

*In the opinion of Gilmore & Bell, P.C., Bond Counsel to the Foundation, under existing law and assuming continued compliance with certain requirements of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on the Series 2021A Bonds (including any original issue discount properly allocable to an owner thereof) is excludable from gross income for federal income tax purposes, but is an item of tax preference for purposes of the federal alternative minimum tax. The interest on the Series 2021B Bonds is included in gross income for federal income tax purposes. In the opinion of Gilmore & Bell, P.C., Bond Counsel to the Foundation, under existing law, the interest on the Series 2021 Bonds is excludable from net income for State of New Mexico income tax purposes. See "TAX MATTERS" in this Official Statement.*



**\$208,000,000**  
**NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**  
**EDUCATION LOAN BONDS, SERIES 2021**  
**Consisting of**  
**\$162,000,000 Education Loan Bonds, Senior Series 2021-1A (AMT)**  
**and**  
**\$46,000,000 Education Loan Bonds, Senior Series 2021-1B (Taxable)**

**Dated: Date of Delivery**

**Due: September 1, as shown on the inside front cover**

The New Mexico Educational Assistance Foundation (the "Foundation") \$208,000,000 Education Loan Bonds, Series 2021, consisting of: (i) \$162,000,000 Education Loan Bonds, Senior Series 2021-1A (AMT) (the "Series 2021A Bonds"); and (ii) \$46,000,000 Education Loan Bonds, Senior Series 2021-1B (Taxable) (the "Series 2021B Bonds" and, together with the Series 2021A Bonds, the "Series 2021 Bonds"), will be issued by the Foundation pursuant to the Indenture (as hereinafter defined) and will mature on September 1 on the respective dates and in the respective principal amounts set forth on the inside front cover page of this Official Statement.

The Series 2021 Bonds, when issued, will be issued as registered bonds and will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC") which will act as securities depository for the Series 2021 Bonds. Individual purchases will be made in book-entry-only form, in the principal amount of \$5,000 or integral multiples thereof. Purchasers will not receive certificates representing their interest in the Series 2021 Bonds purchased. So long as DTC is the registered owner of the Series 2021 Bonds, payments of the principal of and interest on the Series 2021 Bonds will be made directly to DTC. Disbursements of such payments to DTC Participants is the responsibility of DTC and disbursements of such payments to the Beneficial Owners is the responsibility of DTC Participants and Indirect Participants. See the caption "THE SERIES 2021 BONDS—Book-Entry-Only System" herein.

The Series 2021 Bonds will be dated the date of delivery thereof and will bear interest at the respective rates per annum set forth on the inside front cover page hereof, payable semiannually on each March 1 and September 1, commencing March 1, 2022. The Series 2021 Bonds are subject to redemption prior to maturity as described herein. See the caption "THE SERIES 2021 BONDS—Redemption Provisions" herein.

The Series 2021 Bonds are being issued under an Indenture of Trust, dated as of February 1, 1998 (the "Trust Indenture"), as amended and supplemented, including by a Fourteenth Supplemental Indenture of Trust, dated as of December 1, 2021 (the "Fourteenth Supplemental Indenture" and together with the Trust Indenture, the "Indenture"), each between the Foundation and Zions Bancorporation, National Association, as trustee (the "Trustee"). The Series 2021 Bonds are issued for the purpose of, together with other funds of the Foundation: (i) refunding certain outstanding bonds of the Foundation issued pursuant to the Indenture, the 2010-1 Indenture, the 2010-2 Indenture, the 2016 Indenture and the 2018 Indenture (each as defined herein); (ii) refinancing certain Eligible Loans either held unencumbered by the Foundation or financed with the proceeds of short-term indebtedness of the Foundation; (iii) making a deposit into the Debt Service Reserve Fund, including a 2021 Supplemental Reserve Subaccount (each as defined herein); and (iv) paying the costs of issuing the Series 2021 Bonds.

The Series 2021 Bonds will be secured on parity with a lien granted under the Indenture in favor of the owners of the other Senior Bonds outstanding under the Indenture. After giving effect to the issuance of the Series 2021 Bonds and the redemption of certain Bonds which are outstanding under the Indenture, Senior Bonds will be outstanding under the Indenture in an aggregate principal amount of approximately \$241.75 million, and there will be no First or Second Subordinate Bonds or Derivative Products outstanding under the Indenture.

Investment in the Series 2021 Bonds involves risk to the Bondholders. Each prospective investor should read this entire Official Statement and should give particular attention to the section entitled "INVESTMENT CONSIDERATIONS."

**This cover page contains certain information for quick reference only. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.**

THE SERIES 2021 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 SERIES 2021 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 SERIES 2021 BONDS. THE FOUNDATION HAS NO TAXING POWER. SEE "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS."

The Series 2021 Bonds will be offered subject to prior sale, when, as and if issued by the Foundation and accepted by the Underwriters, and are subject to the final approving opinion of Gilmore & Bell, P.C., Salt Lake City, Utah, Bond Counsel to the Foundation, and to certain other conditions described herein. Certain legal matters will be passed upon for the Foundation by Sutin, Thayer & Browne, for the New Mexico Student Loan Guarantee Corporation by Reginald Stormont, its general counsel, and for the Underwriters by Kutak Rock LLP, Denver, Colorado, counsel to the Underwriters. It is expected that the Series 2021 Bonds will be available for delivery through the facilities of DTC on or about December 8, 2021.

**RBC Capital Markets**  
**BofA Securities**

**\$208,000,000**  
**NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**  
**EDUCATION LOAN BONDS, SERIES 2021**  
 Consisting of  
**\$162,000,000 Education Loan Bonds, Senior Series 2021-1A (AMT)**  
 and  
**\$46,000,000 Education Loan Bonds, Senior Series 2021-1B (Taxable)**

**MATURITY SCHEDULE**

**\$162,000,000 EDUCATION LOAN BONDS,  
 SENIOR SERIES 2021-1A (AMT)**

<b><u>Due (September 1)</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>	<b><u>CUSIP No.</u></b> <sup>^</sup>
2023	\$12,000,000	5.000%	0.410%	107.906%	647110 FM2
2024	13,500,000	5.000	0.550	112.042	647110 FN0
2025	13,500,000	5.000	0.710	115.765	647110 FP5
2026	12,500,000	5.000	0.900	118.945	647110 FQ3
2027	12,500,000	5.000	1.070	121.786	647110 FR1
2028	8,000,000	5.000	1.250	124.132	647110 FS9
2029	8,000,000	5.000	1.390	126.371	647110 FT7

\$82,000,000 2.050% Education Loan Bonds, Senior Series 2021-1A (AMT) Term Bonds  
 Due September 1, 2051 Yield 2.200% Price 96.738% CUSIP No. 647110 FU4<sup>^</sup>

**\$46,000,000 EDUCATION LOAN BONDS,  
 SENIOR SERIES 2021-1B (TAXABLE)**

<b><u>Due (September 1)</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>	<b><u>CUSIP No.</u></b> <sup>^</sup>
2023	\$4,000,000	0.933%	0.933%	100.000%	647110 FV2
2024	3,000,000	1.260	1.260	100.000	647110 FW0
2025	3,000,000	1.506	1.506	100.000	647110 FX8
2026	3,000,000	1.756	1.756	100.000	647110 FY6
2027	2,000,000	1.891	1.891	100.000	647110 FZ3
2028	1,000,000	2.091	2.091	100.000	647110 GA7
2029	1,000,000	2.174	2.174	100.000	647110 GG4

\$29,000,000 2.106% Education Loan Bonds, Senior Series 2021-1B (Taxable) Term Bonds  
 Due September 1, 2051 Yield 2.106% Price 100.000% CUSIP No. 647110 GH2<sup>^</sup>

<sup>^</sup> CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by S&P Global Market Intelligence on behalf of The American Bankers Association. The CUSIP numbers are included solely for the convenience of Bondholders, and the Foundation is not responsible for the selection or the correctness of the CUSIP numbers printed herein. CUSIP numbers assigned to securities may be changed during the term of such securities based on a number of factors, including, but not limited to, the refunding or defeasance of such securities or the use of secondary market financing products.

No dealer, broker, salesperson or other person has been authorized by the Foundation or by either of the Underwriters listed on the front cover of this Official Statement (the “Underwriters”) to give any information or to make any representations other than as 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 Series 2021 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 not to be construed as a contract with purchasers or holders of the Series 2021 Bonds.

The information set forth herein has been furnished by the Foundation and by other sources which are believed to be reliable but is not guaranteed as to accuracy or completeness. 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 or other matters described herein since the date hereof.

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

The information in this Official Statement concerning The Depository Trust Company, New York, New York (“DTC”) and DTC’s book-entry-only system has been obtained from DTC. None of the Foundation, any of its advisors or the Underwriters have independently verified, make any representation regarding or accept any responsibility for, the accuracy, completeness or adequacy of such information.

THE ORDER AND PLACEMENT OF MATERIALS IN THIS OFFICIAL STATEMENT, INCLUDING THE APPENDICES, ARE NOT TO BE DEEMED TO BE A DETERMINATION OF RELEVANCE, MATERIALITY OR IMPORTANCE, AND THIS OFFICIAL STATEMENT, INCLUDING THE APPENDICES, MUST BE CONSIDERED IN ITS ENTIRETY. THE OFFERING OF THE SERIES 2021 BONDS IS MADE ONLY BY MEANS OF THIS ENTIRE OFFICIAL STATEMENT.

IN CONNECTION WITH THE OFFERING OF THE SERIES 2021 BONDS, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2021 BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

Upon issuance, the Series 2021 Bonds will not be registered under the Securities Act of 1933, as amended, and will not be listed on any stock or other securities exchange, nor has the Indenture been qualified under the Trust Indenture Act of 1939, as amended, in reliance upon certain exemptions contained in such federal laws. In making an investment decision, investors must rely upon their own examination of the Series 2021 Bonds and the security therefor, including an analysis of the risks involved. The Series 2021 Bonds have not been recommended by any federal or state securities commission or regulatory authority. The registration, qualification or exemption of the Series 2021 Bonds in accordance with applicable provisions of securities laws of the various jurisdictions in which the Series 2021 Bonds have been registered, qualified or exempted cannot be regarded as a recommendation thereof. Neither such jurisdictions nor any of their agencies have passed upon the merits of the Series 2021 Bonds or the adequacy, accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense. Neither the Securities and Exchange Commission nor any other federal, state, municipal

or other governmental entity has passed upon the accuracy or adequacy of this Official Statement or approved the Series 2021 Bonds for sale.

This Official Statement contains statements which, to the extent they are not recitations of historical fact, constitute “forward-looking statements.” In this respect, the words “estimate,” “project,” “anticipate,” “expect,” “intend,” “believe” and similar expressions are intended to identify forward-looking statements. A number of important factors affecting the Foundation’s business and financial results could cause actual results to differ materially from those stated in the forward-looking statements. See the captions “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” and “INVESTMENT CONSIDERATIONS” herein.

#### **U.S. RISK RETENTION**

The transaction described herein is not subject to the U.S. risk retention rules (Regulation RR (17 C.F.R. Part 246) promulgated under Section 15G of the Securities Exchange Act of 1934, as amended (the “Securities Exchange Act”).

## SUMMARY STATEMENT

This Summary Statement is subject in all respects to more complete information contained in this Official Statement and no conclusion should be drawn from the order of material or information presented in this Official Statement. The offering of the New Mexico Educational Assistance Foundation \$208,000,000 aggregate principal amount of Education Loan Bonds, Series 2021, consisting of the: (i) \$162,000,000 Education Loan Bonds, Senior Series 2021-1A (AMT) (the “Series 2021A Bonds”); and (ii) \$46,000,000 Education Loan Bonds, Senior Series 2021-1B (Taxable) (the “Series 2021B Bonds” and, together with the Series 2021A Bonds, the “Series 2021 Bonds”) to potential investors is made only by means of this entire Official Statement. No person is authorized to detach this Summary Statement from this Official Statement or to otherwise use it without this entire Official Statement. All capitalized terms used in this Summary Statement shall have the same meaning as defined in this Official Statement.

### Principal Parties

<i>Foundation</i>	New Mexico Educational Assistance Foundation
<i>Servicer</i>	New Mexico Educational Assistance Foundation
<i>Guaranty Agencies</i>	New Mexico Student Loan Guarantee Corporation Ascendium Education Solutions, Inc. (f/k/a Great Lakes Higher Education Guaranty Corporation)
<i>Trustee</i>	Zions Bancorporation, National Association

### The Series 2021 Bonds

The Series 2021 Bonds are being issued under an Indenture of Trust, dated as of February 1, 1998 (the “Trust Indenture”), as amended and supplemented including by a Fourteenth Supplemental Indenture of Trust, dated as of December 1, 2021 (the “Fourteenth Supplemental Indenture” and together with the Trust Indenture, the “Indenture”), each between the Foundation and Zions Bancorporation, National Association, as trustee (the “Trustee”). The Series 2021 Bonds will be dated the date of delivery thereof and will bear interest at the respective rates per annum set forth on the inside front cover page hereof, payable semiannually on each March 1 and September 1, commencing March 1, 2022 (each, an “Interest Payment Date”). Interest on the Series 2021 Bonds will be payable to the record owners of the Series 2021 Bonds as of the 15<sup>th</sup> day of the calendar month preceding the Interest Payment Date. Interest on the Series 2021 Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The Series 2021 Bonds will mature on September 1 in the respective years and in the respective principal amounts set forth on the inside front cover page hereof. The final payment of the Series 2021 Bonds maturing on September 1, 2051 may occur earlier if:

- there are prepayments on the Financed Eligible Loans;
- the Series 2021 Bonds maturing on September 1, 2051 are redeemed as described under “Redemption—*Mandatory Redemption from Excess Revenues*” below.

The Series 2021 Bonds will be issued in denominations of \$5,000 and any integral multiple thereof.

The Series 2021 Bonds are issued for the purpose of providing the Foundation with funds which, together with other funds of the Foundation, will be used to: (i) refund certain outstanding bonds of the

Foundation issued pursuant to the Indenture, the 2010-1 Indenture, the 2010-2 Indenture, the 2016 Indenture and the 2018 Indenture (each as defined herein); (ii) refinance certain Eligible Loans (defined herein) either held unencumbered by the Foundation or financed with the proceeds of short-term indebtedness of the Foundation; (iii) make a deposit into the Debt Service Reserve Fund, including the 2021 Supplemental Reserve Subaccount (each as defined herein); and (iv) pay the costs of issuing the Series 2021 Bonds. See the caption “ESTIMATED SOURCES AND USES OF FUNDS” herein.

THE SERIES 2021 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 SERIES 2021 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 SERIES 2021 BONDS. THE FOUNDATION HAS NO TAXING POWER. SEE “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS.”

The Series 2021 Bonds will be paid primarily from collections on the Financed Eligible Loans held by the Foundation and pledged to the Trustee under the Indenture. The Series 2021 Bonds are Senior Bonds, payable on parity with other outstanding Senior Bonds under the Indenture, and, after giving effect to the issuance of the Series 2021 Bonds and the redemption of certain Bonds which are outstanding under the Indenture, the Senior Bonds will be outstanding in the aggregate principal amount of \$241.75 million and there will be no First or Second Subordinate Bonds or Derivative Products outstanding under the Indenture.

## **Redemption**

***Optional Redemption.*** The Series 2021 Bonds maturing on September 1 of the years 2023 through 2029 shall not be subject to redemption at the option of the Foundation. The Series 2021A Bonds maturing on September 1, 2051 (the “Tax-Exempt Term Bonds”) and the Series 2021B Bonds maturing on September 1, 2051 (the “Taxable Term Bonds”) shall be subject to optional redemption at the direction and specification of the Foundation, in whole or in part on any date on or after September 1, 2031, at a redemption price equal to the outstanding principal amount thereof, plus accrued interest, if any; provided, however, that if any Bonds remain Outstanding following such optional redemption, each Rating Agency rating the Bonds must confirm that such optional redemption will not adversely affect its Rating on any of the Outstanding Bonds after taking into account such optional redemption.

***Mandatory Redemption from Excess Revenues.*** The Tax-Exempt Term Bonds and the Taxable Term Bonds shall be subject to mandatory redemption from excess revenues on each Interest Payment Date from amounts available therefor as described in “—Application of Revenues” below at a redemption price of 100% of the principal amount of the Series 2021 Bonds to be redeemed plus accrued interest to the date of redemption, commencing after the Series 2001A-1 Bonds, the Series 2002A-2 Bonds, the Series 2003A-2 Bonds and the Series 2004A-1 Bonds are each outstanding in the principal amount of \$100,000.

***Mandatory Sinking Fund Redemption.*** The Tax-Exempt Term Bonds shall be subject to mandatory sinking fund redemption by lot in such manner as the Trustee may determine, at a price equal to 100% of the principal amount thereof plus accrued interest to the redemption date, on the dates and in the principal amounts as follows:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Principal Amount</u>
2041	\$5,000,000
2042	6,000,000
2043	7,000,000
2044	8,000,000
2045	8,000,000
2046	8,000,000
2047	8,000,000
2048	8,000,000
2049	8,000,000
2050	8,000,000
2051*	8,000,000

\*Final Maturity

The Taxable Term Bonds shall be subject to mandatory sinking fund redemption by lot in such manner as the Trustee may determine, at a price equal to 100% of the principal amount thereof plus accrued interest to the redemption date, on the dates and in the principal amounts as follows:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Principal Amount</u>
2041	\$1,000,000
2042	1,000,000
2043	1,000,000
2044	1,000,000
2045	2,000,000
2046	3,000,000
2047	4,000,000
2048	4,000,000
2049	4,000,000
2050	4,000,000
2051*	4,000,000

\*Final Maturity

See “THE SERIES 2021 BONDS—Redemption Provisions” in this Official Statement.

## Refunded Bonds

Proceeds of the Series 2021 Bonds, and other available funds, will be used to redeem the outstanding principal amounts of the following bonds of the Foundation (referred to herein as the “Refunded Bonds”):

Series	Principal Amount Outstanding <sup>(1)</sup>	Indenture
Senior Series 2007A-1	\$ 39,400,000	1998 <sup>(2)</sup>
Senior Series 2007A-2	25,000,000	1998 <sup>(2)</sup>
Senior Series 2010-1A-1	10,690,000	2010-1 <sup>(3)</sup>
Senior Series 2010-1A-3	36,370,000	2010-1 <sup>(3)</sup>
Senior Series 2010-2A-2	24,690,000	2010-2 <sup>(4)</sup>
Senior Series 2010-2A-3	15,485,000	2010-2 <sup>(4)</sup>
Senior Series 2013-1A-1	24,771,550	1998 <sup>(2)</sup>
Senior Series 2016	6,579,000	2016 <sup>(5)</sup>
Senior Series 2018	<u>11,294,000</u>	2018 <sup>(6)</sup>
Total	<u>\$194,279,550</u>	

<sup>(1)</sup> Principal amount outstanding as of August 31, 2021. The amount of bonds redeemed may be lower due to principal payments between such date and the Series 2021 Date of Issuance.

<sup>(2)</sup> Issued pursuant to the Indenture

<sup>(3)</sup> Issued pursuant to the Indenture of Trust, dated as of September 1, 2010, between the Foundation and Wells Fargo Bank, National Association, as supplemented and amended (the “2010-1 Indenture”).

<sup>(4)</sup> Issued pursuant to the Indenture of Trust, dated as of December 1, 2010, between the Foundation and Wells Fargo Bank, National Association, as supplemented and amended (the “2010-2 Indenture”).

<sup>(5)</sup> Issued pursuant to the Indenture of Trust, dated as of December 1, 2016, between the Foundation and Zions Bancorporation, National Association, as supplemented and amended (the “2016 Indenture”).

<sup>(6)</sup> Issued pursuant to the Indenture of Trust, dated as of December 1, 2018, between the Foundation and Zions Bancorporation, National Association, as supplemented and amended (the “2018 Indenture”).

## 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 Sections 21-21A-1 to 21-21A-23 NMSA 1978, as amended (the “Educational Assistance Act”). The Foundation was organized on July 1, 1981, 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 services loans and provides administrative support and other services for in-state educational and lending institutions. The Foundation also provides administrative support for the New Mexico Student Loan Guarantee Corporation, a nonprofit entity operating as a guarantee agency under the Federal Family Education Loan Program. See “THE FOUNDATION” in this Official Statement.

As described under “PLAN OF FINANCING,” the proceeds from the sale of the Series 2021 Bonds will be used, among other uses and together with other funds of the Foundation, to refund the Refunded Bonds and to refinance certain Eligible Loans financed with the proceeds of short-term indebtedness of the



Foundation (as further defined herein, the “Line of Credit”). Upon the application of the proceeds of the Series 2021 Bonds, certain Eligible Loans pledged to secure the Refunded Bonds and the Line of Credit and certain Eligible Loans currently held unencumbered by the Foundation will be released and transferred to be held and pledged pursuant to the Indenture. Such Eligible Loans will be credited to the Acquisition Fund established pursuant to the Indenture. The Eligible Loans on deposit in the Acquisition Fund after giving effect to the plan of financing as described herein will constitute the “Financed Eligible Loans” under the Indenture. See “PLAN OF FINANCING” herein.

The information presented in this Official Statement under the caption “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” relating to the Eligible Loans expected to be pledged to the Trustee on the date of issuance of the Series 2021 Bonds is as of August 31, 2021 (the “Statistical Cut-Off Date”). The Foundation believes that the information set forth in this Official Statement with respect to the 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 of the Series 2021 Bonds (the “Series 2021 Date of Issuance”).

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 the Financed Eligible Loans and investments. After the issuance of the Series 2021 Bonds and the application of the proceeds thereof and other available funds as described under “PLAN OF FINANCING,” the Parity Ratio on the Series 2021 Date of Issuance will equal approximately 134.68% of the aggregate principal amount of the Bonds Outstanding. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Credit Enhancement” herein.

The term “Parity Ratio” as used herein means the ratio of the Aggregate Market Value of the assets in the Trust Estate to the sum of the aggregate principal amount of the Bonds then Outstanding plus accrued but unpaid Administrative Expenses, fees owing but unpaid to servicers, and any monthly consolidation rebate fees and Special Allowance Payments required to be rebated to the Secretary.

“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 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 are a discrete trust estate that include (collectively, the “Trust Estate”): (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 (including the 2021 Supplemental Reserve Subaccount) 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 and to any Derivative Product (provided a Reciprocal Payor will not have the benefit of such security with respect to its Derivative Product); 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 Financed Eligible Loans include loans originated under the Federal Family Education Loan Program (the “Financed Eligible FFELP Loans”) and certain loans originated under the Foundation’s alternative loan program. As of the Statistical Cut-Off Date, the Financed Eligible FFELP Loans are expected to account for approximately 99.37% of the Financed Eligible Loans on the Series 2021 Date of Issuance. The acquisition of additional Financed Eligible Loans under the Indenture is not permitted for so long as the Series 2021 Bonds are outstanding.

All of the Financed Eligible FFELP Loans pledged to the Trustee under the Indenture will be 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” and “DESCRIPTION OF THE NEW MEXICO GUARANTEED STUDENT LOAN PROGRAM” in this Official Statement.

**Revenue Fund.** The Trustee will deposit in 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 (including the 2021 Supplemental Reserve Subaccount), all Reciprocal Payments (as defined in the Indenture) 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 payments, set-asides and distributions described under the caption “—Application of Revenues” below, to the extent funds are available. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Application of Revenues; Payment of Bonds” herein.

**Debt Service Reserve Fund.** On the Series 2021 Date of Issuance, the Foundation will make a deposit to the Debt Service Reserve Fund in the amount of \$2,080,000 so that the total amount on deposit in the Debt Service Reserve Fund on such date shall equal \$2,417,500. See “ESTIMATED SOURCES AND USES OF FUNDS—Sources and Uses of Funds.” The Debt Service Reserve Fund Requirement is, as of any particular date of calculation, an amount equal to the greater of (a) 1% of the principal amount of the Bonds Outstanding or (b) \$300,000; provided that no surety bond is permitted for the Series 2021 Bonds. Moneys in the Debt Service Reserve Fund are to be used to cure insufficiencies of amounts in the Revenue Fund and the Redemption Subaccount to make payments of principal and interest on the Bonds when due. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Application of Revenues; Payment of Bonds” herein.

**2021 Supplemental Reserve Subaccount.** On the Series 2021 Date of Issuance, the Foundation will make a deposit to the 2021 Supplemental Reserve Subaccount in the amount of \$10,000,000. See “ESTIMATED SOURCES AND USES OF FUNDS.” Amounts on deposit in the 2021 Supplemental Reserve Subaccount are not credited towards the Debt Service Reserve Fund Requirement. The 2021 Supplemental Reserve Subaccount shall be used in the same manner as other accounts in the Debt Service Reserve Fund. On June 1, 2023 the amount required in the 2021 Supplemental Reserve Subaccount shall be reduced to \$500,000 and amounts in excess thereof shall be used as directed in writing by the Foundation first to pay (or to set aside for payment of) any interest on the Bonds or principal of any Bonds then maturing or subject to mandatory sinking fund redemption (to the extent other amounts are not then available in amounts sufficient for such purpose) and then shall be transferred to the Revenue Fund and used for the purposes of such fund. If between June 1, 2023 and June 1, 2034, the average of the following percentage for the immediately prior 12 months is greater than or equal to 48% then the Foundation will direct the Trustee to use amounts on deposit in the 2021 Supplemental Reserve Subaccount for the mandatory redemption of the Series 2001A-1 Bonds, the Series 2002A-2 Bonds, the Series 2003A-2 Bonds and the Series 2004A-1 Bonds, pro rata: the ratio (as determined monthly by the Foundation) of (a) the aggregate principal balance of Financed Eligible Loans which, were either (i) in forbearance status or (ii) in a “partial financial hardship” repayment plan on which no payment was made, to (b) the aggregate balance of all Financed Eligible Loans. On June 1, 2034 the amount in the 2021 Supplemental Reserve Subaccount shall be reduced to zero and amounts in excess thereof shall be used first to pay (or set aside for payment of) any interest on the Bonds or principal of any Bonds then maturing or subject to mandatory sinking fund redemption (to the extent other amounts are not then available in amounts sufficient for such purpose) and then shall be transferred to the Revenue Fund and used for the purposes of such fund. The 2021 Supplemental Reserve Subaccount is not required to be replenished if amounts therein are used for the stated purposes thereof.

