any ownership interest in the Bonds, (ii) except as otherwise provided in this Indenture, the delivery to any Participant or any other person, other than a Bondholder, as shown in the registration books kept by the Trustee, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any Participant or any other person, other than a Bondholder, as shown in the registration books kept by the Trustee, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Foundation and the Trustee may treat and consider the person

in whose name each Bond is registered in the registration books kept by the Trustee as the holder and absolute owner of such Bond for the purpose of payment of principal, premium and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of, premium, if any, the interest on the Bonds only to or upon the order of the respective Bondholders, as shown in the registration books, or their respective attorneys duly authorized in writing, as provided in Section 2.4 hereof, and all such payments shall be valid and effective to fully satisfy and discharge the Foundation's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Bondholder, as shown in the registration books, shall receive a certificated Bond evidencing the obligation of the Foundation to make payments of principal, premium, if any, and interest pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the provisions herein with respect to Record Dates, the word "Cede" in this Indenture shall refer to such new nominee of DTC; and upon receipt of such a notice the Trustee shall promptly deliver a copy of the same to any registrar, if the registrar is other than the Trustee.

(c) The Foundation has previously issued a Representations Letter which Representations Letter is attached hereto as Exhibit C. The execution and delivery of the Representations Letter shall not in any way limit the provisions of Section 2.11(b) hereof or in any other way impose upon the Foundation any obligation whatsoever with respect to persons having interests in the Bonds other than the Bondholders, as shown on the registration books kept by the Trustee. The Trustee shall take all action necessary for all representations of the Foundation in the Representation Letter and DTC's operational arrangements with respect to the Trustee to at all times be complied with.

(d) (i) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Foundation and the Trustee and discharging its responsibilities with respect thereto under applicable law.

(ii) The Foundation, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the Foundation determines that:

(A) DTC is unable to discharge its responsibilities with respect to the Bonds, or

(B) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede, or any other nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds.

(iii) Upon the termination of the services of DTC with respect to the Bonds pursuant to Section 2.11(d)(ii)(B) hereof, or upon the discontinuance or

termination of the services of DTC with respect to the Bonds pursuant to Section 2.11(d)(i) or Section 2.11(d)(ii)(B) hereof after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found which, in the opinion of the Foundation, is willing and able to undertake such functions upon reasonable and customary terms, the Foundation is obligated to deliver Bond certificates at the expense of the beneficial owners of the Bonds, as described in this Indenture and the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede as nominee of DTC, but may be registered in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

(e) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given in the manner provided in the Representation Letter and DTC's operational arrangements.

### ARTICLE III

#### PARITY AND PRIORITY OF LIEN; OTHER OBLIGATIONS;

#### AND INTEREST RATE SWAP

Section 3.1 Parity and Priority of Lien. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the Foundation shall be for the equal benefit, protection and security of the Registered Owners of any and all of the Obligations, all of which, regardless of the time or times of their issuance or Stated Maturity, shall be of equal rank without preference, priority or distinction of any of the Obligations over any other thereof, except as expressly provided in this Indenture with respect to certain payment and other priorities and the subordinate nature of the Subordinated Swap Payments.

#### Section 3.2 Other Obligations.

(a) No additional bonds may be issued under this Indenture. The Foundation reserves the right to issue other bonds or obligations which do not constitute or create a lien on the Trust Estate.

(b) The Foundation shall not commingle the Funds established by this Indenture with funds, proceeds, or investment of funds relating to other issues or series of bonds heretofore or hereafter issued, except to the extent such commingling is required by the Trustee for ease in administration of its duties and responsibilities; provided, however, that should the Trustee require such permitted commingling, it shall keep complete records in order that the funds, proceeds, or investments under this Indenture may at all times be identified by source and application, and if necessary, separated.

(c) The revenues and other moneys, Financed Eligible Loans, securities, evidences of indebtedness, interests, rights and properties pledged under this Indenture are and will be owned by the Foundation free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, of equal rank with or subordinate to the respective pledges created by this Indenture, except as otherwise expressly provided herein, and all action on the part of the Foundation to that end has been duly and validly taken. Except as otherwise provided herein, the Foundation shall not create or voluntarily permit to be created any debt, lien, or charge which would be on a parity with, junior to, or prior to the lien of this Indenture; shall not do or omit to do or suffer to be done or omitted to be done any matter or things whatsoever whereby the lien of this Indenture or the priority of such lien for the Obligations hereby secured might or could be lost or impaired; and will pay or cause to be paid or will make adequate provisions for the satisfaction and discharge of all lawful claims and demands which if unpaid might by law be given precedence to or any equality with this Indenture as a lien or charge upon the Financed Eligible Loans; provided, however, that nothing in this subsection (c) shall require the Foundation to pay, discharge, or make provision for any such lien, charge, claim, or demand so long as the validity thereof shall be by it in good faith contested, unless thereby, in the opinion of the Trustee, the same will endanger the security for the Obligations.

Section 3.3 Interest Rate Swap. The Foundation hereby authorizes and directs the Trustee to acknowledge and agree to the Interest Rate Swap by and between the Foundation and the Swap Counterparty. The Trustee shall act in good faith with respect to the Interest Rate Swap.

No later than the second Business Day immediately preceding each day on which a Swap Receipt, Swap Payment, Parity Termination Payment or Subordinated Swap Payment is payable pursuant to the Interest Rate Swap through and including the termination date of the Interest Rate Swap, the Foundation shall give written notice to the Trustee stating either (a) the amount of any Swap Receipt due to be received by the Trustee for the account of the Foundation on such upcoming day or (b) the amount of any Swap Payment, Parity Termination Payment or Subordinated Swap Payment to be paid to the Swap Counterparty on such day. If the Trustee fails to receive such written notification from the Foundation by the end of such second Business Day, it shall immediately notify the Foundation and the Swap Counterparty of such fact in writing.

The Trustee shall deposit all moneys received representing a Swap Receipt in the Revenue Fund to be applied in accordance with the provisions of Section 5.3 hereof. The Trustee shall notify the Foundation on each Swap Payment Date, if (a) the amount received from the Swap Counterparty is not equal to the amount specified in the written notification of the Foundation, (b) no amount is received from the Swap Counterparty or (c) the amount received is not received in freely transferable funds.

Subject to the provisions of Section 5.3 hereof, on any Swap Payment Date on which a Swap Payment is payable by the Foundation in accordance with the written notification received from the Foundation or on any date on which a Parity Termination Payment or Subordinated Swap Payment is payable by the Foundation, the Trustee shall make payment to the Swap Counterparty from moneys in the Revenue Fund as specified in such written notification of the Foundation, on such date by the deposit or wire transfer of freely transferable funds to the credit of the account of the Swap Counterparty specified in such written notification of the Foundation.

To the extent that amounts available in the Revenue Fund for Swap Payments or Parity Termination Payments (but not Subordinated Termination Payments, unless all of the Bonds have been paid) are not sufficient to make such payments, amounts on deposit in the Debt Service Reserve Fund may be used (in that order) to make such payments on a parity with the use thereof on the next Bond Payment Date.

Any amounts received by the Foundation or the Trustee from the Swap Counterparty in connection with the termination of the Interest Rate Swap shall first be used to pay the cost, if any, of replacing the Interest Rate Swap and any amounts remaining thereafter shall be deposited to the Revenue Fund. An account may be established by the Trustee for the deposit of moneys received from the Swap Counterparty before such amounts are transferred or deposited to the Revenue Fund.

The Foundation covenants that it shall (i) use its best efforts to keep the Interest Rate Swap in effect (A) in a notional amount equal to the principal amount of the Series 2010A-1 Bonds and (B) with fixed rates in the aggregate approximating the interest rates on the Series

2010A-1 Bonds then Outstanding and (ii) not cause the partial termination of the Interest Rate Swap without a redemption of the corresponding principal amount of Series 2010A-1 Bonds.

The Foundation shall not enter into any other interest rate swaps secured by the Trust Estate without the prior written consent of the Swap Counterparty.

## ARTICLE IV

### PROVISIONS APPLICABLE TO THE BONDS;

#### DUTIES OF THE FOUNDATION

Section 4.1 Payment of Principal, Interest and Premium; Agreement of the State. The Foundation covenants that it will promptly pay, but solely from the Trust Estate (except as provided below), the principal of and interest, if any, on each and every Bond issued under the provisions of this Indenture at the places, on the dates and in the manner specified herein and in said Bonds and any premium required for the retirement of said Bonds by purchase or redemption according to the true intent and meaning thereof.

The Foundation shall at all times maintain an office or agency where Bonds may be presented for registration, transfer or exchange, and where notices, presentations and demands upon the Foundation in respect of the Bonds or of this Indenture may be served. The Foundation hereby appoints the Trustee as its agent to maintain such office or agency for the registration, transfer or exchange of Bonds, and for the service of such notices, presentations and demands upon the Foundation.

Pursuant to the authority given the Foundation in Section 21-21A-22 of the Educational Assistance Act to include the following pledge and agreement of the State in any agreement with the Registered Owners, the State pledges to and agrees with the Registered Owners that the State will not limit or alter the rights vested by the Educational Assistance Act in the Foundation and the Guaranty Agency to fulfill the terms of any agreement made with the Registered Owners or in any way impair the rights and remedies of the Registered Owners until the Bonds, together with the interest thereon, with interest on any unpaid installment of interest, and all costs and expenses in connection with any action by or on behalf of the Registered Owners are fully met and discharged.

The Foundation covenants that it will comply with the terms and provisions of the Interest Rate Swap, as provided therein and will make the Swap Payments, the Parity Termination Payments and the Subordinated Swap Payments (but solely from the sources and in the priority provided herein).

Section 4.2 Covenant to Perform Obligations under this Indenture. The Foundation covenants that it will faithfully perform at all times and at all places all covenants, undertakings, stipulations, provisions and agreements contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of the Foundation pertaining thereto. The Foundation covenants that it is duly authorized to issue the Bonds authorized hereby and to enter into this Indenture and that all action on its part for the issuance of the Bonds issued hereunder and the execution and delivery of this Indenture has been duly and effectively taken; and that such Bonds in the hands of the owners thereof are and will be valid and enforceable obligations of the Foundation according to the tenor and import thereof.

In consideration of the purchase and acceptance of the Bonds by those who shall hold the same from time to time, the provisions of this Indenture shall be a part of the contract of the

Foundation with the owners of the Bonds and shall be deemed to be and shall constitute a contract among the Foundation, the Trustee and the Registered Owners from time to time.

Section 4.3 No Extension of Maturities. The Foundation will not directly or indirectly extend or assent to the extension of the time for the payment of any principal of or claim for interest on any Bond and will not directly or indirectly be a party to any arrangement therefor. In case the time for the payment of the interest on any Bond shall be extended, whether or not such extension be by or with the consent of the Foundation, such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Indenture except subject to the prior payment in full of the principal of all Bonds then Outstanding and of all interest the time for the payment of which shall not have been extended.

Section 4.4 Further Instruments and Actions. The Foundation covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better pledging all and singular of the Trust Estate pledged hereby to the payment of the principal of, premium, if any, and the interest on the Bonds and other amounts owed hereunder to the Swap Counterparty.

Section 4.5 Administration of the Program. The Foundation shall administer, operate and maintain the Program in such manner as to ensure that the Program and the Financed Eligible Loans will benefit, to the optimum extent, from the benefits available under the Higher Education Act and the federal program of reimbursement for student loans pursuant to the Higher Education Act, or from any other federal statute providing for such federal program.

Section 4.6 Enforcement and Amendment of the Guarantee Agreement. So long as any Obligations are Outstanding, the Foundation (a) will, from and after the date on which it shall have entered into the Guarantee Agreement, maintain the Guarantee Agreement and diligently enforce its rights thereunder; (b) will enter into such other similar or supplemental agreements as shall be required to maintain benefits for all Financed Eligible Loans covered thereby; and (c) will not voluntarily consent to or permit any rescission of or consent to any amendment to or otherwise take any action under or in connection with the Guarantee Agreement or any similar or supplemental agreement or engage any other guarantor of the Financed Eligible Loans which in any manner will materially adversely affect the rights of the Registered Owners hereunder.

Section 4.7 Enforcement and Amendment of Certificates of Insurance and Contract of Insurance. So long as any Obligations are Outstanding, the Foundation (a) will maintain all Certificates of Insurance and the Contract of Insurance and diligently enforce its rights thereunder; (b) will enter into such other similar or supplemental agreements as shall be required to maintain benefits for all Financed Eligible Loans covered thereby, and (c) will not voluntarily consent to or permit any rescission of or consent to any amendment to or otherwise take any action under or in connection with any such Certificates of Insurance or the Contract of Insurance or any similar or supplemental agreement which in any manner will materially adversely affect the rights of the Registered Owners hereunder.

Section 4.8 Collection and Assignment of Eligible Loans. The Foundation shall diligently cause to be collected all principal and interest payments (subject to Section 4.9 hereof) on all the Financed Eligible Loans and other sums to which the Foundation is entitled pursuant to, all grants, subsidies, donations, insurance payments, Special Allowance Payments, Interest Benefit Payments, and all defaulted payments Guaranteed by the Guaranty Agency or Insured by the Secretary which relate to such Financed Eligible Loans. The Foundation shall also make, or cause to be made by Eligible Lenders or Servicers, every effort to perfect the Foundation's or such Eligible Lender's or Servicer's claims for payment from the Secretary or the Guaranty Agency, of all payments related to such Financed Eligible Loans, no later than required by the Higher Education Act and the applicable Guarantee Agreement. The Foundation will assign such Financed Eligible Loans for payment of Guarantee or Insurance benefits within the required period under applicable law and regulations. The Foundation will comply with all United States and State statutes, rules and regulations which apply to the Program and to such Financed Eligible Loans and will maintain a "Plan for Doing Business" as described in the Higher Education Act and shall submit such Plan to the Secretary at such times as are required under the Higher Education Act to maintain the receipt of Special Allowance Payments.

Section 4.9 Enforcement of Financed Eligible Loans.

(a) The Foundation shall, subject to Section 4.9(b) and the last sentence of this Section 4.9(a), cause to be diligently enforced, and take all steps, actions and proceedings reasonably necessary for the enforcement of, all terms, covenants and conditions of all Financed Eligible Loans and agreements in connection therewith, including the prompt payment of all principal and interest payments and all other amounts due the Foundation thereunder. The Foundation shall not, except as permitted by Section 4.9(b) and the last sentence of this Section 4.9(a), permit the release of the obligations of any borrower under any Financed Eligible Loan and shall, subject to Section 4.9(b) and the last sentence of this Section 4.9(a), at all times, to the extent permitted by law, cause to be defended, enforced, preserved and protected the rights and privileges of the Foundation and the Trustee hereunder or with respect to each Financed Eligible Loan and agreement in connection therewith. The Foundation shall not, subject to Section 4.9(b) and the last sentence of this Section 4.9(a), consent or agree to or permit any amendment or modification of any Financed Eligible Loan or agreement in connection therewith which will in any manner materially adversely affect the rights or security of the Registered Owners hereunder. Nothing in this Indenture shall be construed to prevent the Foundation from (i) granting a reasonable forbearance to a borrower as permitted by the Higher Education Act (unless such forbearance will, in the reasonable judgment of the Foundation, have a material adverse impact on the Foundation's ability to meet its obligations hereunder), (ii) from settling a default or curing a delinquency on any Financed Eligible Loan on such terms as shall be permitted by law, (iii) charging interest at a lower rate than is required by the Higher Education Act, or (iv) establishing discounts or forgiveness of principal or of interest on Financed Eligible Loans, so long as such action will not adversely affect the Ratings on any of the Bonds.

(b) Notwithstanding the foregoing, the Foundation may also forgive the indebtedness on all or a portion of the Financed Eligible Loans to the extent necessary to

prevent interest on any Bonds from being includable in the gross income of the owners thereof for federal income tax purposes, or take such other action as may be provided in the written opinion of Bond Counsel (including, but not limited to, the payment of "yield reduction payments" under Section 1.148 5(c) of the Treasury Regulations), and may forgive the remaining indebtedness on any Financed Eligible Loan if, in the reasonable judgment of the Foundation evidenced by a certificate delivered to the Trustee, the cost of collection of the remaining indebtedness of such Financed Eligible Loan would exceed such remaining indebtedness.

Section 4.10 Enforcement of Servicing Agreements.

(a) The Foundation shall cause to be diligently enforced, and take all reasonable steps, actions and proceedings necessary for the enforcement of, all terms, covenants and conditions of all Servicing Agreements, including without limitation the prompt payment of all principal and interest payments and all other amounts due the Foundation thereunder, including all grants, subsidies, donations, insurance payments, Special Allowance Payments, Interest Benefit Payments, and all defaulted payments Guaranteed by the Guaranty Agency and/or Insured by the Secretary which relate to any Financed Eligible Loans. The Foundation shall not permit the release of the obligations of any Servicer under any Servicing Agreement and shall at all times, to the extent permitted by law, cause to be defended, enforced, preserved and protected the rights and privileges of the Foundation and the Trustee under or with respect to each Servicing Agreement. The Foundation shall not consent or agree to or permit any amendment or modification of any Servicing Agreement which will in any manner adversely affect the rights or security of the Trustee or the Registered Owners. Nothing in this Indenture shall be construed to prevent the Foundation (i) from taking actions to replace any Servicer if it is reasonably prudent to do so in light of all circumstances then existing and such action will not materially adversely affect the ability of the Foundation to pay or perform, as the case may be, all of its obligations under this Indenture or the security for the Registered Owner, or (ii) from consenting or agreeing to or permitting amendments or modifications to any Servicing Agreement if it is reasonably prudent to do so in light of all circumstances then existing, and such action will not materially adversely affect the ability of the Foundation to pay or perform, as the case may be, all of its obligations under this Indenture or the security for the Bonds and the Registered Owners.

Pursuant to a backup servicing agreement to be effective on the date of issuance of the Bonds (the "Backup Servicing Agreement"), the Backup Servicer will act as backup servicer with respect to the Financed Eligible Loans presently serviced by the Foundation. If the Foundation decides to no longer service the Financed Eligible Loans, it will use its best efforts to notify the Backup Servicer six months, but in any event no less than four months, prior to the initiation of the Backup Servicer's obligations to begin to perform servicing pursuant to the Backup Servicing Agreement. If the Foundation in the performance of its servicing obligations as to the Financed Eligible Loans fails to fully perform such obligations and this failure results in an Event of Default, and such Event of Default is not cured during any applicable cure period, then the Trustee will provide written notice to the Backup Servicer of the determination that the Financed Eligible Loans serviced by the Foundation must be serviced by the Backup Servicer

under the Backup Servicing Agreement. The Trustee will use its best efforts to give such notice to the Backup Servicer six months, but in any event no less than four months, prior to the initiation of the Backup Servicer's obligations to begin to perform servicing pursuant to the Backup Servicing Agreement.

(b) If the Foundation enters into a Servicing Agreement with a Servicer, such Servicing Agreement shall require the Servicer to administer and collect all Financed Eligible Loans in the manner provided in this Section 4.10 and Section 4.11 hereof and to perform the duties, obligations and functions specified in the Guarantee Agreement.

(c) If at any time any Servicer fails in any material respect to perform its obligations under its Servicing Agreement or under the Higher Education Act, including without limitation the failure of the Servicer to comply with the due diligence requirements of the Higher Education Act, or if any servicing audit shows any material deficiency in the servicing of Financed Eligible Loans by any Servicer, within 90 days of the Foundation's becoming aware of or receiving notice thereof, the Foundation shall cure the failure to perform or the material deficiency or remove such Servicer and appoint another Servicer. Any replacement Servicer shall agree to cooperate with the Servicer being replaced during the period of Servicer conversion.

(d) If any Financed Eligible Loan is found to have had a due diligence failure at the time such Financed Eligible Loan became a part of the Trust Estate, and as a result thereof, a Guarantee or Insurance claim with respect to such Financed Eligible Loan is rejected by the Guaranty Agency or the Secretary, as the case may be, and is not cured within 90 days after such rejection, then the Foundation shall either: (i) purchase such Financed Eligible Loan from the Trust Estate for a purchase price equal to its principal amount plus unamortized premium and interest accrued thereon or (ii) replace such Financed Eligible Loan with another Financed Eligible Loan of substantially identical characteristics (excluding such due diligence failure). The Foundation's obligations under the preceding covenant apply only with respect to a Financed Eligible Loan which is found to have a due diligence failure at the time it became a part of the Trust Estate, and not to Financed Eligible Loans with respect to which a due diligence failure arises thereafter.

(e) The Foundation shall deposit or cause to be deposited with the Trustee, within two Business Days of receipt, all Revenues which are derived from the Financed Eligible Loans and are otherwise proper for deposit with the Trustee.

#### Section 4.11 Administration and Collection of Financed Eligible Loans.

(a) All Financed Eligible Loans shall be administered and collected either by the Foundation or by a Servicer selected by the Foundation in a competent, diligent and orderly fashion and in accordance with all requirements of the Higher Education Act, the Secretary, the Educational Assistance Act, this Indenture, the Guarantee Agreement and the Contract of Insurance.

(b) In all events, promissory notes evidencing Financed Eligible Loans shall be held by the Servicer or its agent or bailee on behalf of the Foundation. To the extent that the Servicer, in the ordinary course of its servicing duties, shall require reference to the text of any such note, the Servicer may refer to a photocopy of such note in its files and not to the original thereof. Subject to the foregoing, the Foundation, in its role as Servicer, covenants and agrees to comply with the following provisions with respect to all Financed Eligible Loans and, to the extent it engages a separate Servicer, agrees to include the following provisions in its Servicing Agreement:

(i) In the event any such Servicer holds notes evidencing Financed Eligible Loans and related documentation, such Servicer holds such notes and related documentation as bailee for and on behalf of the Foundation. While the Foundation is acting as Servicer, and with respect to any such notes and/or related documentation which it holds from time to time, the Foundation as Servicer shall hold such assets in a segregated account and clearly mark such assets as being held for the account of the Foundation as bailee.

(ii) All sums received by any Servicer with respect to Financed Eligible Loans shall be held on behalf of the Trustee including, but not limited to, all payments of principal and interest, Special Allowance Payments, Interest Benefit Payments, insurance or guarantee payments and proceeds of the sale thereof. All such amounts shall be held in a segregated account and shall not be commingled with any of the Servicer's funds and shall be accounted for such that all such funds are identified separately from all other payments received in respect of the servicing of loans. Any such amounts, if received by the Servicer, shall be remitted only to the Trustee and not to the Foundation (in its capacity other than as Servicer).

(iii) All periodic reports required to be furnished pursuant to each Servicing Agreement shall be furnished to the Trustee. The Trustee's duty shall be limited solely to the monitoring of receipt of such reports and to retain any such reports which are received. The Servicer shall indemnify and hold the Trustee harmless to the same extent provided with respect to the Foundation in the Servicing Agreement.

(iv) No assignment or purported assignment by the Foundation of any note evidencing a Financed Eligible Loan held by a Servicer on behalf of the Foundation shall be recognized by the Servicer or be effective unless joined in by the Trustee.

(v) Each Servicer waives any lien that the Servicer might have pursuant to statute or otherwise available at law or in equity on the notes evidencing Financed Eligible Loans held by the Servicer on behalf of the Foundation and on related documentation, including all moneys and proceeds derived therefrom or relating thereto.



(c) The Foundation shall provide, or shall cause the Servicer to provide to the Trustee a copy of the Foundation's most recent quarterly report listing all Financed Eligible Loans; containing the names and social security numbers of the obligors of the Financed Eligible Loans, the unpaid principal balance of all Eligible Loans of each of said obligors, and such other information with respect to the Financed Eligible Loans which is reasonably requested by the Trustee.

The Trustee shall not have any implied duty to examine or review any reports furnished to it pursuant to this Section 4.11.

**Section 4.12 Books of Account; Annual Audit.** The Foundation shall cause to be kept and maintained proper books of account relating to the Program in which full, true and correct entries will be made, in accordance with generally accepted accounting principles, of all dealings or transactions of or in relation to the business and affairs of the Foundation, and within 150 days after the end of each Fiscal Year shall cause such books of account to be audited by an Accountant. A copy of each audit report, annual balance sheet and income and expense statement showing in reasonable detail the financial condition of the Foundation as at the close of each Fiscal Year, and summarizing in reasonable detail the income and expenses for such year, including the transactions relating to the Funds, Accounts and Subaccounts, Outstanding Bond balance by Stated Maturity and redemption history (date, amount, source of funds, distribution of funds per Bond Stated Maturity), shall be filed promptly with the Trustee and shall be available for inspection by any Registered Owner.

The Foundation shall deliver to the Trustee, within 150 days after the end of each Fiscal Year, a certificate from an Authorized Officer including (a) a current list of the Authorized Officers and (b) a statement indicating whether or not to the knowledge of the signers thereof, the Foundation is in compliance with all conditions and covenants under this Indenture and, in the event of any noncompliance, specifying such noncompliance and the nature and status thereof.

The Foundation shall provide the Trustee with copies of the annual lender compliance audit (in accordance with the United States Department of Education's Audit Guide, Compliance Audits (Attestation Engagements) for Lenders and Lender Servicers Participating in the Federal Family Education Loan Program) as well as any written reports, audits or findings that are performed by the Foundation and delivered to the United States Department of Education within 30 days of submission, including any written reports indicating fees due to the United States Department of Education. The foregoing requirement shall not apply to ED Form 799 filings with the United States Department of Education. However, the Foundation shall cause the completion of the Lender Interest and Special Allowance request and reports (ED Form 799) for all Financed Eligible Loans.

The Foundation shall deliver to the Trustee, within 150 days after the end of each Fiscal Year, a certification from an Authorized Officer to the effect that the Foundation is in compliance with the Higher Education Act and all State rules and regulations applicable to its Program. Such certification shall include a statement that the Foundation has not engaged in any prohibited inducements as described in the Higher Education Act. The Foundation shall, or shall cause to be taken, all reasonable steps, actions and proceedings necessary or appropriate for the

prompt payment of fees and expenses due to the United States Department of Education or any service providers of the Foundation, it being understood and agreed that pursuant to the terms of this Indenture, payments to the United States Department of Education, the Trustee and the Servicer shall be disbursed by the Trustee pursuant to the terms hereof.

The Foundation shall provide the following items to the Trustee, within 30 days after receipt thereof, with respect to each Servicer (a) copies of any annual audited financial statements of such Servicer, certified by an independent certified public accounting firm, (b) on an annual basis, copies of SAS 70 reports for such Servicer, (c) the annual compliance audit for each Servicer as required by Section 428(b)(1)(4) of the Higher Education Act and (d) to the extent not included in the financial information provided pursuant to the clauses above, such Servicer's net dollar loss for the year due to servicing errors to the extent received by it.

The Foundation shall cause the Servicer to deliver to the Trustee and the Foundation (if the Foundation shall no longer be the Servicer), within 150 days after the end of each Fiscal Year, beginning with November 27, 2010, a certificate stating that (i) a review of the activities of the Servicer during the preceding calendar year and of its performance under any Servicing Agreement has been made under the supervision of the officer signing such certificate; and (ii) to the best of such officers' knowledge, based on such review, the servicer has fulfilled all its obligations under any Servicing Agreement throughout such year, or, there has been a default in the fulfillment of any such obligation, specifying each such default known to such officer and the nature and stature thereof.

The Trustee shall not have any implied duty to examine or review any reports furnished to it pursuant to this Section 4.12.

#### **Section 4.13 Tax Covenants.**

(a) The Foundation shall at all times do and perform all acts and things necessary or desirable in order to assure that interest paid on the Bonds shall, for purposes of federal income taxation, be excludable from the gross income of the recipients thereof, including, but not limited to, such actions as are required to be taken pursuant to the Tax Certificate and this Indenture.

(b) The Foundation shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Foundation to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any Bond to be or become an "arbitrage bond" as defined in Section 148 of the Code.

(c) The Foundation shall take such action as may be necessary to assure that the Portfolio Yield as of the date of final payment of the Bonds does not exceed the Bond Yield by an amount greater than may be consistent with the Tax Certificate, including the forgiveness and discharge of borrower payment obligations with respect to the outstanding principal amounts of and any interest due upon any or all of the Financed Eligible Loans upon any such payment date.

(d) The Foundation shall not sell, transfer or otherwise dispose of any Eligible Loans, except for: (i) loan consolidation, combination or collection purposes and (ii) sales

the entire proceeds of which are to be applied to fund the payment of Bonds, unless the Foundation determines that adequate provision has been made assuring that such sale, transfer or other disposition does not impair the Foundation's capacity to comply with its obligation relative to the restriction upon Portfolio Yield as such obligation would be calculated upon the date of such sale, transfer or other disposition in accordance with the Tax Certificate.

(e) The Program documents shall include the requirement that no borrower on a Financed Eligible Loan nor any "related person," as defined in Section 144(a)(3) of the Code, shall pursuant to any arrangement, formal or informal, purchase the Foundation's obligations in an amount related to the amount of such borrower's Financed Eligible Loans.

(f) The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to Article IX hereof or any other provision hereof.