**Administration Fund.** On the Series 2021 Date of Issuance, proceeds of the Series 2021 Bonds will be deposited into the Administration Fund created under the Indenture as described in “ESTIMATED SOURCES AND USES OF FUNDS.” Moneys on deposit in the Administration Fund will be used to pay Administrative Expenses (including servicing and Trustee fees) and the costs of issuance with respect to the Series 2021 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.

**Acquisition Fund; Characteristics of the Financed Eligible Loans.** The portfolio of Eligible Loans expected to be credited to the Acquisition Fund and pledged by the Foundation to the Trustee under the Indenture on the Series 2021 Date of Issuance has, as of the Statistical Cut-Off Date, an aggregate outstanding principal balance of approximately \$301,658,246, which does not include \$15,750,583 of interest expected to be capitalized. As of the Statistical Cut-Off Date (and based on the aggregate outstanding principal balances of the Financed Eligible Loans as of such date), the weighted average annual interest rate of the Eligible Loans expected to be pledged to the Trustee under the Indenture (excluding Special Allowance Payments and not giving effect to currently utilized borrower benefit programs) was approximately 5.40% and their weighted average remaining term to scheduled maturity was approximately 151.97 months. The portfolio of Eligible Loans expected to be pledged by the Foundation to the Trustee under the Indenture is described more fully under the caption “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” herein.

In the event that the principal amount of Eligible Loans required to provide collateral for the Bonds varies from the amounts anticipated herein, whether by reason of a change in the collateral requirement necessary to obtain the expected rating on the Bonds (see the caption “—Rating” below), the rate of amortization or prepayment on the portfolio of Eligible Loans from the Statistical Cut-Off Date to the Series 2021 Date of Issuance varying from the rates that were anticipated, or otherwise, the portfolio of Eligible Loans to be pledged to the Trustee under the Indenture may consist of a subset of the pool of Eligible Loans described herein or may include additional Eligible Loans not described under the caption “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” herein.

As of the Statistical Cut-Off Date, approximately \$49.56 million of the principal amount of the Financed Eligible Loans (representing approximately 16.43% of the Financed Eligible Loans by aggregate outstanding principal balance) are “rehabilitation loans,” which are Eligible Loans that have previously defaulted, but for which the borrower thereunder has made a specified number of on-time payments as described under “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees—Rehabilitation of Defaulted Loans” hereto.

As of the Statistical Cut-Off Date, the Financed Eligible FFELP Loans are expected to account for approximately 99.37% of the Financed Eligible Loans on the Series 2021 Date of Issuance. The acquisition of additional Financed Eligible Loans under the Indenture is not permitted for so long as the Series 2021 Bonds are outstanding.

**Application of Revenues.** The Indenture provides that Recoveries of Principal constituting a portion of the revenues deposited in the Revenue Fund and so identified to the Trustee, will be transferred, as soon as practicable, to the Redemption Subaccount. Amounts on deposit in the Redemption Subaccount are to be used for the same purposes and in the same manner and priority as Revenues on deposit in the Revenue Fund.

At any time, upon receipt of a Foundation Order, the Trustee shall pay from the Revenue Fund to the Administration Fund (a) a monthly set aside of amounts payable to the U.S. Department of Education with respect to the Financed Eligible FFELP Loans; and (b) a monthly set aside and the amount then due for Administrative Expenses (including servicing and Trustee fees), subject to the limitations described herein. See “FEES AND EXPENSES” herein.

On the first Business Day of each month, commencing January 3, 2022, the Trustee will set aside and sequester within the Revenue Fund (a) an amount equal to 1/6<sup>th</sup> (one-half for the first interest payment date) of the amount of any interest payments coming due within the next six months (but not in excess of such amounts coming due) and (b) an amount equal to 1/12<sup>th</sup> of the amount of any principal payments (by maturity or mandatory sinking fund redemption) coming due within the next 12 months (but not in excess of such amounts coming due).

After making the set-asides described in the previous two paragraphs, the Foundation may request that the Trustee release moneys from the Revenue Fund and Redemption Subaccount to the Foundation on the first Business Day of each March, June, September and December as follows:

- (a) commencing March 2023 through December 2027, in the following amounts: not to exceed \$4.6 million for calendar year 2023; not to exceed \$4.7 million for calendar year 2024; not to exceed \$4.8 million for calendar year 2025; not to exceed \$4.9 million for calendar year 2026; not to exceed \$5.0 million for calendar year 2027; and
- (b) commencing March 2028 to and including June 2030, only so long as after giving effect to such release (x) the Parity Ratio is at least 130% and (y) the Aggregate Market Value of the Trust Estate exceeds the amount of the Bonds and other liabilities under the Indenture by at least \$10,000,000;
- (c) from September 2030 through March 2034 no releases are permitted; and
- (d) from and after June 2034, only so long as after giving effect to such release (x) the Parity Ratio is at least 130% and (y) the Aggregate Market Value of the Trust Estate exceeds the amount of the Bonds and other liabilities under the Indenture by at least \$10,000,000.

All revenues in excess of amounts released to the Foundation as described in the preceding paragraph shall be applied to redeem Bonds as follows:

*First*, on a pro rata basis to redeem the Series 2001A-1 Bonds, the Series 2002A-2 Bonds, the Series 2003A-2 Bonds and the Series 2004A-1 Bonds on each Interest Payment Date therefor until each such series has an amount equal to \$100,000 of principal then outstanding;

*Second*, to redeem the Taxable Term Bonds on each Interest Payment Date therefor until such Bonds are no longer outstanding; and

*Third*, to redeem the Tax-Exempt Term Bonds on each Interest Payment Date therefor until such Bonds are no longer outstanding.

**Payment of Bonds.** Amounts on deposit in the Revenue Fund and the Redemption Fund will be used on each Bond Payment Date (from amounts set aside for such purposes as described above and from other available amounts, if necessary): *First*, to pay the rebate amount or any excess interest necessary to comply with the Tax Certificate; *Second*, to pay interest due on Senior Bonds and any Foundation Derivate Payments secured on parity with Senior Bonds; *Third*, to pay principal due (including as a result of

mandatory sinking fund redemption) on Senior Bonds; and *Fourth*, to replenish the Debt Service Reserve Fund.

On the Series 2021 Date of Issuance all of the Bonds outstanding under the Indenture will constitute Senior Bonds. Upon satisfaction of certain conditions set forth in the Indenture, the Foundation may issue Additional Bonds on parity with the Senior Bonds, including the Series 2021 Bonds, or may issue First Subordinate Bonds or Second Subordinate Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Application of Revenues; Payment of Bonds” for the payment priorities with respect to the Bonds if First Subordinate Bonds and Second Subordinate Bonds are issued in the future.

### **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 Senior Bonds and Foundation Derivative Payments secured on a parity with the Senior Bonds 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 Senior Bonds on which such interest shall be in default and such Foundation Derivative Payments then due, and second, to the payment of the principal of all Senior Bonds then due and any amounts owed to a Reciprocal Payor secured on a parity with the Senior Bonds (pro rata between the series of the then Outstanding Senior Bonds and the applicable Derivative Products, if amounts are insufficient to pay all principal and amounts owed to a Reciprocal Payor then due) prior to making any payments on subordinated obligations. See “APPENDIX C—FORM OF THE INDENTURE” attached hereto.

### **Credit Enhancement**

The security for the Bonds will include overcollateralization, excess spread and cash on deposit in the Debt Service Reserve Fund and the 2021 Supplemental Reserve Subaccount, as described herein. After the issuance of the Series 2021 Bonds and the application of the proceeds thereof and other available funds (as described under “PLAN OF FINANCING” herein), the Parity Ratio under the Indenture on the Series 2021 Date of Issuance is expected to be approximately 134.68%. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Credit Enhancement” herein.

### **Book-Entry Registration**

The Series 2021 Bonds will be delivered in book-entry form through The Depository Trust Company. Bondholders will not receive a certificate representing their Series 2021 Bonds except in very limited circumstances. See “THE SERIES 2021 BONDS—Book-Entry-Only System” herein.

### **Rating**

It is a condition to the Underwriters’ obligation to purchase the Series 2021 Bonds that Moody’s Investors Service assign a rating of at least “Aaa (sf)” to the Series 2021 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 “RATING” herein.

### **Certain Investment Considerations**

Attention should be given to certain investment considerations described in this Official Statement which could affect the ability of the Foundation to pay debt service on the Series 2021 Bonds and which

could have an effect on the market price of the Series 2021 Bonds to an extent that cannot be determined. See the caption "INVESTMENT CONSIDERATIONS" herein. Each prospective purchaser of Series 2021 Bonds should read this entire Official Statement, including the cover page and Appendices hereto.

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## OFFICIAL STATEMENT

Relating to

**\$208,000,000**

**NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION  
EDUCATION LOAN BONDS, SERIES 2021**

Consisting of

**\$162,000,000 Education Loan Bonds, Senior Series 2021-1A (AMT)**

And

**\$46,000,000 Education Loan Bonds, Senior Series 2021-1B (Taxable)**

### INTRODUCTION

This Official Statement, including the cover page and inside front cover page hereof, the Summary Statement and the Appendices hereto, sets forth information regarding the issuance by the New Mexico Educational Assistance Foundation (the “Foundation”) of \$208,000,000 aggregate principal amount of its Education Loan Bonds, Series 2021 consisting of \$162,000,000 Education Loan Bonds, Senior Series 2021-1A (AMT) (the “Series 2021A Bonds”) and \$46,000,000 Education Loan Bonds, Senior Series 2021-1B (Taxable) (the “Series 2021B Bonds”) and, together with the Series 2021A Bonds, the “Series 2021 Bonds”). Terms used in this Official Statement and not otherwise defined herein shall have the same meanings set forth in “APPENDIX C—FORM OF THE INDENTURE” hereto.

The Series 2021 Bonds are being issued pursuant to the Indenture of Trust, dated as of February 1, 1998 (the “Trust Indenture”), as amended and supplemented, including by a Fourteenth Supplemental Indenture of Trust, dated as of December 1, 2021 (the “Fourteenth Supplemental Indenture” and together with the Trust Indenture, the “Indenture”), each between the Foundation and Zions Bancorporation, National Association, as trustee (the “Trustee”). The Series 2021 Bonds are authorized to be issued pursuant to the New Mexico Educational Assistance Act, Sections 21-21A-1 to 21-21A-23, NMSA, as amended (the “Educational Assistance Act”) and 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 Series 2021 Bonds are to be applied by the Foundation to refund the Refunded Bonds (defined herein). Upon the issuance of the Series 2021 Bonds and provision for the refunding of the Refunded Bonds, certain student loans originated under the Federal Family Education Loan Program (“Eligible FFELP 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, together with the Financed Eligible FFELP Loans and other loans held pursuant to the Indenture. Proceeds of the Series 2021 Bonds, together with other available funds, are also expected to be used to refinance certain Eligible Loans either held unencumbered by the Foundation or financed with the proceeds of short-term indebtedness of the Foundation, fund a deposit to the Debt Service Reserve Fund (including the 2021 Supplemental Reserve Subaccount) under the Indenture and pay for certain costs of issuance. See “PLAN OF FINANCING.”

The Series 2021 Bonds will be special obligations of the Foundation, payable only from the security therefor provided under the Indenture. The Series 2021 Bonds constitute “Senior Bonds” under the Indenture. The Indenture authorizes the issuance of additional bonds (the “Additional Bonds”) subordinate to or on a parity with the Senior Bonds, senior to, on a parity with or subordinate to the First Subordinate Bonds, and on a parity with or senior to the Second Subordinate Bonds. See “APPENDIX C—FORM OF

THE INDENTURE.” The Series 2021 Bonds, together with any Bonds presently outstanding under the Indenture and any Additional Bonds that may be hereafter issued, are referred to herein as the “Bonds.”

### Outstanding Bonds

The Series 2021 Bonds will be secured on parity with the lien granted under the Indenture in favor of the owners of other Senior Bonds Outstanding under the Indenture. After giving effect to the issuance of the Series 2021 Bonds and the redemption of the Refunded Bonds, Senior Bonds Outstanding under the Indenture will total approximately \$241.75 million, and no First or Second Subordinate Bonds or Derivative Products will be outstanding under the Indenture.

The following Bonds will be outstanding under the Indenture after giving effect to the issuance of the Series 2021 Bonds and the redemption of the Refunded Bonds:

#### Pro Forma Outstanding Bonds

Series	Outstanding Principal Amount	Payment Priority	Federal Tax Status	Interest Rate Mode	Interest Rate(s)	Final Maturity Date/Range
Series 2001A-1	\$ 6,250,000	Senior	Exempt (AMT)	Fixed	3.750%	09/01/2031
Series 2002A-2	5,850,000	Senior	Exempt (AMT)	Fixed	3.800%	11/01/2032
Series 2003A-2	10,000,000	Senior	Exempt (AMT)	Fixed	3.800%	09/01/2033
Series 2004A-1	11,650,000	Senior	Exempt (AMT)	Fixed	3.875%	04/01/2034
Series 2021-1A	162,000,000	Senior	Exempt (AMT)	Fixed	See inside cover.	09/01/2023- 09/01/2051
Series 2021-1B	<u>46,000,000</u>	Senior	Taxable	Fixed	See inside cover.	09/01/2023- 09/01/2051
Total	<u>\$241,750,000</u>					

### Proposed Amendments to the Indenture

In connection with the issuance of the Series 2021 Bonds, certain amendments are being made to the Indenture as described herein under the caption “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Indenture Amendments” (referred to herein as the “Amendments”). **By the purchase of the Series 2021 Bonds on their date of issuance, each holder of the Series 2021 Bonds will be deemed to have consented to the Amendments.** The Amendments will become effective on the date of issuance of the Series 2021 Bonds (the “Series 2021 Date of Issuance”).

### Miscellaneous

Descriptions of, among other things, the Series 2021 Bonds, the Foundation, 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 and the Series 2021 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 Series 2021 Bonds.

## THE SERIES 2021 BONDS

### General Terms of the Series 2021 Bonds

The Series 2021 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 Series 2021 Bonds. Individual purchases of the Series 2021 Bonds will be made in book-entry form only in the principal amount of authorized denominations. Purchasers of the Series 2021 Bonds will not receive certificates representing their interests in the Series 2021 Bonds purchased. See “—Book-Entry-Only System” below. The Series 2021 Bonds are issued as fully registered bonds in denominations of \$5,000 and any integral multiple thereof.

The Series 2021 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 2021 Bonds will be payable on March 1, 2022 and each September 1 and March 1 thereafter. The Series 2021 Bonds will bear interest at the rates and will mature on the dates as described on the inside cover page hereof. Interest on the Series 2021 Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

### Redemption Provisions

***Optional Redemption.*** The Series 2021 Bonds maturing on September 1 of the years 2023 through 2029 are not subject to redemption at the option of the Foundation. The Series 2021A Bonds maturing on September 1, 2051 (the “Tax-Exempt Term Bonds”) and the Series 2021B Bonds maturing on September 1, 2051 (the “Taxable Term Bonds”) are subject to optional redemption at the direction and specification of the Foundation, in whole or in part on any date on or after September 1, 2031, at a redemption price equal to the outstanding principal amount thereof, plus accrued interest, if any; provided, however, that if any Bonds remain Outstanding following such optional redemption, each Rating Agency rating the Bonds must confirm that such optional redemption will not adversely affect its Rating on any of the Outstanding Bonds after taking into account such optional redemption.

***Mandatory Redemption from Excess Revenues.*** The Tax-Exempt Term Bonds and the Taxable Term Bonds are subject to mandatory redemption from excess revenues on each Interest Payment Date from amounts available therefor as described in “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Application of Revenues; Payment of Bonds—*Application of Revenues*” herein at a redemption price of 100% of the principal amount of the Series 2021 Bonds to be redeemed plus accrued interest to the date of redemption, commencing after the Series 2001A-1 Bonds, the Series 2002A-2 Bonds, the Series 2003A-2 Bonds and the Series 2004A-1 Bonds are each outstanding in the principal amount of \$100,000.

***Mandatory Sinking Fund Redemption.*** The Tax-Exempt Term Bonds are subject to mandatory sinking fund redemption by lot in such manner as the Trustee may determine, at a price equal to 100% of the principal amount thereof plus accrued interest to the redemption date, on the dates and in the principal amounts as follows:

<u>Redemption Date (September 1)</u>	<u>Principal Amount</u>
2041	\$5,000,000
2042	6,000,000
2043	7,000,000
2044	8,000,000
2045	8,000,000
2046	8,000,000
2047	8,000,000
2048	8,000,000
2049	8,000,000
2050	8,000,000
2051*	8,000,000

\*Final Maturity

The Taxable Term Bonds are subject to mandatory sinking fund redemption by lot in such manner as the Trustee may determine, at a price equal to 100% of the principal amount thereof plus accrued interest to the redemption date, on the dates and in the principal amounts as follows:

<u>Redemption Date (September 1)</u>	<u>Principal Amount</u>
2041	\$1,000,000
2042	1,000,000
2043	1,000,000
2044	1,000,000
2045	2,000,000
2046	3,000,000
2047	4,000,000
2048	4,000,000
2049	4,000,000
2050	4,000,000
2051*	4,000,000

\*Final Maturity

If fewer than all of the Tax-Exempt Term Bonds or Taxable Term Bonds are redeemed in a manner other than pursuant to a mandatory sinking fund redemption, the principal amount so redeemed shall be credited at 100% of the principal amount thereof by the Trustee against the obligation of the Foundation on future mandatory sinking fund redemption dates for the Tax-Exempt Term Bonds or Taxable Term Bonds, respectively, on a pro rata basis.

**Notice of Redemption.** Upon Foundation Order, the Trustee will cause notice of any redemption to be given by mailing a copy of the redemption notice to the Registered Owner of any Series 2021 Bonds designated for redemption in whole or in part, at its address as the same shall last appear upon the registration books or by electronic means, in each case not less than 30 days nor more than 60 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 Series 2021 Bonds for which no such failure or defect occurs.

Each notice of redemption is to set forth, among other things, the date of redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed, and 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.

Any notice mailed as described above shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives such notice. Failure to give such notice or any defect therein with respect to any Bond shall not affect the validity of the proceedings for redemption with respect to any other Bond.

Each notice of optional redemption may further state that such redemption shall be conditional upon the receipt by the Paying Agent, on or prior to the date fixed for such redemption, of moneys sufficient to pay the principal of, premium, if any, 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. If such condition is included in the notice of redemption and if sufficient moneys have not been deposited on the date fixed for redemption, then a notice stating sufficient moneys were not deposited and that no redemption occurred on that date shall be sent within a reasonable time thereafter, in like manner, to the registered owners of each Bond which was sent the notice of redemption.

If notice of redemption shall have been given as described above and the foregoing condition, if any, shall have been met, the Bonds or portions thereof specified in said notice shall become due and payable at the applicable redemption price on the redemption date therein designated, and if, on the redemption date, moneys for the payment of the redemption price of all the Bonds to be redeemed, together with interest to the redemption date, shall be available for such payment on said date, then from and after the redemption date interest on such Bonds shall cease to accrue and become payable.

***Selection of Bonds for Redemption.*** If less than all of the Series 2021 Bonds of any Stated Maturity of any series or subseries of the Series 2021 Bonds are to be redeemed, such Series 2021 Bonds of the same Stated Maturity to be redeemed shall be selected by lot in such manner as the Trustee shall determine.

In case a Series 2021 Bond is of a denomination larger than \$5,000 the Trustee shall treat such Series 2021 Bond as representing that number of Series 2021 Bonds which is obtained by dividing the principal amount of such Series 2021 Bond by \$5,000 and any such portion of such Series 2021 Bond may be redeemed. Except as otherwise described herein under “—Book-Entry-Only System,” upon surrender of any Series 2021 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 Series 2021 Bond or Series 2021 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 Series 2021 Bond surrendered.

### **Places of Payment**

So long as Cede & Co. is the Registered Owner of the Series 2021 Bonds, all payments of principal of and interest on the Series 2021 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-Only System” below.

The principal of all Series 2021 Bonds shall be payable, as and when due, at the designated office of the Trustee upon presentation and surrender of the Series 2021 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 Series 2021 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.

### **Special Record Date**

Any interest not timely paid or provided for shall cease to be payable to the Registered Owner thereof at the close of business on the Record Date and shall be payable to the Registered Owner thereof at the close of business on a special record date (a “Special Record Date”) for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of such Special Record Date shall be given to the Registered Owners of the Bonds not less than 10 days prior thereto by first-class mail to each such Registered Owner as shown on the Trustee’s registration books on the date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest, which payment date shall not be more than 15 nor less than 10 days subsequent to the Special Record Date.

### **Exchange and Transfer of Series 2021 Bonds**

At the option of the Registered Owner, Series 2021 Bonds may be exchanged at the designated office of the Trustee for a like aggregate principal amount of fully registered Series 2021 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 Series 2021 Bond or Series 2021 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 15 business 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 foregoing, while the Series 2021 Bonds are in the book-entry system, (a) all rights of ownership must be exercised through DTC and the book-entry system, and (b) notices that are to be given to Registered Owners by the Foundation or the Trustee will be given only to DTC. See “—Book-Entry-Only System” below.

### **Book-Entry-Only System**

DTC will act as securities depository for the Series 2021 Bonds. The Series 2021 Bonds will be issued as fully-registered securities 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 Series 2021 Bond certificate will be issued for each stated maturity of each Series of the Series 2021 Bonds, in the aggregate principal amount of such maturity of such Series and will 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 (the "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, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation, (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. 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 (the "Indirect Participants"). DTC has a Standard & Poor's rating of "AA+." DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission.

Purchases of the Series 2021 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2021 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2021 Bond (the "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 Series 2021 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 Series 2021 Bonds except in the event that use of the book-entry system for the Series 2021 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2021 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. The deposit of Series 2021 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2021 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2021 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.

So long as DTC serves as securities depository for the Series 2021 Bonds, redemption and other notices shall be sent to DTC. If less than all of the Series 2021 Bonds 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 the Series 2021 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 the Series 2021 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Series 2021 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 the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will 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 sole responsibility of such Participant and not of DTC, the Paying Agent or the Foundation, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest 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 shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2021 Bonds at any time by giving reasonable notice to the Foundation. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2021 Bonds are required to be printed and delivered.

The Foundation may discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Series 2021 Bonds will be printed and delivered to DTC (or such other securities depository).

The foregoing information in this section concerning DTC and DTC's book-entry-only system is based upon information obtained from DTC. The Foundation assumes no responsibility as to accuracy thereof.

NEITHER THE FOUNDATION NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION, EITHER SINGULARLY OR JOINTLY, TO DTC PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DTC PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (II) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE HOLDERS OF THE SERIES 2021 BONDS UNDER THE INDENTURE; (III) THE SELECTION BY DTC OR ANY DTC PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE SERIES 2021 BONDS; (IV) THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PRICE (IF ANY) OR INTEREST DUE WITH RESPECT TO THE SERIES 2021 BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE HOLDER OF THE SERIES 2021 BONDS, OR (VI) ANY OTHER MATTER.

## **PLAN OF FINANCING**

The Series 2021 Bonds are being issued for the purpose of providing the Foundation with funds which, together with other funds of the Foundation, will be used to: (i) refinance certain Eligible Loans currently pledged under the Indenture, the 2010-1 Indenture, the 2010-2 Indenture, the 2016 Indenture and



the 2018 Indenture by refunding the Refunded Bonds (see “ESTIMATED SOURCES AND USES OF FUNDS—Refunded Bonds” below); (ii) refinance certain Eligible Loans either held unencumbered by the Foundation or financed with the proceeds of short-term indebtedness of the Foundation; (iii) make a deposit into the Debt Service Reserve Fund, including the 2021 Supplemental Reserve Subaccount; and (iv) pay the costs of issuing the Series 2021 Bonds.

In connection with the issuance of the Series 2021 Bonds and the refunding of the Refunded Bonds, the Foundation expects to terminate the interest rate swap agreement secured by the Series 2010-1 Indenture.

## ESTIMATED SOURCES AND USES OF FUNDS

### Sources and Uses of Funds

The following table shows the estimated sources and uses of the proceeds of the Series 2021 Bonds.

Sources of Funds:	
Principal Amount of Series 2021 Bonds.....	\$208,000,000
Net Original Issue Premium.....	11,159,440
Less Underwriters’ Discount .....	<u>(1,562,155)</u>
Total.....	<u>\$217,597,285</u>
Uses of Funds:	
Payment of Refunded Bonds and Line of Credit <sup>1</sup> .....	\$195,822,664
Acquisition of Eligible Loans <sup>2</sup> .....	8,829,621
Deposit to Debt Service Reserve Fund .....	2,080,000
Deposit to 2021 Supplemental Reserve Subaccount.....	10,000,000
Deposit to Administration Fund <sup>3</sup> .....	<u>865,000</u>
Total.....	<u>\$217,597,285</u>

<sup>1</sup> Funds on deposit in the debt service reserve funds held under the 2010-1 Indenture, the 2010-2 Indenture, the 2016 Indenture and the 2018 Indenture and excess funds on deposit in the debt service reserve fund held under the Indenture will also be used for payment of the Refunded Bonds and Line of Credit.

<sup>2</sup> To acquire Eligible Loans currently held unencumbered by the Foundation. Such Eligible Loans will be deposited to the credit of the Acquisition Fund.

<sup>3</sup> To pay the costs of issuing the Series 2021 Bonds, not including the Underwriters’ discount.

Funds released from the Indenture, the 2010-1 Indenture, the 2010-2 Indenture, the 2016 Indenture and the 2018 Indenture in connection with the refunding of the Refunded Bonds will be used to acquire Eligible Loans currently held unencumbered by the Foundation in an amount sufficient to cause the Parity Ratio on the Series 2021 Date of Issuance to be not less than approximately 134.68% and amounts in excess of such requirement shall be released to the Foundation free of the lien of the Indenture.

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## Refunded Bonds

The proceeds of the Series 2021 Bonds, together with cash currently held in the indentures securing the Refunded Bonds, will be used to redeem the outstanding principal amounts of the following bonds of the Foundation (referred to herein as the “Refunded Bonds”):

Series	Principal Amount Outstanding <sup>(1)</sup>	Indenture
Senior Series 2007A-1	\$ 39,400,000	1998 <sup>(2)</sup>
Senior Series 2007A-2	25,000,000	1998 <sup>(2)</sup>
Senior Series 2010-1A-1	10,690,000	2010-1 <sup>(3)</sup>
Senior Series 2010-1A-3	36,370,000	2010-1 <sup>(3)</sup>
Senior Series 2010-2A-2	24,690,000	2010-2 <sup>(4)</sup>
Senior Series 2010-2A-3	15,485,000	2010-2 <sup>(4)</sup>
Senior Series 2013-1A-1	24,771,550	1998 <sup>(2)</sup>
Senior Series 2016	6,579,000	2016 <sup>(5)</sup>
Senior Series 2018	<u>11,294,000</u>	2018 <sup>(6)</sup>
Total	<u>\$194,279,550</u>	

<sup>(1)</sup> Principal amount outstanding as of August 31, 2021. The amount of bonds redeemed may be lower due to principal payments between such date and the Series 2021 Date of Issuance.

<sup>(2)</sup> Issued pursuant to the Indenture.

<sup>(3)</sup> Issued pursuant to the Indenture of Trust, dated as of September 1, 2010, between the Foundation and Wells Fargo Bank, National Association, as supplemented and amended (the “2010-1 Indenture”).

<sup>(4)</sup> Issued pursuant to the Indenture of Trust, dated as of December 1, 2010, between the Foundation and Wells Fargo Bank, National Association, as supplemented and amended (the “2010-2 Indenture”).

<sup>(5)</sup> Issued pursuant to the Indenture of Trust, dated as of December 1, 2016, between the Foundation and Zions Bancorporation, National Association, as supplemented and amended (the “2016 Indenture”).

<sup>(6)</sup> Issued pursuant to the Indenture of Trust, dated as of December 1, 2018, between the Foundation and Zions Bancorporation, National Association, as supplemented and amended (the “2018 Indenture”).

All of the Refunded Bonds except the Series 2013-1A-1 Bonds will be redeemed on the Series 2021 Date of Issuance. A portion of the proceeds of the Series 2021 Bonds will be held by the Trustee in escrow and used to redeem the Series 2013-1A-1 Bonds on or about January 3, 2022.

The Refunded Bonds issued pursuant to the 2010-1 Indenture, the 2010-2 Indenture, the 2016 Indenture and the 2018 Indenture (the “Prior Indentures”) and the Revolving Credit and Security Agreement, dated as of November 13, 2015 (the “Line of Credit”), among the Foundation, the Trustee and Bank of America, N.A. are secured by certain Eligible Loans that will be pledged pursuant to the Indenture. Contemporaneously with the receipt of Series 2021 Bond proceeds and other amounts available therefor by the trustees under the Prior Indentures (or, with respect to the Series 2013-1A-1 Bonds, the deposit in an irrevocable escrow) in amounts sufficient to redeem the outstanding Refunded Bonds and by the lender under the Line of Credit of amounts sufficient to repay the Line of Credit in full, the security interest in the Eligible Loans held under the Prior Indentures and the Line of Credit will be released, such Eligible Loans

will be deposited to the credit of the Acquisition Fund, and such Eligible Loans will constitute Financed Eligible Loans under the Indenture.

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

### **General**

THE SERIES 2021 BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE FOUNDATION, AND DO NOT CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF THE STATE OF NEW MEXICO (THE “STATE”) OR OF ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE STATE OF NEW MEXICO NOR THE FOUNDATION SHALL BE OBLIGATED TO PAY THE SERIES 2021 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 SERIES 2021 BONDS. THE FOUNDATION HAS NO TAXING POWER.

The Series 2021 Bonds 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 Trust Estate**

The Bonds and any obligations of the Foundation under any Derivative Product 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 (including the 2021 Supplemental Reserve Subaccount) 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 and to any Derivative Product (provided a Reciprocal Payor will not have the benefit of such security with respect to its Derivative Product); 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.

Pursuant to the Indenture, the “Financed Eligible Loans” may include alternative loans originated by the Foundation, provided that the origination or acquisition of such loans will not adversely affect the Ratings on any of the Bonds Outstanding. As of the Statistical Cut-Off Date, approximately 99.37% of the Financed Eligible Loans expected to be pledged to the Trustee on the Series 2021 Date of Issuance constitute Financed Eligible FFELP Loans. The acquisition of additional Financed Eligible Loans under the Indenture is not permitted for so long as the Series 2021 Bonds are outstanding.

### **Credit Enhancement**

Security for the Bonds includes overcollateralization, expected excess spread and cash on deposit in the Acquisition Fund, the Revenue Fund, the Debt Service Reserve Fund and the 2021 Supplemental

Reserve Subaccount. “Excess spread” is created when the interest earnings on the Financed Eligible Loans from borrower interest payments, interest subsidy payments and Special Allowance Payments exceed 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.

As described under the caption “PLAN OF FINANCING” herein, on the Series 2021 Date of Issuance certain proceeds of the Series 2021 Bonds will be used to make a deposit to the Debt Service Reserve Fund and the 2021 Supplemental Reserve Subaccount and other proceeds of the Series 2021 Bonds will be used to refinance Eligible Loans presently pledged by the Foundation under the Indenture, the Prior Indentures and the Line of Credit. Such refinanced Eligible Loans will be pledged to the Trustee under the Indenture upon such refinancing. After the issuance of the Series 2021 Bonds, the deposits to the Debt Service Reserve Fund and the 2021 Supplemental Reserve Subaccount and the pledge of the Financed Eligible Loans to the Trustee on the Series 2021 Date of Issuance, the Parity Ratio under the Indenture is expected to be approximately 134.68%.

The term “Parity Ratio” as used herein means the ratio of the Aggregate Market Value of the assets in the Trust Estate to the sum of the aggregate principal amount of the Bonds then Outstanding plus accrued but unpaid Administrative Expenses, fees owing but unpaid to servicers, and any monthly consolidation rebate fees and Special Allowance Payments required to be rebated to the Secretary.

“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 which have not, as of any date of calculation, yet been deposited therein.

The Eligible Loans expected to be refinanced and pledged under the Indenture on the Series 2021 Date of Issuance have been identified and are described herein (as of the Statistical Cut-Off Date) under the caption “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS.”

On the Series 2021 Date of Issuance, the Foundation will make a deposit to the Debt Service Reserve Fund in the amount of \$2,080,000 so that the total amount on deposit in the Debt Service Reserve Fund on such date shall equal \$2,417,500. See the caption “ESTIMATED SOURCES AND USES OF FUNDS” herein. The Debt Service Reserve Fund is intended to enhance the likelihood of timely payment of principal and interest to the Bondholders and to decrease the likelihood that the Bondholders will experience losses. To the extent of available funds, the Debt Service Reserve Fund will be replenished so that amounts on deposit therein do not fall below the Debt Service Reserve Fund Requirement.

On the Series 2021 Date of Issuance, the Foundation will make a deposit to the 2021 Supplemental Reserve Subaccount in the amount of \$10,000,000. See the caption “ESTIMATED SOURCES AND USES OF FUNDS” herein. The 2021 Supplemental Reserve Subaccount is intended to enhance the likelihood of timely payment of principal and interest to the Bondholders and to decrease the likelihood that the Bondholders will experience losses. Amounts released from the 2021 Supplemental Reserve Subaccount will not be replenished.

The Financed Eligible Loans on deposit in the Acquisition Fund on the Series 2021 Date of Issuance, together with the cash on deposit in the Debt Service Reserve Fund and the 2021 Supplemental Reserve Subaccount will exceed the outstanding principal balance of the Bonds under the Indenture, which excess will represent the initial overcollateralization for the Trust Estate created under the Indenture.

Credit Enhancement 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 of the credit enhancement, Bondholders will bear their allocable share of deficiencies. The

Foundation is not issuing any subordinate bonds. To the extent that the credit enhancement 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, 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.

### **Acquisition Fund**

The portfolio of Eligible Loans expected to be credited to the Acquisition Fund and pledged by the Foundation to the Trustee under the Indenture on the Series 2021 Date of Issuance has, as of the Statistical Cut-Off Date, an aggregate outstanding principal balance of approximately \$301,658,246, which does not include \$15,750,583 of interest expected to be capitalized. As of the Statistical Cut-Off Date (and based on the aggregate outstanding principal balances of the Financed Eligible Loans as of such date), the weighted average annual interest rate of the Eligible Loans expected to be pledged to the Trustee under the Indenture (excluding Special Allowance Payments and not giving effect to currently utilized borrower benefit programs) was approximately 5.40% and their weighted average remaining term to scheduled maturity was approximately 151.97 months. The portfolio of Eligible Loans expected to be pledged by the Foundation to the Trustee under the Indenture is described more fully under the caption “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” herein.

In the event that the principal amount of Eligible Loans required to provide collateral for the Bonds varies from the amounts anticipated herein, whether by reason of a change in the collateral requirement necessary to obtain the expected rating on the Bonds (see the caption “RATING” herein), the rate of amortization or prepayment on the portfolio of Eligible Loans from the Statistical Cut-Off Date to the Series 2021 Date of Issuance varying from the rates that were anticipated, or otherwise, the portfolio of Eligible Loans to be pledged to the Trustee under the Indenture may consist of a subset of the pool of Eligible Loans described herein or may include additional Eligible Loans not described under the caption “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” herein.

As of the Statistical Cut-Off Date, approximately \$49.56 million of the principal amount of the Financed Eligible Loans (representing approximately 16.43% of the Financed Eligible Loans by aggregate outstanding principal balance) are “rehabilitation loans,” which are Eligible Loans that have previously defaulted, but for which the borrower thereunder has made a specified number of on-time payments as described under “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees—Rehabilitation of Defaulted Loans” hereto.

The Financed Eligible Loans on deposit 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.

Financed Eligible Loans may not be sold, transferred or otherwise disposed of free from the lien of the Indenture: (a) unless (and to the extent) the Foundation shall determine in a Foundation Order that the aggregate principal amount of Financed Eligible Loans being so sold, transferred or otherwise disposed of shall not since the original delivery date of the most recently issued Obligations exceed 10% of the aggregate principal amount of all Financed Eligible Loans as of such original delivery date or (ii) the

Foundation and the Trustee have received written notice from Moody's that the completion of such sale, transfer or disposition as proposed shall not have an adverse effect on the then existing Ratings by Moody's with respect to any Outstanding Obligations; and (b)(i) the disposition price is equal to or in excess of the principal amount thereof (plus accrued interest) or equal to or in excess of the purchase price paid by the Foundation for such Financed Eligible Loan (less principal amounts received with respect to such Financed Eligible Loan), or (ii) the disposition price is lower than the principal amount thereof (plus accrued interest), and (A) the Foundation reasonably believes that the Revenues expected to be received (after giving effect to such disposition) would be at least equal to the Revenues expected to be received assuming no such sale, transfer or other disposition occurred, or (B) the Foundation shall remain able to pay debt service on the Bonds and make payment on any other Obligations on a timely basis (after giving effect to such sale, transfer or other disposition) whereas it would not have been able to do so on a timely basis if it had not sold, transferred or disposed of the Financed Eligible Loans at such discounted amount, or (C) the Aggregate Market Value of the Trust Estate (after giving effect to such sale, transfer or other disposition) will be at least equal to 100% of the aggregate principal amount of the Obligations plus accrued interest and the Foundation and the Trustee have received written notice from Moody's that the completion of such sale, transfer or disposition as proposed shall not have an adverse effect on the then existing Ratings by Moody's with respect to any Outstanding Obligations.

### **Debt Service Reserve Fund**

On the Series 2021 Date of Issuance, cash and investments in an amount equal to \$2,417,500 is expected to be on deposit in the Debt Service Reserve Fund. The Debt Service Reserve Fund Requirement shall be, as of any particular date of calculation, an amount equal to the greater of (a) 1% of the principal amount of the Bonds Outstanding or (b) \$300,000; provided that no surety bond shall be permitted for the Series 2021 Bonds. Moneys in the Debt Service Reserve Fund are to be used to cure insufficiencies of revenues for the purposes described below in "Revenue Fund; Application of Revenues; Payment of Bonds—*Payment of Bonds*" clauses First through Eighth and shall be replenished from available revenues as described in clause Sixth thereof. See "APPENDIX C—FORM OF THE INDENTURE."

On any day that the amount on deposit 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 Redemption Account of the Acquisition Fund.

### **2021 Supplemental Reserve Subaccount**

On the Series 2021 Date of Issuance, the Foundation will make a deposit to the 2021 Supplemental Reserve Subaccount in the amount of \$10,000,000. See "ESTIMATED SOURCES AND USES OF FUNDS." Amounts on deposit in the 2021 Supplemental Reserve Subaccount are not counted towards amounts otherwise required to be on deposit in the Debt Service Reserve Fund. On June 1, 2023 the amount in the 2021 Supplemental Reserve Subaccount shall be reduced to \$500,000 and amounts in excess thereof shall be used as directed in writing by the Foundation first to pay (or to set aside for payment of) any interest on the Bonds or principal of any Bonds then maturing or subject to mandatory sinking fund redemption (to the extent other amounts are not then available in amounts sufficient for such purpose) and then shall be transferred to the Revenue Fund and used for the purposes of such fund. If between June 1, 2023 and June 1, 2034, the average of the following percentage for the immediately prior 12 months is greater than or equal to 48% then the Foundation will direct the Trustee to use amounts on deposit in the 2021 Supplemental Reserve Subaccount for the mandatory redemption of the Series 2001A-1 Bonds, the Series 2002A-2 Bonds, the Series 2003A-2 Bonds and the Series 2004A-1 Bonds, pro rata: the ratio (as determined monthly by the Foundation) of (a) the aggregate principal balance of Financed Eligible Loans which, were either (i) in forbearance status or (ii) in a "partial financial hardship" repayment plan on which no payment was made, to (b) the aggregate balance of all Financed Eligible Loans. On June 1, 2034 the

amount in the 2021 Supplemental Reserve Subaccount shall be reduced to zero and amounts in excess thereof shall be used first to pay (or set aside for payment of) any interest on the Bonds or principal of any Bonds then maturing or subject to mandatory sinking fund redemption (to the extent other amounts are not then available in amounts sufficient for such purpose) and then shall be transferred to the Revenue Fund and used for the purposes of such fund. The 2021 Supplemental Reserve Subaccount is not required to be replenished if amounts therein are used for the stated purposes thereof.

### **Revenue Fund; Application of Revenues; Payment of Bonds**

The Trustee will deposit in 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, the Debt Service Reserve Fund (including the 2021 Supplemental Reserve Subaccount), all Reciprocal Payments and any other amounts deposited thereto upon receipt of a Foundation Order.

The Indenture provides that Recoveries of Principal constituting a portion of the revenues deposited in the Revenue Fund and so identified to the Trustee, will be transferred, as soon as practicable, to the Redemption Subaccount. Amounts on deposit in the Redemption Subaccount are to be used for the same purposes and in the same manner and priority as Revenues on deposit in the Revenue Fund.

***Application of Revenues.*** At any time, upon receipt of a Foundation Order, the Trustee shall pay from the Revenue Fund to the Administration Fund (a) a monthly set aside of amounts payable to the U.S. Department of Education with respect to the Financed Eligible FFELP Loans; and (b) a monthly set aside and the amount then due for Administrative Expenses (including servicing and Trustee fees), subject to the limitations described herein. See “FEES AND EXPENSES” herein.

On the first Business Day of each month, commencing January 3, 2022, the Trustee will set aside and sequester within the Revenue Fund (a) an amount equal to 1/6<sup>th</sup> (one-half for the first interest payment date) of the amount of any interest payments coming due within the next six months (but not in excess of such amounts coming due) and (b) an amount equal to 1/12<sup>th</sup> of the amount of any principal payments (by maturity or mandatory sinking fund redemption) coming due within the next 12 months (but not in excess of such amounts coming due).

After making the set-asides described in the previous two paragraphs, the Foundation may request that the Trustee release moneys from the Revenue Fund and Redemption Subaccount to the Foundation on the first Business Day of each March, June, September and December as follows:

- (a) commencing March 2023 through December 2027, in the following amounts: not to exceed \$4.6 million for calendar year 2023; not to exceed \$4.7 million for calendar year 2024; not to exceed \$4.8 million for calendar year 2025; not to exceed \$4.9 million for calendar year 2026; not to exceed \$5.0 million for calendar year 2027; and
- (b) commencing March 2028 to and including June 2030, only so long as after giving effect to such release (x) the Parity Ratio is at least 130% and (y) the Aggregate Market Value of the Trust Estate exceeds the amount of the Bonds and other liabilities under the Indenture by at least \$10,000,000;
- (c) from September 2030 through March 2034 no releases are permitted; and

- (d) from and after June 2034, only so long as after giving effect to such release (x) the Parity Ratio is at least 130% and (y) the Aggregate Market Value of the Trust Estate exceeds the amount of the Bonds and other liabilities under the Indenture by at least \$10,000,000.

All revenues in excess of amounts released to the Foundation as described in the preceding paragraph shall be applied to redeem Bonds as follows:

*First*, on a pro rata basis to redeem the Series 2001A-1 Bonds, the Series 2002A-2 Bonds, the Series 2003A-2 Bonds and the Series 2004A-1 Bonds on each Interest Payment Date therefor until each such series has an amount equal to \$100,000 of principal then outstanding;

*Second*, to redeem the Taxable Term Bonds on each Interest Payment Date therefor until such Bonds are no longer outstanding; and

*Third*, to redeem the Tax-Exempt Term Bonds on each Interest Payment Date therefor until such Bonds are no longer outstanding.

**Payment of Bonds.** On the Series 2021 Date of Issuance all of the Bonds outstanding under the Indenture will constitute Senior Bonds. Upon satisfaction of certain conditions set forth in the Indenture, the Foundation may issue Additional Bonds on parity with the Senior Bonds, including the Series 2021 Bonds, or may issue First Subordinate Bonds or Second Subordinate Bonds. As of the Series 2021 Date of Issuance, no Derivative Products will be secured by the Indenture.

Amounts on deposit in the Revenue Fund and the Redemption Subaccount will be used on each Bond Payment Date and Derivative Payment Date (from amounts set aside for such purposes as described above and from other available amounts, if necessary), as follows:

*First*, to pay the rebate amount or any excess interest necessary to comply with the Tax Certificate;

*Second*, to pay Senior Bondholders and Reciprocal Payors, on a parity basis, interest due on Senior Bonds and Foundation Derivative Payments on Derivative Products secured on parity with Senior Bonds;

*Third*, to pay Senior Bondholders, on a parity basis, principal and mandatory sinking fund payments when due;

*Fourth*, to pay First Subordinate Bondholders and Reciprocal Payors, on a parity basis, interest due on First Subordinate Bonds and Foundation Derivative Payments on Derivative Products secured on parity with First Subordinate Bonds;

*Fifth*, to pay First Subordinate Bondholders, on a parity basis, principal and mandatory sinking fund payments when due;

*Sixth*, to transfer to the Debt Service Reserve Fund amounts necessary to restore the Debt Service Reserve Fund to the Debt Service Reserve Fund Requirement;

*Seventh*, to pay Second Subordinate Bondholders and Reciprocal Payors, on a parity basis, interest due on Second Subordinate Bonds and Foundation Derivative Payments on Derivative Products secured on parity with Second Subordinate Bonds; and



*Eighth*, to pay First Subordinate Bondholders, on a parity basis, principal and mandatory sinking fund payments when due.

Any amounts remaining on deposit in the Revenue Fund and/or the Redemption Subaccount following such payments shall be applied as described under “—*Application of Revenues*” above.

### **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 Senior Bonds and Foundation Derivative Payments secured on a parity with the Senior Bonds 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 Senior Bonds on which such interest shall be in default and such Foundation Derivative Payments then due, and second, to the payment of the principal of all Senior Bonds then due and any amounts owed to a Reciprocal Payor secured on a parity with the Senior Bonds (pro rata between the series of the then Outstanding Senior Bonds and the applicable Derivative Products, if amounts are insufficient to pay all principal and amounts owed to a Reciprocal Payor then due). See “APPENDIX C—FORM OF THE INDENTURE—Section 6.02 Remedy on Default; Possession of Trust Estate” hereto.

### **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.

### **Administration Fund**

On the Series 2021 Date of Issuance, cash will be deposited into the Administration Fund created under the Indenture as described in “ESTIMATED SOURCES AND USES OF FUNDS.” Thereafter, amounts shall be transferred from the Revenue Fund to the Administration Fund as described above under “—Revenue Fund; Application of Revenues; Payment of Bonds.” Moneys on deposit in the Administration Fund shall be used solely to pay Administrative Expenses and the costs of issuance with respect to the Series 2021 Bonds. Amounts shall be disbursed from the Administration Fund for such purpose upon receipt by the Trustee of a direction from the Foundation. See “FEES AND EXPENSES” herein.

### **Additional Bonds**

Upon satisfaction of certain conditions set forth in the Indenture, the Foundation may issue Additional Bonds on parity with the Senior Bonds, including the Series 2021 Bonds, or may issue First Subordinate Bonds or Second Subordinate Bonds. The Foundation may not issue Additional Bonds unless the Trustee has received written evidence from each Rating Agency which has assigned a Rating or Ratings to the Bonds that the Rating or Ratings will not be reduced or withdrawn as a result of the issuance of the Additional Bonds. See “APPENDIX C—FORM OF THE INDENTURE—Section 2.12. Issuance of Additional Bonds” hereto.

### **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 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. 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.

### **Trustee Account**

The Trustee will establish an account with The Northern Trust Company (“Northern”) to hold interim cash balances. The Trustee will retain ownership and sole control of the account for the benefit of the Trust Estate and will initiate and execute all transactions on such account. All Revenues will be deposited directly to such account and allocated to the trust accounts established under the Indenture by means of the Trustee’s trust accounting system. Upon the Foundation’s written request, the Trustee will initiate and execute disbursements from such account to pay obligations as due under the Indenture. No cash will be received or held at the Trustee.

### **Indenture Amendments**

In connection with the issuance of the Series 2021 Bonds, the Foundation intends to amend the Indenture as follows (collectively, the “Amendments”):

(i) The definition of “Debt Service Reserve Fund Requirement” will be amended to provide for a minimum requirement of \$300,000 instead of the \$500,000 previously required;

(ii) The requirement for receipt of an opinion of Bond Counsel contemplated by the Indenture for release of monies from the Revenue Fund will not be required for releases described herein under the caption “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Application of Revenues; Payment of Bonds—*Application of Revenues*;”

(iii) The requirement in the Indenture for a Back-up Servicer shall not apply; and

(iv) The definition of “Rating Agency” will be amended and restated to read as follows: “Rating Agency” shall mean (i) with respect to the Bonds Outstanding under the Indenture other than the Series 2021 Bonds, Moody’s and Fitch and their successors and assigns so long as any such entity is rating any of such Bonds, or any other rating agency requested by the Foundation to maintain a Rating on any of such Bonds, (ii) with respect to the Series 2021 Bonds, Moody’s and its successors and assigns so long as any such entity is rating any of such Bonds, or any other rating agency requested by the Foundation to maintain a Rating on any of such Bonds and (iii) with respect to any Additional Bonds issued after the Series 2021 Bonds and Outstanding under the Indenture, any rating agency requested by the Foundation to maintain a Rating on any of such Bonds.

**By the purchase of the Series 2021 Bonds, the original purchasers and all subsequent holders thereof consent, and shall be deemed to have consented, to the Amendments, direct the Trustee to consent to the amendments and waive, and shall be deemed to have waived, any and all other formal notice, implementation, execution or timing requirements that may otherwise be required by the Indenture in order to implement all such Amendments. Any such consent will be effective on the Series 2021 Date of Issuance, will be binding on any subsequent purchaser of the Series 2021 Bonds, and may not be revoked after the issuance of the Series 2021 Bonds.**

The Amendments will become effective on the Series 2021 Date of Issuance.

The form of the Indenture as supplemented and amended to the date hereof is attached hereto as Appendix C.

## **INVESTMENT CONSIDERATIONS**

Attention should be given to the investment considerations described below which, among others, could affect the ability of the Foundation to pay debt service on the Series 2021 Bonds, and which could also affect the market price of the Series 2021 Bonds to an extent that cannot be determined. The following summary discussion of possible risks is intended to identify certain factors that should be considered by potential investors but is not meant to be an exhaustive discussion of the risks identified or a listing of all risks associated with the purchase of the Series 2021 Bonds and does not necessarily reflect the relative importance of the various risks identified. Additional investment considerations relating to an investment in the Series 2021 Bonds are described throughout this Official Statement, whether or not specifically designated as investment considerations. Each prospective purchaser of the Series 2021 Bonds should read this Official Statement in its entirety, including the Appendices hereto. There can be no assurance that material facts relating to identified risks may not change in the future or that other investment considerations will not become material in the future.

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

THE SERIES 2021 BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE FOUNDATION, AND DO NOT CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF. NEITHER THE STATE NOR THE FOUNDATION SHALL BE OBLIGATED TO PAY THE SERIES 2021 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 OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE SERIES 2021 BONDS. THE FOUNDATION HAS NO TAXING POWER.

No insurance or guarantee of the Bonds will be provided by any government agency or instrumentality, by any insurance company or by any other person or entity. Therefore, a Bondholder's receipt of payments on the Bonds will depend solely on:

(a) the amount and timing of payments and collections on the Financed Eligible Loans and interest paid or earnings on the amounts held in the funds and accounts established pursuant to the Indenture; and

(b) amounts on deposit in the Revenue Fund, the Debt Service Reserve Fund, the 2021 Supplemental Reserve Account and certain other funds and accounts held in the Trust Estate.