Section 4.14 Continuing Existence and Qualification. The Foundation will maintain its existence as a New Mexico nonprofit corporation and will take no action and suffer no action to be taken by others which will alter, change or destroy, and will take all affirmative action necessary to maintain its status as a nonprofit corporation and its status as an organization described in Section 501(c)(3) of the Code and exempt from federal income taxation under Section 501(a) of the Code (or any successor sections of a subsequent federal income tax statute or code) except as otherwise permitted in Section 4.14(a)(i) or (ii) below. The Foundation will remain duly qualified to do business in the State and will not dispose of all or substantially all of its assets (by sale, lease or otherwise), except as otherwise specifically authorized under this Indenture or under comparable provisions of any previous or future indenture of the Foundation with respect to prior or subsequent issues of bonds, notes or other obligations of the Foundation, or consolidate with or merge into another entity or permit any other entity to consolidate with or merge into it unless:

(a) (i) the surviving, resulting or transferee entity, as the case may be, shall be organized under the laws of the United States or one of the states thereof, shall be an entity which, in the opinion of Bond Counsel, qualifies under the Code to issue Bonds "on behalf of" the State (or, upon receipt of a Favorable Opinion, a corporation meeting the requirements of Section 150(d) of the Code for the issuance of "qualified scholarship funding bonds"), shall be an organization described in Section 501(c)(3) of the Code and exempt from federal income taxation under Section 501(a) or 115 of the Code, respectively (or any successor sections of a subsequent federal income tax statute or code), shall have a total unrestricted fund balance at least equal to that of the Foundation as of the date of such consolidation, merger or transfer and shall be qualified to do business in the State; or

(ii) the surviving, resulting or transferee entity, as the case may be, shall be the State or any political subdivision thereof;

(b) at least 30 days before any merger, consolidation or transfer of assets becomes effective, the Foundation shall give the Trustee and the Rating Agencies written notice of the proposed transaction;

(c) prior to any merger, consolidation or transfer of assets, an opinion of Bond Counsel shall be delivered to the Trustee stating that such merger, consolidation or transfer of assets will not cause interest on the Bonds to become includable in the gross income for federal income tax purposes of recipients thereof subject to federal income taxation; and

(d) prior to or concurrently with any merger, consolidation or transfer of assets, the surviving, resulting or transferee entity, as the case may be, if other than the Foundation, shall deliver to the Trustee an instrument assuming all of the obligations of the Foundation under this Indenture, the Contract of Insurance, Tax Certificate, any Servicing Agreement and the Guarantee Agreement, together with the consent of the other parties, if any, to each such instrument to such assumption.

Section 4.15 Fidelity Bonds. The Foundation shall obtain and maintain in force fidelity bonds upon all personnel insuring against any loss or damage which the Trustee or the Foundation might suffer as a consequence of any act of such personnel in an amount required by any supervising agency of the federal or State government, or, if not so required, in such reasonable amount as may be determined from time to time by the Foundation.

Section 4.16 Recordation of the Indenture and Filing of Security Instruments.

(a) The Foundation shall cause this Indenture and all supplements hereto and thereto, together with all other security instruments and financing statements, to be recorded and filed, as the case may be, if required by law for perfection of the security interests created therein, in such manner and in such places as may be required by law in order to perfect the lien of, and the security interests created by, this Indenture.

(b) The Foundation shall promptly notify the Trustee of any change in its name or in the address of its principal place of business.

Section 4.17 Personnel and Servicing of Program.

(a) The Foundation may pay to any State agency, municipality, political subdivision or governmental instrumentality of the State such amounts as are necessary to reimburse such State agency, municipality, political subdivision or governmental instrumentality of the State for the reasonable costs of any services performed for the Foundation.

(b) Each depositary which may from time to time hold amounts in excess of \$50,000 shall enter into a written agreement with the Foundation or the Trustee providing that:

(i) any amounts held by such depositary shall be set aside and held in trust for the Trustee on behalf of the holders of the Bonds;

(ii) all such amounts shall be invested or deposited in accordance with this Indenture and as may be directed by the Foundation or the Trustee or, failing such direction, as such depositary may determine;

(iii) any amounts held by such depositary shall be transmitted to the Trustee regularly as required pursuant to this Indenture and shall be transmitted to the Trustee as soon as practicable upon the written demand at any time of the Foundation or the Trustee; and

(iv) such depositary shall regularly deliver an accounting to the Foundation and the Trustee of the amount held by it hereunder and the deposits and investments thereof.

Section 4.18 No Waiver of Laws. The Foundation shall not at any time insist upon or plead in any manner whatsoever, or claim to take the benefit or advantage of any stay or extension of law now or at any time hereafter in force which may affect the covenants and agreements contained in this Indenture, in the Bonds or in the Interest Rate Swap and all benefit or advantage of any such law or laws is hereby expressly waived by the Foundation.

## ARTICLE V

### FUNDS

#### Section 5.1 Creation and Continuation of Funds and Accounts.

(a) There are hereby created and established the following Funds to be held and maintained by the Trustee:

- (i) Acquisition Fund;
- (ii) Revenue Fund;
- (iii) Debt Service Reserve Fund; and
- (iv) Administration Fund.

(b) There is hereby created and established the Rebate Fund, to be held and maintained by the Trustee, in which neither the Foundation nor the Registered Owners have any right, title or interest.

The Trustee is hereby authorized for the purpose of facilitating the administration of the Trust Estate to create further Accounts or Subaccounts in any of the various Funds and Accounts established hereunder which are deemed necessary or desirable.

Section 5.2 Acquisition Fund. On the Date of Issuance, the Bond proceeds shall be deposited to the Acquisition Fund and shall be used for the refunding of the Refunded Bonds as set forth in Section 2.9 hereof. Financed Eligible Loans shall be held by the Servicer or its agent or bailee and shall be pledged to and accounted for as a part of the Acquisition Fund.

Cash deposited to the Acquisition Fund pursuant to Section 2.9(a)(iii) from amounts held with respect to the Refunded 2008 Bonds shall be used to reimburse the Foundation for the cost of acquisition of certain Eligible Loans purchased following the issuance of the Refunded 2008 Bonds. Any remaining moneys on deposit in the Acquisition Fund on December 1, 2010 shall be transferred to the Revenue Fund.

The Foundation, or its assignee, shall have the option to release all of the Financed Eligible Loans free and clear of the lien of this Indenture on any date commencing with the Interest Payment Date on which the then outstanding principal amount of Financed Eligible Loans is equal to or less than 10% of the initial principal amount of Financed Eligible Loans on the Date of Issuance. To exercise the option described in this Section, the Foundation or its assignee shall deposit in the Revenue Fund amounts sufficient to, and such amounts shall be used to, retire the Bonds then Outstanding and to terminate the Interest Rate Swap in whole and pay any Swap Payments, Parity Termination Payments and Subordinated Swap Payments and pay any fees due to the Servicer, the Foundation or the Trustee and any Rebate Amount or Excess Interest due and any amounts due to the Secretary with respect to such Financed Eligible Loans. Upon the exercise of such option, the Trustee shall, upon Foundation Order and subject to the

provisions of this Indenture, take all actions reasonably necessary to effect the release of the Financed Eligible Loans from the lien of this Indenture.

The Foundation may also release Financed Eligible Loans free from the lien of this Indenture, so long as the Foundation deposits an amount equal to the principal amount of Financed Eligible Loans released and the collective aggregate principal balance of all such releases does not exceed 5.00% of the initial principal amount of the Financed Eligible Loans and the collective aggregate principal balance of all such releases in any calendar year does not exceed 1.00% of the principal amount of the Financed Eligible Loans as of January 1, of such calendar year (or as of the Date of Issuance with respect to the first calendar year).

#### Section 5.3 Revenue Fund.

(a) The Trustee shall, upon direction of the Foundation or the Servicer, promptly deposit into the Revenue Fund, but in any event within two Business Days of receipt, all Revenues derived from Financed Eligible Loans, and all other Revenue derived from moneys or assets on deposit in the Acquisition Fund, the Debt Service Reserve Fund, the Revenue Fund and the Administration Fund, all Swap Receipts, amounts received upon the termination of the Interest Rate Swap (not needed to be used to replace such Interest Rate Swap), and any other amounts deposited thereto upon receipt of a Foundation Order.

(b) On the first Business Day preceding each March 1, June 1, September 1 and December 1, commencing December 1, 2010 money in the Revenue Fund shall be used (or set aside for use) and transferred to other funds or Persons in the following order of precedence, as directed by Foundation Order (any money not so transferred or paid to remain in the Revenue Fund until subsequently applied pursuant to this Section):

(i) to an account to be established for such purpose under the Indenture, such amount, if any, as the Foundation shall determine in a certificate of an Authorized Officer as necessary to provide for the reconciliation of Special Allowance Payments under the Higher Education Act among the Foundation, trust estates of the Foundation and the United States Department of Education, or to make any other payments due and payable to the United States Department of Education related to the Eligible Loans (including, without limitation, consolidation loan rebate fees);

(ii) to the Rebate Fund, if necessary to comply with the Tax Certificate, the Rebate Amount or Excess Interest;

(iii) Subject to the limits of (c) below, to the Administration Fund for use in paying the Servicer and the Trustee, the amount, if any, then due, representing the Financed Eligible Loan Servicer fees and Trustee fees, as applicable, as shall have been incurred and as shall be set forth in a certificate of an Authorized Officer;

(iv) on a parity basis, (A) to pay interest due on any Bonds on the next Bond Payment Date and any Swap Payment due on the Swap Payment Date, (B)

to pay any Parity Termination Payments as a result of the declaration by the Swap Counterparty of an Early Termination Date (as defined in the Interest Rate Swap) of the Interest Rate Swap and (C) to set aside (within the Revenue Fund) quarterly an amount equal to the Swap Payments accrued, but not due and payable, on the Interest Rate Swap;

(v) on a parity basis, to pay (A) the principal of any Bonds due on the next Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Bonds) and (B) on each next Bond Payment Date that is not also a Stated Maturity or mandatory sinking fund redemption date with respect to such Bonds, but is within 12 months of a Bond Payment Date that is a Stated Maturity or mandatory sinking fund redemption date with respect to such Bonds, to set aside quarterly an amount equal to 30% of the principal due on such Bonds on such Stated Maturity or mandatory sinking fund redemption date;

(vi) to the Debt Service Reserve Fund the amount, if any, required by Section 5.4(b) hereof;

(vii) to mandatorily redeem Series 2010A-2 Bonds and Series 2010A-3 Bonds pursuant to Section 2.2(d) hereof until the Aggregate Market Value of the assets in the Trust Estate (following the payments described in this paragraph) equals or exceeds 115% (130% if all of the Series 2010A-1 Bonds have been paid in full prior to such date) of the unpaid principal amount of the Bonds Outstanding (plus any accrued and unpaid expenses and Swap Payments) or until the principal amount of the Series 2010A-2 Bonds and Series 2010A-3 Bonds is paid in full;

(viii) (A) so long as the Series 2010A-1 Bonds are outstanding (prior to the payments described above) and the Aggregate Market Value of the assets in the Trust Estate (following the payments described above) equals or exceeds 115% of the unpaid principal amount of the Bonds Outstanding (plus any accrued and unpaid expenses and Swap Payments), first to the Swap Counterparty to pay any unpaid Subordinated Swap Payments due to the Swap Counterparty and second in connection with each December 1 transfer, to the Administration Fund to pay up to \$65,000 (per Fiscal Year) of Administrative Expenses which have not already been paid under (iii) above and (B) if the Series 2010A-1 Bonds have been paid in full (prior to the payments described above), and so long as the Aggregate Market Value of the assets in the Trust Estate (following the payments described above) equals or exceeds 130% of the unpaid principal amount of the Bonds Outstanding (plus any accrued and unpaid expenses and Swap Payments), in connection with each December 1 transfer, to the Administration Fund to pay up to \$65,000 (per Fiscal Year) of Administrative Expenses which have not already been paid under (iii) above;

(ix) to mandatorily redeem Series 2010A-2 Bonds and Series 2010A-3 Bonds, in that order, pursuant to Section 2.2(d) hereof until the principal amount of the Series 2010A-2 Bonds and Series 2010A-3 Bonds is paid in full;

(x) at the direction of the Foundation, to optionally redeem Series 2010A-1 Bonds pursuant to Section 2.2(b) hereof, including payment of the related Parity Termination Payments resulting from the termination of the related portion of the Interest Rate Swap, if any, payable to the Swap Counterparty with respect to the redemption of the related Series 2010A-1 Bonds being redeemed, provided that after such payments the Aggregate Market Value of the assets in the Trust Estate exceeds 115% of the unpaid principal amount of the Bonds Outstanding (plus any accrued and unpaid expenses and Swap Payments), or, if such Aggregate Market Value will be equal to or less than 115%, the Foundation shall deliver a Rating Confirmation from Moody's in connection with the payments;

(xi) to pay any unpaid Subordinated Swap Payments not already provided for under (viii) above due to the Swap Counterparty but only so long as the Aggregate Market Value of the assets in the Trust Estate (following the payments described above) equals or exceeds 115% of the unpaid principal amount of the Bonds Outstanding (plus any accrued and unpaid expenses and Swap Payments).

(c) The Foundation covenants and agrees that any Trustee fees and Servicer fees withdrawn pursuant to (iii) above and (e) below in any one Fiscal Year shall not exceed the aggregate of the amount of such withdrawals for such Fiscal Year as set forth on Exhibit D hereto.

(d) In directing the Trustee to make the transfers described above, the Foundation shall take into account all moneys (except for Swap Receipts) deposited to the Revenue Fund up to and including 30 days prior to the applicable quarterly payment date and shall take into account Swap Receipts which will be received up to and including the applicable quarterly payment date.

(e) In addition to the transfers described in (b) above, upon receipt of a Foundation Order directing the same, moneys in the Revenue Fund may be transferred on the first Business Day of each month to the Administration Fund, as described in Section 5.6, to pay Servicer fees as shall have been incurred.

#### Section 5.4 Debt Service Reserve Fund.

(a) The Trustee shall deposit to the Debt Service Reserve Fund the amount specified therefor in Section 2.9 hereof. On each Bond Payment Date or Swap Payment Date, or date on which a Parity Termination Payment is payable, to the extent there are insufficient moneys in the Revenue Fund to make the transfers required by Sections 5.3(b)(i) through (v) hereof, then, the amount of such deficiency shall be paid directly from the Debt Service Reserve Fund.

(b) If the Debt Service Reserve Fund is used for the purposes described in Section 5.4(a) hereof, the Trustee shall restore the Debt Service Reserve Fund to the Debt Service Reserve Fund Requirement with respect thereto by transfers from the Revenue Fund pursuant to Section 5.3(b)(vi) hereof, until the deficiency in the Debt Service Reserve Fund has been eliminated.

(c) On any day that the amount in the Debt Service Reserve Fund exceeds the Debt Service Reserve Fund Requirement with respect thereto for any reason, the Trustee, at the direction of the Foundation, shall transfer the excess to the Revenue Fund.

(d) The Foundation shall use amounts on deposit in the Debt Service Reserve Fund in order to make the final payments on the Bonds. At such time as all of the Bonds are subject to redemption and amounts on deposit in the Revenue Fund and the Debt Service Reserve Fund are sufficient to retire the Bonds and to pay all other amounts due and owing hereunder, amounts on deposit in the Debt Service Reserve Fund shall be used along with such other amounts for such purpose.

#### Section 5.5 Rebate Fund.

(a) The Trustee shall, in accordance with Section 5.3(b)(ii) hereof, withdraw from the Revenue Fund and deposit to the Rebate Fund an amount such that the balance held in the Rebate Fund after such deposit is equal to the Rebate Amount pursuant to written instructions from the Foundation. Computation of the Rebate Amount shall be furnished to the Trustee by or on behalf of the Foundation in accordance with the Tax Certificate, as the same may be amended or supplemented in accordance with their terms.

(b) The Trustee, upon receipt of written instructions from an Authorized Officer in accordance with the Tax Certificate, shall pay to the United States of America from the Rebate Fund (i) not later than 60 days after the fifth anniversary of the Date of Issuance and after the end of each five year period thereafter, an amount such that, together with amounts previously paid to the United States of America is equal to at least 90% of the Rebate Amount and (ii) not later than 60 days after the date on which all of the Bonds have been paid or redeemed, 100% of the Rebate Amount.

(c) The Trustee shall also, in accordance with Section 5.3(b)(ii) hereof, withdraw from the Revenue Fund and deposit to the Rebate Fund such amount as shall be required to be paid to the federal government as Excess Interest. Alternatively, upon Foundation Order the Foundation may from time to time forgive payments on Financed Eligible Loans to satisfy such requirement, in accordance with the Tax Certificate.

Notwithstanding anything in this Indenture to the contrary, in the event the Foundation and the Trustee shall receive a Favorable Opinion to the effect that it is not necessary under either existing statutes and court decisions or under any then pending federal legislation to pay any portion of earnings on Funds held under this Indenture or Excess Interest to the United States of America in order to assure the exclusion from gross income for federal income tax purposes of interest on any Bonds, then the provisions of this Section need not be complied with and shall no

longer be effective and all or a portion of such amounts on deposit in the Rebate Fund shall be transferred to the Revenue Fund.

Section 5.6 Administration Fund. The Trustee shall deposit to the Administration Fund the amount specified in Section 2.9, Section 5.3(b)(iii) and Section 5.3(e) hereof. The Administration Fund shall be used solely to pay Administrative Expenses and the costs of issuance with respect to the Bonds. Amounts shall be disbursed therefrom for such purpose upon receipt by the Trustee of a Foundation Order. Amounts deposited to the Administration Fund pursuant to Section 2.9 for the payment of costs of issuance and not used prior to November 1, 2010 shall be transferred to the Revenue Fund.

The amount deposited in the Administration Fund by transfer from the Revenue Fund and the schedule of deposits shall be determined by the Foundation, but the amount so transferred in any one Fiscal Year shall not in the aggregate exceed the amount or amounts designated therefor in the cash flows (including the assumptions contained therein) provided to the Rating Agency on the Date of Issuance, unless the Foundation, after furnishing the Rating Agencies with revised cash flows, shall have received a Rating Confirmation from Moody's that such additional amount or amounts, will not adversely affect the Ratings on any of the Bonds. The Foundation shall provide the Trustee with a Foundation Order from time to time as to the amount to be transferred.

At any time in order to meet expenses which have been incorporated in such cash flows, the Foundation may requisition from the Trustee the amount which it is anticipated will be required to pay the Administrative Expenses. The requisition, in the form of a Foundation Order, shall include a statement that the amount requisitioned, when combined with the amount requisitioned previously in the Fiscal Year, does not exceed the amount in such cash flows for that year as Administrative Expenses.

Upon the receipt of such requisition, the Trustee shall withdraw the amount requisitioned from the Revenue Fund and transfer the same into the Administration Fund. The Foundation may request that the Trustee pay the requisitioned amount in installments as specified by the Foundation. In the event there is not sufficient money on hand in the Revenue Fund to transfer the full amount requisitioned, the Trustee shall notify the Foundation and the Foundation shall then determine the amount to be transferred.

Section 5.7 Reserved.

Section 5.8 Reserved.

Section 5.9 Investment of Funds Held by Trustee. The Trustee shall invest money held for the credit of any Fund or Account or Subaccount held by the Trustee hereunder as directed in writing (or orally, confirmed in writing) by an Authorized Officer of the Foundation or a designee appointed in writing by an Authorized Officer of the Foundation, to the fullest extent practicable and reasonable, in Investment Securities which shall mature or be redeemed at the option of the holder prior to the respective dates when the money held for the credit of such Fund or Account or Subaccount will be required for the purposes intended. In the absence of any such direction, the Trustee shall invest amounts held hereunder in those Investment Securities

described in a certificate of the Foundation provided to the Trustee on the Date of Issuance. The Trustee and the Foundation hereby agree that unless an Event of Default shall have occurred hereunder, the Foundation acting by and through an Authorized Officer shall be entitled to, and shall, provide written direction or oral direction confirmed in writing to the Trustee with respect to any discretionary acts required or permitted of the Trustee under any Investment Securities and the Trustee shall not take such discretionary acts without such written direction.

The Investment Securities purchased shall be held by the Trustee and shall be deemed at all times to be part of such Fund or Account or Subaccounts or combination thereof, and the Trustee shall inform the Foundation of the details of all such investments. Earnings with respect to, and any net gain on the disposition of, any such investments, except on investments contained in the Rebate Fund, shall be deposited into the Revenue Fund as provided in Section 5.3 hereof. Earnings on amounts contained in the Rebate Fund shall remain in the Rebate Fund. Upon direction in writing (or orally, confirmed in writing) from an Authorized Officer of the Foundation, the Trustee shall use its best efforts to sell at the best price obtainable, or present for redemption, any Investment Securities purchased by it as an investment whenever it shall be necessary to provide money to meet any payment from the applicable Fund. The Trustee shall advise the Foundation in writing, on or before the fifteenth day of each calendar month (or such later date as reasonably consented to by the Foundation), of all investments held for the credit of each Fund in its custody under the provisions of this Indenture as of the end of the preceding month and the value thereof, and shall list any investments which were sold or liquidated for less than their Value at the time thereof. The Foundation acknowledges that regulations of the Comptroller of the Currency grant the Foundation the right to receive brokerage confirmations of security transactions as they occur. The Foundation specifically waives such notification to the extent permitted by law and acknowledges that the Foundation will receive periodic cash transaction statements, which will detail all investment transactions. Unless contrary to written investment directions previously submitted to the Trustee, an account statement delivered by the Trustee to the Foundation shall be deemed written confirmation by the Foundation that the investment transactions identified therein accurately reflect the investment directions given to the Trustee by the Foundation, unless the Foundation notifies the Trustee in writing to the contrary within 30 days after the date of such statement.

Money in any Fund constituting a part of the Trust Estate may be pooled for the purpose of making investments and may be used to pay accrued interest on Investment Securities purchased. The Trustee may act as principal or agent in the acquisition or disposition of any Investment Securities.

Notwithstanding the foregoing, the Trustee shall not be responsible or liable for any losses on investments made by it hereunder or for keeping all Funds held by it, fully invested at all times, its only responsibility being to comply with the investment instructions of the Foundation or its designee in a non-negligent manner.

Section 5.10 Purchase of Bonds. Pursuant to this Indenture, any amounts held under this Indenture which are available to redeem Bonds may instead be used to purchase Bonds outstanding under this Indenture at the same times and subject to the same conditions (except as to price) as apply to the redemption of Bonds, except that such purchases made with amounts held under this Indenture shall be made only if the purchase price shall be less than the required

redemption price and only if the related portion of the Interest Rate Swap can be simultaneously terminated and all amounts payable by the Foundation to the Swap Counterparty with respect thereto simultaneously paid.

## ARTICLE VI

### DEFAULTS AND REMEDIES

Section 6.1 Events of Default Defined. For the purpose of this Indenture, the following events are hereby defined as, and are declared to be, “Events of Default”:

- (a) default in the due and punctual payment of the principal of or interest on any of the Bonds when due or failure to make any Swap Payment or Parity Termination Payment when due;
- (b) default in the performance or observance of any other of the covenants, agreements, or conditions on the part of the Foundation to be kept, observed, and performed contained in this Indenture or in the Bonds, and continuation of such default for a period of 90 days after written notice thereof by the Trustee to the President and Secretary of the Foundation; and
- (c) the occurrence of an Event of Bankruptcy.

Any notice herein provided to be given to the President or Secretary of the Foundation with respect to any default shall be deemed sufficiently given if sent by registered mail with postage prepaid to the Person to be notified, addressed to such Person at the post office address as shown at the end of this Indenture or such other address as may hereafter be given as the principal office of the Foundation in writing to the Trustee by the Secretary of the Foundation. The Trustee may give any such notice in its discretion and shall give such notice if requested to do so in writing by the Registered Owners of at least 25% of the collective aggregate principal amount of the Bonds at the time Outstanding and by the Swap Counterparty.

Section 6.2 Remedy on Default; Possession of Trust Estate. Subject to Section 6.9 hereof, upon the happening and continuance of any Event of Default, the Trustee or by its attorneys or agents may or shall, upon direction by the Registered Owners of a majority of the collective aggregate principal amount of the Bonds at the time Outstanding and upon receipt of satisfactory indemnification, enter into and upon and take possession of such portion of the Trust Estate as shall be in the custody of others, and all property comprising the Trust Estate, and each and every part thereof, and exclude the Foundation and its agents, servants, and employees wholly therefrom, and have, hold, use, operate, manage, and control the same and each and every part thereof, and in the name of the Foundation or otherwise, as it shall deem best, conduct the business thereof and exercise the privileges pertaining thereto and all the rights and powers of the Foundation and use all of the then existing Trust Estate for that purpose, and collect and receive all charges, income and Revenue of the same and of every part thereof, and after deducting therefrom all expenses incurred hereunder (except in the case of an Event of Default under Section 6.1(b) herein, in which case the Trustee shall not incur any expenses until indemnified and so directed by the Registered Owners of a majority of the collective aggregate principal amount of the Bonds at the time Outstanding) and all other proper outlays herein authorized including but not limited to those outlays referenced in Section 5.3 hereof, and all payments which may be made as just and reasonable compensation for its own services, and for

the services of its attorneys, agents, and assistants, the Trustee shall apply the rest and residue of the money received by the Trustee as follows:

(a) if the principal of none of the Bonds shall have become due, first to the payment of the interest in default on the Bonds and to the payment of all Swap Payments and Parity Termination Payments then due, in order of the maturity of the installments thereof, with interest on the overdue installments thereof at the same rates, respectively, as were borne by the Bonds on which such interest shall be in default and any such Swap Payments and Parity Termination Payments as provided in the Interest Rate Swap, such payments to be made ratably to the parties entitled thereto without discrimination or preference and second, if the Aggregate Market Value of the assets in the Trust Estate is equal to at least 115% of the unpaid principal amount of the Bonds Outstanding (plus any accrued and unpaid expenses and Swap Payments) and the principal and interest then due on any Bonds shall have been paid in full, to the payment of the Subordinated Swap Payments; and

(b) if the principal of any of the Bonds shall have become due by declaration of acceleration or otherwise, first to the payment of the interest on the Bonds and all Swap Payments and Parity Termination Payments then due, in the order of the maturity of the installments thereof, with interest on overdue installments thereof at the same rates, respectively, as were borne by the Bonds on which such interest shall be in default and such Swap Payments and Parity Termination Payments as provided in the Interest Rate Swap then due, as the case may be, second, to the payment of the principal of all Bonds then due (pro rata among the series of the then Outstanding Bonds, if amounts are insufficient to pay all principal then due) and third to any Subordinated Swap Payments owed to the Swap Counterparty under the Interest Rate Swap.

Section 6.3 Remedies on Default; Advice of Counsel. Upon the happening of any Event of Default, the Trustee may proceed to protect and enforce the rights of the Trustee and the Registered Owners in such manner as counsel for the Trustee may advise, whether for the specific performance of any covenant, condition, agreement or undertaking herein contained, or in aid of the execution of any power herein granted, or for the enforcement of such other appropriate legal or equitable remedies as, in the opinion of such counsel, may be more effectual to protect and enforce the rights aforesaid.

Section 6.4 Remedies on Default; Sale of Trust Estate. Upon the happening of any Event of Default and if the principal of all of the Outstanding Bonds shall have been declared due and payable, then and in every such case, and irrespective of whether other remedies authorized shall have been pursued in whole or in part, the Trustee may sell, with or without entry, to the highest bidder the Trust Estate, and all right, title, interest, claim and demand thereto and the right of redemption thereof, at any such place or places, and at such time or times and upon such notice and terms as may be required by law; provided, however, that no such sale shall be made unless adequate provision has been made to assure that such transfer shall not impair the Foundation's capacity to comply with its obligations relative to the restrictions upon Portfolio Yield and to the rebate of certain amounts to the federal government as such obligations would be calculated upon the date of such sale in accordance with the Tax Certificate. Upon such sale the Trustee may make and deliver to the purchaser or purchasers a

good and sufficient assignment or conveyance for the same, which sale shall be a perpetual bar both at law and in equity against the Foundation and all Persons claiming such properties. No purchaser at any sale shall be bound to see to the application of the purchase money or to inquire as to the authorization, necessity, expediency or regularity of any such sale. The Trustee is hereby irrevocably appointed the true and lawful attorney in fact of the Foundation, in its name and stead, to make and execute all bills of sale, instruments of assignment and transfer and such other documents of transfer as may be necessary or advisable in connection with a sale of all or part of the Trust Estate, but the Foundation, if so requested by the Trustee, shall ratify and confirm any sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers all such instruments as may be necessary, or in the judgment of the Trustee, proper for the purpose which may be designated in such request. In addition, the Trustee may proceed to protect and enforce the rights of the Trustee and the Registered Owners of the Obligations in such manner as counsel for the Trustee may advise, whether for the specific performance of any covenant, condition, agreement or undertaking herein contained, or in aid of the execution of any power herein granted, or for the enforcement of such other appropriate legal or equitable remedies as may be in the opinion of such counsel, be more effectual to protect and enforce the rights aforesaid. The Trustee shall take any such action or actions if requested to do so in writing by the Registered Owners of at least a majority of the collective aggregate principal amount of the Bonds at the time Outstanding, upon receipt of satisfactory indemnification, if required, pursuant to Section 7.1(c) hereof. Subject to Section 10.14 hereof, the Trustee shall also obtain the consent of the Swap Counterparty to any such action or actions prior to taking any actions requested by the Registered Owners if such action or actions could adversely affect the rights of the Swap Counterparty hereunder, or the benefits conferred upon the Swap Counterparty hereunder. If such consent is requested of the Swap Counterparty and no reply is received by the Trustee within a period of 30 days from the oral confirmation by the Trustee that the Swap Counterparty has received a written request for such consent, then the Swap Counterparty shall be deemed to have consented to such action.

Section 6.5 Appointment of Receiver. In case an Event of Default occurs, and if all of the Outstanding Bonds shall have been declared due and payable and in case any judicial proceedings are commenced to enforce any right of the Trustee or of the Registered Owners under this Indenture or otherwise, then as a matter of right, the Trustee shall be entitled to the appointment of a receiver of the Trust Estate and of the earnings, income or Revenue, rents, issues and profits thereof with such powers as the court making such appointments may confer.

Section 6.6 Restoration of Position. In case the Trustee shall have proceeded to enforce any rights under this Indenture by sale or otherwise, and such proceedings shall have been discontinued, or shall have been determined adversely to the Trustee, then and in every such case to the extent not inconsistent with such adverse decree, the Foundation and the Trustee shall be restored to their former respective positions and the rights hereunder in respect to the Trust Estate, and all rights, remedies, and powers of the Trustee and of the Registered Owners shall continue as though no such proceeding had been taken.

Section 6.7 Purchase of Properties by Trustee or Registered Owners. In case of any such sale of the Trust Estate, any Registered Owner or Registered Owners or committee of Registered Owners or the Trustee, may bid for and purchase such property and upon compliance with the terms of sale may hold, retain possession, and dispose of such property as the absolute



right of the purchaser or purchasers without further accountability and shall be entitled, for the purpose of making any settlement or payment for the property purchased, to use and apply any Obligations hereby secured and any interest thereon due and unpaid, by presenting such Obligations in order that there may be credited thereon the sum apportionable and applicable thereto out of the net proceeds of such sale, and thereupon such purchaser or purchasers shall be credited on account of such purchase price payable to him or them with the sum apportionable and applicable out of such net proceeds to the payment of or as a credit on the Obligations so presented.

Section 6.8 Application of Sale Proceeds. The proceeds of any sale of the Trust Estate, together with any funds at the time held by the Trustee and not otherwise appropriated, shall be applied by the Trustee as set forth in Section 6.2 hereof, and then to the Foundation or whosoever shall be lawfully entitled thereto.

Section 6.9 Accelerated Maturity. If an Event of Default shall have occurred and be continuing, the Trustee may declare, or upon the written direction by the Registered Owners of a majority of the collective aggregate principal amount of the Bonds then Outstanding, shall declare, the principal of all Bonds then Outstanding, and the interest thereon, if not previously due, immediately due and payable, anything in the Bonds or this Indenture to the contrary notwithstanding; provided, however, that for a declaration of acceleration upon a default pursuant to Section 6.1(b) hereof shall require the consent of 100% of the Registered Owners of the collective aggregate principal amount of the Bonds then Outstanding. In each case, prior to a declaration of acceleration, and subject to Section 10.14 hereof, the Trustee shall obtain the consent of the Swap Counterparty (and if such consent is requested of the Swap Counterparty and no reply is received by the Trustee within a period of 30 days from the oral confirmation by the Trustee that the Swap Counterparty has received a written request for such consent, then the Swap Counterparty shall be deemed to have consented to such declaration of acceleration).

Section 6.10 Remedies not Exclusive. The remedies herein conferred upon or reserved to the Trustee or the Registered Owners of Obligations are not intended to be exclusive of any other remedy, but each remedy herein provided shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, and every power and remedy hereby given to the Trustee or to the Registered Owners of Obligations, or any supplement hereto, may be exercised from time to time as often as may be deemed expedient. No delay or omission of the Trustee or of any Registered Owner of Obligations to exercise any power or right arising from any default hereunder shall impair any such right or power or shall be construed to be a waiver of any such default or to be acquiescence therein.

Section 6.11 Direction of Trustee. Upon the happening of any Event of Default, and anything in this Indenture to the contrary notwithstanding, the Registered Owners of a majority of the collective aggregate principal amount of the Bonds then Outstanding, and subject to Section 10.14 hereof, with the consent of the Swap Counterparty (and if such consent is requested of the Swap Counterparty and no reply is received by the Trustee within a period of 30 days from the oral confirmation by the Trustee that the Swap Counterparty has received a written request for such consent, then the Swap Counterparty shall be deemed to have consented), shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in

connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 6.12 Right to Enforce in Trustee. No Registered Owner of any Obligation shall have any right as such Registered Owner to institute any suit, action, or proceedings for the enforcement of the provisions of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or for any other remedy hereunder, all rights of action hereunder being vested exclusively in the Trustee, unless and until such Registered Owner shall have previously given to the Trustee written notice of a default hereunder, and of the continuance thereof, and also unless the Registered Owners of the requisite principal amount of the Bonds then Outstanding shall have made written request upon the Trustee (and, subject to Section 10.14 hereof, the consent of the Swap Counterparty has been received, if required above, or if such consent is requested of the Swap Counterparty and no reply is received by the Trustee within a period of 30 days from the oral confirmation by the Trustee that the Swap Counterparty has received a written request for such consent, then the Swap Counterparty shall be deemed to have consented) and the Trustee shall have been afforded reasonable opportunity to institute such action, suit or proceeding in its own name, and unless the Trustee shall have been offered reasonable indemnity and security satisfactory to it against the costs, expenses, and liabilities to be incurred therein or thereby and the Trustee for 30 days after receipt of such notification, request, or offer of indemnity, shall have failed to institute any such action, suit or proceeding. It is understood and intended that no one or more Registered Owners of the Obligations shall have the right in any manner whatever by his or their action to affect, disturb, or prejudice the lien of this Indenture or to enforce any right hereunder except in the manner herein provided and for the equal benefit of the Registered Owners of the Obligations then Outstanding.

Section 6.13 Physical Possession of Obligations Not Required. In any suit or action by the Trustee arising under this Indenture or on all or any of the Obligations issued hereunder, or any supplement hereto, the Trustee shall not be required to produce such Obligations, but shall be entitled in all things to maintain such suit or action without their production.

Section 6.14 Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default hereunder and its consequences and rescind any declaration of acceleration of Bonds, and shall do so upon the written request of the Registered Owners of at least a majority of the collective aggregate principal amount of the Bonds then Outstanding and, subject to Section 10.14 hereof, with the consent of the Swap Counterparty (and if such consent is requested of the Swap Counterparty and no reply is received by the Trustee within a period of 30 days from the oral confirmation by the Trustee that the Swap Counterparty has received a written request for such consent, then the Swap Counterparty shall be deemed to have consented to such action or actions); provided, however, that there shall not be waived (a) any Event of Default in the payment of the principal of any Outstanding Bonds at the date of Stated Maturity or redemption thereof, or any default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest or all arrears of payments of principal (with interest upon such principal and premium, if any, at a rate which shall be 1% per annum above the highest rate of interest borne by any Bonds during the 365 days prior to the date on which such principal and premium, if any, were due or the maximum rate permitted by law if less than such rate aforesaid) and all expenses of the Trustee, in connection with such default shall have

been paid or provided for or (b) any default in the payment of amounts set forth in Sections 4.13 and 7.4 hereof or (c) any default in the payment to the Swap Counterparty without its consent. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Foundation, the Trustee and the Registered Owners of Obligations shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to or affect any subsequent or other default, or impair any rights or remedies consequent thereon.

## ARTICLE VII

### THE TRUSTEE

Section 7.1 Acceptance of Trust. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following terms and conditions:

- (a) Except during the continuance of an Event of Default,
  - (i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
  - (ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform as to form with the requirements of this Indenture and whether or not they contain the statements required under this Indenture.
- (b) In case an Event of Default has occurred and is continuing, the Trustee, in exercising the rights and powers vested in it by this Indenture, shall use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.
- (c) Before taking any action hereunder requested by Registered Owners, the Trustee may require that it be furnished an indemnity bond or other indemnity and security satisfactory to it by the Registered Owners, as applicable, for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which results from the negligence or willful misconduct of the Trustee.

Section 7.2 Recitals of Others. The recitals, statements, and representations set forth herein and in the Bonds shall be taken as the statements of the Foundation, and the Trustee assumes no responsibility for the correctness of the same except for its certificate of authentication on the Bonds. The Trustee makes no representations as to the title of the Foundation in the Trust Estate or as to the security afforded thereby and hereby, or as to the validity or sufficiency of this Indenture or of the Bonds issued hereunder except for its certificate of authentication on the Bonds, and the Trustee shall incur no responsibility in respect of such matters.

Section 7.3 As to Filing of Indenture. The Trustee shall be under no duty (a) to file or record, or cause to be filed or recorded, this Indenture or any instrument supplemental hereto, (b) or to procure any further order or additional instruments of further assurance, (c) to see to the

delivery to it of any personal property intended to be mortgaged or pledged hereunder or thereunder, (d) or to do any act which may be suitable to be done for the better maintenance of the lien or security hereof (other than the filing of any continuation statements), or (e) for giving notice of the existence of such lien, or for extending or supplementing the same or to see that any rights to Revenue and Funds intended now or hereafter to be transferred in trust hereunder are subject to the lien hereof. The Trustee shall not be liable for failure of the Foundation to pay any tax or taxes in respect of such property, or any part thereof, or the income therefrom or otherwise, nor shall the Trustee be under any duty in respect of any tax which may be assessed against it or the Registered Owners in respect of such property or pledged Revenue and Funds.

Section 7.4 Indemnification of Trustee. The Trustee shall be under no obligation or duty to perform any act at the request of Registered Owners or to institute or defend any suit in respect thereof unless properly indemnified and provided with security to its satisfaction as provided in Section 7.1(c) hereof. The Trustee shall not be required to take notice, or be deemed to have knowledge, of any default or Event of Default of the Foundation hereunder and may conclusively assume that there has been no such default or Event of Default (other than an Event of Default described in Sections 6.1(a) or (b) hereof) unless and until it shall have been specifically notified in writing at the address in Section 10.1 hereof of such default or Event of Default by (a) any Registered Owner or (b) an Authorized Officer of the Foundation. The Foundation agrees to indemnify the Trustee and its agents and/or representatives for, and to hold each of them harmless against, any loss, liability, or expenses incurred without negligence, willful misconduct or bad faith on their parts, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of the Trustee's powers or duties hereunder. Such indemnification shall survive its resignation or removal, or the termination of this Indenture.

The Foundation agrees to indemnify and hold harmless the Trustee against any and all claims, demands, suits, actions or other proceedings and all liabilities, costs and expenses whatsoever caused by any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact (other than a material fact relating to the Trustee provided by the Trustee) contained in any offering document distributed in connection with the issuance of the Bonds or caused by any omission or alleged omission from such offering document such information of any material fact (other than a material fact relating to the Trustee provided by the Trustee) required to be stated therein or necessary in order to make the statements made therein in the light of the circumstances under which they were made, not misleading.

Section 7.5 Trustee's Right to Reliance. The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, appraisal, opinion, report or document of the Servicer, Foundation Order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

Whenever in the administration hereof the Trustee shall reasonably deem it desirable that a matter be proved or established prior to taking, suffering, or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith

on its part, rely upon a certificate signed by an Authorized Officer of the Foundation or an authorized officer of the Servicer.

The Trustee shall not be liable for any action taken, suffered, or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it hereby; provided, however, that the Trustee shall be liable for its negligence or willful misconduct in taking such action.

The Trustee is authorized, under this Indenture, subject to Section 4.13 hereof, to sell, assign, transfer, convey, or repurchase Financed Eligible Loans in accordance with a Foundation Order, provided that no such Financed Eligible Loan originated under the Higher Education Act may be sold, assigned, transferred, or conveyed to any Person who is not an Eligible Lender unless permitted by the Higher Education Act. The Trustee is further authorized to enter into agreements with other Persons, in its capacity as Trustee, in order to carry out or implement the terms and provisions of this Indenture.

Section 7.6 Compensation of Trustee. The Foundation shall pay to the Trustee from time to time reasonable compensation for all services, reasonable expenses, charges, and other disbursements incurred in and about the administration and execution of the trusts hereby created. The Trustee may not change the amount of its annual compensation without giving the Foundation at least 90 days' written notice prior to the beginning of a Fiscal Year. In the event of a default of such payments by the Foundation, and as security for such payment, the Trustee shall have a lien therefor on the Trust Estate prior to any rights of the Registered Owners.

Section 7.7 Trustee May Own Bonds. The Trustee hereunder, or any successor Trustee, in its individual or other capacity, may become the owner or pledgee of Bonds and may otherwise deal with the Foundation, with the same rights it would have if it were not the Trustee. The Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or act in any other capacity in respect to, any committee formed to protect the rights of the Registered Owners or to effect or aid in any reorganization growing out of the enforcement of the Bonds, the Interest Rate Swap or of this Indenture, whether or not any such committee shall represent the Registered Owners of more than 25% or 50% of the collective aggregate principal amount of the Bonds then Outstanding.

Section 7.8 Resignation of Trustee. The Trustee and any successor to the Trustee may resign and be discharged from the trust created by this Indenture by giving to the President of the Foundation notice in writing which notice shall specify the date on which such resignation is to take effect; provided, however, that such resignation shall only take effect on the day specified in such notice if a successor Trustee shall have been appointed pursuant to Section 7.10 hereof (and is qualified to be the Trustee under the requirements of Section 7.10 hereof). If no successor Trustee has been appointed by the date specified or within a period of 90 days from the receipt of the notice by the Foundation, whichever period is the longer, the Trustee may (a) appoint a temporary successor Trustee having the qualifications provided in Section 7.10 hereof or (b) request a court of competent jurisdiction to (i) require the Foundation to appoint a successor, as provided in Section 7.10 hereof, within three days of the receipt of citation or notice by the court, or (ii) appoint a Trustee having the qualifications provided in Section 7.10 hereof. In no event may the resignation of the Trustee be effective until a qualified successor Trustee shall have been

selected and appointed. In the event a temporary successor Trustee is appointed pursuant to (a) above, the Board may remove such temporary successor Trustee and appoint a successor thereto pursuant to Section 7.10 hereof.

Section 7.9 Removal of Trustee. The Trustee or any successor Trustee may be removed (a) at any time by the Registered Owners of a majority of the collective aggregate principal amount of the Bonds then Outstanding, (b) by the Foundation for cause or upon the sale or other disposition of the Trustee or its trust functions or (c) by the Foundation without cause so long as no Event of Default exists or has existed within the last 90 days, upon payment to the Trustee so removed of all money then due to it hereunder and appointment of a successor thereto by the Foundation and acceptance thereof by said successor. One copy of any such instrument shall be filed with the Secretary of the Foundation and the other with the Trustee so removed.

In the event a Trustee (or successor Trustee) is removed, by any person or for any reason permitted hereunder, such removal shall not become effective until (a) in the case of removal by the Registered Owners, such Registered Owners by instrument or concurrent instruments in writing (signed and acknowledged by such Registered Owners or their attorneys in fact) filed with the Trustee removed have appointed a successor Trustee or otherwise the Foundation shall have appointed a successor, and (b) the successor Trustee has accepted appointment as such.

Section 7.10 Successor Trustee. In case at any time the Trustee or any successor Trustee shall resign, be dissolved, or otherwise shall be disqualified to act or be incapable of acting, or in case control of the Trustee or of any successor Trustee or of its officers shall be taken over by any public officer or officers, a successor Trustee may be appointed by the Board by an instrument in writing duly authorized by resolution. In the case of any such appointment by the Board of a successor to the Trustee, the Board shall forthwith cause notice thereof to be mailed to the Registered Owners of the Obligations at the address of each Registered Owner of the Bonds appearing on the bond registration books maintained by the Trustee and to the Swap Counterparty at the address listed herein unless otherwise designated pursuant to the Interest Rate Swap.

Every successor Trustee appointed by the Registered Owners, by a court of competent jurisdiction, or by the Board shall be a bank or trust company in good standing, organized and doing business under the laws of the United States or of a state therein, which has a reported capital and surplus of not less than \$50,000,000, be authorized under the law to exercise corporate trust powers, be subject to supervision or examination by a federal or state authority, and be an Eligible Lender so long as such designation is necessary to maintain guarantees and federal benefits under the Higher Education Act with respect to the Financed Eligible Loans originated under the Higher Education Act.

Section 7.11 Manner of Vesting Title in Trustee. Any successor Trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor Trustee, and also to the Foundation, an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed, or conveyance shall become fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of its predecessors in trust hereunder (except that the predecessor Trustee shall continue to have the benefits to indemnification hereunder together with the successor Trustee), with like effect as if originally

named as Trustee herein; but the Trustee ceasing to act shall nevertheless, on the written request of an Authorized Officer of the Foundation, or an authorized officer of the successor Trustee, execute, acknowledge, and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title, and interest of the Trustee which it succeeds, in and to pledged Revenue and Funds and such rights, powers, trusts, duties, and obligations, and the Trustee ceasing to act also, upon like request, pay over, assign, and deliver to the successor Trustee any money or other property or rights subject to the lien of this Indenture, including any pledged securities which may then be in its possession. Should any deed or instrument in writing from the Foundation be required by the successor Trustee for more fully and certainly vesting in and confirming to such new Trustee such estate, properties, rights, powers, and duties, any and all such deeds and instruments in writing shall on request be executed, acknowledged and delivered by the Foundation.

In case any of the Bonds to be issued hereunder shall have been authenticated but not delivered, any successor Trustee may adopt the certificate of authentication of the Trustee or of any successor to the Trustee; and in case any of the Bonds shall not have been authenticated, any successor to the Trustee may authenticate such Bonds in its own name; and in all such cases such certificate shall have the full force which it has anywhere in the Bonds or in this Indenture.

Section 7.12 Additional Covenants by the Trustee to Conform to the Higher Education Act. The Trustee covenants that it will at all times be an Eligible Lender under the Higher Education Act so long as such designation is necessary, as determined by the Foundation, to maintain the guarantees and federal benefits under the Higher Education Act with respect to the Financed Eligible Loans if the same were held and owned by the Trustee and that it will not dispose of or deliver any Financed Eligible Loans originated under the Higher Education Act or any security interest in any such Financed Eligible Loans to any party (other than a person acting as agent or bailee for the Foundation) who is not an Eligible Lender so long as the Higher Education Act requires an Eligible Lender to be the owner or holder of such Financed Eligible Loans; provided, however, that nothing above shall prevent the Trustee from delivering the Eligible Loans to the Servicer or the Guaranty Agency pursuant to Sections 4.8 or 4.11(b) hereof.

The Trustee shall not be accountable or responsible in any manner whatsoever for any action of the Foundation or of the depository bank of any funds of the Foundation, or the Servicer while the Servicer is acting as bailee, custodian or agent of the Foundation with respect to the Financed Eligible Loans except, to the extent provided in the Servicing Agreement, for actions taken in compliance with any instruction or direction given to the Trustee, or for the application of funds or moneys by the Servicer until such time as funds are received by the Trustee.

So long as any Obligations are Outstanding, the Trustee (a) will maintain its participation in the Federal Family Education Loan Program as reflected in the letter of September 4, 1968 from the Department of Education to the Trustee; and (b) will maintain its status as an "eligible lender" under the Higher Education Act.

Section 7.13 Right of Inspection. A Registered Owner shall be permitted at reasonable times during regular business hours and in accordance with reasonable regulations prescribed by

the Trustee to examine at the principal office of the Trustee a copy of any report or instrument theretofore filed with the Trustee relating to the condition of the Trust Estate.

Section 7.14 Limitation with Respect to Examination of Reports. Except as provided in this Indenture, the Trustee shall be under no duty to examine any report or statement or other document required or permitted to be filed with it by the Foundation.

Section 7.15 Additional Covenants of Trustee. The Trustee, by the execution hereof, covenants, represents and agrees that:

(a) it will not exercise any of the rights, duties, or privileges under this Indenture (particularly those enumerated in Article VI hereof or Article VII hereof) in such manner as would cause the Eligible Loans held or acquired under the terms hereof to be transferred, assigned, or pledged as security to any person or entity other than as permitted by this Indenture; and

(b) it will, upon written notice from an Authorized Officer of the Foundation, the Secretary, or the Guaranty Agency, use its reasonable efforts to cause this Indenture to be amended (in accordance with Section 8.1 hereof) if the Higher Education Act is hereafter amended so as to be contrary to the terms of this Indenture.

(c) it will cause to be filed from time to time all continuation statements under the Uniform Commercial Code of the State as in the opinion of counsel to the Trustee are necessary to preserve the lien of, and the security interests created by this Indenture, and will cause to be filed and recorded, as the case may be, all other documents in such manner and in such places as the Trustee may deem necessary in order to protect and maintain in force the lien of, and the security interests created by, this Indenture and will employ counsel in connection therewith, the costs of which shall be borne by the Foundation or the Trust Estate.

Section 7.16 Trustee to Cause Investments to be Made. As to any Funds held by the Trustee under this Indenture, the same shall be invested by the Trustee as directed by a Foundation Order, within the limitations herein prescribed. In the absence of any such direction, the Trustee shall invest amounts held hereunder in those Investment Securities described in a certificate of the Foundation provided to the Trustee on the Date of Issuance.

Section 7.17 Duty of Trustee with Respect to Rating Agencies. It shall be the duty of the Trustee to notify each Rating Agency then rating any series of the Bonds (but the Trustee shall incur no liability for any failure to do so) of (a) any amendment or termination of this Indenture, (b) redemption or defeasance of all the Bonds, or (c) any change in the Trustee; provided, however, the provisions of this Section do not apply when such documents have been previously supplied to such Rating Agency and the Trustee has received written evidence to such effect, all as may be required by this Indenture. All notices and other items to the Rating Agencies required under this Section shall be delivered to Moody's at the below address or by Electronic Means and shall be delivered to S&P via electronic delivery to [Servicer\\_reports@sandp.com](mailto:Servicer_reports@sandp.com) or, for information not available in electronic format, to the below address:

Standard & Poor's Ratings Services  
55 Water Street, 41<sup>st</sup> Floor  
New York, New York 10041-0003  
Attention: ABS Surveillance Group

Moody's Investors Service  
99 Church Street  
New York, New York 10007  
Attention: Asset-Backed and Pooled Risk Finance Group

Section 7.18 Merger of the Trustee. Any corporation into which the Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Indenture, without the execution or filing of any paper of any further act on the part of any other parties hereto.

Section 7.19 Receipt of Funds from Servicer. The Trustee shall not be accountable or responsible in any manner whatsoever for any action of the Foundation, the Servicer or the depository bank of any funds of the Foundation, or for the application of funds or moneys by the Servicer until such time as funds are received by the Trustee. The Servicer shall prepare for filing with the Secretary any required reports.

Section 7.20 Duties of the Trustee in Connection with Interest Rate Swap. The Trustee hereby represents, acknowledges and agrees that:

(a) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(b) It has reviewed Part 5(z) of the Schedule to the Interest Rate Swap; and

(c) The Trustee shall accept Swap Receipts and to the extent and from the sources provided in this Indenture, shall make all Swap Payments, Parity Termination Payments and Subordinated Swap Payments in accordance with the terms of this Indenture and the Interest Rate Swap.

Section 7.21 Trustee May Act Through Agents. The Trustee may execute any of the trusts or powers hereof and perform any duty hereunder, either itself or by or through independent agents appointed by it; provided, however, the Trustee shall be answerable and accountable for any default, negligence or willful misconduct of any such agents. Notwithstanding the foregoing, upon receipt of a Rating Confirmation from Moody's approving the appointment of any such independent agent, the Trustee may execute any of the trusts or powers hereof and perform any duty hereunder by or through such agent of the Trustee, and it shall not be answerable or accountable for any default, negligence or willful misconduct of any such agent. All reasonable costs incurred by the Trustee and all reasonable compensation to all

such persons as may be appointed by the Trustee in connection with the trusts hereof shall be paid by the Foundation.

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES

Section 8.1 Supplemental Indentures Not Requiring Consent of Registered Owners. The Foundation and the Trustee may, without the consent of or notice to any of the Registered Owners of any Obligations enter into any indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Indenture;
- (b) to grant to or confer upon the Trustee for the benefit of the Registered Owners any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Registered Owners or the Trustee;
- (c) to subject to this Indenture additional revenues, properties or collateral;
- (d) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute;
- (e) to evidence the appointment of a separate or co-Trustee or a co-registrar or transfer agent or the succession of a new Trustee hereunder, or any additional or substitute Guaranty Agency or Servicer;
- (f) to add such provisions to or to amend such provisions of this Indenture as may, in Bond Counsel's opinion, be necessary or desirable to assure implementation of the Program in conformance with the Higher Education Act if along with such Supplemental Indenture there is filed a Bond Counsel's opinion to the effect that the addition or amendment of such provisions will in no way impair the existing security of the Registered Owners of any Outstanding Obligations;
- (g) to make any changes necessary to comply with the Higher Education Act or the Code;
- (h) to create any additional Funds or Accounts or Subaccounts under this Indenture deemed by the Trustee to be necessary or desirable; and
- (i) to make any other change which, in the judgment of the Trustee is not to the material prejudice of the Registered Owners of any Obligations. In making any such judgment, the Trustee may rely upon an opinion of counsel.

Section 8.2 Supplemental Indentures Requiring Consent of Registered Owners. Exclusive of Supplemental Indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Registered Owners of not less than a majority of the collective aggregate principal amount of the Bonds then Outstanding which are affected shall have the right, from time to time, to consent to and approve the execution by the Foundation and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section contained shall permit, or be construed as permitting (a) without the consent of all of the Registered Owners of all then Outstanding Bonds, (i) an extension of the Stated Maturity date or mandatory sinking fund redemption date, or the date of payment of the interest on any Bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or (iii) a privilege or priority of any Bonds or Bonds over any other Bonds or Bonds except as otherwise provided herein, or (iv) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture, or (v) the creation of any lien other than a lien ratably securing all of the Bonds at any time Outstanding hereunder except as otherwise provided herein or (b) any modification of the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of the Trustee without the prior written approval of the Trustee.

The Trustee and the Foundation shall not enter into any Supplemental Indenture or any other amendment, modification or waiver of the granting clauses hereto, Article III, Article IV, Article V, Article VI, Article IX, Section 7.20, Section 10.2, Section 10.3, Section 10.4, Section 10.14 or Section 10.16 herein or this paragraph or any definition in Article I used in any such clause, Article or Section or used in another definition used in such clause, Article or Section, without, in each case, the prior written consent of the Swap Counterparty (which consent shall not be unreasonably withheld) or if such consent is requested of the Swap Counterparty and no reply is received by the Trustee within a period of 30 days from the oral confirmation by the Trustee that the Swap Counterparty has received a written request for such consent, then the Swap Counterparty shall be deemed to have consented.

If at any time the Foundation shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be mailed by registered or certified mail to each Registered Owner of an Obligation at the address listed herein unless otherwise designated pursuant to the Interest Rate Swap. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Registered Owners. If, within 60 days, or such longer period as shall be prescribed by the Foundation, following the mailing of such notice, the Registered Owners of not less than a majority of the collective aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented in writing to and approved the execution thereof as herein provided, and receipt of the consent of the Swap Counterparty, if required, no Registered Owner of any Bonds shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Foundation from executing the same or from taking any action pursuant to the provisions

thereof. Upon the execution of any such Supplemental Indenture as in this Section 8.2 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

Section 8.3 Additional Limitation on Modification of Indenture. None of the provisions of this Indenture (including Sections 8.1 and 8.2 hereof) shall permit an amendment to the provisions of the Indenture which permits the transfer of all or part of the Financed Eligible Loans originated under the Higher Education Act or granting of a security interest therein to any Person other than an Eligible Lender or the Servicer, unless the Higher Education Act is hereafter modified so as to permit the same.

No amendment to this Indenture or to the indentures supplemental thereto shall be effective unless the Trustee receives an opinion of Bond Counsel to the effect that such amendment was adopted in conformance with this Indenture and will not affect adversely the exclusion from gross income for federal income tax purposes of interest on the Bonds.

## ARTICLE IX

### PAYMENT AND CANCELLATION OF BONDS

#### AND SATISFACTION OF INDENTURE

Section 9.1 Trust Irrevocable. The trust created by the terms and provisions of this Indenture is irrevocable until the indebtedness secured hereby (the Bonds and interest thereon) and all Swap Payments, Parity Termination Payments and Subordinated Swap Payments are fully paid or provision made for its payment as provided in this Article and the Interest Rate Swap have expired or terminated.

Section 9.2 Satisfaction of Indenture.

(a) If the Foundation shall pay, or cause to be paid, or there shall otherwise be paid (i) to the Registered Owners of the Bonds, the principal of and interest on the Bonds, at the times and in the manner stipulated in this Indenture, (ii) to the Swap Counterparty, all Swap Payments, Parity Termination Payments and Subordinated Swap Payments then due, (iii) all other amounts to be paid hereunder and (iv) to the United States of America, the amount required to be rebated in satisfaction of its obligations as described in the Tax Certificate, then the pledge of the Trust Estate, except the Rebate Fund, which is not pledged hereunder, and all covenants, agreements, and other obligations of the Foundation to the Registered Owners of Bonds other than as provided in Section 4.13 hereof shall thereupon cease, terminate, and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the Foundation all such instruments as may be desirable to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver all money held by it under this Indenture to the party entitled to receive the same under this Indenture. If the Foundation shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of any Outstanding Bonds the principal of and interest on such Bonds, and to the Swap Counterparty all Swap Payments, Parity Termination Payments and Subordinated Swap Payments then due, at the times and in the manner stipulated in this Indenture and in the Interest Rate Swap, such Bonds and the Swap Counterparty shall cease to be entitled to any lien, benefit, or security under this Indenture, and all covenants, agreements, and obligations of the Foundation to the Registered Owners thereof and the Swap Counterparty shall thereupon cease, terminate, and become void and be discharged and satisfied.