Bondholders will have no recourse to the Foundation or any other party if the Trust Estate created under the Indenture is insufficient for repayment of the Series 2021 Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS."

### **Purchasers may have difficulty selling their Series 2021 Bonds**

There currently is no secondary market for the Series 2021 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 for their investment. If a secondary market for the Series 2021 Bonds does develop, the spread between the bid price and the asked price for the Series 2021 Bonds may widen, thereby reducing the net proceeds to investors from the sale of their Series 2021 Bonds. The Foundation does not intend to list the Series 2021 Bonds on any exchange. From time to time, any existing secondary market for the Series 2021 Bonds may be adversely affected by periods of general market illiquidity or by events in the global financial markets in general or in the securitization market in particular. Accordingly, investors may not be able to sell their Series 2021 Bonds when they want to do so (and may be required to bear the financial risks of an investment in the Series 2021 Bonds for an indefinite period of time) or they may not be able to obtain the price that they wish to receive for their Series 2021 Bonds and, as a result, they may suffer a loss on their investment. The market values of the Series 2021 Bonds may fluctuate and movements in price may be significant.

Additionally, recent events in the United States and the global financial markets as the result of the coronavirus pandemic may cause a reduction of liquidity in any existing secondary market for the Series 2021 Bonds.

### **There will be no market valuation of the Financed Eligible Loans**

The Financed Eligible Loans are all currently owned by the Foundation and are not being acquired pursuant to a bidding process. The value of the Financed Eligible Loans is based on the amount necessary to release such Financed Eligible Loans from the liens of Prior Indentures and Line of Credit and is not based upon their fair market value as determined by any independent advisor.

### **The rating of the Series 2021 Bonds is not a recommendation to purchase and may change**

It is a condition to the Underwriters' obligation to purchase the Series 2021 Bonds that Moody's assign a rating of at least "Aaa (sf)" to the Series 2021 Bonds. There can be no assurance that the rating of the Series 2021 Bonds will not be downgraded or placed on negative watch by Moody's or any other Rating Agency in the future.

Ratings are based primarily on the creditworthiness of the underlying Financed Eligible Loans, the amount of credit enhancement and the legal structure of the transaction. The rating is not a recommendation to any investor to purchase, hold or sell the Series 2021 Bonds inasmuch as the rating does not comment as to the market price or suitability for any investor. 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 the Series 2021 Bonds is likely to decrease the price a subsequent purchaser will be willing to pay for an investor's Series 2021 Bonds.

Certain actions affecting the Financed Eligible Loans and the Trust Estate, including actions relating to the servicing of the Financed Eligible Loans and the administration of the Trust Estate, including changes in the Administrative Expenses, may be taken by the Foundation or the Trustee (at the written direction of the Foundation) only upon receipt of a confirmation from each Rating Agency that such action will not adversely affect the ratings on any Bonds.

Furthermore, the Rating Agencies have been and may continue to be under scrutiny by federal and state legislative and regulatory bodies and such scrutiny and any actions such legislative and regulatory bodies may take as a result thereof may also have an adverse effect on the price that a subsequent purchaser would be willing to pay for the Series 2021 Bonds and an investor's ability to resell its Series 2021 Bonds.

**There is the potential for conflicts of interest and regulatory scrutiny with respect to the Rating Agencies rating the Series 2021 Bonds**

The Foundation will pay fees to Moody's to assign the initial credit rating to the Series 2021 Bonds on or before the Series 2021 Date of Issuance and to maintain the rating on the Bonds. The SEC has said that being paid by an issuer to issue and/or maintain a credit rating on asset backed securities creates a conflict of interest for a rating agency, and that this conflict is particularly acute because arrangers of asset backed securities transactions provide repeat business to such a rating agency. This conflict of interest may affect the ratings that the Rating Agencies hired by the Foundation assign to the Bonds and other functions that the Rating Agencies perform relating to the Bonds.

**Funds available in the Debt Service Reserve Fund and the 2021 Supplemental Reserve Subaccount are limited and, if depleted, there may be shortfalls in payments to Bondholders**

The Debt Service Reserve Fund and the 2021 Supplemental Reserve Subaccount will each be funded on the Series 2021 Date of Issuance. Amounts on deposit in the Debt Service Reserve Fund will be replenished to the extent of available funds in the Revenue Fund so that the amount on deposit in the Debt Service Reserve Fund will be maintained at the Debt Service Reserve Fund Requirement. The 2021 Supplemental Reserve Subaccount will not be replenished and will be available only for a limited period of time. Funds may be transferred out of the Debt Service Reserve Fund and the 2021 Supplemental Reserve Subaccount from time to time as described under the caption "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein. In the event that the funds on deposit in the Debt Service Reserve Fund and the 2021 Supplemental Reserve Subaccount are exhausted and there are insufficient available funds in the Revenue Fund, the Bondholders will bear any risk of loss.

**Certain amendments to the Indenture and other actions may be taken without the consent of Bondholders, with confirmation by the Rating Agencies, or by less than all of the Bondholders**

The Indenture permits the Foundation and the Trustee (at the written direction of the Foundation) to take certain actions upon receipt of a confirmation from each Rating Agency that such action will not adversely affect the ratings on any Bonds, without the consent of the Bondholders. These include, without limitation, the issuance of Additional Bonds, the appointment of a new Servicer, a change in the Administrative Expenses and entering into a Derivative Product. In addition, subject to the limitations described in "Section 8.01. Supplemental Indentures Not Requiring Consent of Registered Owners" in Appendix C, changes may be made to the Indenture or other actions taken without the consent of the Bondholders and without Rating Agency confirmation.

Under the Indenture, Bondholders of specified percentages of the aggregate principal amount of the Bonds may amend or supplement or waive provisions of the Indenture without the consent of the other Bondholders, including, but not limited to, the ability to redeem Bonds at a price of par or greater with the consent of the Bondholders of a majority of the aggregate principal amount of the affected Bonds. A Bondholder has no recourse if the required percentage of Bondholders vote and other Bondholders disagree with the vote on these matters. The Bondholders may vote in a manner which impairs the ability to pay principal and interest on the Bonds.

## **The rate of payments on the Financed Eligible Loans may affect the maturity of the Series 2021 Bonds**

Financed Eligible Loans may be prepaid at any time without penalty. If the Foundation receives prepayments on the Financed Eligible Loans, those amounts will be used as described above under the caption “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Application of Revenues; Payment of Bonds” herein, including in some cases to redeem Bonds, which could shorten the average life of the Series 2021 Bonds. Factors affecting prepayment of loans include general economic conditions, legislative action or inaction, executive orders and administrative initiatives, prevailing interest rates and changes in the borrower’s job, including transfers and unemployment. Refinancing opportunities that may provide more favorable repayment terms, including those that may be offered under potential government initiatives to consolidate or otherwise refinance existing FFELP Loans to the Federal Direct Loan Program (the “Direct Loan Program”), also affect prepayment rates. For example, legislation has been proposed periodically that would allow eligible student loan borrowers with FFELP Loans or private loans to refinance those student loans at lower interest rates currently offered to new borrowers, with refinanced FFELP Loans to be fully paid and reissued as loans under the Direct Loan Program, and with borrower eligibility requirements to be established by the Department of Education based on income or debt to income financial need metrics. As an example, on October 6, 2021, the Department of Education announced a change to the Public Service Loan Forgiveness Program rules. This change allows FFELP Loan borrowers that consolidate into the Direct Loan Program prior to October 31, 2022 to receive a credit for past payments toward public service loan forgiveness that would not otherwise qualify. See “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—The Consolidation Loan Program.” This regulatory change may result in prepayments of the Financed Eligible Loans if such Financed Eligible Loans are consolidated under the Direct Loan Program. Also, the President of the United States has indicated his possible support for legislation or a potential executive order providing for the cancellation or prepayment of student debt in amounts not yet determined. In addition, defaults on Financed Eligible FFELP Loans owned by the Foundation and pledged under the Indenture result in guarantee payments being made on such Financed Eligible FFELP Loans, which will accelerate the prepayment of the Series 2021 Bonds subject to optional redemption.

Scheduled payments with respect to the Financed Eligible FFELP Loans may be reduced and the maturities of Financed Eligible FFELP Loans may be extended as authorized by the Higher Education Act. Also, periods of deferment and forbearance may lengthen the remaining term of the Financed Eligible Loans. Consequently, the length of time that the Series 2021 Bonds maturing on September 1, 2051 are outstanding and accruing interest may be longer than expected.

As of the Statistical Cut-Off Date, approximately \$49.56 million of the principal amount of the Financed Eligible Loans (representing approximately 16.43% of the Financed Eligible Loans by principal amount) are “rehabilitation loans,” which are Eligible Loans that have previously defaulted, but for which the borrower thereunder has made a specified number of on-time payments as described in “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees—Rehabilitation of Defaulted Loans” hereto. Although rehabilitation loans benefit from the same guarantees as other FFELP student loans, rehabilitation loans have generally experienced re-default rates that are higher than default rates for FFELP student loans that have not previously defaulted.

## **Changes in interest rate indexes may affect Trust Estate cash flow**

The Financed Eligible FFELP Loans will 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, the Financed Eligible Loans may be entitled to receive Special Allowance Payments from the Department of Education based upon a One-Month LIBOR rate or the 91-day U.S. Treasury Bill rate. See the caption “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS” herein and “DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM” in Appendix A hereto. If there is a decline in the rates payable on Financed Eligible Loans or Special Allowance Payments, the amount of funds representing interest deposited into the Revenue Fund may be reduced and may not be sufficient to pay interest on the Bonds when due or other expenses of the Trust Estate.

The London Interbank Offered Rate, or LIBOR, which serves as a global benchmark for what various issuers pay to borrow money, is being discontinued as a floating rate benchmark. The United Kingdom’s Financial Conduct Authority, which provides regulatory oversight and supervision of LIBOR, has announced that, in the case of the One-Month U.S. dollar LIBOR, after June 30, 2023, such LIBOR setting will cease to be provided by any administrator or will no longer be representative. If One-Month LIBOR is no longer available, Special Allowance Payments based on such index will bear interest based upon a replacement index. The Department of Education has not indicated what index it will use to calculate Special Allowance Payments presently based upon One-Month LIBOR if One-Month LIBOR is no longer available. The Adjustable Interest Rate (LIBOR) Act of 2021 (the “Sherman Bill”) was recently introduced in the House of Representatives. At one point during the drafting of the Sherman Bill, a provision was included that would have changed the index used to calculate LIBOR-based Special Allowance Payments from One-Month LIBOR to a replacement benchmark rate established by the Board of Governors of the Federal Reserve System. This language related to Special Allowance Payments has been removed from the current version of the Sherman Bill, but if reinserted during the committee process could tie such Special Allowance Payments to a replacement benchmark rate based upon the Secured Overnight Financing Rate (“SOFR”) effective no later than June 30, 2023, unless the Board of Governors of the Federal Reserve System determines that any LIBOR tenor will cease to be published or ceases to be representative on a different date. No assurance can be given that the proposed Sherman Bill will be adopted or, if adopted, will be adopted in its current form or in a form containing a provision relating to a change in the calculation of Special Allowance Payments. In addition, there are important fundamental differences between LIBOR and SOFR and SOFR is not expected to be representative of LIBOR. The Foundation cannot provide any assurances that SOFR or any other index chosen by the Department of Education to calculate Special Allowance Payments will produce the economic equivalent of One-Month LIBOR over the life of the Bonds.

For Eligible Loans disbursed prior to April 1, 2006, lenders are entitled to retain interest income in excess of the special allowance support level in instances when the Eligible Loan interest rate exceeds the special allowance support level. However, owners of the Eligible Loans are not allowed to retain interest income in excess of the special allowance support level on loans disbursed on or after April 1, 2006 and are required to rebate any such “excess interest” to the federal government on a quarterly basis. This modification effectively limits such owners’ returns on those loans to the special allowance support level and could require a lender to rebate excess interest accrued but not yet received. For fixed rate loans, the excess interest owed to the federal government will be greater when One Month LIBOR rate is relatively low, causing the special allowance support level to fall below the student loan rate. There can be no assurance that such factors or other types of factors will not occur or that, if they occur, such occurrence will not materially adversely affect the sufficiency of the Trust Estate established under the Indenture to pay the principal of and interest on the Bonds, as and when due.

## **Deterioration of general economic conditions and turmoil in the credit markets as a result of COVID-19 Pandemic**

Beginning at the end of March 2020, financial markets began to experience significant volatility as a result of the outbreak of COVID-19, and the United States economy and various other world economies experienced a sudden downturn. The COVID-19 Pandemic has adversely impacted local, state and national economic conditions and has resulted in substantial employment disruption in the United States and record unemployment claims. The long-term impact of a continuation of these developments and the impact of new developments, including as a result of the “delta variant” or other variants of COVID-19, while currently unknown, could result in an increase in delays by borrowers in paying Financed Eligible Loans, thus causing increased default claims to be paid by the New Mexico Student Loan Guarantee Corporation (“NMSLGC”) or Ascendium Education Solutions, Inc. (“Ascendium”). It is impossible to predict the status of the economy or unemployment levels or at what point a downturn in the economy would significantly reduce Foundation revenues or NMSLGC’s or Ascendium’s ability to pay default claims. The COVID-19 Pandemic and the economic downturn might also affect the ability of the transaction parties to perform their duties and obligations under the transaction documents, which could adversely affect the market value of the Series 2021 Bonds or limit the ability of an investor to resell its Series 2021 Bonds.

General economic conditions may also be affected by other events including the prospect of increased hostilities abroad. Certain of such events may have other effects, the impact of which is difficult to project.

## **Impact of turmoil in the credit markets on the business of the Foundation**

There have been changes in the national credit markets since the Fall of 2007 and more recently since March 2020 that have dramatically changed the way that the Foundation does business. The Foundation has historically financed its student loan purchases on a long-term basis through the issuance of revenue bonds or notes secured by the student loans it had originated or purchased with the proceeds of such bonds or notes. Due to the turmoil in the credit markets, the cost of asset-backed financings has increased. Some of the issues that have made asset-backed borrowings more difficult include: the recession that began in March 2020 as the result of the COVID-19 Pandemic; the collapse of the auction rate securities market; the downgrade of national bond insurers; the investigations and related matters as to the manipulation of LIBOR; limited availability of credit support and liquidity in the market; the requirement by those credit and liquidity providers that are in the market of higher amounts of equity and higher fees payable to such credit and liquidity providers; the establishment by the credit rating agencies of significantly more rigorous cash flow assumptions and requirements; and the downgrading of the long-term sovereign credit rating on the obligations of the United States by S&P Global Ratings. In addition to the turmoil in the credit markets, the changes in the FFEL Program imposed by the Health Care and Education Reconciliation Act of 2010 (as discussed herein) have adversely impacted the profitability of financing FFELP Loans. In addition, the elimination of the FFEL Program described below has impacted the Foundation’s business.

## **Cashflows to the Trust Estate may be affected by natural disasters or pandemics**

Student loan borrowers in regions affected by natural disasters or pandemics may experience difficulty in timely payment of their Eligible Loans. This could reduce the funds available to the Foundation to pay principal and interest on the Series 2021 Bonds.



## **Impact of COVID-19 Pandemic on the Foundation and student loan related legislation resulting from COVID-19 Pandemic**

On January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency in response to the spread of the novel coronavirus (“COVID-19” and the “COVID-19 Pandemic”). On March 13, 2020, the President of the United States declared a national emergency. The President’s declaration of a national emergency allowed the Foundation to begin granting administrative forbearance under the federal regulations. In addition, the Department of Education’s Office of Federal Student Aid (“FSA”) published several announcements permitting lenders of FFELP Loans to voluntarily grant the same relief that the Department of Education is granting to federally owned loans.

In response to the COVID-19 Pandemic, in mid-March 2020, the Foundation advised borrowers of the Financed Eligible Loans that it adopted a number of temporary relief measures. Initially, a disaster forbearance was automatically applied to all loans that were delinquent or became more than 30 days delinquent, allowing a borrower facing financial hardship to suspend interest and principal payments for up to 90 days. Following the initial 90-day period, borrowers were required to request any additional disaster forbearance time. In addition, the Foundation began waiving all late fees as of March 13, 2020. All otherwise available options to suspend or reduce monthly payments remained in full force. The Foundation reserves the right to adopt additional relief measures in response to the COVID-19 Pandemic.

In mid-March 2020, the Foundation successfully increased the percentage of operations performed in a remote or “work-at-home” manner utilizing full system interfaces. The Foundation has begun to gradually phase in personnel working in its facilities while complying with applicable federal, state and county restrictions. The Foundation has the ability to redeploy its employees to work from home if needed based on the future status of the COVID-19 Pandemic. Management continually reviews this strategy and expects to be able to adjust current staffing arrangements if necessary. The Foundation has never had to run its operations to such extent remotely for an extended period of time. The Foundation’s operations rely on the efficient and secure collection, processing, storage, and transmission of personal, confidential, and other information in a significant number of customer transactions on a continuous basis through its computer systems and networks.

***The Federal Relief Acts.*** The United States Congress has enacted several COVID-19 related bills, including the Coronavirus Aid, Relief, and Economic Security Act, signed into law on March 27, 2020 (“CARES Act”), the Paycheck Protection and Health Care Enhancement Act, signed into law on April 24, 2020, the Student Veteran Coronavirus Response Act, signed into law on April 28, 2020, the COVID-19 Consumer Protection Act (Title XIV of the Consolidated Appropriations Act, 2021), signed into law on December 27, 2020 and the American Rescue Plan Act of 2021, signed into law on March 11, 2021 (collectively, the “Relief Acts”), that authorize numerous measures in response to the economic effects of the COVID-19 Pandemic. Such measures include, but are not limited to: direct financial aid to American families; temporary relief from certain federal tax requirements (including tax imputed by reason of forgiveness of indebtedness on student loans), the scheduled payment of federally owned education loans, including federally owned FFELP Loans and loans originated under the Direct Loan Program (“Direct Loans”), and from certain other federal higher education aid requirements; temporary relief for borrowers with federally-related mortgage loans; payroll and operating expense support for small businesses and nonprofit entities; federal funding of higher education institutions’ emergency aid to students and operations and support for the capital markets loan assistance for distressed industries; financial assistance to governmental entities; and capital market support.

The Relief Acts also authorized the United States Department of the Treasury (the “Treasury”) to provide up to approximately \$450 billion in loans, loan guarantees and other investments to support programs and facilities established by the Board of Governors of the Federal Reserve System (the “Federal Reserve”) that are intended to provide liquidity to the financial system and facilitate lending to eligible businesses and to states, political subdivisions and instrumentalities. Such injection of liquidity followed actions by the Federal Reserve, including the purchase of Treasury securities and mortgage backed securities, facilitating the flow of credit to municipalities by expanding its Money Market Mutual Fund Liquidity Facility to include a wider range of securities, including certain municipal variable rate demand bonds, and facilitating the flow of credit to municipalities by expanding its Commercial Paper Funding Facility to include high quality, tax-exempt commercial paper as eligible securities. No assurance can be given that such liquidity assistance from the federal government will assure that a secondary market exists for Foundation debt obligations, including the Series 2021 Bonds, or the availability to the Foundation of adequate liquidity to fully fund its program needs at any particular time.

On August 6, 2021, the President of the United States signed an executive order instructing the Department of Education to extend the student loan payment forbearance and the halting of interest accrual and collections activities through January 31, 2022 for Direct Loans and federally-owned loans (which do not include the Financed Eligible Loans). It is possible such period could be extended to a later date, although the Department of Education has stated that this extension will be the final extension. The Foundation continues to provide COVID-19 related forbearances to borrowers of the Financed Eligible Loans upon request for 90-day periods. Interest continues to accrue on any Financed Eligible Loans for which a COVID-19 related forbearance is requested and granted. Such forbearances could cause the rate of repayment of the Financed Eligible Loans to be slower than expected, which would have a corresponding impact on the payment of the Series 2021 Bonds.

***Uncertainty of Future Impacts.*** In addition to the legislation described above, the Department of Education recently announced an overhaul of the Public Service Loan Forgiveness Program, expanding the program to loan types and payment plans that were not previously eligible and offering a time-limited waiver so that student borrowers can count payments from all federal loan programs or repayment plans toward forgiveness. The Office of Federal Student Aid also recently issued updated guidance requiring assignment of defaulted Perkins Loans that have been in default for longer than two years to the Department of Education by June 30, 2022. Except with respect to the legislation described herein, the Foundation is not currently aware of federal or state consumer lending law changes in response to the COVID-19 Pandemic that it expects to materially and adversely affect the operation of its student loan program, although no assurance can be given that such federal or state laws will not be enacted in the future. Any further COVID-19 Pandemic relief measures that may be required by law or voluntarily implemented by the Foundation and that are applicable to the Financed Eligible Loans would be expected to result in a delay in the receipt of, or in a reduction of, the revenues received from the Financed Eligible Loans. The Foundation cannot accurately predict the number of Financed Eligible Loan borrowers that would utilize any benefit program that requires borrower action. The greater the number of borrowers that utilize any relief measures, the lower the total current loan receipts on the Financed Eligible Loans. If actual receipt of Financed Eligible Loan revenues or actual Financed Eligible Loan administrative expenditures were to vary materially from those projected, the ability of the Trust Estate created under the Indenture to provide sufficient revenues to fund interest and administrative costs and to amortize the Series 2021 Bonds might be adversely affected.

The COVID-19 Pandemic has adversely impacted local, state and national economic conditions and has resulted in substantial employment disruption in the United States and record unemployment claims. The long-term impact of a continuation of these developments, while currently unknown, could result in an increase in delays by borrowers in paying Financed Eligible Loans, thus causing increased default claims to be paid by a Guaranty Agency. It is impossible to predict the status of the economy or

unemployment levels or at what point a downturn in the economy would significantly reduce the Foundation's revenues or a Guaranty Agency's ability to pay default claims. The COVID-19 Pandemic and the economic downturn might also affect the ability of the transaction parties to perform their duties and obligations under the transaction documents, which could adversely affect the market value of the Series 2021 Bonds or limit the ability of an investor to resell its Series 2021 Bonds.

The full impact of the COVID-19 Pandemic, and of directly and indirectly related developments, on the Foundation's finances and operations, on the performance of the Financed Eligible Loans constituting security for the Series 2021 Bonds, and on the security, market value and liquidity of the Series 2021 Bonds cannot be predicted at this time. It is not currently possible to project with certainty the nature, degree and duration of economic and legal changes that may result from the COVID-19 Pandemic. The COVID-19 Pandemic could adversely affect global, national, regional or local economies in a manner that might reduce the ability of certain Financed Eligible Loan borrowers to make full and timely loan repayment. The number and aggregate principal balance of Financed Eligible Loans for which repayment may be so affected by the COVID-19 Pandemic is not known at this time but may be significant. As a result, there may be a delay in, or reduction of, total Financed Eligible Loan collections that might materially and adversely affect the ability of the Trust Estate created under the Indenture to provide sufficient revenues to fund interest and administrative costs and to amortize the Series 2021 Bonds, as initially projected or as projected herein. Further federal legislative or administrative action, including forgiveness of principal on Financed Eligible FFELP Loans by the Department of Education, could result in an increase in the percentage of incidence of on-time payments of Financed Eligible Loans or of prepayments of Financed Eligible Loans. There can be no assurance, however, that such further federal action will occur, or as to the number or aggregate principal balance of Financed Eligible Loans that might be so affected. The Foundation is monitoring and assessing the economic and legal impact of the COVID-19 Pandemic and of governmental responses thereto, including orders, laws, regulations and mandates adopted by the Foundation, the State of New Mexico or the federal government, on its operations and financial position.

**Forbearance granted as a result of the COVID-19 Pandemic may delay payments of interest and principal**

The Foundation services the Financed Eligible Loans. The Higher Education Act permits, and in some cases requires, "forbearance" periods from loan collection in some circumstances. Interest that accrues during a forbearance period is never subsidized. Forbearance is most often granted to borrowers for periods of economic hardship affecting the borrower, which may occur for a variety of reasons. During periods of deteriorating economic conditions in the United States or globally, such as during disruptive political, social or economic events, forbearance requests typically increase. Forbearance is also often granted to borrowers when a federal disaster or emergency has been declared such as in response to COVID-19. See the caption "Impact of COVID-19 Pandemic on the Foundation and student loan related legislation resulting from COVID-19 Pandemic" above.

The COVID-19 Pandemic has resulted in an increase in the number of borrowers of Financed Eligible Loans who have requested forbearance. Due to the COVID-19 Pandemic, the federal CARES Act was enacted which included relief for borrowers of student loans owned by the federal government. The Department of Education provided guidance to FFELP lenders and guaranty agencies in an April 3, 2020 Electronic Announcement regarding the non-federally held FFELP Loans not covered by the CARES Act. Following this guidance, in April of 2020, the Foundation placed the borrowers of any of its FFELP Loans, including any Financed Eligible FFELP Loans, that were more than 30 days delinquent in their payments into a 90-day natural disaster forbearance period effective as of March 2020 (which also deemed such borrowers to be "current" in their payments). As a result, delinquency rates dropped significantly as delinquent borrowers were moved from delinquent status to natural disaster forbearance status. Notification

was sent to borrowers and the forbearance was removed if requested. Additional time in forbearance was also available to borrowers impacted by the COVID-19 Pandemic. In May 2021, the Foundation automatically applied the natural disaster forbearance to any account that was 180 days or more delinquent along with notification to the borrower regarding opting out of the forbearance if desired. This automatic process was suspended July 1, 2021, but for qualified loan borrowers who are adversely impacted by the COVID-19 Pandemic, the Foundation continues to provide short-term, extended forbearance relief from payments upon request. During these forbearance periods, unpaid interest will accrue and will not be capitalized.