(b) Bonds or interest installments shall be deemed to have been paid within the meaning of Section 9.2(a) hereof if money for the payment or redemption thereof has been set aside and is being held in trust by the Trustee at the Stated Maturity or earlier redemption date thereof. Any Outstanding Bond shall, prior to the Stated Maturity or earlier redemption thereof, be deemed to have been paid within the meaning and with the effect expressed in Section 9.2(a) hereof if (i) such Bond is to be redeemed on any date prior to its Stated Maturity and (ii) the Trustee shall have given notice of redemption as provided herein on said date, or the Foundation shall have given irrevocable instructions to the Trustee to provide notice of redemption in accordance with this Indenture and there shall have been deposited with the Trustee either money in an amount which shall be

sufficient, or Governmental Obligations (including any Governmental Obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) the principal of and the interest on which when due will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal of and interest, to become due on such Bond on and prior to the redemption date or Stated Maturity thereof, as the case may be, as certified by an independent firm of public accountants. Notwithstanding anything herein to the contrary, however, (A) no such deposit shall have the effect specified in this subsection (b) if made during the existence of an Event of Default, unless made with respect to all of the Bonds then Outstanding, and (B) no such deposit shall be made unless there shall be delivered to the Trustee an opinion of Bond Counsel to the effect that such deposit will not adversely affect any exclusion from gross income for federal income tax purposes of interest on any Bond. Neither Governmental Obligations nor money deposited with the Trustee pursuant to this subsection (b) nor principal or interest payments on any such Governmental Obligations shall be withdrawn or used for any purpose other than, and shall be held irrevocably in trust in an escrow account for, the payment of the principal of and interest on such Bonds. Any cash received from such principal of and interest on such Governmental Obligations deposited with the Trustee, if not needed for such purpose, shall, to the extent practicable, be reinvested in Governmental Obligations maturing at times and in amounts sufficient to pay when due the principal of and interest on such Bonds on and prior to such redemption date or Stated Maturity thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Foundation, as received by the Trustee, free and clear of any trust, lien, or pledge. Any payment for Governmental Obligations purchased for the purpose of reinvesting cash as aforesaid shall be made only against delivery of such Governmental Obligations. For the purposes of this Section, "Governmental Obligations" shall mean and include only non-callable direct obligations of the Department of the Treasury of the United States of America or portions thereof (including interest or principal portions thereof), and such Governmental Obligations shall be of such amounts, maturities, and interest payment dates and bear such interest as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom, be sufficient to make the payments required herein, and which obligations have been deposited in an escrow account which is irrevocably pledged as security for the Bonds. Such term shall not include mutual funds and unit investment trusts.

(c) The Interest Rate Swap shall be deemed to have been paid when the Interest Rate Swap shall have been terminated or expired and all Swap Payments, Parity Termination Payments and Subordinated Swap Payments have been paid or duly provided for in accordance with the terms thereof.

(d) In no event shall the Trustee deliver over to the Foundation any Financed Eligible Loans originated under the Higher Education Act unless the Foundation is an Eligible Lender, if the Higher Education Act then in effect requires the owner or holder of such Financed Eligible Loans to be an Eligible Lender.



ARTICLE X  
GENERAL PROVISIONS

Section 10.1 Notices. Any notice, request or other instrument required by this Indenture to be signed or executed by the Registered Owners of Obligations may be executed by the execution of any number of concurrent instruments of similar tenor, and may be signed or executed by such Registered Owners of Obligations in person or by agent appointed in writing. As a condition for acting thereunder, the Trustee may demand proof of the execution of any such instrument and of the fact that any person claiming to be the owner of any of said Obligations is such owner and may further require the actual deposit of such Obligation or Obligations with the Trustee. The fact and date of the execution of such instrument may be proved by the certificate of any officer in any jurisdiction who by the laws thereof is authorized to take acknowledgments of deeds within such jurisdiction, that the person signing such instrument acknowledged before him the execution thereof, or may be proved by any affidavit of a witness to such execution sworn to before such officer.

All notices, requests and other communications to any party hereunder shall be in writing or given by other Electronic Means at the following addresses, and each address shall constitute each party's respective "Principal Office" for purposes of the Indenture:

If intended for the Foundation: New Mexico Educational Assistance Foundation  
7400 Tiburon, N.E.  
Albuquerque, New Mexico 87109  
Attention: President  
Telephone: (505) 761-2010  
Telecopier: (505) 345-6381  
E-mail: farbere@nmstudentloans.org

If intended for the Trustee: Wells Fargo Bank, National Association  
625 Marquette  
MAC N9311-115  
Minneapolis, Minnesota 55479  
Attention: Kimberly K. Johnson  
Telephone: (612) 667-3552  
Telecopier: (612) 667-2160  
E-mail: kimberly.k.johnson@wellsfargo.com

If intended for the Swap Counterparty: Royal Bank of Canada  
2<sup>nd</sup> Floor  
Royal Bank Plaza  
200 Bay Street  
Toronto, Ontario CANADA M5J 2W7  
Attention: GRM Trading Credit Risk  
Telephone: (416) 842-4577  
Telecopier: (416) 842-4839

Any party may change the address to which subsequent notices to such party are to be sent, or of its Principal Office, by notice to the others, delivered by hand or received by telecopier or registered first class mail, postage prepaid. Each such notice, request or other communication shall be effective when delivered by hand or received by telecopier or registered first class mail, postage prepaid.

Section 10.2 Covenants Bind Foundation. The covenants, agreements, conditions, promises, and undertakings in this Indenture shall extend to and be binding upon the successors and assigns of the Foundation, and all of the covenants hereof shall bind such successors and assigns, and each of them, jointly and severally. All the covenants, conditions, and provisions hereof shall be held to be for the sole and exclusive benefit of the parties hereto and their successors and assigns and of the Registered Owners from time to time of the Obligations.

No extension of time of payment of any of the Obligations shall operate to release or discharge the Foundation, it being agreed that the liability of the Foundation, to the extent permitted by law, shall continue until all of the Obligations are paid in full, notwithstanding any transfer of Financed Eligible Loans or extension of time for payment.

Section 10.3 Lien Created. This Indenture shall operate effectually as (a) a grant of lien on and security interest in, and (b) an assignment of, the Trust Estate.

Section 10.4 Severability of Lien. If the lien of this Indenture shall be or shall ever become ineffectual, invalid, or unenforceable against any part of the Trust Estate, which is not subject to the lien, because of want of power or title in the Foundation, the inclusion of any such part shall not in any way affect or invalidate the pledge and lien hereof against such part of the Trust Estate as to which the Foundation in fact had the right to pledge.

Section 10.5 Consent of Registered Owners Binds Successors. Any request or consent of the Registered Owner of any Obligations given for any of the purposes of this Indenture shall bind all future Registered Owners of the same Obligation or any Obligations issued in exchange therefor or in substitution thereof in respect of anything done or suffered by the Foundation or the Trustee in pursuance of such request or consent.

Section 10.6 Nonliability of Directors; No General Obligation. It is hereby expressly made a condition of this Indenture that any agreements, covenants, or representations herein contained or contained in the Bonds do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the incorporators, officers, employees, agents, or directors of the Foundation, or against the general credit of the Foundation, and in the event of a breach of any such agreement, covenant, or representation, no personal or pecuniary liability or charge payable directly or indirectly from the general revenues of the Foundation shall arise therefrom. Nothing contained in this Section, however, shall relieve the Foundation from the observance and performance of the several covenants and agreements on its part herein contained. The obligation of the Foundation hereunder and under the Interest Rate Swap and the Bonds is a special limited obligation, payable solely from the Trust Estate. Neither the State nor the Foundation shall be obligated to pay the Bonds or the interest thereon or the Interest Rate Swap except in the case of the Foundation from the Trust Estate, and neither the faith and credit nor the

taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on the Bonds or the Interest Rate Swap.

Section 10.7 Nonpresentment of Bonds or Interest Checks. Should any of the Bonds or interest checks not be presented for payment when due, the Trustee shall retain from any money transferred to it for the purpose of paying the Bonds or interest checks so due, for the benefit of the Registered Owners thereof, a sum of money sufficient to pay such Bonds or interest checks when the same are presented by the Registered Owners thereof for payment. Such money shall not be required to be invested. All liability of the Foundation to the Registered Owners of such Bonds or interest checks and all rights of such Registered Owners against the Foundation under the Bonds or interest checks or under this Indenture shall thereupon cease and determine, and the sole right of such Registered Owners shall thereafter be against such deposit. If any Bond or interest check shall not be presented for payment within the period of two years following its payment or redemption date, the Trustee shall to the extent permitted by law return to the Foundation the money theretofore held by it for payment of such Bond or interest check, and such Bond or interest check shall (subject to the defense of any applicable statute of limitation) thereafter be an unsecured obligation of the Foundation.

Section 10.8 Security Agreement. This Indenture constitutes a Financing Statement and a Security Agreement under the New Mexico Uniform Commercial Code.

Section 10.9 Laws Governing. It is the intent of the parties hereto that this Indenture shall in all respects be governed by the laws of the State.

Section 10.10 Severability. If any covenant, agreement, waiver, or part thereof in this Indenture contained be forbidden by any pertinent law or under any pertinent law be effective to render this Indenture invalid or unenforceable or to impair the lien hereof, then each such covenant, agreement, waiver, or part thereof shall itself be and is hereby declared to be wholly ineffective, and this Indenture shall be construed as if the same were not included herein.

Section 10.11 Exhibits. The terms of the Exhibits attached to this Indenture are incorporated herein in all particulars.

Section 10.12 Non Business Days. Except as may otherwise be provided herein, if the date for making payment of any amount hereunder or on any Bond, or if the date for taking any action hereunder, is not a Business Day, then such payment can be made without accruing further interest or action can be taken on the next succeeding Business Day, with the same force and effect as if such payment were made when due or action taken on such required date.

Section 10.13 Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Trustee, the paying agent, if any, and the Registered Owners of the Obligations, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Foundation shall be for the sole and exclusive benefit of the Trustee, the paying agent, if any, and the Registered Owners of the Obligations.

Section 10.14 Swap Counterparty Rights. Notwithstanding any provision of this Indenture, if the Swap Counterparty shall be in default under the Interest Rate Swap, it shall not have the right to consent or direct the Trustee as to remedies hereunder.

Section 10.15 Financed Eligible Loans. The Foundation will cause to be transferred to the Trustee on the Date of Issuance all of the Financed Eligible Loans, in accordance with this Indenture. If for any reason a Financed Eligible Loan did not constitute an Eligible Loan, or ceases to constitute an Eligible Loan, such loan shall continue to be subject to the lien of this Indenture as a Financed Eligible Loan and, except as otherwise expressly provided herein, shall otherwise be treated for all purposes of this Indenture as a Financed Eligible Loan.

Section 10.16 General Provisions Regarding Security Interest. The Foundation hereby represents and warrants: (a) this Indenture, when delivered to and accepted by the Trustee, shall constitute a security agreement pursuant to and for all purposes of the Uniform Commercial Code of the State of New Mexico (the "UCC"). The pledge of the Trust Estate as provided for in this Indenture creates a valid and continuing security interest (as defined in the UCC) in the Trust Estate in favor of the Trustee, which security interest is prior to any other pledge, lien, charge or encumbrance thereon and is enforceable as such as against creditors and purchasers from the Foundation.

(b) The Financed Eligible Loans, the notes evidencing the same and all other documentation relating to the same, shall be treated as "accounts" within the meaning of the UCC in accordance with the provisions of Section 432(m)(1)(E) of the Higher Education Act. The Investment Securities held in the Funds established under Section 5.1 of this Indenture constitute Securities, permitted investments and other assets credited to securities accounts. The accounts established under Section 5.1 of this Indenture constitute "securities accounts" within the meaning of the UCC.

(c) All of the Investment Securities have been and will have been credited to one of the accounts established by Section 5.1 of this Indenture. The Trustee has agreed to treat all assets credited to the accounts as "financial assets" within the meaning of the UCC.

(d) The Foundation owns and has good and marketable title to the Trust Estate free and clear of any lien, pledge, charge or encumbrance thereon.

(e) The Foundation has received all consents and approvals required by the terms of the Investment Securities to the transfer to the Trustee of its interest and rights in the Investment Securities under this Indenture.

(f) The Foundation has caused or will have caused, within ten days of the date of issuance of the Bonds, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdiction under applicable law in order to perfect the security interest in the (i) Financed Eligible Loans, the notes evidencing the same and all other documentation relating to the same, and (ii) the Investment Securities granted to the Trustee under this Indenture.

(g) The Foundation or agents of the Foundation have in their possession all original copies (including electronic copies) of the documentation that constitutes or evidences the Financed Eligible Loans, the notes evidencing the same and all other documentation relating to the same. The documentation that constitutes or evidences the Financed Eligible Loans, the notes evidencing the same and all other documentation relating to the same does not have any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Trustee. All financing statements filed or to be filed against the Foundation in favor of the Trustee in connection herewith describing the Financed Eligible Loans, the notes evidencing the same and all other documentation relating to the same contain a statement to the following effect: "A purchase of or security interest in any collateral described in this financing statement will violate the rights of the Trustee."

(h) The Foundation has taken all steps necessary to cause the Trustee to become the account holder of the accounts established under Section 5.1 of this Indenture.

(i) Other than the security interest granted to the Trustee pursuant to this Indenture, the Foundation has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Trust Estate.

(j) The Foundation has not authorized the filing of and is not aware of any financing statements against the Foundation that include a description of collateral covering the Financed Eligible Loans, the notes evidencing the same and all other documentation relating to the same, and the Investment Securities, other than any financing statement relating to the security interest granted to the Trustee under this Indenture or that has been terminated. The Foundation is not aware of any judgment or tax lien filings against the Foundation.

(k) The Investment Securities and accounts established under Section 5.1 of this Indenture are not in the name of any Person other than the Trustee.

(l) Notwithstanding any other provision of this Indenture to the contrary, the representations and warranties contained in this Section 10.16 shall survive the defeasance or payment in full of the Bonds and the term of this Indenture.

(m) Neither the Foundation nor the Trustee may waive any of the representations and warranties contained in this Section 10.16.

(n) The Foundation shall cause all financing statements to be continuously recorded and filed in such manner and in such places as may be required by law in order to fully protect and preserve the priority of the interest of the Registered Owners in the Trust Estate conveyed under this Indenture and the rights, privileges and options of the Trustee under this Indenture.

(o) From time to time, the Foundation shall file or cause to be filed continuation statements for the purpose of the continuing without lapse the effectiveness of (i) those financing statements which shall have been filed at or prior to the issuance of

Bonds in connection with the security for the Bonds issued pursuant to this Indenture pursuant to the authority of the UCC and (ii) any previously filed continuation statements which shall have been filed as required by this Indenture.

IN WITNESS WHEREOF, the Foundation has caused this Indenture to be executed in its corporate name and behalf by its duly authorized officers, and the Trustee, to evidence its acceptance of the trusts hereby created, has caused this Indenture to be executed in its corporate name and behalf, all in multiple counterparts, each of which shall be deemed an original.

NEW MEXICO EDUCATIONAL  
ASSISTANCE FOUNDATION

(SEAL)

By \_\_\_\_\_  
Chairperson

By \_\_\_\_\_  
President

ATTEST:

By \_\_\_\_\_  
Secretary

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Name \_\_\_\_\_

S-1

EXHIBIT A

FORM OF SERIES 2010-1 A-1 BOND

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the New Mexico Educational Assistance Foundation or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

New Mexico Educational Assistance Foundation  
Education Loan Bond  
Series 2001-1 A-1  
(Tax-Exempt Non-AMT Fixed Rate Bonds)

REGISTERED NO. \_\_\_\_\_ REGISTERED \$ \_\_\_\_\_

<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Original Issue Date</u>	<u>CUSIP No.</u>
_____	_____ %	September 22, 2010	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: \_\_\_\_\_ DOLLARS

New Mexico Educational Assistance Foundation, a nonprofit corporation organized under the nonprofit corporation laws of the State of New Mexico as authorized by the Educational Assistance Act of such State (the "Foundation," which term includes any successor corporation under the Indenture of Trust, dated as of September 1, 2010 (the "Indenture"), between the Foundation and Wells Fargo Bank, National Association, as trustee (the "Trustee," which term includes any successor trustee under the Indenture)) for value received, hereby promises to pay to the Registered Owner (stated above) or registered assigns, the Principal Sum (stated above), but solely from the revenues and receipts hereinafter specified and not otherwise, on the Maturity Date specified above (subject to the right of prior redemption hereinafter described), upon presentation and surrender of this Bond at the Principal Office of the Trustee, or such other location as designated, as paying agent, trustee, and registrar for the Bonds, or a duly appointed successor paying agent, and to pay interest in arrears on said Principal Sum, but solely from the revenues and receipts hereinafter specified and not otherwise, to the Registered Owner (stated above) or registered assigns, from the Original Issue Date (stated above), or upon transfer, exchange or other replacement, from the most recent Interest Payment Date to which interest has been paid hereon, or if no interest has been paid, from the Original Issue Date, until the payment of said principal sum in full.

A-1

Any capitalized words and terms used as defined words and terms in this Bond and not otherwise defined herein shall have the meanings given to them in the Indenture.

Interest on this Bond shall be payable on each June 1 and December 1, commencing December 1, 2010 and at maturity or upon the date of redemption. Interest payable on this Bond shall be computed on the assumption that each year contains 360 days and is composed of twelve 30-day months.

Such interest is payable by check or draft drawn upon the Trustee and mailed on the Interest Payment Date to the person who is the Registered Owner hereof on the Record Date at the address of such Registered Owner as it appears on the registration books maintained by the Trustee.

The principal of and interest on this Bond are payable in lawful money of the United States of America. If the specified date for any payment of principal or interest accrued to such specified date shall be a day other than a Business Day then such payment may be made on the next succeeding Business Day, with the same force and effect as if made on the specified date for such payment without additional interest.

This Bond is one of a series of Bonds of the Foundation designated Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds), dated the Original Issue Date, in the aggregate original principal amount of \$86,000,000 (the "Series 2010A-1 Bonds") which, together with the Foundation's Education Loan Bonds, Series 2010-1 A-2 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) issued in the aggregate principal amount of \$73,000,000 (the "Series 2010A-2 Bonds") and Education Loan Bonds, Series 2010-1 A-3 (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) issued in the aggregate principal amount of \$39,700,000 (the "Series 2010A-3 Bonds" and collectively with the Series 2010A-1 Bonds and the Series 2010A-2 Bonds, the "Bonds"), have been authorized by the Foundation under certain resolutions, dated May 11, 2010 and September 7, 2010, and issued by the Foundation pursuant to the Indenture. The proceeds of the Bonds will be used by the Foundation for the purpose of providing funds to refund certain of the Foundation's outstanding bonds.

As provided in the Indenture, the Bonds are subject to optional or mandatory redemption by the Foundation, upon notice as provided in the Indenture.

Reference is hereby made to the Indenture, copies of which are on file in the Principal Office of the Trustee, and to all of the provisions of which any Registered Owner of this Bond by acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Bonds; the refunding of the Refunded Bonds; the revenues and other money pledged to the payment of the principal of and interest on the Bonds; the nature and extent and manner of enforcement of the pledge; the conditions upon which the Indenture may be amended or supplemented with or without the consent of the Registered Owners of the Bonds and the Swap Counterparty; the rights and remedies of the Registered Owner hereof with respect hereto and thereto, including the limitations upon the right of a Registered Owner hereof to institute any suit, action, or proceeding in equity or at law with respect hereto and thereto; the rights, duties, and obligations of the Foundation and the Trustee thereunder; the terms and provisions upon which the liens, pledges, charges, trusts, and covenants made therein may be

discharged at or prior to the stated maturity or earlier redemption of this Bond, and this Bond thereafter shall no longer be secured by the Indenture or be deemed to be Outstanding, as defined in the Indenture, thereunder; and for the other terms and provisions thereof.

THE SERIES 2010A-1 BONDS ARE SPECIAL OBLIGATIONS OF THE FOUNDATION, PAYABLE OUT OF AND SECURED SOLELY BY A PLEDGE OF THE TRUST ESTATE, AS DEFINED IN THE INDENTURE. NEITHER THE STATE NOR THE FOUNDATION SHALL BE OBLIGATED TO PAY THE SERIES 2010A-1 BONDS OR THE INTEREST THEREON EXCEPT IN THE CASE OF THE FOUNDATION FROM THE TRUST ESTATE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE SERIES 2010A-1 BONDS.

No recourse, either directly or indirectly, shall be had for the payment of the principal of and interest on this Bond or any claim based hereon or in respect hereof or of the Indenture, against the Trustee, or any incorporator, director, officer, employee, or agent of the Foundation, nor against the State of New Mexico, or any official thereof, but the obligation to pay all amounts required by the Indenture securing this Bond and the obligation to do and perform the covenants and acts required of the Foundation therein and herein shall be and remain the responsibility and obligation of said Foundation, limited as set forth in the Indenture.

This Bond is transferable on the bond register kept for that purpose by the Trustee, as registrar, upon surrender of this Bond for transfer at the principal office of the Trustee or such other location as designated, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by, the Registered Owner hereof or such Registered Owner's attorney duly authorized in writing, and thereupon one or more new Bonds of the same series, subseries, Stated Maturity, of authorized denominations, bearing interest at the same rate, and for the same aggregate principal amount will be issued to the designated transferee or transferees. At the option of the Registered Owner, any Bond may be exchanged for other Bonds in authorized denominations upon surrender of the Bond to be exchanged at the principal office of the Trustee or such other location as designated. Upon any such presentation for exchange, one or more new Bonds of the same series, subseries, Stated Maturity, in authorized denominations, bearing interest at the same rate, and for the same aggregate principal amount as the Bond or Bonds so surrendered will be issued to the Registered Owner of the Bond or Bonds so surrendered; and the Bond or Bonds so surrendered shall thereupon be cancelled by the Trustee.

The Foundation, the Trustee, and any agent of either of them shall treat the Person in whose name this Bond is registered as the Registered Owner hereof (a) on the record date for purposes of receiving timely payment of interest hereon, and (b) on the date of surrender of this Bond for purposes of receiving payment of principal hereof at its stated maturity and (c) for all other purposes, whether or not this Bond is overdue, and neither the Foundation, the Trustee, nor any such agent shall be affected by notice to the contrary.

To the extent permitted by the Indenture, modifications or alterations of the Indenture and any supplemental indenture may be made with the consent of less than all of the Registered

Owners of the Bonds then outstanding or without the consent of any of such Registered Owners in certain instances, but such modification or alteration is not permitted to extend the maturity date, reduce the interest rate, grant a privilege or priority except as otherwise permitted by the Indenture, reduce the percentage of any persons required to consent to supplemental indentures or create any lien other than as permitted by the Indenture, without the consent of all of the Registered Owners.

It is hereby certified and recited that all acts and things required by the laws of the State of New Mexico to happen, exist, and be performed precedent to and in the issuance of this Bond, and the passage of said resolution and the execution of said Indenture, have happened, exist and have been performed as so required.

IN TESTIMONY WHEREOF, the Board of Directors of New Mexico Educational Assistance Foundation has caused the seal of the Foundation to be impressed or a facsimile thereof to be printed hereon, and this Bond to be executed by the duly authorized officers of the Foundation all as of the Original Issue Date.

NEW MEXICO EDUCATIONAL ASSISTANCE  
FOUNDATION

(SEAL)

By \_\_\_\_\_  
Chairperson

By \_\_\_\_\_  
President

ATTEST:

By \_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Series 2010A-1 Bonds designated therein and described in the within mentioned Indenture.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

By \_\_\_\_\_  
Authorized Signatory

Authentication Date:

\_\_\_\_\_

ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_, the  
undersigned hereby sells, assigns, and transfers unto

\_\_\_\_\_  
(Social Security or Other Number of Assignee)

\_\_\_\_\_  
(Please Print or Typewrite Name and Address of Assignee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ attorney to transfer the within bond on the books kept for registration  
thereof, with full power of substitution in the premises.

DATED:

Signature: \_\_\_\_\_

NOTICE: The signature on this Assignment must  
correspond with the name of the Registered Owner  
as it appears on the face of the within bond in every  
particular.

Signature Guaranteed by:

\_\_\_\_\_  
Eligible Guarantor Institution

EXHIBIT B

FORM OF SERIES 2010-1 A-[2][3] BOND

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the New Mexico Educational Assistance Foundation or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

New Mexico Educational Assistance Foundation  
Education Loan Bond  
Series 2010-1 A-[2][3]  
(Tax-Exempt Non-AMT LIBOR Floating Rate Bonds)

REGISTERED NO. \_\_\_\_\_ REGISTERED \$ \_\_\_\_\_

<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Original Issue Date</u>	<u>CUSIP No.</u>
	Variable	September 22, 2010	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: \_\_\_\_\_ DOLLARS

New Mexico Educational Assistance Foundation, a nonprofit corporation organized under the nonprofit corporation laws of the State of New Mexico as authorized by the Educational Assistance Act of such State (the "Foundation," which term includes any successor corporation under the Indenture of Trust, dated as of September 1, 2010 (the "Indenture"), between the Foundation and Wells Fargo Bank, National Association, as trustee (the "Trustee," which term includes any successor trustee under the Indenture)) for value received, hereby promises to pay to the Registered Owner (stated above) or registered assigns, the Principal Sum (stated above), but solely from the revenues and receipts hereinafter specified and not otherwise, on the Maturity Date specified above (subject to the right of prior redemption hereinafter described), upon presentation and surrender of this Bond at the Principal Office of the Trustee, or such other location as designated, as paying agent, trustee, and registrar for the Bonds, or a duly appointed successor paying agent, and to pay interest in arrears on said Principal Sum, but solely from the revenues and receipts hereinafter specified and not otherwise, to the Registered Owner (stated above) or registered assigns, from the Original Issue Date (stated above), or upon transfer, exchange or other replacement, from the most recent Interest Payment Date to which interest has been paid hereon, or if no interest has been paid, from the Original Issue Date, until the payment of said principal sum in full.

Any capitalized words and terms used as defined words and terms in this Bond and not otherwise defined herein shall have the meanings given to them in the Indenture.

This Bond shall bear interest at the LIBOR Rate, payable on each Interest Payment Date and on the date of payment or redemption of principal hereof to the extent of interest accrued on the principal then being paid or redeemed, such interest to accrue from the later of the date hereof or the date through which interest has been paid or duly provided for. Interest on this Bond shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days.

Such interest is payable by check or draft drawn upon the Trustee and mailed on the Interest Payment Date to the person who is the Registered Owner hereof on the Record Date at the address of such Registered Owner as it appears on the registration books maintained by the Trustee.

The principal of and interest on this Bond are payable in lawful money of the United States of America. If the specified date for any payment of principal or interest accrued to such specified date shall be a day other than a Business Day then such payment may be made on the next succeeding Business Day, with the same force and effect as if made on the specified date for such payment without additional interest.

This Bond is one of a series of Bonds of the Foundation designated Education Loan Bonds, Series 2010-1 A-[2][3] (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds), dated the Original Issue Date, in the aggregate original principal amount of \$86,000,000 (the "Series 2010A-[2][3] Bonds") which, together with the Foundation's Education Loan Bonds, Series 2010-1 A-1 (Tax-Exempt Non-AMT Fixed Rate Bonds) issued in the aggregate principal amount of \$73,000,000 (the "Series 2010A-1 Bonds") and Education Loan Bonds, Series 2010-1 A-[2][3] (Tax-Exempt Non-AMT LIBOR Floating Rate Bonds) issued in the aggregate principal amount of \$39,700,000 (the "Series 2010A-[2][3] Bonds" and collectively with the Series 2010A-1 Bonds and the Series 2010A-[2][3] Bonds, the "Bonds"), have been authorized by the Foundation under certain resolutions, dated May 11, 2010 and September 7, 2010, and issued by the Foundation pursuant to the Indenture. The proceeds of the Bonds will be used by the Foundation for the purpose of providing funds to refund certain of the Foundation's outstanding bonds.

As provided in the Indenture, the Bonds are subject to optional or mandatory redemption by the Foundation, upon notice as provided in the Indenture.

Reference is hereby made to the Indenture, copies of which are on file in the Principal Office of the Trustee, and to all of the provisions of which any Registered Owner of this Bond by acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Bonds; the refunding of the Refunded Bonds; the revenues and other money pledged to the payment of the principal of and interest on the Bonds; the nature and extent and manner of enforcement of the pledge; the conditions upon which the Indenture may be amended or supplemented with or without the consent of the Registered Owners of the Bonds and the Swap Counterparty; the rights and remedies of the Registered Owner hereof with respect hereto and thereto, including the limitations upon the right of a Registered Owner hereof to



institute any suit, action, or proceeding in equity or at law with respect hereto and thereto; the rights, duties, and obligations of the Foundation and the Trustee thereunder; the terms and provisions upon which the liens, pledges, charges, trusts, and covenants made therein may be discharged at or prior to the stated maturity or earlier redemption of this Bond, and this Bond thereafter shall no longer be secured by the Indenture or be deemed to be Outstanding, as defined in the Indenture, thereunder; and for the other terms and provisions thereof.

THE SERIES 2010A-[2][3] BONDS ARE SPECIAL OBLIGATIONS OF THE FOUNDATION, PAYABLE OUT OF AND SECURED SOLELY BY A PLEDGE OF THE TRUST ESTATE, AS DEFINED IN THE INDENTURE. NEITHER THE STATE NOR THE FOUNDATION SHALL BE OBLIGATED TO PAY THE SERIES 2010A-[2][3] BONDS OR THE INTEREST THEREON EXCEPT IN THE CASE OF THE FOUNDATION FROM THE TRUST ESTATE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE SERIES 2010A-[2][3] BONDS.

No recourse, either directly or indirectly, shall be had for the payment of the principal of and interest on this Bond or any claim based hereon or in respect hereof or of the Indenture, against the Trustee, or any incorporator, director, officer, employee, or agent of the Foundation, nor against the State of New Mexico, or any official thereof, but the obligation to pay all amounts required by the Indenture securing this Bond and the obligation to do and perform the covenants and acts required of the Foundation therein and herein shall be and remain the responsibility and obligation of said Foundation, limited as set forth in the Indenture.

This Bond is transferable on the bond register kept for that purpose by the Trustee, as registrar, upon surrender of this Bond for transfer at the principal office of the Trustee or such other location as designated, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by, the Registered Owner hereof or such Registered Owner's attorney duly authorized in writing, and thereupon one or more new Bonds of the same series, subseries, Stated Maturity, of authorized denominations, bearing interest at the same rate, and for the same aggregate principal amount will be issued to the designated transferee or transferees. At the option of the Registered Owner, any Bond may be exchanged for other Bonds in authorized denominations upon surrender of the Bond to be exchanged at the principal office of the Trustee or such other location as designated. Upon any such presentation for exchange, one or more new Bonds of the same series, subseries, Stated Maturity, in authorized denominations, bearing interest at the same rate, and for the same aggregate principal amount as the Bond or Bonds so surrendered will be issued to the Registered Owner of the Bond or Bonds so surrendered; and the Bond or Bonds so surrendered shall thereupon be cancelled by the Trustee.

The Foundation, the Trustee, and any agent of either of them shall treat the Person in whose name this Bond is registered as the Registered Owner hereof (a) on the record date for purposes of receiving timely payment of interest hereon, and (b) on the date of surrender of this Bond for purposes of receiving payment of principal hereof at its stated maturity and (c) for all other purposes, whether or not this Bond is overdue, and neither the Foundation, the Trustee, nor any such agent shall be affected by notice to the contrary.

To the extent permitted by the Indenture, modifications or alterations of the Indenture and any supplemental indenture may be made with the consent of less than all of the Registered Owners of the Bonds then outstanding or without the consent of any of such Registered Owners in certain instances, but such modification or alteration is not permitted to extend the maturity date, reduce the interest rate, grant a privilege or priority except as otherwise permitted by the Indenture, reduce the percentage of any persons required to consent to supplemental indentures or create any lien other than as permitted by the Indenture, without the consent of all of the Registered Owners.

It is hereby certified and recited that all acts and things required by the laws of the State of New Mexico to happen, exist, and be performed precedent to and in the issuance of this Bond, and the passage of said resolution and the execution of said Indenture, have happened, exist and have been performed as so required.

IN TESTIMONY WHEREOF, the Board of Directors of New Mexico Educational Assistance Foundation has caused the seal of the Foundation to be impressed or a facsimile thereof to be printed hereon, and this Bond to be executed by the duly authorized officers of the Foundation all as of the Original Issue Date.

NEW MEXICO EDUCATIONAL ASSISTANCE  
FOUNDATION

(SEAL)

By \_\_\_\_\_  
Chairperson

By \_\_\_\_\_  
President

ATTEST:

By \_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Series 2010A-[2][3] Bonds designated therein and described in the within mentioned Indenture.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

By \_\_\_\_\_  
Authorized Signatory

Authentication Date:

\_\_\_\_\_

ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_, the  
undersigned hereby sells, assigns, and transfers unto

\_\_\_\_\_  
(Social Security or Other Number of Assignee)

\_\_\_\_\_  
(Please Print or Typewrite Name and Address of Assignee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ attorney to transfer the within bond on the books kept for registration  
thereof, with full power of substitution in the premises.

DATED:

Signature: \_\_\_\_\_

NOTICE: The signature on this Assignment must  
correspond with the name of the Registered Owner  
as it appears on the face of the within bond in every  
particular.

Signature Guaranteed by:

\_\_\_\_\_  
Eligible Guarantor Institution

EXHIBIT C

REPRESENTATIONS LETTER

EXHIBIT D

FEE LIMITS

The Trustee's annual administration fee shall be as set forth in the fee letter from the Trustee to the Foundation as of the Date of Issuance, but not to exceed 0.015% per annum of the Bonds Outstanding.

The Servicer fees shall be limited to an amount equal to 0.90% per annum based on the Finance Eligible Loan balance.

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The Backup Servicer fees shall be limited to \$25,000 per annum.

**APPENDIX C**

**AUDITED FINANCIAL STATEMENTS OF THE NEW MEXICO  
EDUCATIONAL ASSISTANCE FOUNDATION**

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**NEW MEXICO  
STUDENT  
LOANS**

*We invest in you.*

NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

# Financial Statements

June 30 | 2009



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**Independent Auditor's Report**

The Board of Directors  
New Mexico Educational Assistance Foundation

We have audited the accompanying statements of net assets of New Mexico Educational Assistance Foundation (NMEAF, a nonprofit organization) as of June 30, 2009 and 2008, and the related statements of revenues, expenses and changes in net assets, and cash flows for the years then ended. These financial statements are the responsibility of NMEAF's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the organization's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of NMEAF as of June 30, 2009 and 2008, and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The Board of Directors  
New Mexico Educational Assistance Foundation

Management's Discussion and Analysis is not a required part of the financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

*Moss Adams LLP*

Albuquerque, New Mexico  
September 30, 2009

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2009 and 2008

#### Overview

The New Mexico Educational Assistance Foundation (the Foundation or NMEAF) functions as a lender and loan servicer to meet the financial needs of New Mexico students seeking post-secondary education. Funding of student loans is achieved through underwritings of tax-exempt and taxable debt securities issued by the Foundation for resale primarily to institutional investors. NMEAF services loans issued by affiliated lenders and purchases the loans in the secondary market as they enter repayment. NMEAF also services loans issued by universities acting as lender and purchases the loans in the secondary market once they are fully disbursed. The Foundation provides the following additional services:

- Perkins loan servicing and coordination of accounts receivable collections on behalf of affiliated colleges and universities throughout the state;
- assessment and collection of late & legal fees on delinquent loan balances;

As of June 30, 2009, the Foundation had 255,006 loans outstanding to 83,355 current and former students at a total principal value, net of an allowance of doubtful accounts, of approximately \$1.168 billion.

This Management's Discussion and Analysis is required supplementary information under GASB Statement 34. The narrative will focus on changes in results of operations and financial position from the prior year, with emphasis on the current year. Reasons for these changes and economic factors affecting the Foundation's results will be highlighted.

The topics discussed in this Management's Discussion and Analysis, per GASB 34 guidelines, are the following:

- A brief discussion of the basic financial statements, including the relationships of the statements to each other, and the significant differences in the information they provide;
- Condensed financial information derived from financial statements comparing the current year to prior years;
- An analysis of the entity's overall financial position and results of operations to assist users in assessing whether financial position has improved or deteriorated as a result of the year's operations;
- An analysis of significant variations between original and final budget amounts and between final budget amounts and actual budget results for the general fund, or its equivalent;
- A description of significant capital asset and long-term debt activity during the year, including a discussion of commitments made for capital expenditures, changes in credit ratings, and debt limitations that may affect the financing of planned facilities or services;
- A description of currently known facts, decisions, or conditions that are expected to have a significant effect on financial position or results of operations.

#### I. Brief Discussion of Financial Statements

The financial statements presented herein are the following:

- Statement of Net Assets;
- Statement of Revenues, Expenses and Changes in Net Assets;
- Statement of Cash Flows.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2009 and 2008

The Statement of Net Assets summarizes the Foundation's financial position as of the end of the fiscal year. It describes the various classifications of assets, liabilities and the residual net assets. This Statement is distinguished from the other two in that it provides a snapshot of account balances at a particular point in time, as opposed to an accumulation of activity during the period.

The Statement of Revenues, Expenses and Changes in Net Assets illustrate the Foundation's inflows and outflows of financial resources during the year. The accrual of revenue and expense items during the year will affect the year-end balances on the Statement of Net Assets. The increase or decrease in net assets computed on the Statement of Revenues, Expenses and Changes in Net Assets is added to or subtracted from the beginning net assets on the Statement of Net Assets to yield net assets as of the report date.

The Statement of Cash Flows lists the sources and uses of cash during the year, using the direct method. The Statement itemizes the changes in the balance of cash and equivalents from the beginning of the year to year-end. The inflows and outflows of cash during the year help explain the change in the balances of assets and liabilities on the Statement of Net Assets.

For internal management reporting purposes the Foundation segregates financial reporting into two funds – the Debt Fund and the General Fund. The Debt Fund monitors all activity and net assets relating to the Federal Family Education Loan Program (FFELP) student loans, the Foundation's alternative student loans, borrower incentive programs offered by the Foundation, and the outstanding debt issued to fund these programs. The General Fund consists of Foundation operating costs and net assets, primarily financed by an administrative allowance from the Debt Fund and service fees. Presentation of the two funds discretely helps distinguish the primary function of the Foundation – financing guaranteed FFELP loans – from general and administrative operations.

With the implementation of GASB Statement 34, the focus of the financial statements is on the overall entity. Therefore, the two funds, which do not meet the criteria for reporting as separate funds in the accompanying financial statements, are combined for presentation on this report. The financial statements are presented in a single-column format as enterprise fund business-type activities.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Management's Discussion and Analysis  
Fiscal Years Ended June 30, 2009 and 2008

## II. Condensed Financial Information

Condensed financial information is presented below.

	June 30 (\$000's)		
	2009	2008	2007
Capital Assets	\$ 11,771	\$ 9,730	\$ 7,135
Student Loan Receivables and Other Assets	1,288,504	1,166,061	1,024,726
Total Assets	\$1,300,275	\$ 1,175,791	\$ 1,031,861
Long-Term Liabilities	\$1,032,487	\$ 1,030,938	\$ 901,871
Other Liabilities	176,352	49,897	38,206
Total Liabilities	1,208,839	1,080,835	940,077
Net Assets:			
Invested in Capital Assets	11,771	9,730	7,135
Unrestricted	17,671	25,232	26,510
Restricted	61,994	59,994	58,139
Total Net Assets	91,436	94,956	91,784
Total Liabilities & Net Assets	\$ 1,300,275	\$ 1,175,791	\$ 1,031,861

	Year Ended June 30 (\$000's)		
	2009	2008	2007
Revenues:			
Borrower Interest Income & Fees	\$ 40,560	\$ 37,809	\$ 31,020
Federal Subsidies	5,805	24,181	31,614
Investment Interest Income	2,028	8,366	8,739
Loan Servicing & Other Revenue	1,799	2,182	2,297
	50,192	72,538	73,670
Expenses:			
Direct Costs – Federal Family Education Loan Program	38,909	61,088	56,611
Overhead Costs – Federal Family Education Loan Program	6,730	7,908	7,850
Loan Servicing	8,074	370	391
Default Collection	-	-	841
	53,713	69,366	65,693
Change in Net Assets	\$ (3,521)	\$ 3,172	\$ 7,977

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

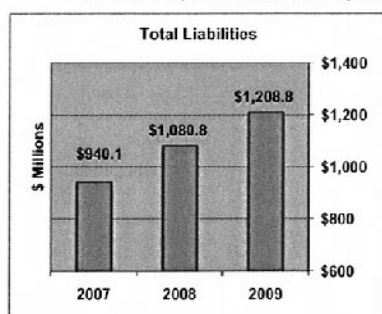
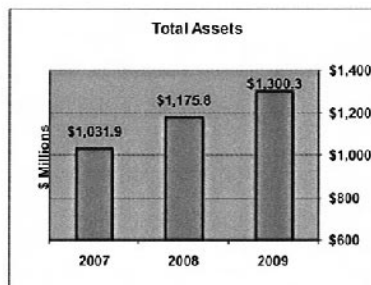
### Management's Discussion and Analysis Fiscal Years Ended June 30, 2009 and 2008

#### III. Analysis of Overall Financial Position and Results of Operations

##### Analysis of Financial Position:

The Foundation's Total Assets at June 30, 2009 were \$1.3 billion, an increase of approximately \$124 million over the balance at June 30, 2008. Total Assets at June 30, 2008 were \$1.176 billion, an increase of approximately \$144 million over the balance at June 30, 2007. Significant changes in Total Assets components included (approximately):

- As of June 30, 2009, there was an increase of \$158.2 million in student loans receivable representing a 16% increase in growth. As of June 30, 2008, there was an increase of \$154.2 million in student loans receivable representing an 18% increase in growth.
- A decrease of \$.5 million in 2009 compared to an increase of \$.6 million in 2008 of debt issuance cost and commitment fees is due to the large debt refinancing in 2008.
- Investments decreased as of June 30, 2009 by \$21.6 million over the amount outstanding June 30, 2008. The most significant component of this decrease was the use of investments for debt payments. Investments decreased as of June 30, 2008 by \$8.8 million over the amount outstanding June 30, 2007. Debt related expenses covered by investments were higher in Fiscal Year 2008 due to the costs of two bond issues as opposed to just one.
- As of June 30, 2009, cash and cash equivalents had decreased \$6.2 million. Unrestricted cash decreased by \$3.6 million primarily due to a reduction in the trust administrative allowance draw and a decrease in interest earnings. Restricted cash decreased by \$2.6 million due to less cash on hand awaiting reinvestment at the end of the year. In 2008 there was a decrease of \$4.4 million in cash and cash equivalents. Unrestricted cash increased by \$.1 million and is due to cash generated from operations net of cash outlay for capital assets. Restricted cash decreased by \$4.5 million due to less cash on hand awaiting reinvestment.
- Between 2008 and 2009, there was a \$5.7 million decrease in student loan interest, federal interest subsidies, late and legal fees, and special allowance receivable. Changes in FFELP program regulations and low T-bill and Commercial Paper rates resulted in lower rates on certain borrower interest rates and special allowance rates. This reduction was offset by a collection of \$7.5 million from the Department of Education for 9.5% floor special allowance billing of which the majority was accrued in 2008. The decrease in student loan interest, federal interest subsidies, late and legal fees, and special allowance receivables as of June 30, 2008 was \$1.5 million which was primarily due to low T-bill and Commercial Paper rates.
- As of June 30, 2009, UNM notes receivable net of other UNM receivables decreased \$.7 million. Other receivables decreased \$1.5 million. As of June 30, 2008, UNM notes receivables increased \$.4 million over the balance of notes receivable at June 30, 2007. A \$.7 million increase in other receivables is due to an overestimate of the monies escrowed for defeasance of debt.
- Capital assets increased \$2.0 million and \$2.6 million due to new systems initiatives in progress as of June 30, 2009 and 2008, respectively.



Total Liabilities increased by approximately \$129 million to \$1.209 billion as of June 30, 2009 as compared to an increase of approximately \$141 million to \$1.08 billion as of June 30, 2008. Increases were driven by the following primary changes (in approximate amounts):

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

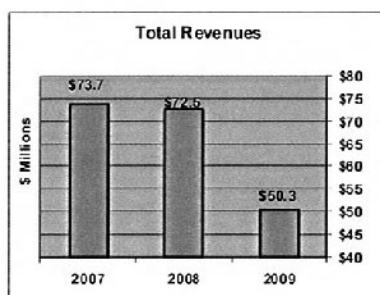
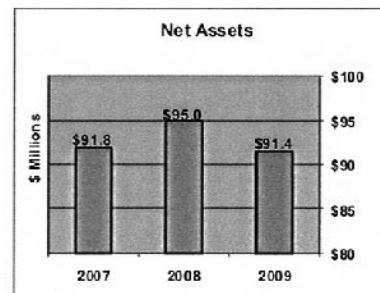
### Management's Discussion and Analysis Fiscal Years Ended June 30, 2009 and 2008

- Notes payable increased by \$23 million as a result of using a line of credit for short-term funding of student loans in anticipation of a bond issue. As of June 30, 2008, note payable had decreased \$21 million as a result of pay-downs on lines of credit.
- As of June 30, 2009, bonds payable increased by \$106 million due to the issuance of 2008 Series D and E and net of debt pay downs. As of June 30, 2008, bonds payable increased by \$171 million primarily due to the 2007 Bond issues.
- In fiscal year 2009, interest rates continued to drop on many of the debt issues which reduced the year end accrual by \$2.3 million compared to the prior year. In fiscal year 2008, interest rates on debt were higher than normal for a good part of the year, due to wide spread failure in the auction rate securities market, but dropped to very low rates on some debt during the last quarter due to the maximum auction rate calculations defined in the individual bond indentures. The result is that accrued interest expense is \$3 million less than the amount in fiscal year 2007.
- As of June 30, 2009, the reserve for excess earnings increased by \$2.3 million due to decreasing interest rates on debt. As of June 30, 2008, the reserve for excess earnings decreased \$4.6 million due to higher rates on the interest accruing on the debt during the year and the use of excess earnings for borrower benefit programs. Arbitrage rebate reserve decreased \$1.1 million in 2008 due to payments on amounts due.

Net Assets shrank by 4% to \$91.4 million and Net Assets comprised approximately 7% of Total Assets at June 30, 2009. Net Assets grew by 3.4% to \$95 million and Net Assets comprised approximately 8% of Total Assets at June 30, 2008.

#### Analysis of Results of Operations:

Total Revenues for the Year Ended June 30, 2009 were approximately \$50.2 million, a decrease of \$22.3 million from the prior year. Total Revenues for the Year Ended June 30, 2008 were approximately \$72.6 million, a decrease of \$1.1 million from the prior year. The increases are primarily attributable to:



- In 2009 and 2008, an increase in student loan interest and interest subsidy due to loan growth was offset by a reduction in special allowance and even negative special allowance (amounts due back to ED) due to recent changes in FFELP program regulations and falling T-Bill and Commercial Paper rates.
- Lower earnings on funds held in investments were experienced during the years ending June 30, 2009 and 2008 due to a lower investment balance and declining interest rates.

- For the year ended June 30, 2009, investment revenue in the General Fund decreased approximately \$.6 million, investment revenue in the Debt Fund decreased approximately \$5.7 million, and interest and special allowance revenue for the Debt Fund decreased by nearly \$16 million. For the year ended June 30, 2008, investment revenue in the General Fund decreased approximately \$.5 million and interest and special allowance revenue for the Debt Fund decreased by nearly \$.6 million.

Total Expenses for the year ended June 30, 2009 were \$53.7 million, which was a decrease of \$15.6 million or 23% over prior year expense. Total Expenses for the year ended June 30, 2008 were nearly \$69.4 million, which was an increase of nearly \$3.7 million or 6% over prior year expense.

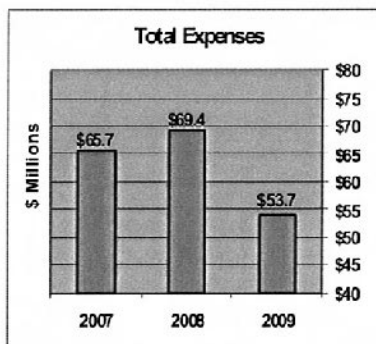


## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2009 and 2008

The primary drivers behind the changes were:

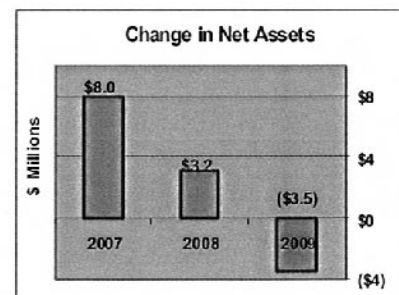
- During the year ended June 30, 2009, interest expense decreased by over \$19 million. This was due to declining interest rates. During the year ended June 30, 2008, interest expense increased by over \$10 million. The increase was driven by rising interest costs on outstanding debt and the issuance of new bonds.
- For the year ended June 30, 2009, the expense for arbitrage rebate and excess earnings liability increased over \$7 million due to lower interest rates in the calculation of these liabilities. For the year ended June 30, 2008, the expense for arbitrage rebate and excess earnings liability decreased over \$7 million due to higher interest rates in the calculation of these liabilities, payments made toward these liabilities, and the use of excess earnings for borrower benefit programs.
- During fiscal year 2009, decreases in salaries and benefits, student loan costs, trust expenses, and other costs were offset by increases in the provision for student loan losses, and Department of Education fees. During fiscal year 2008, increases in salaries and benefits were partially offset by decreases in provision for student loan losses and other student loan related costs. The increase in the provision for student loan losses in 2009 is reflective of the current economic condition. The decrease in the provision for loan losses in 2008 is due to a higher collection rate on private loans and the decrease in other student loan related costs is primarily due to the reduction in the origination fee amount.



In 2009, the Debt Fund expenses decreased by nearly \$13.1 million due to a decrease in interest expense, trustee fees, and student loan costs. The General Fund operating expenses decreased by approximately \$2.5 million primarily due to a decrease in salaries, employee benefits, and loan forgiveness. In 2008, expenses increased for the Debt Fund by nearly \$2.2 million due to an increase in interest expense and offset by decreases in the provision for student loan losses, arbitrage rebate, and excess earnings. The General Fund operating expenses increased \$1.5 million due to an increase in salaries and employee benefits.

For the year ended June 30, 2009, the Change in Net Assets (deficit) was \$(3.5) million. This is a decrease of \$6.7 million from the prior year. This is due to special allowance revenues continuing to decline as the T-Bill and Commercial Paper rates dropped throughout the year. For the year ended June 30, 2008, the Change in Net Assets (excess revenue) was \$3.2 million. This is a decrease of \$4.8 million from the prior year. Although the volume of loans outstanding increased in 2008, program changes and declining interest rates reduced the amount of revenue on each dollar outstanding, as compared to the prior year. The costs of servicing these loans, however, did not decline and the Foundation incurred additional interest expense due to rising interest rates in the auction rate market and the volume of debt outstanding.

The Debt Fund contributed a deficit of \$ (5.1) million of the Change in Net Assets while the General Fund contributed \$1.6 million. The Debt Fund deficit came from the reduction in special allowance revenue net against the reduction in the allowance for uncollectible 9.5% floor special allowance, interest and trust expense. The General Fund's improvement in operating income was driven by a reduction in operating expenses and borrower incentive plans. In comparison, for the year ended June 30, 2008, the Debt Fund contributed \$1.9 million of the Change in Net Assets while the General Fund contributed \$1.3 million. The Debt Fund contribution came from the reduction in excess earnings and arbitrage rebate liabilities. The General Fund's improvement in operating income was driven by an increased trust administrative allowance.





## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2009 and 2008

The primary interfund transactions are periodic payments to the General Fund from the Debt Fund of a "trust administrative allowance." The allowance is a federally prescribed yield on the student loan receivable balance that can be utilized unencumbered by the agency to cover general administrative costs. The allowance comprised 76% of the General Fund's Total Revenues for the year ended June 30, 2009. In 2008, the allowance comprised 79% of the General Fund's Total Revenues, an increase from 74% for the prior year. The allowance is driven by the growing balance in student loans receivable. In consolidating the two Funds for presentation in the financial statements, Trust Administrative Allowance Revenue and Expense were eliminated from the Statement of Revenues, Expenses, and Changes in Net Assets.

The amount of Net Assets invested in capital assets at June 30, 2009 was \$11.8 million, an increase of \$2 million over the prior year. The amount of Net Assets invested in capital assets at June 30, 2008 was \$9.7 million, an increase of \$2.6 million over the prior year. For both years, the increase is primarily due to work in progress on new systems development projects. For the Fiscal Year Ended June 30, 2009, the Restricted Net Assets balance of \$62 million - which must be reserved to collateralize outstanding bond debt - increased by nearly \$2 million. The Restricted Net Assets balance of \$60 million, which must be reserved to collateralize outstanding bond debt, increased by over \$1.9 million in fiscal year 2008. Unrestricted Net Assets, which are unencumbered, decreased by \$7.6 million to \$17.7 million as of June 30, 2009 and decreased by \$1.3 million to \$25 million as of June 30, 2008.

### III. Analysis of Significant Budgetary Variations

In May 2008 and 2007, respectively, the Foundation's board of directors adopted the fiscal year 2008-2009 and 2007-2008 operating budgets for the Debt Fund, the General Fund and the entity as a whole. These budgets were final, although not legally binding and therefore are not an integral part of the financial statements. It is the Foundation's policy to freeze the revenue and expense budget as initially approved and treat new income streams and subsequent approved expenses as non-budgeted items during the year.

In fiscal year 2009, actual total revenues of \$50.2 million were short to budget by \$33.4 million, or 40%. Revenues were lower than projected in fiscal year 2009 due to reductions in borrower interest rates, the special allowance rates paid by the Department of Education, and the rate of return on investments. Total expenses (combined operating and non-operating) of \$53.7 million were favorable to budget by \$18 million, or approximately 25%. During fiscal year 2009, interest rates on debt was significantly lower than projected which yielded over a \$19 million reduction in interest expense. An increase in excess earnings was partially offset by decreases in payroll and trust expense. The change in net assets of \$(3.5) million did not reach the budgeted amount of \$11.8 million.

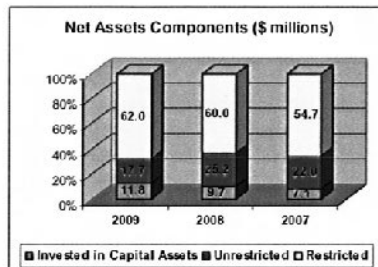
In fiscal year 2008, actual total revenues of \$72.6 million were short to budget by \$2.4 million, or 3%. Revenues were lower than projected in fiscal year 2008 due to reductions in the special allowance rates paid by the Department of Education. Total expenses (combined operating and non-operating) of \$69.4 million were favorable to budget by \$.8 million, or approximately 1%. During fiscal year 2008, higher than budgeted interest expenses due to disruptions in the auction rate bond markets were offset by savings in the excess earnings tax liability due on the assets held by the organization. The change in net assets of \$3.2 million did not reach the budgeted amount of \$4.7 million.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2009 and 2008

#### IV. Description of Significant Capital Asset and Long-Term Debt Activity

##### Capital Assets



The approved capital budget for year ended June 30, 2009 was \$6.3 million. The total capital expenditures for the year were \$2.7 million or \$3.6 million under budget. This included development costs for a new loan servicing system of \$2.5 million, which will not be depreciated until the new loan servicing system is in production. The major categories of capital expenditures during the year were: Building, Office equipment, Furniture & Fixtures, Information Technology (IT) hardware, and IT software.

The approved capital budget for year ended June 30, 2008 was \$4.8 million. The total capital expenditures for the year were \$3.3 million or \$1.5 million under budget. This included development costs for a new loan servicing system of \$2.9 million, which will not be depreciated until the new loan servicing system is in production. The major categories of capital expenditures during the year were: Building, Office equipment, Furniture & Fixtures, Information Technology (IT) hardware, and IT software.

##### Long-Term Debt

Under the Letter of Credit and Reimbursement Agreement with Bank of America, the Royal Bank of Canada (RBC), and Lloyds Bank dated June 1, 2008, there are certain covenants under which the Foundation is to maintain compliance. On June 15, 2009, Fitch Ratings downgraded the underlying ratings in the Series 2008A bonds from AAA to A+ to match the long term ratings of the letter of credit providers. The downgrade of the underlying rating from AAA violates one of the covenants of the Letter of Credit and Reimbursement Agreement and is categorized under such agreement as an event of default. The banks that are party to this agreement have not invoked their rights to declare an event of default and therefore there has been no impact to 2008A bond issue or The Foundation. Management and the party banks are working towards an amendment to the agreement that would remove the requirement to maintain the AAA underlying ratings.

In July 2007, the Foundation issued \$113.43 million of tax-exempt and \$62 million of taxable bonds. Thirty-three million was used to purchase student loans from other bond issues and the remainder was used to originate, purchase, and consolidate loans during the fiscal year. In June 2008, the Foundation again went to market to issue \$435.975 million in bonds in a strategic response to disruptions in the variable rate auction market. The new bond issue was used to retire debt with unfavorable interest rates. The Moody's and Fitch rating agencies issued Aaa and AAA ratings, respectively, on all Series of 2008 and 2007 bonds. These ratings are consistent with previous foundation issues of senior debt.

On August 1, 2008, the Foundation issued \$50 million in taxable bonds through the Office of the State Treasurer maturing in March 2009. The maturity was later extended to September 30, 2009. The Foundation issued a \$95.135 million tax-exempt bond through the Office of the State Treasurer on December 15, 2008 maturing in June 2009. The maturity on this bond was extended to September 30, 2009 as well. Both bond proceeds were used to fund student loans for the 2008-2009 academic year.

#### V. Discussion of Currently Known Facts, Decisions, or Conditions Expected to Have a Significant Effect on Financial Position or Results of Operations.

##### Interest Expense

During fiscal year 2008, the Foundation experienced significantly higher interest costs caused by higher interest rates resulting from a widespread failure of the auction rate securities market. The Foundation's

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2009 and 2008

auction rate debt was in a failed auction mode beginning in February 2008. The result of these failed auctions is that the interest rate on auction rate debt defaulted to the indenture defined maximum rates. The Foundation took steps to alleviate the increase in interest costs by restructuring \$435.975 million of auction rate debt to a variable demand note structure on June 26, 2008. The restructuring addressed approximately 55% of the Foundation's auction rate debt. The remaining 45% of auction rate debt remains in failed auction mode at June 30, 2009. In September 2009, the Foundation issued a new debt structure with the Series 2009 A, B, C bonds to address the majority of the remaining failed auction rate debt.

#### Economic Concentration

The University of New Mexico, the state's largest post-secondary educational institution, transitioned its student loan volume to the Foundation during fiscal year 2005. In the year ended June 30, 2009, the Foundation realized approximately \$78.8 million in student loan volume from the University of New Mexico. In the year ended June 30, 2008, the Foundation realized approximately \$82.7 million in student loan volume from the University of New Mexico.