Forbearance usage rates by principal amount of Financed Eligible Loans in forbearance as a percentage of all Financed Eligible Loans for the months indicated were approximately as follows:

<b>Month-End</b>	<b>Total Percentage of the Financed Eligible Loans in Forbearance</b>
January 2020	3.29%
February 2020	3.24
March 2020	4.72
April 2020	19.10
May 2020	19.10
June 2020	2.54
July 2020	3.03
August 2020	2.85
September 2020	2.62
October 2020	3.81
November 2020	4.92
December 2020	5.14
January 2021	4.05
February 2021	3.69
March 2021	4.72
April 2021	4.34
May 2021	7.29
June 2021	7.77
July 2021	7.27
August 2021	3.82
September 2021	3.67
October 2021	3.72

For details of forbearance policies under the FFELP see “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Deferment and Forbearance Periods” herein. An increase in forbearances on the Financed Eligible Loans may result in a delay in payments of interest or principal on the Financed Eligible Loans, which could negatively affect the ability of the Foundation to generate sufficient cash flow to pay its obligations and which, in turn, may cause losses on the Series 2021 Bonds.

## **Federal financial regulatory legislation may affect the Series 2021 Bonds**

The Dodd Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the “Dodd Frank Act”), which was enacted in July 2010, represented a comprehensive overhaul of the financial services industry within the United States, and established the federal Consumer Financial Protection Bureau (the “CFPB”). The CFPB, an independent agency within the Federal Reserve, regulates consumer financial products, including education loans, and other financial services offered primarily for personal, family, or household purposes, and the CFPB and other federal agencies, including the Securities and Exchange Commission (the “SEC”) and the Commodity Futures Trading Commission (the “CFTC”), are required to undertake various assessments and rulemakings to implement the law. The majority of the provisions in the Dodd Frank Act are aimed at financial institutions. However, there are components of the law that impact the Foundation, including requirements for securitizations as described below.

The Dodd-Frank Act affects the Foundation’s student loan portfolio securitization transactions which result in the issuance of asset-backed securities. In December 2014, the SEC and federal banking agencies published final regulations, effective December 24, 2016 for issuers of student loan asset-backed securities, generally requiring issuers of asset-backed securities or persons who organize and initiate asset-backed securities transactions to retain a portion of the underlying assets’ credit risk. In addition, the SEC approved changes to the rules applicable to issuers of asset-backed securities under the Securities Act and the Securities Exchange Act, that substantially revise Regulation AB and other rules governing the offering process, disclosure and reporting for asset-backed securities issued in registered and certain unregistered transactions. It is not clear how the revisions to Regulation AB will be implemented, and to what extent the Foundation may be affected. No assurance can be given that the new standards contained in the amended Regulation AB will not have an adverse impact on the Foundation or on the value or marketability of the Series 2021 Bonds.

The documents entered into in connection with prior Foundation sponsored securitization transactions and this transaction contain covenants requiring the repurchase or replacement of Eligible Loans in the case of a breach of certain representations and warranties. The Foundation is responsible for disclosure of all fulfilled and unfulfilled repurchase requests for student loans in such securitization transactions. There have not been any fulfilled or unfulfilled repurchase requests for student loans with respect to any of the Foundation sponsored securitization transactions. With respect to the Series 2021 Bonds, the Foundation will furnish a Form ABS-15G at the times required by and pursuant to Rule 15Ga-1 of the Securities Exchange Act as required by the SEC.

In September 2014, the SEC adopted new rules further regulating rating agencies’ activities with respect to rating asset-backed securities, and requiring that issuers of asset-backed securities, effective June 15, 2015, disclose third-party due diligence findings, including certain agreed upon procedure reviews. The Foundation has not engaged any third party to perform an agreed upon procedures review with respect to the Financed Eligible Loans.

Student loans and student loan servicing are top priorities for the CFPB. In May 2015, the CFPB launched a public inquiry into student loan servicing practices throughout the industry. In September 2015, the CFPB issued a report discussing public comments submitted in response to the inquiry and, in consultation with the Department of Education and Department of the Treasury, released recommendations to reform student loan servicing to improve borrower outcomes and reduce defaults. In July 2016, the Department of Education expanded on these joint principles by outlining enhanced customer service standards and protections that will be incorporated into federal servicing contracts and guidelines. The CFPB has also announced that it may issue student loan servicing rules in the future.

The Dodd Frank Act gave the CFPB authority to supervise private education lenders. In addition, the CFPB adopted a rule in December 2013 that enables it to federally supervise certain non-bank student loan servicers that service more than one million borrower accounts, to ensure that bank and non-bank servicers follow the same rules in the student loan servicing market. The rule covers both federal and private student loans. Non-compliance could result in material adverse consequences to a servicer, including, without limitation, settlements, fines, penalties, adverse regulatory actions, changes in a servicer's business practices, or other actions. However, it is not possible to estimate at this time any potential financial or other impact to any Servicer, including any impact on its ability to satisfy its obligations with respect to the Financed Eligible Loans, that could result from the CFPB's examinations, in the event that any adverse regulatory actions occur.

In addition to its supervisory authority, the CFPB has broad authority to enforce compliance with federal consumer financial laws applicable to private student lenders and student loan servicers, including the Dodd Frank Act's prohibition on unfair, deceptive or abusive acts or practices, by conducting investigations and hearings, imposing monetary penalties, collecting fines and requiring consumer restitution in the event of violations. It may also bring a federal lawsuit or administrative proceeding.

Also in December 2013, the banking regulators and other agencies principally responsible for banking and financial market regulation in the United States implemented the final rule under the so called Volcker Rule under the Dodd Frank Act, which in general prohibits "banking entities" (as defined therein) from (a) engaging in proprietary trading; (b) acquiring or retaining an ownership interest in or sponsoring certain hedge funds, private equity funds (broadly defined to include any entity that would be an investment company under the Investment Company Act but for the exemptions provided in Section 3(c)(1) or 3(c)(7) of the Investment Company Act) and certain similar funds; and (c) entering into certain relationships with such funds. Although the Foundation is not registered or required to be registered as an "investment company" under the Investment Company Act pursuant to Section 2(b) thereof and, as such, is not a covered fund, the general effects of the final rules implementing the Volcker Rule remain uncertain. Any prospective investor in the Series 2021 Bonds, including a U.S. or foreign bank or an affiliate or subsidiary thereof, should consult its own legal advisors regarding such matters and other effects of the Volcker Rule and regulatory implementation.

At this time, it is also difficult to predict the extent to which the Dodd Frank Act or the resulting regulations will impact the Foundation's business and operations. As rules and regulations are promulgated by the federal agencies responsible for implementing and enforcing the provisions of the Dodd Frank Act, the Foundation will need to apply adequate resources to ensure that it is in compliance with all applicable provisions. Compliance with these laws and regulations may result in additional costs and may otherwise adversely impact the Foundation's results of operations, financial condition, or liquidity.

**Changes to the Higher Education Act, including the enactment of the Health Care and Education Reconciliation Act of 2010, changes to other applicable law and other Congressional action may affect investors' Bonds and the Financed Eligible FFELP Loans**

On March 30, 2010, the Health Care and Education Reconciliation Act of 2010 ("HCERA" or the "Reconciliation Act") was enacted into law. Effective July 1, 2010, the Reconciliation Act eliminated the origination of new FFELP Loans. All loans made under the Higher Education Act beginning on July 1, 2010 have been, and in the future will be, originated under the Direct Loan Program. The terms of FFELP

Loans originated prior to July 1, 2010 are not materially affected by the Reconciliation Act and continue to be subject to the terms of the FFEL Program.

The curtailment of the FFEL Program could have a material adverse impact on the Foundation and the Guaranty Agencies. For example, the Foundation may experience increased costs due to reduced economies of scale to the extent the volume of loans serviced by the Foundation is reduced. Those cost increases could affect the ability of the Foundation to satisfy its obligations to service the Financed Eligible Loans held in the Trust Estate securing the Series 2021 Bonds. FFELP Loan volume reductions could further reduce revenues received by the Guaranty Agencies 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 FFELP Loans.

In addition to the passage of the Reconciliation Act, Title IV of the Higher Education Act and the regulations promulgated by the Department of Education thereunder have been the subject of frequent and extensive amendments and reauthorizations. See “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM” hereto for more information on the Higher Education Act and various amendments thereto. There can be no assurance that the Higher Education Act or other relevant federal or state laws, rules and regulations may not be further amended or modified in the future in a manner that could adversely affect the Foundation or its student loan programs, the Trust Estate created under the Indenture, the Financed Eligible FFELP Loans, or the financial condition of or ability of the Foundation or a Guaranty Agency to comply with their obligations under the various transaction documents or the Series 2021 Bonds. Future changes could also have a material adverse effect on the revenues received by the Guaranty Agencies that are available to pay claims on defaulted Financed Eligible FFELP Loans in a timely manner. In addition, if legislation were to be passed in the future requiring the sale of the Financed Eligible FFELP Loans held in the Trust Estate to the federal government, proceeds from such sale would be deposited to the Revenue Fund and used to pay the Series 2021 Bonds in advance of their Stated Maturity. No assurance can be given as to the amount that would be received from such sale or whether such amount would be sufficient to pay all principal and accrued interest due on the Series 2021 Bonds, as there is no way to know what purchase price would be paid by the federal government for the Financed Eligible FFELP Loans.

Funds for payment of interest benefit payments, Special Allowance Payments and other payments under the FFEL Program are subject to annual budgetary appropriations by Congress. Federal budget legislation has contained provisions that restricted payments made under the FFEL Program to achieve reductions in federal spending. Future federal budget legislation may adversely affect expenditures by the Department of Education, and the financial condition of the Foundation and the Guaranty Agencies.

Bills have been proposed which would forgive all or part of existing federal student loans. If such bills were to pass, if FFELP Loans are included in such loan forgiveness, or if such legislation creates an incentive for FFELP Loan borrowers to consolidate their loans into Federal Direct Consolidation loans, repayment rates on the Eligible Loans could increase, thereby increasing early redemptions on the Series 2021 Bonds.

The Foundation cannot predict whether any other changes will be made to the Higher Education Act or other relevant federal laws, and rules and regulations promulgated by the Secretary of Education in future legislation, or the effect of such legislation or executive orders on the Foundation, the Guaranty Agencies, the Financed Eligible FFELP Loans or the Foundation’s loan programs.

## **Competition from the Federal Direct Student Loan Program**

The Direct Loan Program was established under the Student Loan Reform Act of 1993. Under the Direct Loan Program, approved institutions of higher education, or alternative loan originators approved by the Department of Education, make loans to students or parents without application to or funding from outside lenders or guaranty agencies. The Department of Education provides the funds for such loans, and the program provides for a variety of flexible repayment plans, including consolidations under the Direct Loan Program of existing FFEL Program student loans. Such consolidation permits borrowers to prepay existing student loans and consolidate them into a Federal Direct Consolidation Loan under the Direct Loan Program. As a result of the enactment of the Reconciliation Act, no FFELP Loans have been, or in the future will be, originated after June 30, 2010, and all loans made under the Higher Education Act will be originated under the Direct Loan Program. The Direct Loan Program may result in prepayments of Financed Eligible FFELP Loans if such Financed Eligible FFELP Loans are consolidated under the Direct Loan Program.

Because of the limited recourse nature of the Trust Estate created under the Indenture for the Bonds, competition from the Direct Loan Program should not impact the payment of the Series 2021 Bonds unless it causes (a) erosion in the finances of the Foundation to such an extent that it cannot honor any administration, servicing or similar obligations under the Indenture; or (b) prepayments of Financed Eligible FFELP Loans if such Financed Eligible FFELP Loans are consolidated under the Direct Loan Program.

## **Information Technology Risks**

The Foundation's operations rely on the secure processing, storage and transmission of personal, confidential and other sensitive information in its information technology systems, including borrower data. Although the Foundation devotes significant resources to maintain and regularly upgrade its systems and processes that are designed to protect the security of its systems, software and networks and to protect the confidentiality, integrity and availability of information belonging to the Foundation and its borrowers, the Foundation may experience numerous and sophisticated attacks on its systems, and its cybersecurity measures may not be entirely effective.

The Foundation may not be able to anticipate or to implement effective preventive measures against all types of potential security breaches, because the techniques used change frequently, generally increase in sophistication, often are not recognized until launched, sometimes go undetected even when successful, and result in cybersecurity attacks originating from a wide variety of sources, including organized crime, hackers, terrorists, activists, hostile foreign governments, and other external parties. Those parties may also attempt to fraudulently induce employees, customers, or other users of the Foundation's systems to disclose sensitive information to gain access to the Foundation's data or that of its borrower, such as through "phishing" schemes. In addition, the Foundation's borrowers often use their own devices, such as computers, smart phones, and tablet computers, to make payments and manage their accounts. The Foundation's shift to a remote working environment due to COVID-19 could increase the risk of a security breach. See "INVESTMENT CONSIDERATIONS—Impact of COVID-19 Pandemic on the Foundation and student loan related legislation resulting from COVID-19 Pandemic." The Foundation has limited ability to assure the safety and security of its borrowers' transactions to the extent they are using their own devices, which could be subject to similar threats. A penetration or circumvention of the Foundation's information security systems, or the intentional or unintentional disclosure, alteration or destruction by an authorized user of confidential information necessary for the Foundation's operations, could result in serious negative consequences for the Foundation. These consequences may include violations of applicable privacy and other laws; financial loss to the Foundation; loss of confidence in the Foundation's



cybersecurity measures; borrower dissatisfaction; significant litigation exposure; regulatory fines, penalties or intervention; reimbursement or other compensatory costs; additional compliance costs; significant disruption of the Foundation's business operations; and harm to the Foundation's reputation. In addition, many states have enacted laws requiring companies to notify individuals of data security breaches involving their personal data. These mandatory disclosures regarding a security breach are costly to implement and often lead to widespread negative publicity, which may cause borrowers to lose confidence in the effectiveness of the Foundation's data security measures. Such events and consequences could have a material adverse effect on the Foundation's business, financial condition or operations or impair the ability of the Foundation to make payments on the Bonds. Although to date the Foundation has not experienced a material loss relating to information security breaches, there can be no assurance that the Foundation will not suffer such losses in the future or that there is not a current threat that remains undetected at this time.

### **Other litigation risks**

The Foundation may be subject to various claims, lawsuits, tax audits and proceedings that arise from time to time. See the caption "ABSENCE OF CERTAIN LITIGATION" herein.

### **The Foundation may be subject to student loan industry investigations**

A number of state attorneys general and the U.S. Senate Committee on Health, Education, Labor and Pensions have conducted broad inquiries or investigations of the activities of various participants in the student loan industry, including, but not limited to, activities that may involve perceived conflicts of interest.

The Department of Education has adopted regulations that impact the practices which are the subject of the foregoing investigations. See the caption "—Changes to the Higher Education Act, including the enactment of the Health Care and Education Reconciliation Act of 2010, changes to other applicable law and other Congressional action may affect investors' Bonds and the Financed Eligible FFELP Loans" above.

There is no assurance that the Foundation will not be subject to inquiries or investigations. While the ultimate outcome of any inquiry or investigation cannot be predicted, it is possible that these inquiries or investigations and regulatory developments may materially affect the Foundation's ability to perform its obligations under the Indenture or the Foundation's ability to pay principal of and interest on the Series 2021 Bonds from assets in the Trust Estate.

### **Military service obligations, natural disasters and pandemics may cause a delay in payments on the Financed Eligible Loans**

Military service obligations, natural disasters and pandemics may result in delayed payments from borrowers. Congress has enacted, and may enact in the future, statutes and other guidelines that provide relief to borrowers who enter active military service, to borrowers in reserve status who are called to active duty after the origination of their Eligible Loan, and to individuals who live in a disaster area or suffer a direct economic hardship as a result of a national emergency.

The number and aggregate principal balance of the Financed Eligible Loans that may be affected by the application of these statutes and other guidelines will not be known at the time the Series 2021 Bonds are issued. If a substantial number of borrowers of the Financed Eligible Loans become eligible for the relief under these statutes and other guidelines, or any actions Congress may take to respond to natural

disasters or pandemics, there could be an adverse effect on the total collections on those Financed Eligible Loans and the Foundation's ability to provide for payments of principal and interest on the Series 2021 Bonds.

The Servicemembers Civil Relief Act limits the ability of a lender under the FFELP 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, and may limit the interest rate on a Financed Eligible FFELP Loan to 6% per annum while the borrower is in military service if the loan was incurred before the borrower's entry into military service.

The Foundation does not know how many Financed Eligible FFELP Loans have been or may be affected by the application of the Servicemembers Civil Relief Act. Payments on Financed Eligible FFELP Loans may be delayed as a result of these requirements, which may reduce the funds available to the Foundation to pay principal and interest on the Series 2021 Bonds.

### **Higher Education Relief Opportunities for Students Act of 2003 may result in delayed payments from borrowers**

The Higher Education Relief Opportunities for Students Act of 2003 ("HEROS Act of 2003"), signed into law on August 18, 2003, authorizes the Secretary of Education 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 for the benefit of "affected individuals" who:

- (a) are serving on active military duty or performing qualifying national guard duty during a war or other military operation or national emergency;
- (b) reside or are employed in an area that is declared by any federal, state or local office to be a disaster area in connection with a national emergency; or
- (c) suffered direct economic hardship as a direct result of war or other military operation or national emergency, as determined by the Secretary.

The Secretary is authorized to waive or modify any provision of the Higher Education Act to ensure that:

- (a) such recipients of student financial assistance are not placed in a worse financial position in relation to that assistance;
- (b) administrative requirements in relation to that assistance are minimized;
- (c) calculations used to determine need for such assistance accurately reflect the financial condition of such individuals;
- (d) provision is made for amended calculations of overpayment; and
- (e) 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 Financed Eligible FFELP Loans that may be affected by the application of the HEROS Act of 2003 is not known at this time. Accordingly, payments the Foundation receives on Financed Eligible FFELP Loans made to a borrower who qualifies for such relief may be subject to certain limitations. If a substantial number of borrowers become eligible for the relief provided under the HEROS Act of 2003, there could be an adverse effect on the total collections on the Financed Eligible FFELP Loans and the Foundation's ability to pay principal and interest on the Series 2021 Bonds.

### **Consumer protection laws may affect enforceability of Financed Eligible Loans**

Numerous federal and state consumer protection laws, including various state usury laws and related regulations, impose substantial requirements upon lenders and servicers involved in consumer finance. Some states 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 liability that could affect an assignee's ability to enforce consumer finance contracts such as the Financed Eligible Loans. In addition, the remedies available to the Trustee or the Bondholders upon an Event of Default under the Indenture may not be readily available or may be limited by applicable state and federal laws.

### **Bondholders will rely on the Foundation, as Servicer, for the servicing of the Financed Eligible Loans**

Bondholders will be relying on the Foundation, as Servicer, to service all of the Financed Eligible Loans. The cash flow projections relied upon by the Foundation in structuring the issuance of the Series 2021 Bonds were based upon assumptions with respect to the Foundation's costs to service the Financed Eligible Loans. No assurance can be made that the costs to the Foundation for servicing the Financed Eligible Loans will not increase, or that, in the event a successor Servicer is required, the Foundation would be successful in entering into a servicing agreement with a servicer that would be acceptable to the Rating Agencies at the assumed level of servicing cost. Although the Foundation is obligated to service the Financed Eligible Loans in accordance with the Higher Education Act and the Indenture, the timing of payments to be actually received with respect to the Financed Eligible Loans will be dependent upon the ability of the Foundation or any future Servicer to adequately service the Financed Eligible Loans. In addition, the Bondholders will be relying on the Foundation's compliance with applicable federal and state laws and regulations.

In the event of a default by the Foundation or another 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.

### **A default by the Foundation, as Servicer, could adversely affect the Series 2021 Bonds**

The Foundation will service the Financed Eligible Loans. If the Foundation defaults on its obligations to service the Financed Eligible Loans, a successor Servicer would be required to service the Financed Eligible Loans. In the event of a default by the Foundation or the removal of the Foundation 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 its obligations and duties under any servicing agreement. If any such successor third-party Servicer defaults on its obligations to service the loans serviced by it, the Foundation may remove the third-party successor Servicer without the consent of any other party.

**If the Foundation or a successor Servicer fails to comply with the Department of Education's or State License Regulator's regulations, payments on the Series 2021 Bonds could be adversely affected**

The Department of Education regulates each servicer of federal student loans. Numerous states have implemented legislation requiring the licensing and regulation of student loan servicers. Under these regulations, a servicer is jointly and severally liable with its client lenders (including the Foundation) for liabilities to the Department of Education arising from its violation of applicable requirements. Liabilities are also imposed for violations of state servicer licensing laws. In addition, if any lender or servicer fails to meet standards of financial responsibility or administrative capability included in the federal regulations, or violates other requirements, the Department of Education may impose penalties or fines and limit, suspend, or terminate the lender's ability to participate in or a servicer's eligibility to contract to service loans originated under the FFEL Program.

If the Foundation (as lender) were so fined, or its FFEL Program eligibility were limited, suspended or terminated, payment on the Series 2021 Bonds could be adversely affected. If the Foundation, as Servicer, or a successor Servicer were so fined, or its FFEL Program eligibility were limited, suspended or terminated, its ability to properly service the Financed Eligible Loans and to satisfy any remedies owed by it under a servicing agreement relating to Financed Eligible Loans could be adversely affected. In addition, if the Department of Education terminates a Servicer's eligibility, a servicing transfer will take place and there may be delays in collections and temporary disruptions in servicing. Any servicing transfer may temporarily adversely affect payments to the Bondholders.

**Failure to comply with loan origination and servicing procedures for Financed Eligible FFELP Loans may result in loss of Guarantee or other benefits**

The Foundation and other lenders must meet various requirements in order to maintain the federal guarantee on the Financed Eligible FFELP Loans. These requirements establish servicing requirements and procedural guidelines and specify school and borrower eligibility criteria.

A Guaranty Agency (including any Guaranty Agency guaranteeing the Financed Eligible FFELP Loans) may reject an Eligible FFELP Loan for claim payment due to a violation of the FFEL Program due diligence collection and servicing requirements. In addition, a Guaranty Agency may reject claims under other circumstances, including, for example, if a claim is not timely filed or adequate documentation is not maintained. Once a Financed Eligible FFELP Loan ceases to be guaranteed, it is ineligible for federal interest benefit and Special Allowance Payments. If a Financed Eligible FFELP Loan is rejected for claim payment by a Guaranty Agency, the Foundation, as Servicer, continues to pursue the borrower for payment or institutes a process to reinstate the guarantee. Guaranty agencies may reject claims as to portions of interest for certain violations of the due diligence collection and servicing requirements even though the remainder of a claim may be paid.

Examples of errors that cause claim rejections include isolated missed collection calls, or failures to send collection letters as and when required. Violations of due diligence collection and servicing

requirements can result from human error. Violations can also result from computer processing system errors, or from problems arising in connection with the implementation of a new computer platform or the conversion of additional loans to a servicing system.

**Limitation on enforceability of remedies against the Foundation could result in payment delays or losses**

The remedies available to the Trustee or the Bondholders 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 remedies specified by the Indenture and such other documents may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2021 Bonds and the Indenture will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

In addition, the Higher Education Act provides that a security interest in FFELP Loans may be perfected by the filing of notice of such security interest in the manner in which security interests in accounts may be perfected by applicable state law, which, under the New Mexico Uniform Commercial Code, is accomplished by filing a financing statement with the New Mexico Secretary of State. Nonetheless, if through fraud, inadvertence or otherwise a third-party lender or purchaser acting in good faith were to obtain possession of any of the promissory notes evidencing the Financed Eligible Loans (or, in the case of a master promissory note, a copy thereof), any security interest of the Trustee in the related Financed Eligible Loans could be preempted. The Foundation currently maintains control and shall continue to maintain control of all Financed Eligible Loans that are evidenced by an electronically signed note in compliance with applicable federal and state laws. Custody of all other promissory notes relating to Financed Eligible Loans will be maintained by the Foundation, or a custodial agent on its behalf, or by a Servicer.

**The obligations of the Trustee are limited**

The duties, actions and obligations of the Trustee are limited to such duties, actions and obligations specifically set forth in the transaction documents and no implied covenants, duties or obligations are read into such documents. The remedies available against the Trustee are similarly limited by the terms of the transaction documents. The Trustee has no duty or obligation to take any additional action unless specifically directed to take such action and satisfactorily indemnified therefor. Additionally, certain of the duties and obligations of the Trustee are dependent upon receipt of information from other parties. Any failure of one party to timely and accurately deliver any information, or perform its duties and obligations, could prevent another party from being able to fulfill its duties and obligations.

**Certain factors relating to security**

The Foundation has covenanted in the Indenture that the assets constituting the Trust Estate pledged by the Foundation under the 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 the Indenture, and that all action on the part of the Foundation to that end has been duly and validly taken. The Foundation acquired some of the Financed Eligible Loans by purchasing such loans from other lenders. When purchasing student loans, the Foundation obtained warranties from the sellers as to certain matters, including that the loans were originated in accordance with the Higher Education Act and that the loans were transferred to the Foundation free of any liens and that

all filings (including UCC filings) necessary in any jurisdiction to give the Trustee, on behalf of the Foundation, ownership of the Financed Eligible Loans have been made. Notwithstanding the foregoing, under applicable law, security interests in such loans may exist and may not be ascertained by the Foundation. Therefore, no absolute assurance can be given that liens other than the lien of the Indenture do not and will not exist.

**The use of master promissory notes for the Financed Eligible FFELP Loans may compromise the Trustee's security interest**

Student loans made under the FFEL Program may be evidenced by a master promissory note. Once a borrower executes a master promissory note with a lender, additional FFELP Loans made by the lender to such borrower are evidenced by a confirmation sent to the borrower, and all Eligible Loans are governed by the single master promissory note.

A FFELP Loan evidenced by a master promissory note may be sold independently of the other Eligible Loans governed by the master promissory note. If the Foundation originated a Financed Eligible FFELP Loan governed by a master promissory note and does not retain possession of the master promissory note, other parties could claim an interest in the Financed Eligible FFELP Loan. This could occur if the holder of the master promissory note were to take an action inconsistent with the Foundation's rights to a Financed Eligible FFELP Loan, such as delivery of a duplicate copy of the master promissory note to a third party for value. Although such action would not defeat the Foundation's rights to the Financed Eligible FFELP Loan or impair the security interest held by the Trustee for the Bondholders' benefit, it could delay receipt of principal and interest payments on the Financed Eligible FFELP Loan.