#### Special Allowance Revenue

Based on a new interpretation made by the U.S. Department of Education (ED) as to eligibility of a loan to earn a 9.5% floor special allowance rate, ED has withheld payments to NMEAF for the difference between this 9.5% floor special allowance rate and the non- 9.5% floor rate for the first two quarters in fiscal year 2009, in fiscal year 2008, and the last three quarters of fiscal year 2007. Approximately 72% of this accrued amount was received in May of 2009, totaling \$7.5 Million. A reduction in special allowance revenue of over \$3 million was recognized in the Fiscal Year 2009 for the amount that will not be collected from ED.

#### Changes in Federal Family Education Loan Program

H.R. 2669, the College Cost Reduction and Access Act, was enacted effective October 1, 2007. This act made several changes to the Federal Family Education Loan Program (FFELP). Special allowance rates on loans first disbursed October 1, 2007 and later have decreased by 40 basis points which reduced the special allowance revenue received by the Foundation. Lender fees increased from .5% to 1% on loans first disbursed October 1, 2007.

#### Bond Issues

On August 1, 2009, the Foundation issued \$40 million in taxable bonds and \$60 million in tax-exempt bonds maturing in March 2009 to fund student loans for the 2009-2010 academic year. The Foundation retired the Bank of the West Line of Credit on August 31, 2009. On September 16, 2009, the Foundation issued the Series 2009 Bond that consisted of reoffered issues for Senior Series 2001A, 2002A, 2003A and 2004A totaling \$219.1 million (AMT) plus a new series 2009A (AMT) at \$42.5 million, 2009B (non-AMT) at \$190.6 million, and 2009C (AMT) at \$59.1 million. The ratings for each Series is Aaa (Moody's) with the exception of 2001B which is A2.

#### Proposed Legislation

President Obama's fiscal year 2010 budget submitted to Congress earlier this year proposed the elimination of the FFEL Program in favor of the government-run Direct Loan program, beginning July 1, 2010. On July 21, 2009, the House Education and Labor Committee concluded a markup by voting to approve the Student Aid and Fiscal Responsibility Act (H.R. 3221) ("SAFRA"). SAFRA calls for all new federal student loans to be originated through the Direct Loan program effective July 1, 2010. The Act was passed by the House on September 17, 2009 with 3 amendments. It is uncertain what changes will be made to the proposed legislation as it moves through the Senate HELP Committee and eventually to the Senate floor. This process is not expected to be completed until October, 2009.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Statements of Net Assets June 30, 2009 and 2008

	June 30, 2009	June 30, 2008
<b><u>ASSETS</u></b>		
<b><i>Current Assets:</i></b>		
Cash and Cash Equivalents	\$ 3,948,473	\$ 7,510,489
Cash and Cash Equivalents - Restricted	1,204,273	3,848,217
Funds Held In Custody For Others	161,863	151,696
Investments	81,908,978	103,496,746
Receivables:		
Current Portion of Student Loans Receivable, Net	62,367,263	50,470,417
Student Loan Interest Receivable, Net of Allowance of \$63,905 (2009) and \$75,617 (2008)	23,085,150	19,204,354
Accrued Interest Receivable On Funds Held by Trustee and Investment	169,248	554,148
Student Loan Late and Legal Fees Receivable, Net of Allowance of \$1,618,305 (2009) and \$1,398,097 (2008)	2,051,321	1,367,927
Interest Subsidy and Special Allowance Receivable (Payable)	(1,301,141)	8,922,702
Other	2,320,965	3,733,713
Total Current Assets	<u>175,916,393</u>	<u>199,260,409</u>
<b><i>Long-Term and Other Assets:</i></b>		
Student Loans Receivable, Net, Less Current Portion	1,105,948,225	959,645,785
Debt Issuance Costs and Commitment Fees	6,639,350	7,154,480
Total Long-Term and Other Assets	<u>1,112,587,575</u>	<u>966,800,265</u>
<b><i>Capital Assets:</i></b>		
Property, Plant & Equipment	<u>11,770,854</u>	<u>9,729,894</u>
Total Assets	<u>\$ 1,300,274,822</u>	<u>\$ 1,175,790,568</u>
<b><u>LIABILITIES</u></b>		
<b><i>Current Liabilities:</i></b>		
Accounts Payable and Accrued Liabilities	\$ 3,841,167	\$ 4,811,297
Bonds Payable, Current Portion	146,535,000	38,975,000
Accrued Interest on Bonds and Note Payable	2,860,304	5,218,985
Arbitrage Payable to Federal Government	29,034	717,050
Funds Held In Custody For Others	5,322	66,621
Note Payable	22,886,853	-
Other	194,833	107,167
Total Current Liabilities	<u>176,352,513</u>	<u>49,896,120</u>
<b><i>Long-Term Liabilities:</i></b>		
Bonds Payable, Less Current Portion	998,860,000	1,000,260,000
Reserves For Excess Earnings	30,912,990	28,580,732
Arbitrage Payable to Federal Government, Less Current Portion	2,713,880	2,097,158
Total Long-Term Liabilities	<u>1,032,486,870</u>	<u>1,030,937,890</u>
Total Liabilities	<u>1,208,839,383</u>	<u>1,080,834,010</u>
<b><u>NET ASSETS</u></b>		
Invested in Capital Assets	11,770,854	9,729,894
Unrestricted	17,670,792	25,231,988
Restricted, Bond Indenture	61,993,793	59,994,676
Total Net Assets	<u>91,435,439</u>	<u>94,956,558</u>
Total Liabilities & Net Assets	<u>\$ 1,300,274,822</u>	<u>\$ 1,175,790,568</u>

See accompanying notes to financial statements.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Statements of Revenues, Expenses, and Changes in Net Assets Years Ended June 30, 2009 and 2008

	2009	2008
<b><i>OPERATING REVENUES:</i></b>		
Student Loan Interest	\$ 38,857,915	\$ 36,745,021
Interest Subsidy and Special Allowance	5,805,156	24,181,416
Interest on Funds Held by Trustee and Investment	2,027,607	8,365,851
Student Loan Late and Legal Fees, Net	1,701,810	1,063,789
Servicing and Administration Agreements:		
New Mexico Student Loan Guarantee Corporation	1,406,316	1,451,247
Servicing Fees	348,829	679,167
Other	43,836	51,812
Total Operating Revenues	<u>50,191,469</u>	<u>72,538,303</u>
<b><i>OPERATING EXPENSES:</i></b>		
Interest Expense on Bonds and Note Payable	25,282,100	44,566,648
General and Administration:		
Salaries and Employee Benefits	9,915,776	10,747,890
Depreciation and Amortization	619,376	630,319
Provision for Student Loan Losses	845,717	235,048
Department of Education Fees	6,228,123	5,682,364
Other Student Loan Related Costs	2,813,335	3,779,709
Other	3,466,310	3,894,650
Trustee Fees, Amortization of Debt Issuance Costs,		
Commitment Fees and Other Trust Expenses	<u>1,756,645</u>	<u>4,250,481</u>
Total Operating Expenses	<u>50,927,382</u>	<u>73,787,109</u>
 Operating (Loss)	 <u>(735,913)</u>	 <u>(1,248,806)</u>
<b><i>NON-OPERATING EXPENSES (REVENUES):</i></b>		
Arbitrage Rebate Provision	452,948	176,696
Excess Earnings Provision (Reversal)	<u>2,332,258</u>	<u>(4,597,743)</u>
 Total Non-Operating Expenses	 <u>2,785,206</u>	 <u>(4,421,047)</u>
Change in Net Assets	<u>\$ (3,521,119)</u>	<u>\$ 3,172,241</u>
<b><i>NET ASSETS:</i></b>		
Beginning	<u>94,956,558</u>	<u>91,784,317</u>
Ending	<u>\$ 91,435,439</u>	<u>\$ 94,956,558</u>

See accompanying notes to financial statements.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Statements of Cash Flows Years Ended June 30, 2009 and 2008

	2009	2008
<b>Cash Flows From Operating Activities:</b>		
Cash Received from or on behalf of Borrowers	\$ 115,445,720	\$ 135,303,178
Cash Disbursed to or paid on Behalf of Borrowers	(230,156,201)	(238,560,470)
Cash Received from Others	1,892,286	2,185,882
Cash Paid to Employees	(9,444,846)	(10,290,123)
Cash Paid to Suppliers	(4,880,535)	(4,085,563)
Cash Received From Investments	2,412,507	8,436,041
Cash Paid For Interest On Notes/Bonds	(27,063,904)	(47,606,881)
Net Cash Used by Operating Activities	<u>(151,794,973)</u>	<u>(154,617,936)</u>
<b>Cash Flows From Non-Capital Financing Activities:</b>		
Proceeds on Bonds/Notes	193,094,919	616,576,385
Payments on Bonds/Notes	(64,048,066)	(466,393,395)
Trust Expenditures, Arbitrage, and Excess Earnings Expenditures	(2,280,887)	(5,524,391)
Net Cash Provided by Non-Capital Financing Activities	<u>126,765,966</u>	<u>144,658,599</u>
<b>Cash Flows From Capital and Related Financing Activities:</b>		
Purchase of Capital Assets	(2,693,256)	(3,199,632)
Proceeds from Sale of Capital Assets	-	3,700
Net Cash Used by Capital and Related Financing Activities	<u>(2,693,256)</u>	<u>(3,195,932)</u>
<b>Cash Flows From Investing Activities:</b>		
Redemptions of Investments	606,704,566	782,674,938
Purchases of Investments	(585,116,798)	(773,893,714)
Funds Held in Custody for Others	(71,465)	(27,232)
Net Cash Provided by Investing Activities	<u>21,516,303</u>	<u>8,753,992</u>
Net Decrease in Cash and Cash Equivalents	(6,205,960)	(4,401,277)
Cash and Cash Equivalents, Beginning of Year	<u>11,358,706</u>	<u>15,759,983</u>
Cash and Cash Equivalents, End of Year	<u>\$ 5,152,746</u>	<u>\$ 11,358,706</u>

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# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Statements of Cash Flows Years Ended June 30, 2009 and 2008

	2009	2008
<b>Reconciliation of Operating Income to Net Cash Used by Operating Activities:</b>		
Operating (Loss)	\$ (735,913)	\$ (1,248,806)
Adjustments to Reconcile Operating Income (Loss) to Net Cash Used by Operating Activities:		
Gain on Sale of Fixed Asset	17,120	(3,536)
Depreciation and Amortization Expense	619,376	630,319
Trustee Fees, Amortization of Debt Issuance Costs, Commitment Fees, and Other Trust Expense	1,756,645	4,250,481
Changes in Assets & Liabilities:		
Increase in Student Loans Receivable, net	(158,199,286)	(154,247,035)
Decrease in Student Loan Interest Receivable, Interest Subsidy & Special Allowance Receivable, and Late & Legal Fees Receivable	5,659,653	1,463,238
Decrease in Investment Income Receivable	384,900	70,190
Decrease (Increase) in Other Current Assets	1,412,747	(1,146,385)
Decrease (Increase) in Debt Issuance Costs & Commitment Fees	515,130	(647,597)
Decrease in Accounts Payable & Other Accrued Liabilities	(3,225,345)	(3,738,805)
<b>Net Cash Used by Operating Activities</b>	<b>\$ (151,794,973)</b>	<b>\$ (154,617,936)</b>
<b>Supplemental Disclosures of Cash Flow Information:</b>		
Interest Collected on FFELP Student Loans	\$ 16,443,314	\$ 15,827,541
Interest Subsidy & Special Allowance Collected from the U.S. Department of Education	\$ 16,029,002	\$ 31,809,134
Arbitrage Rebate Expense Incurred & Liability Accrued	\$ 452,948	\$ 176,696
Excess Earnings Expense Incurred & Liability Accrued	\$ 2,332,258	\$ (4,597,743)
Principal Amount of Bonds Refunded or Retired	\$ 38,975,000	\$ 435,975,000

See accompanying notes to financial statements.



# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to Financial Statements  
June 30, 2009

## (1) Organization

The New Mexico Educational Assistance Foundation (the Foundation or NMEAF) was organized under the laws of the State of New Mexico on July 1, 1981, as a quasi-governmental, not-for-profit organization for the purpose of improving the educational opportunities of the residents of New Mexico and students who attend New Mexico post-secondary educational institutions. The Foundation's primary purpose is to provide a program for making, financing, holding, and purchasing federally insured educational loans. The Foundation services loans and provides administrative support and other services for in-state educational and lending institutions and administers federal financial aid programs. The Foundation also provides administrative support for the New Mexico Student Loan Guarantee Corporation (Corporation), a quasi-governmental, not-for-profit entity operating as a guarantee agency under the Federal Family Education Loan Program (FFELP).

In October of 2003, the Foundation and the Corporation filed a "doing business as" trade name of *New Mexico Student Loans* with the New Mexico State Corporation Commission. As of that date, both entities hold themselves out to the public as one organization in order to improve awareness and understanding of their inter-related purpose.

The University of New Mexico, the state's largest post-secondary educational institution, transitioned its student loan volume to the Foundation during fiscal year 2005. In the year ended June 30, 2009, the Foundation realized approximately \$78.8 million in student loan volume from the University of New Mexico. In the year ended June 30, 2008, the Foundation realized approximately \$82.7 million in student loan volume from the University of New Mexico.

## (2) Summary of Significant Accounting Policies

### (a) Basis of Accounting

NMEAF meets the definition of a governmental entity as set forth in the AICPA Audit and Accounting Guide, *Audits of State and Local Governmental Units*. The financial statements of the Foundation are prepared on the basis of an enterprise fund as defined by the Governmental Accounting Standards Board (GASB). Enterprise funds are used to account for operations (a) that are financed and operated in a manner similar to private business enterprises where the intent of the entity is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the entity has decided that periodic determination of revenue earned, expenses incurred, and net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

The Foundation's government-wide financial statements are designed to be corporate-like in that all business-type activities are consolidated into one column, and consist of a Statement of Net Assets, a Statement of Revenues, Expenses and Changes in Net Assets, and a Statement of Cash Flows. The Foundation carries on no governmental activities. It has neither fiduciary funds nor component units that are fiduciary in nature.

Enterprise funds are accounted for on the flow of economic resources measurement focus and use the accrual basis of accounting. Under this method, revenue is recorded when earned, and expenses are recorded at the time liabilities are incurred. NMEAF has elected not to follow the pronouncements of the Financial Accounting Standards Board (FASB) issued after November 30, 1989, which is an alternative followed by GASB Statement No. 20, *Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities that use Proprietary Fund Accounting*.

Amounts reported as program revenues include:

- Borrower interest income and fees;
- Federal subsidies;
- Investment interest income;
- Loan servicing and other revenue.



## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to Financial Statements  
June 30, 2009

Essentially all of the Foundation's revenues are program revenues.

Enterprise funds distinguish operating revenues and expenses from non-operating items. All of the Foundation's revenue streams are considered operating in nature. The principal non-operating expenses are arbitrage rebate and excess earnings expense.

When both restricted and unrestricted net assets are available to cover a designated expense, it is the Foundation's policy to use restricted resources first, and then utilize unrestricted resources as they are needed.

### *(b) Fund Accounting*

The General and Debt Funds (Funds) are separate sets of self-balancing accounts established to account for all transactions pertaining to the general administration, student lending and debt issues of NMEAF. These funds do not meet the criteria for reporting as separate funds in the accompanying financial statements, but are used for internal reporting purposes. Each fund utilizes the accrual basis of accounting whereby revenues are recognized when earned and expenses are recognized when incurred. The effect of interfund activity has been eliminated from the combined financial statements.

All transactions relating to the Funds, which are not presented distinctly in the financial statements, are recorded as described below:

- General Fund: The receipt of revenue and transfers for the payment of expenses for the administration of the Foundation's programs are recorded in the General Fund.
- Debt Fund: Transactions relating to the Foundation's borrowings to finance student loans through the issuance of debt are recorded in the Debt Fund. All revenue and expenses associated with these student loans and all related trust indenture activity are recorded in this fund. The Debt Fund reimburses the General Fund for expenses incurred on its behalf. Various assets and liabilities of each respective debt issue are combined in the accompanying balance sheet although there are various restrictive covenants associated with each issue. Net Assets of the Fund generally are restricted for the repayment of Debt Fund obligations and to satisfy certain reserve requirements specified by the various indentures.

### *(c) Use of Estimates*

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. The allowance for student loan losses, late and legal fees, special allowance revenue, and arbitrage rebate and excess earnings liabilities are the principal areas involving estimates and judgments. Actual results could differ from those estimates.

### *(d) Cash and Cash Equivalents, Cash and Cash Equivalents – Restricted, Investments*

NMEAF considers cash on hand, in banks, and similar highly liquid instruments to be cash and cash equivalents. Cash equivalents are carried at cost. Cash earmarked for loan disbursement to students and cash collected on student loans but not yet remitted to the Bond trustees are restricted from use for Foundation operations and are shown as Cash and Cash Equivalents – Restricted on the Statement of Net Assets. NMEAF considers all other invested funds to be Investments.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to Financial Statements June 30, 2009

Funds held by Bond trustees, recorded as investments on the Statement of Net Assets, consist of the following:

- Money market and deposit funds that are fully secured by a pledge of direct obligations of or guaranteed by the United States of America or certain federal agencies. These investments are carried at cost, which approximates market value.
- Guaranteed investment contracts that are carried at cost, which approximates market value.

The Foundation also invests in U.S. Treasury bills and notes through the Treasury Direct program. These investments, as well as the guaranteed investment contracts and money markets, are subject to GASB Statement No. 40, *Deposit and Risk Disclosures – An Amendment of GASB Statement No. 3*. As such, they are reported at fair value with maturities and credit ratings by investment type.

*(e) Funds Held in Custody for Others*

NMEAF is the agent for various in-state educational institutions and the private lending community. As an agent, NMEAF holds and disburses funds for the institutions to qualified students.

*(f) Premiums and Borrower Incentive Plan Fees*

NMEAF defers the recognition of premiums paid on student loan notes purchased and amortizes them over the estimated life of the loans as an adjustment to the yield of the related loans. Borrower incentives costs such as origination fees and default fees are also amortized over the estimated life of the related loans. Amortization of these costs is included in other student loan costs expense on the Statement of Revenues, Expenses, and Changes in Net Assets.

*(g) Student Loan Late and Legal Fees Receivable*

NMEAF records late and legal fees to each borrower's account when assessed, in accordance with its litigation policy. However, management believes that a portion of these amounts will not be received from the borrower. As a result, NMEAF records late and legal fees revenue, net of estimated amounts deemed uncollectible.

*(h) Allowance for Student Loan Losses*

NMEAF provides allowances for the following items in the student loan portfolio: student loans receivable (principal), student loan interest, and late and legal fees receivable. To the extent NMEAF has properly serviced the student loan portfolio in accordance with the U.S. Department of Education's (ED) due diligence regulations and other requirements, student loan principal and interest receivable was insured by the ED at 98% of the principal and interest balance during the year. As NMEAF was designated an "exceptional performer" by the ED in August, 2005, the reinsurance rate was 100% as of June 30, 2006, provided relevant criteria were met. Beginning July 1, 2007, the reinsurance rate is 99%. The "exceptional performer" program was terminated as of September 30, 2007, thereby reducing the reinsurance rate to 97%.

Allowance considerations are applied to student loan late and legal fees receivable because the only recourse for collection of such receivables is the borrower. Allowances recorded by NMEAF are amounts that, in the judgment of management, are adequate to absorb known and estimated risks in the student loan portfolio. Management considers various factors in providing for these losses, including the amount of loans with due diligence violations, litigation results and estimated successful due diligence cure and collection results on student loans.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to Financial Statements  
June 30, 2009

(i) *Amortization of Debt Issuance Costs and Commitment Fees*

Debt issuance costs and commitment fees are amortized using the bonds outstanding method, which approximates the effective interest rate method, over the contractual repayment term or life of the associated debt (ranging from one to thirty years) or over the commitment period (typically less than one year).

(j) *Capital Assets*

Capital assets are recorded at cost, net of accumulated depreciation. The capitalization threshold is \$1,000. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Estimated useful lives of the fixed assets are as follows:

Building and building improvements	30 and 10 years, respectively
Software Development	12 years
Building equipment	5 years
Data processing hardware, personal computers	3 years
Data processing hardware, other than personal computers	4 years
Data processing software	3 years
Furniture and fixtures	10 years
Vehicles	3 years

Maintenance and repairs that do not extend the assets' useful lines are charged to expense as incurred. Software development is for internal use. Only the costs paid externally for study, design, and programming will be capitalized.

NMEAF did not receive donations of capital assets during the years ending June 30, 2009 and 2008.

(k) *Restricted Net Assets*

Net Assets held as collateral on outstanding Bonds Payable are classified as Restricted Net Assets.

(l) *Revenue Recognition*

NMEAF records student loan interest, interest subsidy, and special allowance as revenue when earned.

Under the FFELP program, the ED makes quarterly interest payments to the Foundation while the subsidized Stafford loan is in an in-school or in-grace status and until the student is required, under the provisions of the Higher Education Act, to begin repayment. Interest becomes due from individual borrowers once the loan goes into repayment status. Interest on non-subsidized loans is due from individual borrowers once the loan is disbursed. Borrowers under the FFELP program may defer their interest payments on unsubsidized Stafford loans until the end of their in-school and in-grace period. Interest, both subsidized and due from the borrower, is equivalent to the annual student loan interest rate multiplied by the daily unpaid loan balance.

The ED also provides a special allowance subsidy to lenders participating in the FFELP. Special allowances are computed and paid quarterly on the average daily unpaid principal balance of qualifying student loans outstanding based on an annual rate equal to the average bond equivalent rate of 91-day United States Treasury Bills for subsidized loans during the calendar quarter, or for loans first disbursed after January 1, 2000, the 90-day commercial paper rate. For loans first disbursed on or after April 1, 2006, if the special allowance calculation based on the 90-day commercial paper rate is less than zero, the Foundation must return this "negative" special allowance to the ED. For loans first disbursed on or after October 1, 2007, the special allowance rates decreased by 40 basis points. The Foundation records interest subsidy and special allowance, net of any negative special allowance, as revenue when earned.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to Financial Statements June 30, 2009

For loans originated after July 1, 2007 and July 1, 2008, origination fee rates of 1.5%, and 2.0% respectively were paid by NMEAF on behalf of student loan borrowers and paid to the ED along with a .5% lender fee. The lender fee increased to 1% for loans first disbursed on October 1, 2007 and later. Payment of the origination fee to the ED occurs through an offset to the interest subsidy and special allowance payments received from the ED.

Late and legal fees are recorded as revenue when they have been assessed to each borrower's account in accordance with NMEAF's litigation policy. Service agreement revenue is recorded as earned over the life of the contract, and servicing fees are recorded as earned (see Note 8 for additional information).

#### *(m) Income Taxes*

NMEAF is a tax-exempt, quasi-governmental organization under Section 501(c) (3) of the Internal Revenue Code (IRC). All of NMEAF's income is from tax-exempt activities. Accordingly, no provision for income taxes has been included in the accompanying financial statements.

### **(3) Cash and Cash Equivalents and Investments**

NMEAF considers cash deposits in banks, unrestricted money market funds, and cash on hand to be cash and cash equivalents. Other invested funds, including guaranteed investment contracts, U.S. Treasury securities, trustee-held money markets, and certificates of deposit, are classified as investments. GASB Statement No. 40 amends GASB Statement No. 3 to change required disclosures relating to cash and equivalents and investments. While this new Statement changes the custodial credit risk categorization requirements, additional disclosures are now required, including estimation of fair value as of the report date, and exposure of each investment to credit risk, if any, as measured by nationally recognized statistical rating organizations. For purposes of presentation on this footnote, all cash and cash equivalents and investments are displayed in a single schedule.

#### **(a) Concentration of Credit Risk**

The Foundation's investment policy specifies that all investments must comply with New Mexico State Statute 21-21A-17. Generally, this Statute permits investment of funds in the following types of instruments:

- Direct obligations of the United States or its agencies (GNMA, FNMA, FHLB, etc.),
- Certificates of deposit fully collateralized by the above;
- If proceeds from a bond issue, in securities specified under the trust indenture.

As of June 30, 2009, approximately 38% of total cash and investments are in Investment Agreements as defined by the trust indentures. Nearly 48% of total cash and investments are in money markets that invest in government securities. The remaining cash is in repurchase agreements or demand deposit accounts.

As of June 30, 2008, approximately 61% of total cash and investments are in Investment Agreements as defined by the trust indentures. Nearly 30% of total cash and investments are in money markets that invest in government securities. The remaining cash is in repurchase agreements or demand deposit accounts.

#### **(b) Custodial Credit Risk**

Custodial credit risk is the risk that in the event of a bank failure, the Foundation's deposits may not be returned to it. NMEAF has a policy to ensure sufficient collateral on its deposits through U.S. Agency Securities to meet state requirements.

Investments listed below as guaranteed investment contracts and money market funds are carried at cost, which approximates market value due to the short-term nature of the accounts. The credit ratings of these investments are obtained from Moody's Investors Service. They are restricted to the extent required by the bond indentures. Money market funds have no stated maturities.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

Cash and equivalents and investments balances, June 30, 2009:

<u>Investment</u>	<u>Maturity</u>	<u>Rating</u>	<u>Fair Value</u>
Guaranteed Investment Contracts:			
1995 Series A Float – Westdeutsche	11/1/2010	Aa1	\$8,992,710
1995 Series A Reserve – Trinity	11/1/2010	Aa2	210,000
1996 Series A & B – Bayerische	11/1/2025	Aaa	4,335,641
1998 Series A, B & C – Bayerische	11/1/2028	Aaa	6,325,368
1999 Series A & B – Societe Generale	11/1/2028	Aa2	1,946,715
2001 Series A & B – Trinity	9/1/2031	Aa2	436,206
2002 Series A – Trinity	11/1/2032	Aa2	1,304,299
2003 Series A – Trinity	9/1/2033	Aa2	4,064,751
2004 Series A – Trinity	4/1/2034	Aa2	4,647,546
2005 Series A & B – Pallas	10/1/2035	Aaa	1,232,874
Money Market Funds – AIM-Government	N/A	Aaa	11,520,239
Money Market Fund – Fidelity - Government	N/A	Aaa	28,847,494
Money Market Fund - Bank of the West	N/A	N/A	1,235,164
Demand Deposits and Cash on Hand	N/A	N/A	11,962,717
Total			<u>\$87,061,724</u>

Cash and equivalents and investments balances, June 30, 2008:

<u>Investment</u>	<u>Maturity</u>	<u>Rating</u>	<u>Fair Value</u>
Guaranteed Investment Contracts:			
1994 Series II - Societe Generale	12/1/2009	Aa2	\$ 96,767
1995 Series A Float – Westdeutsche	11/1/2010	Aa1	8,126,298
1995 Series A Reserve – Trinity	11/1/2010	Aaa	210,000
1996 Series A & B – Bayerische	11/1/2025	Aa2	20,274,193
1998 Series A, B & C – Bayerische	11/1/2028	Aa2	7,951,861
1999 Series A & B – Societe Generale	11/1/2028	Aa2	3,399,527
2001 Series A & B – Trinity	9/1/2031	Aaa	4,590,519
2002 Series A – Trinity	11/1/2032	Aaa	9,274,973
2003 Series A – Trinity	9/1/2033	Aaa	7,229,696
2004 Series A – Trinity	4/1/2034	Aaa	7,795,492
2005 Series A & B – Pallas	10/1/2035	Aaa	1,575,069
Money Market Funds – AIM-Government	N/A	Aaa	27,192,769
Money Market Fund – Fidelity - Government	N/A	Aaa	5,779,582
Money Market Fund - Bank of the West	N/A	N/A	1,235,164
Demand Deposits and Cash on Hand	N/A	N/A	10,123,542
Total			<u>\$114,855,452</u>

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to Financial Statements  
June 30, 2009

## (4) Student Loans Receivable

Student loans receivable by bond issue and status, June 30, 2009:

Bond Issue	Status		Total
	Student	Repayment	
General Fund	\$ 17,146,487	\$ 6,593,683	\$ 23,740,170
1995 Series A	34,252	2,315,921	2,350,173
1996 Series A	871,698	12,821,706	13,693,404
1996 Series B	1,954,465	14,418,915	16,373,380
1998 Series A, B & C	6,678,586	23,865,100	30,543,686
1999 Series A, B & C	4,152,509	5,171,426	9,323,935
2001 Series A, B, C, & D	2,150,746	32,597,589	34,748,335
2002 Series A, B, & C	13,507,154	58,241,290	71,748,444
2003 Series A, B, C, & D	4,297,069	79,499,503	83,796,572
2004 Series A	10,094,235	103,086,198	113,180,433
2005 Series A	2,473,250	4,347,935	6,821,185
2006 Series A & B	1,128,015	8,675,901	9,803,916
2007 Series A & B	73,410,828	108,688,930	182,099,758
2008 Series A & B	90,794,423	336,870,872	427,665,295
2008 Series E	92,935,232	1,536,383	94,471,615
2008 Series D	45,830,937	3,209,601	40,040,538
Total	367,459,886	801,940,953	1,169,400,839
Less allowance for uncollectible principal	(341,049)	(744,302)	(1,085,351)
Total	\$ 367,118,837	\$ 801,196,651	\$ 1,168,315,488

Student Loans Receivable by bond issue and status, June 30, 2008:

Bond Issue	Status		Total
	Student	Repayment	
General Fund	\$ 17,528	\$ 4,101,359	\$ 4,118,887
1995 Series A	54,235	2,913,210	2,967,445
1996 Series A	1,216,173	12,343,725	13,559,898
1996 Series B	1,776,116	9,324,595	11,100,711
1998 Series A, B & C	826,333	21,648,334	22,474,667
1999 Series A, B & C	916,004	1,784,718	2,700,722
2000 Series A, B, & C	914,649	7,631,116	8,545,765
2001 Series A, B, C, & D	1,171,762	39,429,158	40,600,920
2002 Series A, B, & C	20,660,355	58,570,947	79,231,302
2003 Series A, B, C, & D	1,915,243	80,134,174	82,049,417
2004 Series A	2,139,568	109,107,902	111,247,470
2005 Series A	3,697,128	9,535,695	13,232,823
2006 Series A & B	2,783,569	11,861,772	14,645,341
2007 Series A & B	121,798,094	50,274,985	172,073,079
2008 Series A & B	144,459,316	288,077,826	432,537,142
Total	304,346,073	706,739,516	1,011,085,589
Less allowance for uncollectible principal	(291,794)	(677,593)	(969,387)
Total	\$ 304,054,279	\$ 706,061,923	\$ 1,010,116,202



# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

Student loans receivable had variable and fixed interest rates, ranging from 2.75% to 10% at June 30, 2009, and from 2.85% to 10% at June 30, 2008.

Student loans are classified as being in either "in-school/in-grace" or "repayment" status. In-school/in-grace status represents the period from the date the loan is made until a student is out of school for a grace period, plus any authorized deferment periods, at which time the repayment status commences. Substantially all student loans receivable are loans provided under the FFELP and are guaranteed.

Management estimates that approximately \$62.4 million or about 5% of the outstanding balance of student loans receivable is due within one year for 2009. Management estimated that approximately \$50.5 million or about 5% of the outstanding balance of student loans receivable was due within one year for 2008. Generally, Foundation loans are structured with a ten-year repayment period. During fiscal year 2008, \$1,496,732 in student loans were forgiven through the use of operational funds.

### Note Receivable

NMEAF entered into an agreement with the University of New Mexico (UNM) to advance funds for the purpose of UNM's School as Lender program. Per this agreement, dated July 1, 2008, NMEAF will advance funds for new loan originations up to \$65 million. The advanced funds are fully collateralized by the underlying student loan promissory notes. Interest is charged on the unpaid principal at a rate equal to the average of the 3-month Commercial Paper Rate at the end of the preceding quarter. The maturity date of this Note is June 30, 2011. As of June 30, 2009, the outstanding balance was \$1.7 million, as compared to an outstanding balance of \$2.4 million as of June 30, 2008.

### (5) Capital Assets

Capital asset activity, year ended June 30, 2009:

	Balance July 1, 2008	Additions	Deletions	Balance June 30, 2009
Capital Assets, Not Being Depreciated				
Land	\$ 1,011,520	\$ -	\$ -	\$ 1,011,520
Total Capital Assets, Not Being Depreciated	1,011,520	-	-	1,011,520
Capital Assets, Being Depreciated				
Building, Building Equipment & Improvements	5,753,416	1,027	(6,910)	5,747,533
Furniture and Fixtures	645,723	-	-	645,723
Data Processing Hardware	1,373,450	99,604	(47,291)	1,425,763
Data Processing Software	5,144,368	2,576,101	(18,420)	7,702,049
Vehicles	154,700	-	-	154,700
Total Capital Assets, Being Depreciated	13,071,657	2,676,732	(72,621)	15,675,768
Less Accumulated Depreciation:				
Building, Building Equipment & Improvements	(942,907)	(227,465)	6,910	(1,163,462)
Furniture and Fixtures	(277,027)	(62,241)	-	(339,268)
Data Processing Hardware	(893,485)	(238,923)	47,291	(1,085,117)
Data Processing Software	(2,157,617)	(57,284)	1,300	(2,213,601)
Vehicles	(82,247)	(32,739)	-	(114,986)
Total Accumulated Depreciation	(4,353,283)	(618,652)	55,501	(4,916,435)
Total Capital Assets, Being Depreciated, Net	8,718,374	2,058,080	(17,120)	10,759,334
Capital Assets, Net	\$ 9,729,894	\$ 2,058,080	\$ (17,120)	\$ 11,770,854

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

Capital asset activity, year ended June 30, 2008:

	Balance July 1, 2007	Additions	Deletions	Balance June 30, 2008
Capital Assets, Not Being Depreciated				
Land	\$ 1,011,520	\$ -	\$ -	\$ 1,011,520
Total Capital Assets, Not Being Depreciated	1,011,520	-	-	1,011,520
Capital Assets, Being Depreciated				
Building, Building Equipment & Improvements	5,673,948	101,662	(22,194)	5,753,416
Furniture and Fixtures	632,538	13,185	-	645,723
Data Processing Hardware	1,307,828	181,995	(116,373)	1,373,450
Data Processing Software	2,279,780	2,864,588	-	5,144,368
Vehicles	128,456	62,796	(36,552)	154,700
Total Capital Assets, Being Depreciated	10,022,550	3,224,226	(175,119)	13,071,657
Less Accumulated Depreciation:				
Building, Building Equipment & Improvements	(741,868)	(223,233)	22,194	(942,907)
Furniture and Fixtures	(215,074)	(61,953)	-	(277,027)
Data Processing Hardware	(764,010)	(245,684)	116,209	(893,485)
Data Processing Software	(2,078,816)	(78,801)	-	(2,157,617)
Vehicles	(98,940)	(19,859)	36,552	(82,247)
Total Accumulated Depreciation	(3,898,708)	(629,530)	174,955	(4,353,283)
Total Capital Assets, Being Depreciated, Net	6,123,842	2,594,696	(164)	8,718,374
Capital Assets, Net	\$ 7,135,362	\$ 2,594,696	\$ (164)	\$ 9,729,894

Depreciation expense, segregated by function, is as follows:

	Year Ended June 30, 2009	Year Ended June 30, 2008
Building and Building Improvements	227,465	\$ 223,233
Furniture and Fixtures	62,241	61,953
Data Processing Hardware	238,923	245,684
Data Processing Software	57,284	78,801
Vehicles	32,739	19,859
Total Depreciation Expense	\$ 618,652	\$ 629,530



# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

### (6) Long-term Liabilities

Long-term liabilities for the year ended June 30, 2009:

	<u>*Balance 06/30/2008</u>	<u>Increases</u>	<u>Decreases</u>	<u>Due Within One Year</u>	<u>Balance 06/30/2009</u>
Bonds Payable	\$ 1,039,235,000	\$ 145,135,000	\$ (38,975,000)	\$ (146,535,000)	\$ 998,860,000
Reserves for Excess Earnings	28,580,732	2,332,258	-	-	30,912,990
Arbitrage Rebate Payable	2,814,208	452,948	(524,242)	(29,034)	2,713,880
Total Long-Term Liabilities	<u>\$ 1,070,629,940</u>	<u>147,920,206</u>	<u>(39,499,242)</u>	<u>(146,564,034)</u>	<u>\$ 1,032,486,870</u>

Long-term liabilities for the year ended June 30, 2008:

	<u>*Balance 06/30/2007</u>	<u>Increases</u>	<u>Decreases</u>	<u>Due Within One Year</u>	<u>Balance 06/30/2008</u>
Bonds Payable	\$ 868,085,000	\$ 611,405,000	\$ (440,255,000)	\$ (38,975,000)	\$ 1,000,260,000
Reserves for Excess Earnings	33,178,475	-	(4,597,743)	-	28,580,731
Arbitrage Rebate Payable	3,910,634	176,696	(1,273,122)	(717,050)	2,097,159
Total Long-Term Liabilities	<u>\$ 905,174,109</u>	<u>\$ 611,581,696</u>	<u>\$ (446,125,865)</u>	<u>\$ (39,692,050)</u>	<u>\$ 1,030,937,890</u>

\*Beginning balance includes current portion of long-term liabilities.

Student Loan Revenue bonds activity for the year ended June 30, 2009, and balances by bond issue as of June 30, 2009:

<u>Bond Issue</u>	<u>Interest Rate Range</u>	<u>Maturity Range</u>	<u>Bonds Outstanding 06/30/2008</u>	<u>Issued / (Retired) FY 2009</u>	<u>Bonds Outstanding 06/30/2009</u>
1995 Series A	Variable – 6.60%	11/1/2010	4,200,000	-	4,200,000
1996 Series A	6.30% to 6.65%	11/1/2008-2025	15,060,000	(5,695,000)	9,365,000
1996 Series B	Variable	11/1/2025	30,000,000	-	30,000,000
1998 Series A & B	Variable	11/1/2010-2028	33,500,000	-	33,500,000
1998 Series C	5.50%	11/1/2010	2,000,000	-	2,000,000
1999 Series A & B	Variable	11/1/2028	9,000,000	-	9,000,000
2001 Series A & B	Variable - 5.90%	9/1/2009-2031	67,245,000	(33,230,000)	34,015,000
2002 Series A	Variable	11/1/2032	70,000,000	-	70,000,000
2003 Series A	Variable	12/15/2005-9/1/2033	77,100,000	-	77,100,000
2004 Series A	Variable	4/1/2034	109,750,000	-	109,750,000
2005 Series A & B	Variable	4/1/2009-9/1/2010	8,900,000	(50,000)	8,850,000
2006 Series A	Variable	9/1/2010	1,075,000	-	1,075,000
2007 Series B	Variable	4/1/2010 – 2037	175,430,000	-	175,430,000
2008 Series A	Variable	5/1/2012 – 4/1/2036	435,975,000	-	435,975,000
2008 Series D (taxable)	Variable	4/1/2036	-	50,000,000	50,000,000
2008 Series E	Variable	9/30/2009	-	95,135,000	95,135,000
			<u>\$ 1,039,235,000</u>	<u>\$ 106,160,000</u>	<u>\$ 1,145,395,000</u>

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

As of June 30, 2009, interest rates for the variable bond issues are as follows: 1995 Series A – .63%; 1996 Series B – .63%; 1998 Series A and B – .63%; 1999 Series – .63%; 2001 Series A1– .858%; 2002 Series A1 and A2 – .858%; 2003 Series A1 and A2 – .858%; 2004 Series A1 to A3 – .858%; 2005 Series A – .858%; 2006 Series A1 – .858%; 2007 Series A1-.65%; 2007 Series A2 (taxable) 1.1225%; 2008 Series A1 to A3-.37% to .45%; and 2008 Series A4 and A5-.70%; 2008 Series D–1.41; 2008 Series E–1.34%.

Student Loan Revenue bonds activity for the year ended June 30, 2008, and balances by bond issue as of June 30, 2008:

Bond Issue	Interest Rate Range	Maturity Range	Bonds Outstanding 06/30/2007	Issued / (Retired) FY 2008	Bonds Outstanding 06/30/2008
1995 Series IV	7.05 - 7.45%	3/1/2007-2010	\$ 4,280,000	\$ (4,280,000)	\$ -
1995 Series A	Variable – 6.60%	11/1/2010	4,200,000	-	4,200,000
1996 Series A	Variable - 6.75%	11/1/2008-2025	42,860,000	(27,800,000)	15,060,000
1996 Series B	Variable	11/1/2025	30,000,000	-	30,000,000
1998 Series A & B	Variable	11/1/2010-2028	33,500,000	-	33,500,000
1998 Series C	5.50%	11/1/2010	2,000,000	-	2,000,000
1999 Series A & B	Variable	11/1/2028	48,600,000	(39,600,000)	9,000,000
2000 Series A & B	Variable	N/A	61,600,000	(61,600,000)	-
2001 Series A & B	Variable - 5.90%	3/1/2009-9/1/2031	108,945,000	(41,700,000)	67,245,000
2002 Series A	Variable	11/1/2032	70,000,000	-	70,000,000
2003 Series A	Variable	9/1/2010-9/1/2033	84,800,000	(7,700,000)	77,100,000
2004 Series A	Variable	4/1/2034	109,750,000	-	109,750,000
2005 Series A & B	Variable	4/1/2009-9/1/2010	112,600,000	(103,700,000)	8,900,000
2006 Series A	Variable	9/1/2010	94,950,000	(93,875,000)	1,075,000
2006 Series A (taxable)	Variable	matured	50,000,000	(50,000,000)	-
2006 Series B	Variable	4/1/2036	10,000,000	(10,000,000)	-
2007 Series B	Variable	4/1/2010-2037	-	113,430,000	113,430,000
2007 Series A (taxable)	Variable	4/1/2036	-	62,000,000	62,000,000
2008 Series A	Variable	5/1/2012-4/1/2036	-	385,975,000	385,975,000
2008 Series A (taxable)	Variable	4/1/2036	-	50,000,000	50,000,000
			<u>\$ 868,085,000</u>	<u>\$ 171,150,000</u>	<u>\$ 1,039,235,000</u>

As of June 30, 2008, interest rates for the variable bond issues are as follows: 1995 Series A – 2.84%; 1996 Series B – 2.84%; 1998 Series A and B – 2.84%; 1999 Series – 3.826%; 2001 Series A1 3.40% ; 2002 Series A1 and A2 – 2.88% to 3.40%; 2003 Series A1 and A2 – 3.40% to 2.84%; 2004 Series A1 to A3 – 3.36%; 2005 Series A and B – 3.36%; 2006 Series A1 – 3.36%; 2006 Series A (taxable) – 3.36%; 2007 Series A1 1.85%, 2007 Series A2(taxable) 2.97%, 2008 Series A1 to A3-1.85% and 2008 Series A4 and A5 – 2.60%.

Interest is payable on a semi-annual basis except for certain taxable bonds which are monthly and the 2008 Series D & E bonds which are paid quarterly. Depending on the bond, principal is payable annually or at specified times during the bond maturity period. All bonds are secured as described in the applicable bond resolutions. Related purchased and financed student loans and investments secure the bonds.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

Principal maturity and interest requirements on bonds payable were as follows:

June 30, 2009			June 30, 2008		
Year	Bond Principal	Bond Interest	Year	Bond Principal	Bond Interest
2010	\$ 146,535,000	\$ 7,642,508	2009	\$ 38,975,000	\$ 26,644,658
2011	32,925,000	6,855,217	2010	1,400,000	25,509,581
2012	19,100,000	6,771,987	2011	32,925,000	24,573,297
2013	30,300,000	6,595,662	2012	19,100,000	24,278,032
2014	200,000	6,563,262	2013	30,300,000	23,521,794
2015-2019	-	32,815,558	2014-2018	200,000	116,911,598
2020 - 2024	-	32,815,558	2019 - 2023	-	116,910,955
2025 - 2029	131,175,000	29,254,715	2024 - 2028	67,875,000	111,608,575
2030 - 2034	364,665,000	21,555,821	2029 - 2033	248,215,000	91,085,645
2035 - 2038	420,495,000	4,706,537	2034 - 2037	600,245,000	29,992,464
	<u>\$ 1,145,395,000</u>	<u>\$ 155,576,825</u>		<u>\$ 1,039,235,000</u>	<u>\$ 591,036,599</u>

Bond interest for the variable bond issues was calculated using the Auction, Securities Industry and Financial Market Association (SIFMA) and London Inter-Bank Offer Rate (LIBOR) rates as of June 30, 2009 (see bonds activity schedules for lists of variable rates at June 30, 2009).

In accordance with the provisions of the Internal Revenue Code (IRC) and related regulations, retainable earnings from non-purpose investments related to the Foundation's tax-exempt bond issues, generally, are limited to the bond yield of the related bond issue. The bond indentures require NMEAF to make annual arbitrage calculations to determine if investments of excess bond proceeds are earning rates of interest in excess of the bond yield. Such amounts, if any, are required to be set aside in arbitrage rebate accounts for each bond issue. The balance in the arbitrage rebate accounts may increase or decrease annually (but not below zero) based on interest rates earned on the investments provided by the bond financing. At the end of each five-year period over the life of the bonds, NMEAF is required to remit any positive arbitrage rebate liability amount to the federal government. Based on the most recent calculation as of May 1, 2009, there are arbitrage rebate liabilities in an aggregate amount of \$2,742,914 which represent the current calculation of excess investment income for the 1995 Series A, 1996 Series A and B, 1998, 1999, 2004, 2005, 2006, and 2007 bond issues that are payable at future dates. The aggregate amount as of May 1, 2008 was \$2,814,208 which represents the current calculation of excess investment income for the 1995 Series A, 1996 Series A and B, 1998, 1999, 2000, 2004, 2005, 2006 and 2007 bond issues that are payable at future dates.

Similarly, student loan income on all tax-exempt bond issues that may be retained by NMEAF in order to fund operations is limited to the bond yield plus an allowable spread, ranging from 1.50% to 2.00%. The excess earnings liability is computed on an annual basis. Excess earnings calculations are completed based on the respective bond year, which may differ from the Foundation's fiscal year end. The excess earnings reserve can be used over time to forgive principal and/or interest on financed student loans or on other programs that would effectively reduce the Foundation's yield. Amounts not used in this manner are required to be paid to the federal government at the end of each ten-year period and at final maturity of the related bond issues. Based on the most recent calculations as of May 1, 2009, there are excess earnings reserves in an aggregate amount of \$30,912,990 which represent the current calculation of excess loan income for the 1995 Series A, 1996 Series B, 1998, 1999, 2002, 2003, and 2004 bond issues that are payable at future dates. The aggregate amount calculated for 2008 was \$28,580,732 for the 1995 Series A, 1996 Series B, 1998, 1999, 2002, 2003 and 2004 bond issues.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

In June, 2008 the Foundation issued \$435.975 million in bonds, of which \$385.975 million of the bonds were tax exempt and \$50 million were taxable. The entire proceeds were used to refund existing debt issues for the purpose of restructuring bonds that were being traded in the auction rate debt market. These proceeds, included in Bonds Payable in the accompanying financial statements, will serially mature over a period from 2012 to 2036. The refunding transaction decreased the cash flow requirements related to the refunded amounts by approximately \$16.7 million at an economic gain (difference between the present values of the old and new debt service payments) of approximately \$12.5 million. The refunding by outstanding series was as follows:

### 2008 Series A1, A2, A3, A4, & A5 Bonds (issued June, 2008) Issue Size \$435,975,000 Refunded Bonds \$435,975,000

Refunded Issue	Refund Amount
1996A Series A1	\$ 27,800,000
1999 Series A1 & A2	39,600,000
2000 Series A1, A3, & B1	61,600,000
2001 Series A2	41,700,000
2003 Series A1	7,700,000
2005 Series A1, A2, & B	103,700,000
2006 Series A1, A2, A3, A4, & B	153,875,000
	<u>\$435,975,000</u>

In August 2007, the Foundation issued \$175.43 million in bonds of which \$113.430 million of the bonds were tax exempt and \$62 million were taxable. The proceeds will be included in bonds payable in the accompanying financial statements, and will serially mature over a period from 2010 to 2037.

Under the Letter of Credit and Reimbursement Agreement with Bank of America, the Royal Bank of Canada (RBC), and Lloyds Bank dated June 1, 2008, there are certain covenants under which the Foundation is to maintain compliance. On June 15, 2009, Fitch Ratings downgraded the underlying ratings in the Series 2008A bonds from AAA to A+ to match the long term ratings of the letter of credit providers. The downgrade of the underlying rating from AAA violates one of the covenants of the Letter of Credit and Reimbursement Agreement and is categorized under such agreement as an event of default. The banks that are party to this agreement have not invoked their rights to declare an event of default and therefore there has been no impact to 2008A bond issue or The Foundation. Management and the party banks are working towards an amendment to the agreement that would remove the requirement to maintain the AAA underlying ratings.

## (7) Note Payable

Summary of changes in short-term debt for the year ended June 30, 2009:

Short-Term Note (Due Within One Year)	Balance 06/30/2008	Issuances	Retirements	Balance 06/30/2009
Notes Payable	\$ -	\$ 47,959,919	\$ (25,073,066)	\$ 22,886,853

Summary of changes in short-term debt for the year ended June 30, 2008:

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

Short-Term Note (Due Within One Year)	Balance 06/30/2007	Issuances	Retirements	Balance 06/30/2008
Notes Payable	\$ 20,967,010	\$ 5,171,385	\$ (26,138,395)	\$ -

The Foundation had a letter of credit in the amount of \$20 million with Bank of America with a maturity date of April 1, 2010. As of June 30, 2009 and 2008, the balance was zero. State and federal statutes limit the Foundation's bond capacity (or ability to issue tax-exempt bonds). Management entered into this short-term note and investment transaction to capture bond capacity for subsequent tax-exempt bond issues. The Foundation periodically enters into similar short-term investment and note payable agreements to preserve bond capacity.

The Foundation entered into a separate revolving line-of-credit agreement with Bank of America (the Bank) on June 19, 2006 to assist with funding loans. The line-of-credit amount is \$20 million as of June 30, 2009 and 2008. This line is revolving and the balance was \$9.6 million as of June 30, 2009. Amounts used during fiscal year 2008 were paid off through the issuance of the 2007 bond and the balance was zero as of June 30, 2008. The maturity date on this line of credit is April 1, 2010. The borrowing base for this line of credit was 98% of acceptable student loans funded and these loans make up the collateral. The interest rate (annual) is equal to the Wall Street Journal LIBOR Daily Floating Rate plus 45 basis points. There was also a \$30,000 loan fee and unused commitment fees based on the average daily amount of credit outstanding at .125% (annual).

The Foundation had a variable rate nondisclosable revolving line of credit in the amount of \$20 million with Bank of the West with a maturity of August 14, 2009. As of June 30, 2009, the balance on this line of credit was \$13.3 million. The borrowing base for this line of credit was 100% of acceptable student loans first disbursed and funded after May 1, 2008 and these loans make up the collateral. The interest rate (annual) is equal to the 1 month LIBOR Rate as quoted from the Bloomberg Financial Market screen plus 0.8% for an initial rate of 3.266%. There was also an \$80,000 loan origination fee.

The Foundation entered into Letter of Credit and Reimbursement Agreements dated June 1, 2008 with various banks with regard to the Series 2008 Bonds in the amount of \$435,975,000 issued on June 26, 2008. Each Letter of Credit will be issued in an amount (the "Original Stated Amount") equal to the aggregate principal amount of the outstanding Series 2008 Bonds secured by such Letter of Credit, plus (i) 200 day's interest on Series 2008 Tax Exempt Bonds secured by such Letter of Credit, at the rate of 12% per annum and (ii) 47 day's interest on Series 2008 Taxable Bonds secured by such Letter of Credit, at the rate of 12% per annum. At June 30, 2009 and 2008, there was no balance nor has there been activity on these Letters of Credit.

### (8) Contractual Arrangements

NMEAF has certain contractual arrangements as follows:

#### (a) *The New Mexico Student Loan Guarantee Corporation*

The Corporation's primary purpose is to guarantee, on behalf of the ED, the repayment of eligible student loans made by participating lenders to residents of New Mexico and students who attend New Mexico educational and vocational institutions under the FFELP. Under terms of a service agreement, NMEAF provides office space and administers and performs certain duties and functions for the Corporation, subject to the direction of the Corporation's officers and board of directors. These duties and functions were provided by the Foundation for a board-approved fixed fee of \$1,400,160 and \$1,545,922 based upon estimated costs for the Corporation's years ended September 30, 2009 and 2008, respectively.

#### (b) *Servicing Fees*

NMEAF has agreements whereby it provides various legal, servicing, collections and financial aid support services to other in-state education-related institutions, the private lending community and the New Mexico Student Loan Guarantee Corporation. The education-related institutions include the



## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to Financial Statements June 30, 2009

University of New Mexico, New Mexico State University, New Mexico Highlands University, New Mexico Military Institute, Northern New Mexico College, New Mexico Institute of Mining and Technology, St. Johns College, and Central New Mexico Community College. The Foundation also provides collection activity through contract sources for the New Mexico Higher Education Department.

On April 1, 2005 the Foundation began acting as the disbursing agent for most lenders who utilize the New Mexico Student Loan Guarantee Corporation as their loan guarantor. Commencement of this service was in concert with the Corporation's conversion to a new loan guarantee servicing system. Under the disbursement agreements the Foundation is required to transfer funds received from lender accounts to educational institutions on behalf of the lenders and return cancelled loan amounts to the lender accounts.

Fees earned under agreements to service various student receivables, which are assets or responsibilities of the education-related institutions, were \$293,091 and \$497,482 for the years ended June 30, 2009 and 2008, respectively. Fees earned under other agreements with the private lending community were \$55,738, and \$181,685 for the years ended June 30, 2009 and 2008, respectively.

#### (9) Defined Contribution Plan

The Foundation maintains a Defined Contribution Retirement Plan (the Plan). Participation in the Plan is available to employees regularly scheduled to work 1,000 hours or more in a computation period. Eligibility begins on the first day of the month following the completion of 30 days of employment. Each eligible participant is required to contribute a minimum of 3.5% of his or her pay to the Plan. The Foundation contributes 7% of the participant's compensation when the participant contributes the minimum percentage to the Plan. Vesting in the Foundation contributions occurs on a step schedule as follows: 1 year 0%, 2 years 25%, 3 years 50%, 4 years 75%, and 5 years 100%. A participant receives a year of service for vesting purposes if he/she completes 1000 hours in an anniversary year and he/she is employed on the last day of the anniversary year. If the participant terminates before the date of full vesting, the non-vested amount of the participant's account is forfeited and used by the Foundation to reduce its Plan contributions for the next year. The Foundation may terminate this Plan at any time, and all participant accounts would become 100% vested. The Foundation does not intend to terminate the Plan at this time. For the years ended June 30, 2009 and 2008, The Foundation's contribution was approximately \$531,901 and \$501,146, respectively.

#### (10) Self-funded Employee Health and Dental Insurance Plans

On January 1, 2005, the Foundation abandoned its traditional employee medical and dental insurance coverage in favor of a self-funded arrangement managed by a third party administrator. The goal of self-funding is to provide employees with sufficient coverage while combating accelerating medical costs. Under the arrangement, NMEAF accrues an expense for estimated claims and pays claims presented to the administrator from operating funds. A "stop loss" policy was purchased to mitigate the risk of loss by capping the total annual maximum exposure to the Foundation at 125% of estimated claims or \$1.46 million. Meanwhile, employee health and dental benefits were held at similar levels to those offered prior to conversion to self-funding.

Health and dental expense was \$561,799 and \$691,614 for the years ended June 30, 2009 and 2008, respectively. As of June 30, 2009, the Foundation estimated the liability for unpaid claims at \$165,000. This estimate was based primarily on claims subsequent to year-end and other data.

Claims Liability July 1, 2008	Provision for Incurred Claims	Claims Payments	Claims Liability June 30, 2009
\$ 217,640	\$ 814,130	\$ (866,770)	\$ 165,000

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to Financial Statements  
June 30, 2009

### (11) Bonus Plan (Management and Employee Incentive Plan)

In April 2005, the board of directors approved the implementation of an annual management incentive plan (the plan). All Foundation employees are covered by the plan. Payment amounts are contingent on the level of achievement of specific corporate and team-level objectives. The plan contains both current payout and deferred provisions. Deferred amounts were completely paid out in July 2009 and were recognized in the expense amount of \$250,133 for the year ended June 30, 2009. The Foundation recognized an expense of \$942,462 for year ended June 30, 2008.

### (12) Related Parties

The Foundation's board of directors is established by and defined in New Mexico state statute and is made up of six regent members representing each of the higher education institutions established by the state. Each of the regent members is appointed by the regent board of each institution. Pursuant to statute, the regent members appoint three members: two members who are officers or directors of financial institutions located in New Mexico and one member who is an administrator of a private college, university or vocational school located in New Mexico. In addition, one member of a governing board of a two-year public community or technical college is appointed by a representative body of the community and technical colleges. The state treasurer is the final member of this 11 member board.

The Foundation has bank deposits and letters of credit with certain financial institutions; officers of one or more of these financial institutions are members of the Foundation's board. The Foundation also processes and services student loans for these financial institutions and for some of the state higher education institutions, private colleges and community colleges. If discussion and action by the Foundation board of directors specifically involves an entity to which an individual board member has any ties, that board member must abstain from voting on that decision.

On August 1, 2008, the Foundation issued a bond in the amount of \$50 million with the State of New Mexico State Treasurer's Office. The State Treasurer serves on the Foundation's board of directors. Bonds with the State of New Mexico State Treasurer's Office were also issued for \$95.1 million on December 15, 2008 and two bonds were issued for \$60 million and \$40 million on August 1, 2009.

### (13) Commitments and Contingencies

#### (a) *Litigation Matters*

NMEAF is involved in various legal actions incident to its operations that, in the opinion of management and the Foundation's legal counsel, will not materially affect the Foundation's financial position or results of its operations.

#### (b) *Department of Education Reviews*

The ED periodically performs site visits of the Foundation. The last ED site visit was performed in January 2004. The purpose of site visits is to review the Foundation's compliance with the Higher Education Act of 1965, as amended, and the regulations under the FFELP with respect to the Foundation's originating, servicing and collecting of student loans under this program. All ED site visits have been closed.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to Financial Statements June 30, 2009

### (c) *Purchase of Student Loan Notes*

During the normal course of business, NMEAF makes commitments with various banks and other student loan originators to purchase student loan notes. As of June 30, 2009, NMEAF had a commitment outstanding with the University of New Mexico for the School as Lender program to purchase student loans of approximately \$1.7 million. As of June 30, 2008, the amount was \$2.4 million.

### (d) *Risk Management*

NMEAF is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets, errors and omissions, injuries to employees, and natural disasters. NMEAF carries commercial insurance to cover losses related to such risks to which it may be exposed.