**Investors may incur losses or delays in payment on their Bonds if borrowers do not make timely payments or default on their Financed Eligible Loans**

For a variety of economic, social and other reasons all the payments that are actually due on Financed Eligible Loans may not be made or may not be made in a timely fashion. Borrowers' failure to make timely payments of the principal and interest due on the Financed Eligible Loans will affect the revenues of the Trust Estate created under the Indenture, which may reduce the amounts available to pay principal and interest due on the Series 2021 Bonds.

The cash flow from the Financed Eligible Loans, and the Foundation's ability to make payments due on the Series 2021 Bonds will be reduced to the extent interest is not currently payable on the Financed Eligible Loans. The borrowers on most Eligible FFELP Loans are not required to make payments during the period in which they are in school and for certain authorized periods thereafter, as described in the Higher Education Act. The Department of Education will make all interest payments while payments are deferred under the Higher Education Act on certain subsidized Eligible FFELP Loans that qualify for interest benefit payments. For all other Eligible FFELP Loans, interest generally will be capitalized and added to the principal balance of the Eligible FFELP Loans. The Financed Eligible FFELP Loans will consist of Eligible FFELP Loans for which payments are deferred as well as Eligible FFELP Loans for which the borrower is currently required to make payments of principal and interest. The proportions of the Financed Eligible FFELP Loans for which payments are deferred and currently in repayment will vary during the period that the Series 2021 Bonds are outstanding.

In general, a Guaranty Agency reinsured by the Department of Education will guarantee 98% of each Financed Eligible FFELP Loan with a first disbursement after October 1, 1993 and before July 1,

2006, and 97% of each Financed Eligible FFELP Loan with a first disbursement on or after July 1, 2006. All but an insignificant component of the Financed Eligible FFELP Loans had their first disbursements on or after October 1, 1993. As a result, if a borrower of a Financed Eligible FFELP Loan defaults, the Foundation will experience a loss of approximately 2% or 3% of the outstanding principal and accrued interest on each of the defaulted loans depending upon when it was first disbursed. The Foundation does not have any right to pursue the borrower for the remaining portion that is not subject to the guarantee. If defaults occur on the Financed Eligible FFELP Loans and the credit enhancement described herein is not sufficient, Bondholders may suffer a delay in payment or a loss on their investment.

As of the Statistical Cut-Off Date, approximately \$49.56 million of the principal amount of the Financed Eligible Loans (representing approximately 16.43% of the Financed Eligible Loans by principal amount) are “rehabilitation loans,” which are Eligible Loans that have previously defaulted, but for which the borrower thereunder has made a specified number of on time payments as described in “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees—Rehabilitation of Defaulted Loans” hereto. Although rehabilitation loans benefit from the same guarantees as other Eligible Loans, rehabilitation loans have generally experienced re-default rates that are higher than default rates for Eligible Loans that have not previously defaulted.

### **Risk of geographic concentration of the Financed Eligible Loans**

The concentration of the Financed Eligible Loans in specific geographic areas may increase the risk of losses on the Financed Eligible Loans. Economic conditions in the states where borrowers reside may affect the delinquency, loan loss and recovery experience with respect to the Financed Eligible Loans. As of the Statistical Cut-Off Date, approximately 63.20% and 6.82% of the Financed Eligible Loans by principal balance were to borrowers with current billing addresses in the States of New Mexico and Texas, respectively. As of the Statistical Cut-Off Date, no other State accounts for more than 5.00% of the Financed Eligible Loans by principal balance. Economic conditions in any state or region may decline over time and from time to time. Because of the concentrations of the borrowers in the above referenced states any adverse economic conditions, including the ongoing COVID-19 Pandemic, adversely and disproportionately affecting those states may have a greater effect on the performance of the Series 2021 Bonds than if these concentrations did not exist.

### **The Trustee may be forced to sell the Financed Eligible Loans at a loss after an Event of Default**

Generally, if an Event of Default occurs under the Indenture, the Trustee may sell, and, at the direction of Bondholders (in varying percentages and priority as specified in the Indenture), will sell the Financed Eligible Loans. However, the Trustee may not find a purchaser for the Financed Eligible Loans, or the market value of the Financed Eligible Loans plus other assets in the Trust Estate created under the Indenture might not equal the principal amount of outstanding Bonds plus accrued interest. Competition currently existing in the secondary market for student loans made under the FFEL Program also could be reduced, resulting in fewer potential buyers of the Financed Eligible Loans and lower prices available in the secondary market for the Financed Eligible Loans. Investors may suffer a loss if the Trustee is unable to find purchasers willing to pay prices for the Financed Eligible Loans sufficient to pay the principal amount of the Series 2021 Bonds plus accrued interest.

**The characteristics of the portfolio of  
Financed Eligible Loans may change**

The characteristics of the pool of Eligible Loans expected to be pledged to the Trustee under the Indenture are described herein as of the Statistical Cut-Off Date. The aggregate characteristics of the entire pool of Eligible Loans, including the composition of the Eligible Loans and the related borrowers, the distribution by student loan type, the distribution by interest rate, the distribution by principal balance and the distribution by remaining term to scheduled maturity, may vary from the information presented herein, since the information presented herein is as of the Statistical Cut-Off Date, and the date that the Financed Eligible Loans will be pledged to the Trustee under the Indenture will occur after that date.

In the event that the principal amount of Eligible Loans required to provide collateral for the Bonds varies from the amounts anticipated herein, whether by reason of a change in the collateral requirement necessary to obtain the rating on the Series 2021 Bonds from Moody's as indicated under "RATING" herein, the pricing of the interest rate on the Series 2021 Bonds, the principal amount of Bonds to be offered, the rate of amortization or prepayment on the portfolio of Eligible Loans from the Statistical Cut-Off Date to the Series 2021 Date of Issuance varying from the rates that were anticipated, or otherwise, the portfolio of Eligible Loans to be pledged to the Trustee under the Indenture may consist of a subset of the pool of Eligible Loans described herein or may include additional Eligible Loans not described under "CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS" herein.

The Foundation believes that the information set forth in this Official Statement with respect to the pool of Eligible Loans as of the Statistical Cut-Off Date is representative of the characteristics of the pool of Eligible Loans as they will exist on the Series 2021 Date of Issuance. However, investors should consider potential variances when making their investment decision concerning the Series 2021 Bonds. See the caption "CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS" herein.

**The Financed Eligible Loans are unsecured  
and the ability of a Guaranty Agency to honor  
its Guarantee may become impaired**

The Higher Education Act requires that all FFELP Loans be unsecured. As a result, the only security for payment of the Financed Eligible FFELP Loans are the guarantees provided by NMSLGC and Ascendium.

A deterioration in the financial status of NMSLGC or Ascendium and their respective ability to honor guarantee claims on defaulted Financed Eligible FFELP Loans could delay or impair NMSLGC's or Ascendium's ability to make claims payments to the Trustee. The financial condition of a Guaranty Agency can be adversely affected if it submits a sufficiently large number of reimbursement claims to the Department of Education, which results in a reduction of the amount of reimbursement that the Department of Education is obligated to pay a Guaranty Agency. The Department of Education may also require a Guaranty Agency to return its reserve funds to the Department of Education upon a finding that the reserves are unnecessary for a Guaranty Agency to pay its program fees or to serve the best interests of the Federal Family Education Loan Program. The inability of NMSLGC or Ascendium to meet its guarantee obligations could reduce the amount of money available to pay principal and interest to the owners of the Series 2021 Bonds or delay those payments past their due date.

If the Department of Education has determined that the applicable Guaranty Agency is unable to meet its guarantee obligations, the Eligible 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 to such claims. 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 Guaranty Agency is unable to meet its guarantee obligations. The Department of Education may not ever make this determination with respect to a Guaranty 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. See the captions “THE NEW MEXICO STUDENT LOAN GUARANTEE CORPORATION” and “DESCRIPTION OF THE NEW MEXICO GUARANTEED STUDENT LOAN PROGRAM” herein and “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees” hereto.

**Incentive or borrower benefit programs may affect the Series 2021 Bonds**

Certain of the Financed Eligible Loans are eligible to receive an interest rate reduction for enrolling in automatic bank draft payments and certain of the Financed Eligible Loans are subject to other borrower benefit programs, which may vary. Any incentive program that effectively reduces borrower payments or principal balances on Financed Eligible Loans may result in the principal amount of Financed Eligible Loans amortizing faster than anticipated. The Foundation may discontinue, increase or modify such benefits at any time, but only subject to the provisions of the Indenture. The Foundation cannot accurately predict the number of borrowers that will utilize the borrower benefits provided under these programs. The greater the number of borrowers that utilize such benefits with respect to Financed Eligible Loans, the lower the total loan receipts on such Financed Eligible Loans. Although such borrower benefits may decrease the payments to be received from the Financed Eligible Loans, the Foundation does not expect these borrower benefits to impair its ability to make payments of principal and interest on the Series 2021 Bonds when due. See the caption “DESCRIPTION OF THE FOUNDATION’S ELIGIBLE LOAN FINANCING PROGRAM—Borrower Benefit Programs” herein.

**Possible loss of tax exemption of the interest on the Series 2021A 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 Series 2021A 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 Series 2021A Bonds to be includable in gross income for such purposes, either prospectively or retroactively to the date of issuance of the Series 2021A Bonds. See “TAX MATTERS.”

**The Series 2021 Bonds are expected to be issued only in book entry form**

The Series 2021 Bonds are expected to be initially represented by certificates registered in the name of Cede & Co., the nominee for DTC, and will not be registered in any investor’s name or the name of any investor’s nominee. Unless and until definitive securities are issued, holders of the Series 2021 Bonds will not be recognized by the Trustee as Registered Owners as that term is used in the Indenture. Until definitive securities are issued, holders of the Series 2021 Bonds will only be able to exercise the rights of Registered Owners indirectly through DTC and its participating organizations. See the caption “THE SERIES 2021 BONDS—Book-Entry-Only System” herein.

### **Structuring tables are based upon assumptions and models**

The weighted average life information appearing in Appendix F hereto has been prepared on the basis of the modeling assumptions set forth in such Appendix F. The model used in this Official Statement for prepayments does not purport to be an historical description of prepayment experience or a prediction of the anticipated rate of prepayment of any pool of loans, including the Financed Eligible Loans in the pool. It is highly unlikely that the Financed Eligible Loans will prepay at the rates specified. The prepayment assumptions are for illustrative purposes only. For these reasons, the actual weighted average lives of the Series 2021 Bonds may differ significantly from the weighted average lives shown in Appendix F.

### **THE 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.

#### **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 five members, two of whom are required to represent educational institutions and two of whom are required to represent financial institutions located in the State. 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 and such other officers and assistants as the President may appoint.

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

<b>Name and Position Held</b>	<b>Principal Occupation</b>	<b>Term Expires</b>
Dr. Dan Salzwedel Chair	Professor (Retired) Highlands University	2024
Gavin Gillette Vice Chair	SVP Administration First Financial Credit Union	2024
Tim Eichenberg* Secretary/Treasurer	New Mexico State Treasurer	2022
Alexander Heubeck Board Member	Senior Relationship Manager Bank of the West	2023
Pauline J. Garcia Board Member	Governing Board Central New Mexico Community College	2021**
Brad Allpass	President and Chief Executive Officer Foundation	
Grace Tackman	Vice President of Administrative Services Foundation	
Estevan Martinez	Assistant Vice President of Information Technology Foundation	
Tracy Rowe	Assistant Vice President of Finance Foundation	

\* Board member Julie Filatoff serves on the Board as the designee of the State Treasurer Tim Eichenberg.

\*\* A successor has not yet been appointed.

***Brad Allpass, President and Chief Executive Officer.*** Mr. Allpass is the President and Executive Director of both the Foundation and NMSLGC and is responsible for all aspects of the Foundation’s Eligible Loan Financing Program. Mr. Allpass became the President and Chief Executive Officer in early 2020. Mr. Allpass received a Bachelor’s 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 30 years of diversified accounting, auditing, tax, financial, operational and strategic management experience.

***Graciela “Grace” Espino Tackman, Vice President of Administrative Services and Human Resources.*** Mrs. Tackman is an officer for both the Foundation and NMSLGC. Mrs. Tackman received a bachelors in Business Administration from Southwestern University. She is also licensed as a Senior Professional in Human Resources through the Human Resources Certification Institute and has been practicing in the human resources field in various industries for over 20 years. Mrs. Tackman and has been employed by the Foundation for over 10 years.

***Estevan Martinez, Assistant Vice President of Information Technology.*** Mr. Martinez is responsible for the strategic oversight of all information technology activities for both the Foundation and

NMSLGC. Mr. Martinez has served as a leader in the information security community for over 15 years in both the public and private sectors and is a Certified Information Systems Security Professional.

***Tracy Rowe, Assistant Vice President of Finance.*** Tracy Rowe 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 and rating agencies, budgets, internal financial and management reports as well as annual financial audits by independent audit firms. She received a Bachelor's of Philosophy and a Masters of Business Administration with a concentration in Accounting from the University of New Mexico. With credentials including a Certified Public Accountant (CPA), Certified Internal Auditor (CIA) and Chartered Global Management Accountant (GCMA), Tracy has over 27 years of experience in accounting, tax, audit and assurance in the public, private and education arenas.

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 issued by the Foundation. 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 "SERVICING OF THE FINANCED ELIGIBLE LOANS."

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 generally accounts for approximately ten to thirteen percent of the Foundation's annual operating fund revenue.

The Foundation began acquiring student loans in January 1982 and, as of October 31, 2021, had acquired and/or originated over \$2.9 billion in principal amount of such loans to over 340,000 borrowers, of which approximately \$298 million in principal amount remained outstanding as of such date for 15,474 borrowers.

### **Outstanding Obligations**

Since 1982, the Foundation has issued bonds and notes secured by Eligible Loans. The Foundation has paid in full all scheduled principal and interest due and payable on each outstanding series of bonds and notes, and there are no prior payment defaults on any such bonds and notes. After the issuance of the Series 2021 Bonds and the application of the proceeds thereof, the only bonds of the Foundation outstanding will be the following Bonds issued under the Indenture:

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## Pro Forma Outstanding Bonds

Series	Outstanding Principal Amount	Payment Priority	Federal Tax Status	Interest Rate Mode	Interest Rate(s)	Final Maturity Date/Range
Series 2001A-1	\$ 6,250,000	Senior	Exempt (AMT)	Fixed	3.750%	09/01/2031
Series 2002A-2	5,850,000	Senior	Exempt (AMT)	Fixed	3.800%	11/01/2032
Series 2003A-2	10,000,000	Senior	Exempt (AMT)	Fixed	3.800%	09/01/2033
Series 2004A-1	11,650,000	Senior	Exempt (AMT)	Fixed	3.875%	04/01/2034
Series 2021-1A	162,000,000	Senior	Exempt (AMT)	Fixed	See inside cover.	09/01/2023- 09/01/2051
Series 2021-1B	<u>46,000,000</u>	Senior	Taxable	Fixed	See inside cover.	09/01/2023- 09/01/2051
Total	<u>\$241,750,000</u>					

In connection with the issuance of the Series 2021 Bonds and the refunding of the Refunded Bonds, the Foundation expects to terminate the interest rate swap agreement secured by the Series 2010-1 Indenture.

The Foundation may from time to time issue additional obligations not secured by the Indenture. The trust estates securing any such obligations will not provide security for the Bonds.

The Foundation presently has a staff of approximately 65 full-time employees.

### Financial and Other Information

The financial statements of the Foundation as of June 30, 2021, and for the year then ended, are included in Appendix B in this Official Statement. The Foundation's financial statements include information with respect to its loan programs generally and other information regarding the Foundation. These financial statements are included for general background purposes only and for the convenience of Bondholders. Since the Bonds are limited obligations of the Foundation, payable solely from the Financed Eligible Loans and other assets specifically pledged to the Trustee under the Indenture, the overall financial status of the Foundation does not indicate and does not affect whether the Trust Estate created under the Indenture will be sufficient to fund the timely and full payment of principal and interest on the Series 2021 Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS."

### Repurchase Requests

The documents entered into in connection with prior Foundation sponsored securitization transactions and this transaction contain covenants requiring the repurchase or replacement of Eligible Loans in the case of a breach of certain representations and warranties. Therefore, pursuant to Rule 15Ga-1, the Foundation is responsible for disclosure of all fulfilled and unfulfilled repurchase requests for Eligible Loans in such securitization transactions. There have not been any fulfilled or unfulfilled repurchase requests for Eligible Loans with respect to any of the Foundation sponsored securitization transactions. With respect to the Series 2021 Bonds, the Foundation will furnish a Form ABS-15G at the times required by and pursuant to Rule 15Ga-1 of the Securities Exchange Act as required by the SEC.

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

### General

The Foundation was formed to improve educational opportunities for the residents of New Mexico by providing financial assistance to qualified persons, including, but not limited to, a program of making, financing, purchasing, holding and selling educational loans, and by servicing educational loan, scholarship, grant, work study and other educational assistance programs. As further described below, since July 1, 2010, the Foundation can no longer issue new FFELP loans. However in addition to continuing to service its existing loan portfolio, the Foundation has continued with its nonprofit mission to improve educational opportunities for New Mexico residents through various outreach programs, working in conjunction with the State and federal financial aid programs.

### Description of Financed Eligible Loans

Since 1982, the Foundation has established a program to purchase certain Eligible Loans originated pursuant to the Federal Family Education Loan Program ("FFELP" or the "FFEL Program"), authorized by Title IV of the federal Higher Education Act (such loans, "FFELP Loans"). The FFEL Program authorized by the Higher Education Act is described in "APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM" attached hereto. All of the Financed Eligible Loans pledged to the Trustee under the Indenture except a minor portion described below will consist of Eligible Loans that are loans originated under the Higher Education Act ("Financed Eligible FFELP Loans").

The Financed Eligible FFELP Loans are guaranteed by NMSLGC and Ascendium, although the Indenture permits Financed Eligible FFELP Loans to be guaranteed by any other entity authorized to guarantee student loans under the Higher Education Act. For a description of NMSLGC's guarantee and its Guarantee Program, see "DESCRIPTION OF THE NEW MEXICO GUARANTEED STUDENT LOAN PROGRAM."

On March 30, 2010, the Reconciliation Act was enacted into federal law. Included in the Reconciliation Act were provisions that eliminated the origination of new FFELP Loans under the FFEL Program. As of July 1, 2010, no additional FFELP Loans may be originated and all new federal student loans are originated solely under the Federal Direct Loan Program. However, FFELP Loans originated under the Higher Education Act prior to July 1, 2010 which have been originated or acquired by the Foundation continue to be subject to the provisions of the FFEL Program, and are not materially affected by the Reconciliation Act.

The Foundation has also originated Financed Eligible Loans (approximately 0.63% of the Financed Eligible Loans as of the Statistical Cut-Off Date) under an alternative loan program known as the Link/Linc Program. The Link/Linc Program alternative loans are private, credit-based loans issued to borrowers to fill the gap between cost of education and other financial aid available.

### 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, if such changes will not adversely affect the ratings on the Bonds. The Foundation's borrower benefit programs presently include the following:

***Instant Savings Program.*** The Instant Savings Program provides for a one-half percent (0.50%) per annum reduction in the interest rate on a loan when the loan enters repayment with the Foundation.

This benefit is available for all Stafford and PLUS loans guaranteed on or after May 1, 1998. Loans disbursed on or after July 1, 2006 are not eligible for this benefit.

***Easy Pay Program.*** The Easy Pay Program provides an interest rate reduction of 1/4 of 1% (0.25%) per annum if a borrower agrees to automatic debit payments with respect to his or her loan. This benefit is available 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 while 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 available 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 while 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 available for Stafford Loans guaranteed on or after May 1, 2000. For Consolidation Loans otherwise eligible, the interest rate will be reduced to 1.25%.

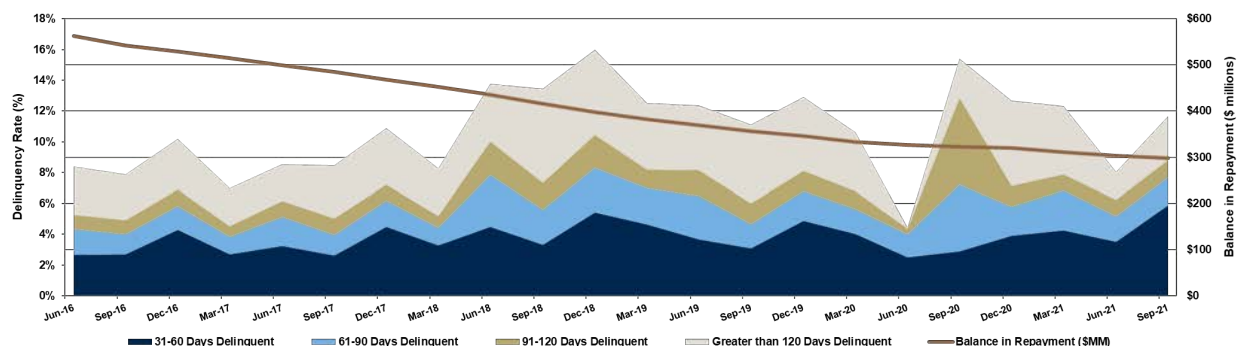
***Zero Percent Interest Loans for Employees Program.*** This program provides for educational loans incurred by current employees of the Foundation to receive a zero percent interest repayment benefit, so long as the employee remains employed by the Foundation. For Consolidation Loans otherwise eligible,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

## **Delinquency**

The chart below illustrates delinquency trends for the Foundation's loans held unencumbered by the Foundation and financed pursuant to the Line of Credit, the Prior Indentures and the Indenture. During the past five years, overall delinquency rates for the Foundation's loans, including the Financed Eligible Loans, ranged from approximately 4.4% to 16.0% and averaged approximately 11.0%. In early 2020, as a result of the COVID-19 Pandemic, delinquency rates dropped significantly as delinquent borrowers were moved from delinquent status to natural disaster forbearance status. See "INVESTMENT CONSIDERATIONS—Forbearance granted as a result of the COVID-19 Pandemic may delay payments of interest and principal." More recently, as borrowers have exited forbearance status, overall delinquency

rates have started to increase. As shown in the chart below, overall delinquency rates dropped from approximately 10.6% in March 2020 to approximately 4.4% in June 2020 and have since trended upward to approximately 11.7% in September 2021.



### Change to Index for Calculation of Special Allowance Payments

The Foundation made an affirmative election under Public Law 112-74 to permanently change the index for Special Allowance Payment calculations on substantially all FFELP Loans in its portfolio disbursed after January 1, 2000 (including all of the Financed Eligible FFELP Loans with such disbursement dates) from the three-month commercial paper rate to the One-Month LIBOR index, commencing with the Special Allowance Payment calculations for the calendar quarter beginning on April 1, 2012. See the captions “INVESTMENT CONSIDERATIONS—Changes in interest rate indexes may affect Trust Estate cash flow” and “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS— Distribution of the Financed Eligible Loans by SAP Basis Type” herein and “APPENDIX A— DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Special Allowance Payments” hereto.

### SERVICING OF THE FINANCED ELIGIBLE LOANS

The Foundation is required under the Higher Education Act, the rules and regulations of the Guaranty Agencies and the Indenture to cause the servicing and collection of the Financed Eligible Loans to be conducted with due diligence. The Higher Education Act defines due diligence as requiring the use of collection practices at least as extensive and forceful as those generally practiced by financial institutions for the collection of consumer loans. The Higher Education Act also requires the exercise of reasonable care and diligence in the making and servicing of student loans originated under the Higher Education Act and provides that the Secretary may disqualify an “eligible lender” from further federal insurance if the Secretary is not satisfied that the foregoing standards have been or will be met.

The Higher Education Act requires that a Guaranty Agency ensure that due diligence will be exercised by an eligible lender in making and servicing student loans originated under the Higher Education Act guaranteed by such Guaranty Agency. Each Guaranty Agency establishes procedures and standards for due diligence to be exercised by the servicer and by eligible lenders which service loans subject to such guaranty agencies’ guarantee. If the Foundation does not comply with the established due diligence standards, its ability to realize the benefits of any guaranty may be adversely affected.

The Trustee has no duties or obligations to service, collect or monitor the servicing and collecting of the Financed Eligible Loans. The Trustee also is not responsible for accounting and reporting functions required under the Higher Education Act to preserve the guarantee of any Guaranty Agency or the insurance of the Secretary on the Financed Eligible Loans.



The Foundation will service and make collections on of all of the Financed Eligible Loans expected to be pledged as part of the Trust Estate under the Indenture. The Foundation may from time to time enter into other servicing agreements and arrangements in accordance with the terms of the Indenture.

The Foundation began full servicing of certain Eligible Loans in January of 1982. As of October 31, 2021, the Foundation has serviced over \$2.9 billion in loans for over 340,000 borrowers and is currently servicing approximately \$298 million of Eligible Loans owned by the Foundation. The Foundation utilizes the IFA student loan servicing system provided by Nelnet Servicing, LLC.

The Foundation undergoes numerous annual and periodic examinations, audits and reviews from both external and internal sources pursuant to all applicable governing entities, contractual obligations and industry standards. These cover the entirety of the Foundation’s operations, policies and procedures, and controls. Biennial program reviews are conducted by the Department of Education Financial Institution Oversight Service in partnership with the Guarantor in accordance with the Higher Education Act for participation in the FFEL Program. Annual Financial Audits are also performed by a licensed third party in compliance with the U.S. Department of Education’s Lender Servicer Financial Audit and Compliance Attestation Guide in accordance with Uniform Guidance; as well as the Foundation’s Financial Report in accordance with Government Auditing Standards. A licensed third party also conducts an annual examination of Lender management’s compliance for loans billed for Special Allowance Payments at the 9.5% minimum return rate as required by the U.S. Department of Education. Internally, the Foundation’s internal audit function also provides objective assurance towards the goal of maintaining compliance with applicable federal and program regulations.

As a servicer, the Foundation works to minimize the net reject rate, which is the amount of claims submitted for payment that are rejected by the guarantor and are subsequently unable to be cured. The net reject rate for both the number and dollar value of the Foundation’s FFELP Loans for the last five calendar years is listed below.

<u>FFELP Net Reject Rate</u>		
<u>Year</u>	<u>Loans</u>	<u>Dollars</u>
2021	0%	0%
2020	0%	0%
2019	0%	0%
2018	0%	0%
2017	0%	0%

The net reject rate is calculated based on claims submitted three years prior which were unable to be cured during the three-year cure period which ended during the calendar years noted above. The number and dollar value of rejected claims not cured is divided by the total claims filed during that same period three years prior.

**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. 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 affairs of NMSLGC are governed by the Board of Directors and carried on by the officers of NMSLGC. NMSLGC’s bylaws provide for five members of the Board of Directors. One of the five positions is temporarily vacant. The present four members are: the Chairperson of the Board of Directors of the Foundation; one member, appointed by the Board of Directors, who is an officer or director of a financial institution located in the State; and two representatives 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, an Executive Vice President, a Secretary, a Treasurer and such vice-presidents or assistant vice-presidents, as the President may appoint.

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

<b>Name and Position Held</b>	<b>Principal Occupation</b>	<b>Term Expires</b>
Sarah D’ion Johnson Chair	Community Bank Executive, Retired	2023
Val Alonzo Vice Chair	Regional Development Corporation	2024
Dr. Dan Salzwedel Secretary	Foundation Chair	2022
Robert Gabaldon Board Member	Business and Community Relations Miller Bonded	2021*
Brad Allpass	President & CEO NMSLGC	
Grace Tackman	Vice President of Administrative Services NMSLGC	
Estevan Martinez	Assistant Vice President of Information Technology NMSLGC	
Tracy Rowe	Treasurer NMSLGC	

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\* A successor has not yet been appointed.

NMSLGC’s address is Post Office 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 with the Foundation 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, and ceased issuing new guarantees on July 1, 2010.

NMSLGC purchases defaulted student loans which it has guaranteed from moneys in its Federal Student Loan Reserve Fund. A FFELP 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 Guaranty Agency in accordance with the provisions of the Higher Education Act, the Guaranty Agency is to pay the holder a percentage of such amount of the loss subject to a reduction within 90 days of notification of such default. 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), therefore 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 “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees.”

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 FFELP Loans beginning July 1, 2010. See “INVESTMENT CONSIDERATIONS—Changes to the Higher Education Act, including the enactment of the Health Care and Education Reconciliation Act of 2010, changes to other applicable law and other Congressional action may affect investors’ Bonds and the Financed Eligible FFELP Loans,” “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM” and “—Guaranty Volume” and “—The Federal Student Loan Reserve Fund and the Guarantee Agreement” below.

### **Guaranty Volume**

As a result of the Reconciliation Act, all new loans guaranteed and disbursed under the FFEL Program were eliminated as of July 1, 2010. Instead, the federal government directly makes federal student

loans for higher education, rather than insuring federal student loans made by private lenders and guaranteed by a guaranty agency such as NMSLGC. As such, under current law, no new FFEL Program guaranty volume has occurred since July 1, 2010.

**Effect of Annual Claims Rate**

NMSLGC is currently entitled to receive reimbursement payments under its Federal Reimbursement Contracts of between 75% and 100% of the amount expended by NMSLGC, depending on the claims rate experience of NMSLGC. The “claims rate” is computed by dividing total default claims since the previous September 30 by the total original principal amount of NMSLGC’s guaranteed loans in repayment on such September 30. 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 allowed by the Department of Education. 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, and 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 allowed by the Department of Education. See “APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees—*Reimbursement*” for more detailed information regarding reimbursement levels under the FFEL Program.

For the federal fiscal years 2016-2020, NMSLGC’s claims rate has not exceeded 5%, and as a result, all claims of NMSLGC have been fully reimbursed at the maximum allowable level by the U.S. Department of Education. Nevertheless, there can be no assurance that Guarantee Agencies will continue to receive full reimbursement for such claims or that its claims rates will not increase.

The following table lists NMSLGC’s claims rates for each of the last five fiscal years.

<b><u>Federal Fiscal Year (Ending September 30)</u></b>	<b><u>Claims Rate</u></b>
2016	2.11%
2017	1.45
2018	2.46
2019	1.13
2020	0.00

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.

**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 and NMSLGC is in compliance with this requirement. 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.

A Guarantee Agency’s reserve ratio is determined by dividing the sum of its Federal Student Loan Reserve Fund balance plus certain allowances and other non-cash charges by the original principal amount of loans outstanding. NMSLGC’s reserve ratio for the last five federal fiscal years ending September 30 is as follows:

<b><u>Federal Fiscal Year</u></b> <b><u>(Ending September 30)</u></b>	<b><u>Reserve Ratio</u></b>
2016	0.53%
2017	0.69
2018	0.87
2019	1.13
2020	1.40

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 on the Financed Eligible Loans. 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. See “INVESTMENT CONSIDERATIONS—The Financed Eligible Loans are unsecured and the ability of the NMSLGC to honor its Guarantee may become impaired.”

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

### **General**

The Eligible Loans expected to be pledged pursuant to the Indenture are primarily loans made to finance post-secondary education made under the Higher Education Act (the “FFELP Loans” or “Eligible FFELP Loans”). Loans that meet the foregoing criteria are sometimes referred to in this Official Statement as “Financed Eligible FFELP Loans.”

The Foundation has also originated Financed Eligible Loans (approximately 0.63% of the Financed Eligible Loans as of the Statistical Cut-Off Date) under an alternative loan program known as the Link/Linc Program. The Link/Linc Program alternative loans are private, credit-based loans issued to borrowers to fill the gap between cost of education and other financial aid available.

The Financed Eligible Loans were originated or purchased by the Foundation and financed pursuant to the Indenture, the 2010-1 Indenture, the 2010-2 Indenture, the 2016 Indenture, the 2018 Indenture and the Line of Credit.

### **Financed Eligible Loans**

As of the Statistical Cut-Off Date (August 31, 2021), the characteristics of the pool of Eligible Loans the Foundation expects to pledge to the Trustee pursuant to the Indenture on the Series 2021 Date of Issuance were collectively as described below. The aggregate outstanding principal balance of the Eligible Loans in each of the following tables includes the principal balance due from borrowers. The tables do not include the approximately \$15,750,583 of interest expected to be capitalized. The percentages set forth in the tables below may not always add to 100% and the balances may not always add to \$301,658,246 due to rounding.

In the event that the principal amount of Eligible Loans required to provide collateral for the Bonds varies from the amounts anticipated herein, whether by reason of a change in the collateral requirement necessary to obtain the rating on the Series 2021 Bonds from Moody's as indicated under the caption "RATING" herein, the pricing of the interest rates on the Series 2021 Bonds, the principal amount of Series 2021 Bonds to be offered, the rate of amortization or prepayment on the portfolio of Eligible Loans from the Statistical Cut-Off Date to the Series 2021 Date of Issuance varying from the rates that were anticipated, or otherwise, the portfolio of Eligible Loans to be pledged to the Trustee under the Indenture may consist of a subset of the pool of Eligible Loans described below or may include additional Eligible Loans not described below.

The aggregate characteristics of the entire pool of Eligible Loans expected to be pledged on the Series 2021 Date of Issuance, including the composition of the Eligible Loans and the related borrowers, the distribution by student loan type, the distribution by interest rate, the distribution by Special Allowance Payment ("SAP" or "Special Allowance Payment") index, the distribution by principal balance and the distribution by remaining term to scheduled maturity, may vary from the information presented below since the information presented below is as of the Statistical Cut-Off Date, and the date that the Financed Eligible Loans will be pledged to the Trustee under the Indenture will occur after that date.

The Consolidated Appropriations Act of 2012 authorized eligible lenders under the FFEL Program to make an irrevocable election to permanently convert the index upon which Special Allowance Payment calculations would be based, effective April 1, 2012, for all FFELP Loans owned by an electing lender that were disbursed after January 1, 2000 (except for excluded FFELP Loans as to which a third party had a contractual right to approve such an election, if such approval had not been obtained). The Special Allowance Payment calculations for FFELP Loans to which such an election applies are based on the One-Month LIBOR for United States dollars in effect for each day of the applicable calendar quarter, as compiled and released by the British Bankers Association ("SAP One-Month LIBOR"), rather than on the three-month commercial paper (financial) rate, which remains applicable with respect to other FFELP Loans that were disbursed after January 1, 2000. The Foundation elected to permanently convert its FFELP Loans that were disbursed after January 1, 2000 to a SAP One-Month LIBOR basis.

An Eligible Loan originated under the FFELP that has previously defaulted, but satisfies the conditions described below, is known as a "rehabilitation loan." Approximately 16.43% of the Financed Eligible Loans will be rehabilitation loans. To rehabilitate an Eligible Loan originated under the FFELP, a borrower must pay the applicable Guaranty Agency at least nine full payments of an amount that is reasonable and affordable, as agreed to by the borrower and the Guaranty Agency, within twenty days of their monthly due dates over a 10-month period. Once the borrower has made the required payments, the loan may be purchased by an eligible lending institution. After a rehabilitation loan is purchased, it is eligible for all benefits under the Higher Education Act for which it would have been eligible if no default had occurred. See "APPENDIX A—DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees—*Rehabilitation of Defaulted Loans*" hereto.

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**Composition of the Financed Eligible Loan Portfolio  
(As of the Statistical Cut-Off Date)<sup>(1)</sup>**

Aggregate Outstanding Principal Balance	\$301,658,246
Total Accrued Interest	\$19,106,251
Accrued Interest Expected to be Capitalized <sup>(2)</sup>	\$15,750,583
Accrued Interest Not Expected to be Capitalized	\$3,355,668
Total Number of Loans	52,705
Total Number of Accounts	15,702
Average Balance per Loan	\$5,724
Average Balance per Borrower	\$19,211
Weighted Average Remaining Term (months)	151.97
Weighted Average Interim Months	1.29
Weighted Average Seasoning (months)	88.19
Weighted Average Gross Borrower Rate	5.40%
Weighted Average Net Borrower Rate	5.20%
Weighted Average Borrower Interest Rate Reduction <sup>(3)</sup>	0.20%
Weighted Average Borrower Age (years)	48
Percentage of Fixed Rate Loans	86.23%
Percentage of Variable Rate Loans	13.77%
Percentage of Floor Income Loans (Fixed Rate Loans Only)	16.87%
Percentage of Income Based Repayment Loans (Partial Financial Hardship) <sup>(4)</sup>	45.30%
Percentage of Rehabilitation Loans	16.43%

<sup>(1)</sup> Does not include an immaterial amount of Financed Eligible FFELP Loans (0.03% of the total outstanding principal balance) currently held unencumbered by the Foundation with characteristics that are substantially similar to the characteristics of the Financed Eligible FFELP Loans described herein.

<sup>(2)</sup> Accrued Interest Expected to be Capitalized includes accrued interest expected to be capitalized on loans in forbearance, unsubsidized school, grace, and deferment, and partial financial hardship (“PFH”) income-based repayment (“IBR”).

<sup>(3)</sup> Calculated as the difference between the Weighted Average Gross Borrower Rate and the Weighted Average Net Borrower Rate. The Weighted Average Borrower Interest Rate Reduction may not equal the difference between the Weighted Average Gross Borrower Rate and the Weighted Average Net Borrower Rate due to rounding.

<sup>(4)</sup> Does not include loans also in forbearance or deferment.

**Distribution of the Financed Eligible Loans by Loan Type  
(As of the Statistical Cut-Off Date)**

Loan Type	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
Stafford Loans - Unsubsidized	\$ 91,534,062	30.34%	17,599
Stafford Loans - Subsidized	75,255,385	24.95	24,500
Consolidation Loans - Unsubsidized	66,398,294	22.01	4,843
Consolidation Loans - Subsidized	65,891,393	21.84	5,360
PLUS Loans Unsubsidized	282,697	0.09	62
Grad PLUS Loans Unsubsidized	350,982	0.12	42
SLS Loans Unsubsidized	60,052	0.02	8
Link/Linc Loans	<u>1,885,381</u>	<u>0.63</u>	<u>291</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

**Distribution of the Financed Eligible Loans by School Type  
(As of the Statistical Cut Off Date)**

<b>School Type</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
Other/Consolidation/Unknown	\$ 12,719,641	4.22%	831
2-Year	57,954,209	19.21	13,950
4-Year & Graduate	202,641,212	67.18	33,583
Vocational/Proprietary	28,059,789	9.30	4,312
Foreign	<u>283,394</u>	<u>0.09</u>	<u>29</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

**Distribution of the Financed Eligible Loans by  
Date of Disbursement (and corresponding guarantee percentage)  
(As of the Statistical Cut-Off Date)<sup>(1)</sup>**

<b>Date of Disbursement (and corresponding guarantee percentage)</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
Not guaranteed (0%)	\$ 1,912,667	0.63%	309
On or after July 1, 2006 (97%)	195,485,300	64.80	33,268
October 1, 1993 – June 30, 2006 (98%)	103,846,686	34.43	18,952
Before October 1, 1993 (100%)	<u>413,593</u>	<u>0.14</u>	<u>176</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup>In general, Eligible Loans for which the first disbursement is made prior to October 1, 1993 are 100% guaranteed by the Guaranty Agency. Eligible Loans disbursed on or after October 1, 1993 and before July 1, 2006 are 98% guaranteed by the applicable Guaranty Agency. Eligible Loans for which the first disbursement is made on or after July 1, 2006 are 97% guaranteed by the applicable Guaranty Agency.

**Distribution of the Financed Eligible Loans by Borrower Payment Status  
(As of the Statistical Cut-Off Date)**

<b>Borrower Payment Status</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
School	\$ 784,904	0.26%	142
Grace	99,191	0.03	18
Deferment	16,502,627	5.47	3,420
Forbearance	11,521,533	3.82	1,900
Repayment	272,508,066	90.34	47,198
Claim	<u>241,924</u>	<u>0.08</u>	<u>27</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>



**Distribution of the Financed Eligible Loans by  
Number of Days Delinquent (In Repayment Only)  
(As of the Statistical Cut-Off Date)**

Number of Days Delinquent	Outstanding Principal Balance	Percent of Outstanding Principal Balance (In Repayment Only)	Number of Loans
<i>Not in repayment</i>	\$29,150,179	N/A	5,507
0-30 days	\$245,417,819	90.06%	42,332
31-60 days	11,120,527	4.08	1,927
61-90 days	5,599,715	2.05	969
91-120 days	3,013,002	1.11	512
121-150 days and greater	2,141,456	0.79	428
151-180 days	2,279,943	0.84	459
181 days and greater	<u>2,935,605</u>	<u>1.08</u>	<u>571</u>
Totals (In Repayment Only)	<u>\$272,508,066</u>	<u>100.00%</u>	<u>47,198</u>

**Distribution of the Financed Eligible Loans by Income Based Repayment  
(Partial Financial Hardship)  
(As of the Statistical Cut-Off Date)**

Income Based Repayment	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
Partial Financial Hardship (PFH) <sup>(1)</sup>	\$136,646,967	45.30%	18,254
PFH and Deferment	1,951,722	0.65	261
PFH and Forbearance	4,234,396	1.40	559
Non-Partial Financial Hardship	<u>158,825,161</u>	<u>52.65</u>	<u>33,631</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup> Does not include loans also in forbearance or deferment.

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**Distribution of the Financed Eligible Loans by Rehabilitation Status  
(As of the Statistical Cut-Off Date)**

<b>Rehabilitation Status</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
Not Rehabilitated	\$252,094,608	83.57%	43,046
Rehabilitated <sup>(1)</sup>	<u>49,563,637</u>	<u>16.43</u>	<u>9,659</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup> Purchased from the guaranty agency pursuant to the rehabilitation provisions described under “DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Insurance and Guarantees—*Rehabilitation of Defaulted Loans*” in Appendix A hereto.

**Distribution of the Financed Eligible Loans by Interest Rate Type  
(As of the Statistical Cut-Off Date)**

<b>Interest Rate Type</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
Fixed Rate	\$260,127,205	86.23%	38,428
Variable Rate	<u>41,531,041</u>	<u>13.77</u>	<u>14,277</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

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**Distribution of the Financed Eligible Loans by  
Range of Annual Borrower Interest Rate  
(As of the Statistical Cut-Off Date)**

Range of Annual Borrower Interest Rate	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
Less than 2.50%	\$ 37,085,750	12.29%	13,169
2.50% to 2.99%	7,730,847	2.56	742
3.00% to 3.49%	12,429,999	4.12	1,670
3.50% to 3.99%	15,261,171	5.06	1,193
4.00% to 4.49%	8,580,938	2.84	653
4.50% to 4.99%	36,497,070	12.10	3,163
5.00% to 5.49%	17,227,228	5.71	1,499
5.50% to 5.99%	8,656,822	2.87	854
6.00% to 6.49%	20,264,426	6.72	4,907
6.50% to 6.99%	120,158,858	39.83	23,826
7.00% to 7.49%	8,835,379	2.93	575
7.50% to 7.99%	2,898,937	0.96	126
8.00% to 8.49%	4,450,278	1.48	212
Greater than 8.49%	<u>1,580,543</u>	<u>0.52</u>	<u>116</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

**Distribution of the Financed Eligible Loans by Borrower Incentives  
Easy Pay (Auto Debit) Rate Reduction – 0.25%  
(As of the Statistical Cut-Off Date)**

Easy Pay (Auto Debit) Rate Reduction	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
Ineligible	\$263,845,322	87.46%	45,884
Receiving	<u>37,812,924</u>	<u>12.54</u>	<u>6,821</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup> See “DESCRIPTION OF THE FOUNDATION’S ELIGIBLE LOAN FINANCING PROGRAM—Borrower Benefit Programs—*Easy Pay Program*.”

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**Distribution of the Financed Eligible Loans by Borrower Incentives  
Instant Savings (Consolidation) – 0.50%<sup>(1)</sup>  
(As of the Statistical Cut-Off Date)**

<b>Instant Savings (Consolidation) Rate Reduction</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
Ineligible	\$251,494,112	83.37%	48,639
Receiving	<u>50,164,134</u>	<u>16.63</u>	<u>4,066</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup> For borrowers who consolidated loans with the Foundation. See “DESCRIPTION OF THE FOUNDATION’S ELIGIBLE LOAN FINANCING PROGRAM—Borrower Benefit Programs—*Instant Savings Program*.”

**Distribution of the Financed Eligible Loans by Borrower Incentives  
Instant Savings (Non-Consolidation) – 0.50%<sup>(1)</sup>  
(As of the Statistical Cut-Off Date)**

<b>Instant Savings (Non-Consolidation) Rate Reduction</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
Ineligible	\$277,177,213	91.88%	44,064
Receiving	<u>24,481,033</u>	<u>8.12</u>	<u>8,641</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup> See “DESCRIPTION OF THE FOUNDATION’S ELIGIBLE LOAN FINANCING PROGRAM—Borrower Benefit Programs—*Instant Savings Program*.”

**Distribution of the Financed Eligible Loans by Borrower Incentives  
Others – 1.00% to 1.20%<sup>(1)</sup>  
(As of the Statistical Cut-Off Date)**

<b>Rate Reduction</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
Ineligible	\$298,920,086	99.09%	52,466
Receiving	<u>2,738,160</u>	<u>0.91</u>	<u>239</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup> See “DESCRIPTION OF THE FOUNDATION’S ELIGIBLE LOAN FINANCING PROGRAM—Borrower Benefit Programs.” Excludes principal reduction incentives for borrowers who are eligible but have not yet received principal reduction, which constitutes 0.12% of the outstanding principal balance of the Financed Eligible Loans.

**Distribution of the Financed Eligible Loans by  
Special Allowance Payment Basis Type  
(As of the Statistical Cut-Off Date)**

Special Allowance Payment Basis Type <sup>(1)</sup>	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
1mL + 1.34/1.94 ExInt <sup>(2)</sup>	\$ 62,663,833	20.77%	14,377
1mL + 1.74/2.34	34,028,885	11.28	11,975
1mL + 1.74/2.34 ExInt <sup>(2)</sup>	66,888,485	22.17	14,467
1mL + 2.24 ExInt <sup>(2)</sup>	7,879,823	2.61	491
1mL + 2.64	47,440,623	15.73	3,902
1mL + 2.64 ExInt <sup>(2)</sup>	73,665,797	24.42	5,760
No SAP	1,885,381	0.63	291
T + 2.20/2.80	1,218,197	0.40	497
T + 2.50/3.10	841,650	0.28	346
T + 3.10	4,712,461	1.56	413
T + 3.25	378,009	0.13	166
T + 3.50	<u>55,102</u>	<u>0.02</u>	<u>20</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup> “1mL” means One-Month LIBOR and “T” means the average 91-day treasury bill rate calculated at a “bond equivalent rate” in the manner applied by the Secretary as referred to in Section 438 of the Higher Education Act.

<sup>(2)</sup> Subject to excess interest rebate.

**Distribution of the Financed Eligible Loans by Floor Loan Status  
Fixed Rate Loans Only  
(As of the Statistical Cut-Off Date)**

Floor Loan Status Fixed Rate Loans <sup>(1)</sup>	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
Floor Loans	\$ 50,876,102	16.87%	4,030
Non-Floor	<u>209,251,103</u>	<u>69.37</u>	<u>34,398</u>
Totals	<u>\$260,127,205</u>	<u>86.23%</u>	<u>38,428</u>

<sup>(1)</sup> The Higher Education Act provides that for FFELP loans first disbursed prior to April 1, 2006 lenders are entitled to retain interest income in excess of the special allowance support level in instances when the loan rate exceeds the special allowance support level. However, lenders are not allowed to retain interest income in excess of the special allowance support level on FFELP loans disbursed on or after April 1, 2006, and are required to rebate any such “excess interest” to the Secretary on a quarterly basis. “Floor loans” are FFELP loans that had their first disbursements prior to April 1, 2006. See the caption “DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Special Allowance Payments” in Appendix A hereto.

**Distribution of the Financed Eligible Loans by 9.5% Floor Loan Status  
(As of the Statistical Cut-Off Date)**

<b>9.5% Floor Loan Status<sup>(1)</sup></b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
9.5% Floor Loans	\$ 24,456,512	8.11%	3,182
Non-9.5% Floor Loans	<u>277,201,734</u>	<u>91.89</u>	<u>49,523</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

<sup>(1)</sup> Loans made or purchased with funds obtained by the holder from the issuance of tax exempt obligations issued prior to October 1, 1993 have an effective minimum rate of return of 9.50%. See the caption "DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM—Special Allowance Payments" in Appendix A hereto.