### (e) *Lease Commitments*

During the year ended June 30, 2009, the Foundation leased a backup and recovery site for its data processing facilities. The operating lease was entered into on May 20, 2003 as an occupancy and services agreement for provision of disaster recovery functions. Currently, the monthly minimum recurring charge associated with this agreement is \$2,700, with an initial term of 36 months. The term automatically renews for one year, unless the lessee or lessor notifies the other party within thirty days that it does not wish to renew.

NMEAF leases its internal telecommunications system. This operating lease was entered into on September 15, 2001 for a 60-month term at a minimum monthly amount of \$10,832. An addendum to the lease was executed August 30, 2002, resulting in a monthly payment of \$15,315. An additional addendum to the lease was executed and renewed on January 16, 2008, resulting in a monthly payment of \$8,728 for 36 months.

NMEAF leases its AS400 Copy/Printing System. This operating lease was entered into on January 22, 2007 for a 40-month term at a minimum monthly amount of \$1,748.

NMEAF leases its mail machine system. This lease was entered into on June 23, 2007 for a 48-month term at a minimum monthly amount of \$974.

NMEAF leases its mail stream solution system. This lease was entered into on June 28, 2007 for a 51-month term at a minimum monthly amount of \$1,155.

The total expense relating to these lease commitments included on the Statement of Revenues, Expenses and Changes in Net Assets as General and Administration – Other Expense for the years ended June 30, 2009 and 2008 was \$202,612 and \$225,396, respectively.

The total minimum lease expense commitment under the above leases is due as follows, as of June 30, 2009:

Minimum Lease Commitment	
As of June 30, 2009	
Year ended June 30:	
2010	\$ 183,657
2011	130,316
2012	34,710
2013	32,400
2014	32,400
	<u>\$ 413,483</u>



# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to Financial Statements  
June 30, 2009

## *(f) Special Allowance Revenue*

The Foundation receives special allowance payments (SAP) from the ED. A portion of the loans in the portfolio that the Foundation bills are entitled to SAP so that the minimum yield on these loans is 9.5%. Based on the ED's new interpretation of the eligibility requirements for these 9.5% minimum yield loans, it has paid only the regular SAP yield on these loans for the last three quarters of the fiscal year 2007. The total amount the Foundation considered receivable amounted to \$7,024,502 as of June 30, 2008. This amount, less of an allowance of \$1,141,287 for a total of \$5,883,215, is included in interest subsidy and special allowance receivable on the Statement of Net Assets.

During the year ended June 30, 2009, Independent Auditors completed an agreed-upon procedures engagement of the 9.5% floor according to Department of Education's specifications. The report was accepted by the Department of Education and the Foundation received a little over \$7.5 million in payment for 9.5% floor billings for the period of December 31, 2006 through December 31, 2008.

## **(14) Subsequent Events**

On August 1, 2009, the Foundation issued \$40 million in taxable bonds and \$60 million in tax-exempt bonds maturing in March 2009 to fund student loans for the 2009-2010 academic year. The Foundation retired the Bank of the West Line of Credit on August 31, 2009. On September 16, 2009, the Foundation issued the Series 2009 Bond that consisted of reoffered issues for Senior Series 2001A, 2002A, 2003A and 2004A totaling \$219.1 million (AMT) plus a new series 2009A (AMT) at \$42.5 million, 2009B (non-AMT) at \$190.6 million, and 2009C (AMT) at \$59.1 million. The ratings are each Series is Aaa (Moody's) with the exception of 2001B which is A2.

President Obama's fiscal year 2010 budget submitted to Congress earlier this year proposed the elimination of the FFEL Program in favor of the government-run Direct Loan program, beginning July 1, 2010. On July 21, 2009, the House Education and Labor Committee concluded a markup by voting to approve the Student Aid and Fiscal Responsibility Act (H.R. 3221) ("SAFRA"). SAFRA calls for all new federal student loans to be originated through the Direct Loan program effective July 1, 2010. The Act was passed by the House on September 17, 2009 with 3 amendments. It is uncertain what changes will be made to the proposed legislation as it moves through the Senate HELP Committee and eventually to the Senate floor. This process is not expected to be completed until October 2009.

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## APPENDIX D

### PROPOSED FORMS OF OPINIONS OF CO-BOND COUNSEL

Upon the issuance of the Bonds, Ballard Spahr LLP, Co-Bond Counsel, proposes to issue their approving opinion in substantially the following form:

We have acted as co-bond counsel to the New Mexico Educational Assistance Foundation (the "Foundation") in connection with the issuance by the Foundation of its Education Loan Bonds, Series 2010-1 A-1 in the aggregate principal amount of \$86,000,000 (the "Series 2010A-1 Bonds"), Education Loan Bonds, Series 2010-1 A-2 in the aggregate principal amount of \$73,000,000 (the "Series 2010A-2 Bonds") and Education Loan Bonds, Series 2010-1 A-3 in the aggregate principal amount of \$39,700,000 (the "Series 2010A-3 Bonds" and collectively with the Series 2010A-1 Bonds and Series 2010A-2 Bonds, the "Bonds"). The Foundation was authorized to be formed by the Educational Assistance Act, Sections 21-21A-1 to 21-21A-23, NMSA 1978, as amended (the "Educational Assistance Act") of the State of New Mexico (the "State") and organized pursuant to the Nonprofit Corporation Act, Sections 53-8-1 to 53-8-99, NMSA, 1978, as amended (the "Act") of the State. The Bonds are issued pursuant to the provisions of the Educational Assistance Act, the Act, a resolution of the Foundation's Board of Directors adopted on May 11, 2010 (the "Resolution") and an Indenture of Trust, dated as of September 1, 2010 (the "Indenture"), between the Foundation and Wells Fargo Bank, National Association, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In such connection, we have reviewed the Indenture, the Resolution and the Tax Certificate of the Foundation with respect to the Bonds (the "Tax Certificate"), certificates of the Foundation, the Trustee and others, opinions of counsel to the Foundation, the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. We have assumed, without undertaking to verify the genuineness of such documents, certificates and opinions presented to us (whether as originals or as copies) and of the signatures thereon, the accuracy of the factual matters represented, warranted or certified in such documents and certificates, the correctness of the legal conclusions contained in such opinions, and the due and legal execution of such documents and certificates by, and validity thereof against, any parties other than the Foundation.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof we are of the following opinions:

1. The Foundation is a nonprofit corporation under the Act and the Educational Assistance Act, duly organized and validly existing under the laws of the State of New Mexico, and has lawful authority to issue the Bonds.
2. The Bonds constitute valid and binding limited obligations of the Foundation, payable solely from the revenues and other assets pledged therefor under the Indenture.
3. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Foundation. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds of the revenues, the proceeds of the Bonds and any other amounts held in any fund or account established pursuant to the Indenture (except the Rebate Fund), and of the rights and interests of the Foundation in and to the Financed Eligible Loans, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.
4. The Bonds shall not be deemed to constitute a debt, liability, or obligation of or a pledge of the faith and credit, or the taxing power of the State of New Mexico or any political subdivision thereof, but shall be payable solely from the revenues or assets of the Foundation pledged for such payment under the Indenture.
5. Interest on the Bonds is excludable from gross income for purposes of federal income tax under existing laws as enacted and construed on the date of initial delivery of the Bonds, assuming the accuracy of the certifications of the Foundation and continuing compliance by the Foundation with the requirements of the Internal Revenue Code of 1986. Interest on the Bonds is exempt from individual and corporate federal alternative minimum tax ("AMT") and is not includable in adjusted current earnings for purposes of corporate AMT.

6. Interest on the Bonds is exempt from State of New Mexico personal income taxes.

In rendering our opinion, we wish to advise you that:

(a) The rights of the holders of the Bonds and the enforceability thereof and of the documents identified in this opinion may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, and their enforcement may also be subject to the application of equitable principles and the exercise of judicial discretion in appropriate cases;

(b) We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement or any other offering material relating to the Bonds; and

(c) Except as set forth above, we express no opinion regarding any other tax consequences relating to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

Respectfully submitted,

Upon the issuance of the Bonds, Sutin Thayer & Browne A Professional Corporation, Co-Bond Counsel, proposes to issue their approving opinion in substantially the following form:

We have acted as co-bond counsel to the New Mexico Educational Assistance Foundation (the "Foundation") in connection with the issuance by the Foundation of its Education Loan Bonds, Series 2010-1 A-1 in the aggregate principal amount of \$86,000,000 (the "Series 2010A-1 Bonds"), Education Loan Bonds, Series 2010-1 A-2 in the aggregate principal amount of \$73,000,000 (the "Series 2010A-2 Bonds") and Education Loan Bonds, Series 2010-1 A-3 in the aggregate principal amount of \$39,700,000 (the "Series 2010A-3 Bonds" and collectively with the Series 2010A-1 Bonds and Series 2010A-2 Bonds, the "Bonds"). The Foundation was authorized to be formed by the Educational Assistance Act, Sections 21-21A-1 to 21-21A-23, NMSA 1978, as amended (the "Educational Assistance Act") of the State of New Mexico (the "State") and organized pursuant to the Nonprofit Corporation Act, Sections 53-8-1 to 53-8-99, NMSA, 1978, as amended (the "Act") of the State. The Bonds are issued pursuant to the provisions of the Educational Assistance Act, the Act, a resolution of the Foundation's Board of Directors adopted on May 11, 2010 (the "Resolution") and an Indenture of Trust, dated as of September 1, 2010 (the "Indenture"), between the Foundation and Wells Fargo Bank, National Association, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In such connection, we have reviewed the Indenture, the Resolution and the Tax Certificate of the Foundation with respect to the Bonds (the "Tax Certificate"), certificates of the Foundation, the Trustee and others, opinions of counsel to the Foundation, the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. We have assumed, without undertaking to verify the genuineness of such documents, certificates and opinions presented to us (whether as originals or as copies) and of the signatures thereon, the accuracy of the factual matters represented, warranted or certified in such documents and certificates, the correctness of the legal conclusions contained in such opinions, and the due and legal execution of such documents and certificates by, and validity thereof against, any parties other than the Foundation.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof we are of the following opinions:

1. The Foundation is a nonprofit corporation under the Act and the Educational Assistance Act, duly organized and validly existing under the laws of the State of New Mexico, and has lawful authority to issue the Bonds.
2. The Bonds constitute valid and binding limited obligations of the Foundation, payable solely from the revenues and other assets pledged therefor under the Indenture.
3. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Foundation. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds of the revenues, the proceeds of the Bonds and any other amounts held in any fund or account established pursuant to the Indenture (except the Rebate Fund), and of the rights and interests of the Foundation in and to the Financed Eligible Loans, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.
4. The Bonds shall not be deemed to constitute a debt, liability, or obligation of or a pledge of the faith and credit, or the taxing power of the State of New Mexico or any political subdivision thereof, but shall be payable solely from the revenues or assets of the Foundation pledged for such payment under the Indenture.
5. Interest on the Bonds is exempt from State of New Mexico personal income taxes.

In rendering our opinion, we wish to advise you that:

(a) The rights of the holders of the Bonds and the enforceability thereof and of the documents identified in this opinion may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, and their enforcement may also be subject to the application of equitable principles and the exercise of judicial discretion in appropriate cases;

(b) We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement or any other offering material relating to the Bonds; and

(c) Except as set forth above, we express no opinion regarding any other tax consequences relating to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

Respectfully submitted,

## **APPENDIX E**

### **CONTINUING DISCLOSURE UNDERTAKING**

This Continuing Disclosure Undertaking (the “Disclosure Certificate”) is executed and delivered by the NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION, a non-profit corporation duly organized and existing under the laws of the State of New Mexico (the “Foundation”), in connection with the issuance of Education Loan Bonds, Series 2010-1 A-1, Series 2010-1 A-2 and Series 2010 A-3 (collectively, the “Bonds”). The Bonds are being issued pursuant to the Indenture of Trust dated as of September 1, 2010 (the “Indenture”) between the Foundation and the Wells Fargo Bank, National Association, as trustee (the “Trustee”).

### **BACKGROUND**

1. The Bonds are being issued to refund certain outstanding obligations of the Foundation and otherwise attain the goals of the Foundation pursuant to the New Mexico Educational Assistance Act.

2. In order to allow the Participating Underwriter (as defined in the Rule defined below) of the Bonds to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, § 240.15c2-12) to the date hereof, the Foundation has agreed to make certain continuing disclosure undertakings for the benefit of owners (including beneficial owners) of the Bonds.

3. This Disclosure Certificate is intended to satisfy the requirements of said Rule 15c2-12, as in effect on the date hereof.

### **FOUNDATION COVENANTS AND AGREEMENTS**

#### **Section 1. Definitions.**

(a) “Annual Financial Information” means the financial information or operating data with respect to the Foundation, delivered at least annually pursuant to Section 2(a) and 2(b) hereof, of the type set forth in the sections of the final Official Statement captioned “DESCRIPTION OF THE FOUNDATION’S ELIGIBLE LOAN FINANCING PROGRAM,” “NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION” and “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS.” Annual Financial Information includes Audited Financial Statements.

(b) “Audited Financial Statements” means the annual financial statements for the Foundation, prepared in accordance with generally accepted accounting principles consistently applied, as in effect from time to time, audited by a firm of certified public accountants.

(c) “Event Information” means the information delivered pursuant to Section 2(d) hereof.

(d) “MSRB” means the Municipal Securities Rulemaking Board or any other entity designated or authorized by the United States Securities and Exchange Commission to receive reports pursuant to Rule 15c2-12. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) system of the MSRB available on the Internet at <http://emma.msrb.org>.

(e) “Official Statement” means the Official Statement delivered in connection with the original issue and sale of the Bonds.

(f) “Rule” means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, § 240.15c2-12), as the same may be amended.

(g) “SEC” means the Securities and Exchange Commission.

(h) “Senior Manager” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, a wholly-owned subsidiary of Bank of America Corporation.

(i) “State” means the State of New Mexico.

Section 2. Provision of Annual Information and Reporting of Event Information.

(a) Commencing with the fiscal year ending June 30, 2010 and annually while the Bonds remain outstanding, the Foundation agrees to provide or cause to be provided the Annual Financial Information to the MSRB in electronic format (with a copy, upon request, to the Senior Manager) annually.

(b) Such Annual Financial Information shall be provided not later than 180 days after the end of each fiscal year for the Foundation (i.e., each June 30). If the Audited Financial Statements are not available by the time the other Annual Financial Information must be provided, unaudited financial statements shall be provided as part of the Annual Financial Information. If not provided as a part of the Annual Financial Information, the Audited Financial Statements will be provided when available.

(c) The Foundation may provide Annual Financial Information by specific reference to other documents, including information reports and official statements relating to other debt issues of the Foundation, which have been made available to the public on the Internet website of the MSRB or filed with the SEC; provided, however, that if the document so referenced is a final official statement within the meaning of the Rule, such final official statement must also be available from the MSRB. The Foundation shall clearly identify each such other document so incorporated by cross-reference.

(d) At any time the Bonds are outstanding, the Foundation shall provide, in a timely manner, to the MSRB, with a copy to the Senior Manager, notice of any of the following events with respect to the Bonds, if material (provided, that any event under clauses (viii), (ix) or (xi) will always be deemed to be material):

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (vii) Modifications to rights of security holders;
- (viii) Bond calls, other than mandatory sinking fund redemption;
- (ix) Defeasances;
- (x) Release, substitution or sale of property - securing repayment of the securities;
- (xi) Rating changes.

and



(e) At any time the Bonds are outstanding, the Foundation shall provide, in a timely manner, to the MSRB, with a copy to the Senior Manager, notice of any failure of the Foundation to timely provide the Annual Financial Information as specified in Sections 2(a) and 2(b) hereof.

Section 3. Method of Transmission. Subject to technical and economic feasibility, the Foundation shall employ such methods of electronic or physical information transmission as is requested or recommended by the MSRB unless otherwise required by law.

Section 4. Enforcement. The obligations of the Foundation hereunder shall be for the benefit of the owners (including the beneficial owners) of the Bonds. The owner or beneficial owner of any Bonds is authorized to take action to seek specific performance by court order to compel the Foundation to comply with its obligations under this Disclosure Certificate, which action shall be the exclusive remedy available to it or any other owners or beneficial owners of the Bonds. Any such action shall be brought only in a court of competent jurisdiction in Bernalillo County, New Mexico; provided, that any action challenging the adequacy of the content of any filing or to compel the inclusion of specific information in any such filing must be taken by the owners or beneficial owners of not less than 10% in aggregate principal amount of the Bonds. Breach of the obligations of the Foundation hereunder shall not constitute an Event of Default under the Indenture and none of the rights and remedies provided by the Indenture shall be available to the owners of the Bonds or the Trustee therein appointed.

Section 5. Additional Information. Nothing in the Disclosure Certificate shall be deemed to prevent the Foundation from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other annual information or notice of occurrence of an event which is not Event Information, in addition to that which is required by this Disclosure Certificate; provided that the Foundation shall not be required to do so. If the Foundation chooses to include any annual information or notice of occurrence of an event in addition to that which is specifically required by this Disclosure Certificate, the Foundation shall have no obligation under this Disclosure Certificate to update such information or include it in any future annual filing or Event Information filing.

Section 6. Term. This Disclosure Certificate shall be in effect from and after the issuance and delivery of the Bonds and shall extend to the earliest of (a) the date all principal and interest on the Bonds shall have been paid or legally defeased pursuant to the terms of the Indenture, (b) the date that the Foundation shall no longer constitute an “obligated person” with respect to the Bonds within the meaning of the Rule; or (c) the date on which those portions of the Rule which require this Disclosure Certificate are determined to be invalid by a court of competent jurisdiction in a nonappealable action, have been repealed retroactively or otherwise do not apply to the Bonds. Any determination made by the Foundation pursuant to the previous sentence shall be evidenced by a written notice to the Senior Manager accompanied by an opinion of counsel experienced in federal securities laws selected by the Foundation and reasonably acceptable to the Senior Manager.

Section 7. Amendments and Waivers. Notwithstanding any other provision of this Disclosure Certificate, the Foundation may amend this Disclosure Certificate from time to time, and any provision of this Disclosure Certificate may be waived, without the consent of the owners or beneficial owners of the Bonds upon the Foundation’s receipt of an opinion of counsel experienced in federal securities laws selected by the Foundation and reasonable acceptable to the Senior Manager to the effect that such amendment or waiver will not adversely affect compliance with the Rule. Any Annual Financial Information containing amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided. If an amendment changes the accounting principles to be followed in preparing financial statements, the Annual Financial Information for the year in which the change is made will present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The Foundation shall provide notice of any such amendment or waiver to the MSRB and the Senior Manager.

Section 8. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Foundation, the Participating Underwriter and the owners (including beneficial owners) from time to time of the Bonds, and shall create no rights in any other person or entity.

Date: \_\_\_\_\_, 2010

NEW MEXICO EDUCATIONAL ASSISTANCE  
FOUNDATION

By: \_\_\_\_\_  
Authorized Officer

## APPENDIX F

### PREPAYMENTS, EXTENSIONS, WEIGHTED AVERAGE LIVES AND EXPECTED MATURITIES OF THE BONDS

Prepayments on pools of Financed Eligible Loans can be calculated based on a variety of prepayment models. The model used herein to calculate prepayments is the constant prepayment rate and is referred to herein as the "CPR" model.

The CPR model is based on prepayments assumed to occur at a constant percentage rate. CPR is stated as an annualized rate and is calculated as the percentage of the loan amount outstanding at the beginning of a period (including accrued interest to be capitalized), after applying scheduled payments, that prepays during that period.

The CPR model assumes that Financed Eligible Loans will prepay in each month according to the following formula:

$$\text{Monthly Prepayments} = (\text{Pool Balance after scheduled payments}) \times (1 - (1 - \text{CPR})^{1/12})$$

Accordingly, monthly prepayments, assuming a \$1,000 balance after scheduled payments would be as follows for various levels of CPR:

	<u>0% CPR</u>	<u>2% CPR</u>	<u>4% CPR</u>	<u>6% CPR</u>	<u>8% CPR</u>
Monthly Prepayment	\$0.00	\$1.68	\$3.40	\$5.14	\$6.92

The CPR model does not purport to describe historical prepayment experience or to predict the prepayment rate of any actual student loan pool. The Financed Eligible Loans pledged under the Indenture will not prepay according to the CPR, nor will all of the Financed Eligible Loans pledged under the Indenture prepay at the same rate. Potential investors must make an independent decision regarding the appropriate principal prepayment scenarios to use in making any investment decision.

For the sole purpose of calculating the information presented in the tables, it is assumed, including but not limited to the following, that:

- the Statistical Cut-off Date for the Financed Eligible Loans pledged under the Indenture is June 30, 2010;
- the pool balance of Financed Eligible Loans is assumed to be approximately \$204,294,793, as of June 30, 2010;
- accrued interest to be capitalized on the student loans totals approximately \$3,996,520, as of June 30, 2010;
- the pool of Financed Eligible Loans consists of 132 representative loans ("rep lines"), which have been created for modeling purposes from individual student loans based on combinations of similar individual student loan characteristics, which include, but are not limited to, loan status, interest rate, loan type, SAP index, servicer, and remaining term;
- the date of issuance is September 22, 2010;
- the Financed Eligible Loans (as grouped in "rep lines") that are in school status are assumed to remain in school until their status end date and then enter a 6 month grace term before entering repayment. All rep lines in grace status remain in grace until status end date (and then enter repayment). All other rep lines are assumed to be in repayment;
- prepayments on the Financed Eligible Loans begin immediately on all rep lines, including rep lines in school or grace status;

- there are government payment delays of 60 days for interest subsidy and special allowance payments;
- there are payment delays of 60 days for interest rebates and interest floor payments;
- no borrower benefits are utilized;
- no delinquencies or defaults occur on any of the Financed Eligible Loans, no purchases from the trust estate for breaches of representations, warranties or covenants occur, and all borrower payments are collected in full;
- 3-Month LIBOR remains at 0.55%, 1-month LIBOR remains at 0.45%, 90-day commercial paper remains at 0.45% and 91-day Treasury bill remains fixed at 0.15% for the life of the transaction;
- Quarterly Distributions begin on December 1, 2010 for the Series 2010A-2 and Series 2010A-3 Bonds, and payments are made quarterly on the first day of every March, June, September and December thereafter, whether or not the first day is a Business Day;
- Semi-annual Distributions of interest for the Series 2010A-1 Bonds begin December 1, 2010 and annual principal distributions with respect thereto begin December 1, 2014;
- the Foundation will enter into a swap to whereby it will pay a floating rate indexed to 1-month LIBOR plus 0.70% and receive a fixed rate equal to the coupon rate payable on the Series 2010A-1 Bonds;
- the interest rate for the Series 2010A-2 and Series 2010A-3 Bonds at all times will be 1.20% and 1.75%, respectively, per annum;
- interest accrues on the swap related to the Series 2010A-1 Bonds on an actual/360 day count basis and on the Series 2010A-2 and Series 2010A-3 Bonds on an actual/360 day count basis;
- Trustee Fees equal 0.015% per annum of the aggregate outstanding principal amount of Bonds and are paid annually, in advance, under the Indenture commencing September 2011. Trustee fees will be subject to a \$7,500 per annum minimum;
- Servicing Fees under the Indenture are paid monthly in arrears at 0.90% per annum of the aggregate principal balance of the Financed Eligible Loans;
- a consolidation loan rebate fee equal to 1.05% per annum of the outstanding principal balance of the Financed Eligible Loans that are consolidation loans, is paid monthly under the Indenture to the Department of Education and are subject to a payment delay of 30 days;
- to the extent funds are available, additional Administrative Expenses paid (under 8th of "Flow of Funds") equaling \$65,000 annually, due each December 1st, commencing December 1, 2010, through and including December 1, 2025, and any unpaid amounts are not due on any subsequent Quarterly Distribution Date;
- miscellaneous fees totaling \$25,000 are paid (under 3rd of "Flow of Funds") annually under the Indenture commencing September 2011;
- the Debt Service Reserve Fund pledged under the Indenture has an initial balance equal to 0.75% of the aggregate principal amount of the Bonds as of the date of issuance and thereafter has a balance equal to the greater of (a) 0.75% of the principal amount of Outstanding Bonds immediately prior to such Quarterly Distribution Date or (b) \$750,000;

- the Bonds will be paid off using funds on deposit in the Debt Service Reserve Fund;
- all payments are assumed to be made at the end of the month and amounts on deposit in the Revenue Fund and the Debt Service Reserve Fund pledged under the Indenture, including reinvestment income earned in the previous month, net of Servicing Fees, are reinvested in eligible investments at the assumed reinvestment rate of 0.15% per annum through the end of the Collection Period; reinvestment earnings from the prior Collection Period are available for distribution;
- the Revenue Fund pledged under the Indenture has an initial balance of approximately \$112,488;
- no excess cashflow will be released;
- no optional redemption clean-up call or purchase of the Financed Eligible Loans under the Indenture occurs;
- no event of default has occurred or is continuing to occur under the Indenture; and
- no early termination of the Interest Rate Swap.

The tables below have been prepared based on the assumptions described above (including the assumptions regarding the characteristics and performance of the rep lines, which will differ from the characteristics and performance of the actual pool of Financed Eligible Loans) and should be read in conjunction therewith. In addition, the diverse characteristics, remaining terms to scheduled maturity and loan ages of the Financed Eligible Loans could produce slower or faster principal payments than implied by the information in these tables, even if the dispersions of weighted average characteristics, remaining terms to scheduled maturity and loan ages are the same as the characteristics, remaining terms to scheduled maturity and loan ages assumed. See "CERTAIN RISK FACTORS" above.

Each set of projected weighted average lives reflects a projected average of the periods of time for which the Bonds are Outstanding. Such projected weighted average lives do not reflect the period of time which any one Bond will remain Outstanding. At each prepayment speed, some Bonds will remain Outstanding for periods of time shorter than the applicable projected weighted average life, while some will remain Outstanding for longer periods of time.

**WEIGHTED AVERAGE LIVES AND EXPECTED MATURITY DATES  
OF THE BONDS AT VARIOUS PERCENTAGES OF THE CPR**

	<u>0% CPR</u>	<u>2% CPR</u>	<u>4% CPR</u>	<u>6% CPR</u>	<u>8% CPR</u>
	<u>Weighted Average Life (Years)<sup>(1)</sup></u>				
Series 2010A-1	7.5	7.5	7.5	7.5	7.5
Series 2010A-2	3.7	2.6	2.0	1.7	1.5
Series 2010A-3	12.8	11.0	8.9	6.8	5.1
	<u>Expected Maturity Date</u>				
Series 2010A-1	December 1, 2025	December 1, 2025	December 1, 2025	December 1, 2025	December 1, 2025
Series 2010A-2	December 1, 2019	December 1, 2017	December 1, 2014	December 1, 2013	September 1, 2013
Series 2010A-3	December 1, 2028	March 1, 2027	June 1, 2025	March 1, 2023	June 1, 2020

<sup>(1)</sup> The weighted average life of each of the Bonds (assuming a 360 day year consisting of twelve 30 day months) is determined by: (a) multiplying the amount of each principal payment on such Bonds by the number of years from the date of issuance to the related Quarterly Distribution Date, (b) adding the results, and (c) dividing that sum by the aggregate principal amount of such Bonds as of the date of issuance.

PERCENTAGES OF ORIGINAL PRINCIPAL AMOUNT OF THE SERIES 2010A-2 AND  
 SERIES 2010A-3 BONDS REMAINING AT CERTAIN QUARTERLY DISTRIBUTION DATES  
 AT VARIOUS PERCENTAGES OF THE CPR

Distribution Dates	0% CPR		2% CPR		4% CPR		6% CPR		8% CPR	
	<u>A-2</u>	<u>A-3</u>	<u>A-2</u>	<u>A-3</u>	<u>A-2</u>	<u>A-3</u>	<u>A-2</u>	<u>A-3</u>	<u>A-2</u>	<u>A-3</u>
Issuance	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Dec-10	96	100	95	100	94	100	93	100	92	100
Dec-11	80	100	73	100	67	100	61	100	55	100
Dec-12	62	100	51	100	40	100	30	100	20	100
Dec-13	41	100	27	100	13	100	0	100	0	77
Dec-14	30	100	13	100	0	95	0	68	0	42
Dec-15	28	100	9	100	0	86	0	58	0	32
Dec-16	24	100	5	100	0	78	0	50	0	25
Dec-17	18	100	0	99	0	69	0	43	0	20
Dec-18	8	100	0	83	0	56	0	32	0	11
Dec-19	0	93	0	66	0	41	0	21	0	4
Dec-20	0	73	0	49	0	28	0	11	0	0
Dec-21	0	61	0	39	0	21	0	5	0	0
Dec-22	0	49	0	29	0	13	0	*	0	0
Dec-23	0	39	0	21	0	7	0	0	0	0
Dec-24	0	32	0	16	0	2	0	0	0	0
Dec-25	0	25	0	10	0	0	0	0	0	0
Dec-26	0	17	0	3	0	0	0	0	0	0
Dec-27	0	9	0	0	0	0	0	0	0	0
Dec-28	0	0	0	0	0	0	0	0	0	0
Dec-29	0	0	0	0	0	0	0	0	0	0
Dec-30	0	0	0	0	0	0	0	0	0	0
Dec-31	0	0	0	0	0	0	0	0	0	0
Dec-32	0	0	0	0	0	0	0	0	0	0
Dec-33	0	0	0	0	0	0	0	0	0	0

\* Less than 0.5%, but greater than 0.





# NEW MEXICO STUDENT LOANS