**Distribution of the Financed Eligible Loans by  
Remaining Term to Scheduled Maturity (in months)  
(As of the Statistical Cut-Off Date)**

<b>Range of Remaining Term to Scheduled Maturity (in months)</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
0 to 24	\$ 2,989,805	0.99%	3,651
25 to 36	3,305,741	1.10	2,269
37 to 48	4,573,681	1.52	2,453
49 to 60	5,396,271	1.79	2,261
61 to 72	7,775,208	2.58	2,405
73 to 84	8,397,833	2.78	2,384
85 to 96	10,496,857	3.48	2,778
97 to 108	17,923,020	5.94	3,864
109 to 120	20,213,118	6.70	3,894
121 to 132	21,034,452	6.97	3,370
133 to 144	28,301,932	9.38	4,540
145 to 156	30,890,520	10.24	4,785
157 to 168	32,262,077	10.69	3,714
169 to 180	24,266,809	8.04	2,515
181 to 192	18,510,936	6.14	1,733
193 to 220	32,869,267	10.90	3,224
221 to 260	26,517,209	8.79	2,629
261 to 300	3,746,075	1.24	192
Over 300	<u>2,187,435</u>	<u>0.73</u>	<u>44</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

**Distribution of the Financed Eligible Loans by Months in Repayment (Seasoning)  
(As of the Statistical Cut-Off Date)**

<b>Months in Repayment (Seasoning)</b>	<b>Outstanding Principal Balance</b>	<b>Percent of Total Outstanding Principal Balance</b>	<b>Number of Loans</b>
Not in Repayment	\$ 29,150,179	9.66%	5,507
0 to 12 months	8,283,846	2.75	1,301
13 to 24 months	16,278,494	5.40	2,841
25 to 36 months	10,466,676	3.47	2,221
37 to 48 months	14,405,160	4.78	2,755
49 to 60 months	23,003,857	7.63	4,431
61 to 72 months	28,765,605	9.54	5,379
More than 73 months	<u>171,304,427</u>	<u>56.79</u>	<u>28,270</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

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**Distribution of the Financed Eligible Loans by  
Range of Outstanding Principal Balance  
(As of the Statistical Cut-Off Date)**

Range of Outstanding Principal Balance	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
Less than \$500	\$ 1,014,958	0.34%	3,727
\$500 to \$999.00	3,313,787	1.10	4,430
\$1,000.00 to \$1,999.00	11,954,243	3.96	8,047
\$2,000.00 to \$2,999.00	18,116,869	6.01	7,271
\$3,000.00 to \$3,999.00	22,453,427	7.44	6,452
\$4,000.00 to \$5,999.00	40,714,776	13.50	8,300
\$6,000.00 to \$7,999.00	32,187,728	10.67	4,696
\$8,000.00 to \$9,999.00	25,979,864	8.61	2,907
\$10,000.00 to \$14,999.00	38,247,489	12.68	3,170
\$15,000.00 to \$19,999.00	22,445,376	7.44	1,299
\$20,000.00 to \$24,999.00	18,017,495	5.97	804
\$25,000.00 to \$29,999.00	13,005,803	4.31	478
\$30,000.00 to \$34,999.00	9,904,779	3.28	307
\$35,000.00 to \$39,999.00	7,435,561	2.46	199
\$40,000.00 to \$49,999.00	11,782,437	3.91	265
\$50,000.00 to \$59,999.00	7,264,963	2.41	133
\$60,000.00 to \$69,999.00	5,885,818	1.95	91
\$70,000.00 to \$79,999.00	3,792,052	1.26	51
\$80,000.00 to \$89,999.00	2,452,392	0.81	29
\$90,000.00 to \$99,999.00	1,315,747	0.44	14
\$100,000.00 to \$109,999.00	1,145,022	0.38	11
\$110,000.00 to \$119,999.00	911,744	0.30	8
\$120,000.00 to \$129,999.00	748,661	0.25	6
\$130,000.00 to \$139,999.00	414,662	0.14	3
\$140,000.00 to \$149,999.00	285,778	0.09	2
\$150,000 or more	866,813	0.29	5
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

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**Distribution of the Financed Eligible Loans by  
Geographic Location  
(As of the Statistical Cut-Off Date)**

Geographic Location	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
Alabama	\$388,020	0.13%	50
Alaska	868,607	0.29	107
Arizona	12,666,481	4.20	2,120
Arkansas	965,312	0.32	156
California	9,108,634	3.02	1,415
Colorado	12,468,648	4.13	1,638
Connecticut	490,361	0.16	60
Delaware	62,866	0.02	9
District of Columbia	45,536	0.02	17
Florida	3,949,611	1.31	591
Georgia	1,041,541	0.35	196
Hawaii	762,084	0.25	66
Idaho	943,792	0.31	167
Illinois	1,841,127	0.61	234
Indiana	642,550	0.21	98
Iowa	857,529	0.28	115
Kansas	1,057,771	0.35	139
Kentucky	217,539	0.07	41
Louisiana	574,462	0.19	98
Maine	399,122	0.13	53
Maryland	729,020	0.24	125
Massachusetts	1,452,486	0.48	145
Michigan	1,301,522	0.43	159
Minnesota	1,006,896	0.33	165
Mississippi	182,859	0.06	55
Missouri	1,272,015	0.42	182
Montana	3,290,429	1.09	516
Nebraska	633,511	0.21	130
Nevada	1,633,511	0.54	336
New Hampshire	207,104	0.07	25
New Jersey	377,062	0.12	48
New Mexico	190,639,901	63.20	35,979
New York	2,540,480	0.84	312
North Carolina	2,783,776	0.92	360
North Dakota	198,290	0.07	38
Ohio	864,277	0.29	145
Oklahoma	2,158,765	0.72	352
Oregon	4,390,664	1.46	517
Pennsylvania	1,897,435	0.63	205
Puerto Rico	32,997	0.01	5
Rhode Island	60,446	0.02	13
South Carolina	727,945	0.24	79
South Dakota	401,547	0.13	66

**Distribution of the Financed Eligible Loans by  
Geographic Location  
(As of the Statistical Cut-Off Date)**

Geographic Location	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
Tennessee	\$ 1,446,791	0.48%	182
Texas	20,561,568	6.82	3,621
Utah	1,076,093	0.36	160
Vermont	469,200	0.16	30
Virginia	1,930,936	0.64	213
Washington	4,672,711	1.55	700
West Virginia	83,908	0.03	18
Wisconsin	1,274,711	0.42	157
Wyoming	704,765	0.23	124
Other	409,962	0.13	81
Unknown	<u>893,075</u>	<u>0.30</u>	<u>92</u>
Totals	<u>\$301,658,246</u>	<u>100.00%</u>	<u>52,705</u>

**Distribution of the Financed Eligible FFELP Loans by Guaranty Agency  
(As of the Statistical Cut-Off Date)**

Guaranty Agency	Outstanding Principal Balance	Percent of Total Outstanding Principal Balance	Number of Loans
NMSLGC	\$294,992,132	98.41%	51,734
Ascendium Education Solutions, Inc.	<u>4,780,732</u>	<u>1.59</u>	<u>680</u>
Totals	<u>\$299,772,865</u>	<u>100.00%</u>	<u>52,414</u>

**Borrower Benefits**

With respect to the Financed Eligible Loans that are expected to be pledged to the Trustee under the Indenture, the Foundation offers certain borrower benefits in the form of interest rate and principal reductions for prompt and regular payments or payments made by automatic bank draft, as well as loan forgiveness for certain borrowers as described “DESCRIPTION OF THE FOUNDATION’S ELIGIBLE LOAN PROGRAM—Borrower Benefit Programs.”

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## **FEES AND EXPENSES**

The Administrative Expenses, including the Trustee's fees, the servicing fees, the administration fees and other program expenses are payable as described in "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Revenue Fund; Application of Revenues; Payment of Bonds" herein. As of the Series 2021 Date of Issuance, the Administrative Expenses are limited as set forth below, provided such amounts may be increased if the Foundation and the Trustee have received written confirmation from each Rating Agency that such additional amount or amounts will not adversely affect the Ratings on any of the Bonds.

The Administrative Expenses shall include (i) a monthly servicing fee payable to the Foundation equal to 1/12<sup>th</sup> of 0.60% of the principal amount of the Eligible Loans plus (ii) a monthly administration fee payable to the Foundation equal to 1/12<sup>th</sup> of (A) 0.20% of the principal amount of the Eligible Loans if the Parity Ratio shall be at least 102.50% and less than 105.50%, (B) 0.50% of the principal amount of the Eligible Loans if the Parity Ratio is greater than or equal to 105.50% and less than 107.00%, (C) 0.70% of the principal amount of the Eligible Loans if the Parity Ratio is greater than or equal to 107.00% and less than 110.8%, and (D) 0.80% of the principal amount of the Eligible Loans if the Parity Ratio is greater than or equal to 110.8%. Such Administrative Expenses shall be paid in arrears on the first Business Day of each month commencing January 2022.

The Trustee fees payable from the Trust Estate shall equal (i) 0.0125% per annum as a percentage of the outstanding principal amount of the Series 2021 Bonds but not less than \$5,000 annually per Series of Series 2021 Bonds outstanding, payable on each annual anniversary of the Series 2021 Date of Issuance and (ii) 0.02% of the Outstanding Series 2001A-1 Bonds, Series 2002A-2 Bonds, Series 2003A-2 Bonds and Series 2004A-1 Bonds, as of each annual anniversary of the date of issuance of each such series. In addition, the Trustee will be paid certain fees on the Series 2021 Date of Issuance.

The Administrative Expenses will also include fees and expenses due to the Rating Agencies and other fees of the Program (including compliance audits), limited to \$125,000 annually, reduced to \$110,000 once the Series 2001A-1 Bonds, the Series 2002A-2 Bonds, the Series 2003A-2 Bonds, and the Series 2004A-1 Bonds are no longer outstanding.

## **TAX MATTERS**

The following is a summary of the material federal and State of New Mexico income tax consequences of holding and disposing of the Series 2021 Bonds. This summary is based upon laws, regulations, rulings and judicial decisions now in effect, all of which are subject to change (possibly on a retroactive basis). This summary does not discuss all aspects of federal income taxation that may be relevant to investors in light of their personal investment circumstances or describe the tax consequences to certain types of owners subject to special treatment under the federal income tax laws (for example, dealers in securities or other persons who do not hold the Series 2021 Bonds as a capital asset, tax-exempt organizations, individual retirement accounts and other tax deferred accounts, and foreign taxpayers), and, except for the income tax laws of the State of New Mexico, does not discuss the consequences to an owner under any state, local or foreign tax laws. The summary does not deal with the tax treatment of persons who purchase the Series 2021 Bonds in the secondary market. Prospective investors are advised to consult their own tax advisors regarding federal, state, local and other tax considerations of holding and disposing of the Series 2021 Bonds.

## Opinion of Bond Counsel

In the opinion of Gilmore & Bell, P.C., Bond Counsel to the Foundation, under the law existing as of the issue date of the Series 2021 Bonds:

***Federal Tax Exemption – Series 2021A Bonds.*** The interest on the Series 2021A Bonds (including any original issue discount properly allocable to an owner thereof) is excludable from gross income for federal income tax purposes.

***No Federal Tax Exemption – Series 2021B Bonds.*** The interest on the Series 2021B Bonds is included in gross income for federal income tax purposes.

***Alternative Minimum Tax – Series 2021A Bonds.*** The interest on the Series 2021A Bonds is an item of tax preference for purposes of computing the federal alternative minimum tax.

***State of New Mexico Tax Exemption.*** The interest on the Series 2021 Bonds is excludable from net income for State of New Mexico income tax purposes.

Bond Counsel’s opinions are provided as of the original issue date of the Series 2021 Bonds, subject to the condition that the Foundation comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2021A Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The Foundation has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the inclusion of interest on the Series 2021A Bonds in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2021A Bonds. Bond Counsel is expressing no opinion regarding other federal, state or local tax consequences arising with respect to the Series 2021 Bonds.

## Other Tax Consequences – Series 2021A Bonds

***Original Issue Discount.*** For federal income tax purposes, original issue discount is the excess of the stated redemption price at maturity of a Series 2021A Bond over its issue price. The stated redemption price at maturity of a Series 2021A Bond is the sum of all payments on the Series 2021A Bond other than “qualified stated interest” (i.e., interest unconditionally payable at least annually at a single fixed rate). The issue price of a Series 2021A Bond is generally the first price at which a substantial amount of the Series 2021A Bonds of that maturity have been sold to the public. Under Section 1288 of the Code, original issue discount on tax-exempt bonds accrues on a compound basis. The amount of original issue discount that accrues to an owner of a Series 2021A Bond during any accrual period generally equals (1) the issue price of that Series 2021A Bond, plus the amount of original issue discount accrued in all prior accrual periods, multiplied by (2) the yield to maturity on that Series 2021A Bond (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), minus (3) any interest payable on that Series 2021A Bond during that accrual period. The amount of original issue discount accrued in a particular accrual period will be considered to be received ratably on each day of the accrual period, will be excludable from gross income for federal income tax purposes, and will increase the owner’s tax basis in that Series 2021A Bond. Prospective investors should consult their own tax advisors concerning the calculation and accrual of original issue discount.

***Original Issue Premium.*** For federal income tax purposes, premium is the excess of the issue price of a Series 2021A Bond over its stated redemption price at maturity. The stated redemption price at maturity of a Series 2021A Bond is the sum of all payments on the Series 2021A Bond other than “qualified stated interest” (i.e., interest unconditionally payable at least annually at a single fixed rate). The issue price of a Series 2021A Bond is generally the first price at which a substantial amount of the Series 2021A Bond of

that maturity have been sold to the public. Under Section 171 of the Code, premium on tax-exempt bonds amortizes over the term of the Series 2021A Bond using constant yield principles, based on the purchaser's yield to maturity. As premium is amortized, the owner's basis in the Series 2021A Bond and the amount of tax-exempt interest received will be reduced by the amount of amortizable premium properly allocable to the owner, which will result in an increase in the gain (or decrease in the loss) to be recognized for federal income tax purposes on sale or disposition of the Series 2021A Bond prior to its maturity. Even though the owner's basis is reduced, no federal income tax deduction is allowed. Prospective investors should consult their own tax advisors concerning the calculation and accrual of bond premium.

***Sale, Exchange or Retirement.*** Upon the sale, exchange or retirement (including redemption) of a Series 2021A Bond, an owner of the Series 2021A Bond generally will recognize gain or loss in an amount equal to the difference between the amount of cash and the fair market value of any property actually or constructively received on the sale, exchange or retirement of the Series 2021A Bond (other than in respect of accrued and unpaid interest) and such owner's adjusted tax basis in the Series 2021A Bond. To the extent a Series 2021A Bond is held as a capital asset, such gain or loss will be capital gain or loss and will be long-term capital gain or loss if the Series 2021A Bond has been held for more than 12 months at the time of sale, exchange or retirement.

***Reporting Requirements.*** In general, information reporting requirements will apply to certain payments of principal, interest and premium paid on the Series 2021A Bonds, and to the proceeds paid on the sale of the Series 2021A Bonds, other than certain exempt recipients (such as corporations and foreign entities). A backup withholding tax will apply to such payments if the owner fails to provide a taxpayer identification number or certification of foreign or other exempt status or fails to report in full dividend and interest income. The amount of any backup withholding from a payment to an owner will be allowed as a credit against the owner's federal income tax liability.

***Collateral Federal Income Tax Consequences.*** Prospective purchasers of the Series 2021A Bonds should be aware that ownership of the Series 2021A Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with "excess net passive income," foreign corporations subject to the branch profits tax, life insurance companies, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Series 2021A Bonds. Bond Counsel expresses no opinion regarding these tax consequences. Purchasers of Series 2021A Bonds should consult their tax advisors as to the applicability of these tax consequences and other federal income tax consequences of the purchase, ownership and disposition of the Series 2021A Bonds, including the possible application of state, local, foreign and other tax laws.

## **Other Tax Consequences – Series 2021B Bonds**

***Sale, Exchange or Retirement of Series 2021B Bonds.*** Upon the sale, exchange or retirement (including redemption) of a Series 2021B Bond, an owner of the Series 2021B Bond generally will recognize gain or loss in an amount equal to the difference between the amount of cash and the fair market value of any property actually or constructively received on the sale, exchange or retirement of the Series 2021B Bond (other than in respect of accrued and unpaid interest) and such owner's adjusted tax basis in the Series 2021B Bond. To the extent a Series 2021B Bond is held as a capital asset, such gain or loss will be capital gain or loss and will be long-term capital gain or loss if the Series 2021B Bond has been held for more than 12 months at the time of sale, exchange or retirement.

***Reporting Requirements.*** In general, information reporting requirements will apply to certain payments of principal, interest and premium paid on the Series 2021B Bonds, and to the proceeds paid on

the sale of the Series 2021B Bonds, other than certain exempt recipients (such as corporations and foreign entities). A backup withholding tax will apply to such payments if the owner fails to provide a taxpayer identification number or certification of foreign or other exempt status or fails to report in full dividend and interest income. The amount of any backup withholding from a payment to an owner will be allowed as a credit against the owner's federal income tax liability.

***Collateral Federal Income Tax Consequences.*** Prospective purchasers of the Series 2021B Bonds should be aware that ownership of the Series 2021B Bonds may result in collateral federal income tax consequences to certain taxpayers. Bond Counsel expresses no opinion regarding these tax consequences. Purchasers of Series 2021B Bonds should consult their tax advisors as to the applicability of these tax consequences and other federal income tax consequences of the purchase, ownership and disposition of the Series 2021B Bonds, including the possible application of state, local, foreign and other tax laws.

## UNDERWRITING

The Series 2021 Bonds are being purchased by RBC Capital Markets, LLC, as representative of the underwriters listed on the front cover of this Official Statement (collectively, the "Underwriters"). The Underwriters have agreed, subject to certain conditions, to purchase all of the Series 2021 Bonds at an aggregate purchase price equal to \$217,597,284.88 (consisting of the aggregate principal amount of the Series 2021 Bonds of \$208,000,000.00, plus a net original issue premium of \$11,159,440.00 and less Underwriters' discount of \$1,562,155.12). The initial public offering prices of the Series 2021 Bonds set forth on the inside front cover page hereof may be changed without notice by the Underwriters. The Underwriters may offer and sell the Series 2021 Bonds to certain dealers (including dealers depositing the Series 2021 Bonds into investment trusts, certain of which may be sponsored or managed by an Underwriter) and others at prices lower than or yields higher than the offering prices or yields set forth on the inside front cover page hereof.

During and after the offering, the Underwriters may engage in transactions, including open market purchases and sales, to stabilize the prices of the Series 2021 Bonds. The Underwriters, for example, may over-allot the Series 2021 Bonds for the account of the underwriting syndicate to create a syndicate short position by accepting orders for more Series 2021 Bonds than are to be sold. In general, over allotment transactions and open market purchases of the Series 2021 Bonds for the purpose of stabilization or to reduce a short position could cause the price of a Series 2021 Bond to be higher than it might be in the absence of those transactions. The Underwriters or their affiliates may retain a material percentage of the Series 2021 Bonds for their own accounts. The retained Series 2021 Bonds may be resold by such Underwriter or such affiliates at any time in one or more negotiated transactions at varying prices to be determined at the time of sale.

The Underwriters (and their affiliates) are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage services. Certain of the Underwriters may have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for the Foundation, for which such Underwriters received or will receive customary fees and expenses.

An affiliate of RBC Capital Markets, LLC serves as counterparty to the Foundation in connection with the interest rate swap secured by the Series 2010-1 Indenture that will be terminated on or about the Series 2021 Date of Issuance. In addition, an affiliate of RBC Capital Markets, LLC holds the Series 2007A-1 Bonds, which will be refunded with proceeds of the Series 2021 Bonds.

In the ordinary course of their various business activities, the Underwriters may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities, which may include credit default swaps) and financial instruments (including bank loans) for their own accounts and/or the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investments and securities may involve securities and instruments of the Foundation. The Underwriters may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities, or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

BofA Securities, Inc., as an underwriter of the Series 2021 Bonds, has entered into a distribution agreement with its affiliate Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”). As part of this arrangement, BofA Securities, Inc. may distribute securities to MLPF&S, which may in turn distribute such securities to investors through the financial advisor network of MLPF&S. As part of this arrangement, BofA Securities, Inc. may compensate MLPF&S as a dealer for its selling efforts with respect to the Series 2021 Bonds.

### **TRUSTEE**

The Foundation will issue the Series 2021 Bonds pursuant to the Indenture by and between the Foundation and Zions Bancorporation, National Association, as Trustee. The Trustee’s duties are limited to those duties specifically set forth in the Indenture.

The Foundation may maintain customary banking relations on arm’s-length terms with the Trustee.

Subject to the terms of the Indenture, the Trustee will act on behalf of the Bondholders and represent their interests in the exercise of its rights only as set forth in the Indenture. See “APPENDIX C—FORM OF THE INDENTURE—ARTICLE VII THE TRUSTEE” for additional information regarding the responsibilities of the Trustee. The Trustee will have no obligation to administer, service or collect the Financed Eligible Loans or to maintain or monitor the administration, servicing or collection of those loans.

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.

### **FINANCIAL ADVISOR**

Hilltop Securities Inc. (“Hilltop Securities”) is serving as financial advisor to the Foundation in connection with the issuance of the Series 2021 Bonds. Although Hilltop Securities reviewed and commented on certain legal documentation, including this Official Statement, Hilltop Securities is not obligated to undertake, and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness or adequacy of the information contained in this Official Statement or any of the other legal documents, and further, Hilltop Securities does not assume any responsibility for the information, covenants and representations with respect to the possible impact of any present, pending or future actions taken by any legislative or judicial bodies or Rating Agencies.

## **CONTINUING DISCLOSURE**

In order to assist the Underwriters in complying with Rule 15c2-12 promulgated by the SEC (the “Rule”), the Foundation will enter into a continuing disclosure agreement with respect to the Series 2021 Bonds (a “Continuing Disclosure Agreement”) setting forth the undertaking of the Foundation to provide certain annual financial information and operating data, and to provide notices of the occurrence of certain enumerated material events relating to the Bonds. The proposed form of the Continuing Disclosure Agreement is set forth in Appendix E attached hereto.

During the last five years, the Foundation has, to the best of its knowledge, complied in all material respects with its previous contractual undertakings to provide annual financial information, operating data and notices of material events in accordance with the Rule except that: (a) the Foundation’s 2016 and 2017 audited financial statements were not linked to all outstanding CUSIPs; (b) the Foundation’s 2017 and 2019 annual operating data was not linked to all outstanding CUSIPs; and (c) certain tables of required information were omitted from the Foundation’s annual operating data filings. The Foundation has since filed such information with the Municipal Securities Rulemaking Board through its EMMA system.

## **ABSENCE OF CERTAIN LITIGATION**

There is no controversy or litigation of any nature pending or, to the Foundation’s knowledge, threatened, to restrain or enjoin the issuance, sale, execution or delivery of the Series 2021 Bonds, or in any way contesting or affecting the validity of the Series 2021 Bonds or any proceedings of the Foundation taken with respect to the issuance or sale thereof, or the pledge or application of any moneys or security provided for the payment of the Series 2021 Bonds or existence or powers of the Foundation.

## **CERTAIN LEGAL MATTERS**

An opinion as to the validity of the Series 2021 Bonds (in substantially the form set forth in Appendix D hereto) is to be delivered by Gilmore & Bell, P.C., Bond Counsel. Certain legal matters will be passed on for the Foundation by Sutin, Thayer & Browne, for NMSLGC by its General Counsel and for the Underwriters by their counsel, Kutak Rock LLP.

## **AGREEMENT OF STATE**

Pursuant to the Educational Assistance Act and the Indenture, the State of New Mexico pledges to and agrees with the Bondholders 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 Bondholders or in any way impair the rights and remedies of the Bondholders until the Series 2021 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 Bondholders, are fully met and discharged.

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

The Series 2021 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 Series 2021 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 Series 2021 Bonds.



## **FINANCIAL STATEMENTS OF THE FOUNDATION**

The financial statements of the Foundation as of June 30, 2021, and for the year then ended, included in Appendix B in this Official Statement, have been audited by Pattillo, Brown & Hill, L.L.P., independent public accountants, as stated in their report appearing herein. Pattillo, Brown & Hill, L.L.P. 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. Pattillo, Brown & Hill, L.L.P. 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 Series 2021 Bonds. No financial statements are available for the Funds and assets comprising the Trust Estate.

## **RATING**

It is a condition to the Underwriters' obligation to purchase the Series 2021 Bonds that the Series 2021 Bonds be assigned the rating of "Aaa (sf)" by Moody's.

Such rating reflects only the views of Moody's at the time such rating was given and the Foundation makes no representation as to the appropriateness of the rating. An explanation of the significance of such rating can only be obtained from Moody's. There is no assurance that a particular rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating organization if, in the judgment of such rating organization circumstances so warrant. Any such downward revision or withdrawal of any such rating may have an adverse effect on the market price of the Series 2021 Bonds or on the existence of a secondary market for the Series 2021 Bonds. The rating is not a recommendation to buy or sell the Series 2021 Bonds and are not a comment as to the suitability of the Series 2021 Bonds for any investor.

## **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 Series 2021 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 Series 2021 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 Underwriter have each been duly authorized and approved by the Foundation.

NEW MEXICO EDUCATIONAL ASSISTANCE  
FOUNDATION

By: /s/ Dan Salzwedel, Ph.D.  
Dan Salzwedel, Chairperson

By: /s/ Brad Allpass  
Brad Allpass, President

## APPENDIX A

### DESCRIPTION OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM

As of July 1, 2010, FFELP Loans made pursuant to the Higher Education Act were no longer originated, and all new federal student loans are originated solely under the Federal Direct Student Loan Program (the "Direct Loan Program"). However, FFELP Loans originated under the Higher Education Act prior to July 1, 2010 which have been originated or acquired by the Foundation continue to be subject to the provisions of the FFEL Program. The following description of the FFEL Program has been provided solely to explain certain of the provisions of the FFEL Program applicable to the approximately 98.66% in principal amount of the Financed Eligible FFELP Loans originated on or after July 1, 1998 and prior to July 1, 2010. Certain additional information about the FFELP Loans which comprise approximately 1.34% in principal amount of the Financed Eligible FFELP Loans originated prior to July 1, 1998 is also included. 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.

The Higher Education Act provides for several different educational loan programs (collectively, the "Federal Family Education Loan Program" or "FFEL Program," and the loans originated thereunder, "Federal Family Education Loans" or "FFELP Loans"). Under the FFEL Program, state agencies or private nonprofit corporations administering student loan insurance programs ("Guaranty Agencies") 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 FFELP Loans. Certain provisions of the Federal Family Education Loan Program are summarized below. This summary 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.

The Higher Education Act has been subject to frequent amendments and federal budgetary legislation, 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 terminated originations of FFELP Loans under the FFEL Program after June 30, 2010 such that all new federal student loans originated on and after July 1, 2010 are originated under the Direct Loan Program.

#### **Federal Family Education Loans**

Several types of loans were authorized as Federal Family Education Loans pursuant to the Federal Family Education Loan Program. These included: (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 periods of enrollment ("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, professional students, or 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").

Generally, a FFELP Loan was made only to a United States citizen or permanent resident or otherwise eligible individual under federal regulations who (a) had been accepted for enrollment or was enrolled and was maintaining satisfactory progress at an eligible institution; (b) was carrying at least

one-half of the normal full-time academic workload for the course of study the student was pursuing, as determined by such institution; (c) agreed to notify promptly the holder of the loan of any address change; (d) was not in default on any federal education loans; (e) met the applicable “need” requirements; and (f) had not committed a crime involving fraud or obtaining funds under the Higher Education Act which funds had not been fully repaid. Eligible institutions included higher educational institutions and vocational schools that complied with certain federal regulations. With certain exceptions, an institution with a cohort default rate that was equal to or greater than 25% for each of the three most recent fiscal years for which data was available was not an eligible institution under the Higher Education Act. However, beginning in fiscal year 2012, the threshold was raised from 25% to 30%. In addition, an institution with a cohort default rate that was equal to or greater than 40% for the most recent fiscal year for which data was available is also not an eligible institution under the Higher Education Act.

### **Subsidized Stafford Loans**

The Higher Education Act provides for federal (a) insurance or reinsurance of eligible Subsidized Stafford Loans, (b) interest benefit payments for borrowers remitted to eligible lenders with respect to certain eligible Subsidized Stafford Loans, and (c) Special Allowance Payments representing an additional subsidy paid by the Secretary to such holders of eligible Subsidized Stafford Loans.

Subsidized Stafford Loans were eligible for reinsurance under the Higher Education Act if the eligible student to whom the loan was made had been accepted or was enrolled in good standing at an eligible institution of higher education or vocational school and was carrying at least one-half the normal full-time workload at that institution. In connection with eligible Subsidized Stafford Loans there were limits as to the maximum amount which could be borrowed for an academic year and in the aggregate for both undergraduate and graduate/professional study. The Secretary had discretion to raise these limits to accommodate students undertaking specialized training requiring exceptionally high costs of education.

Subject to these limits, Subsidized Stafford Loans were available to borrowers in amounts not exceeding their unmet need for financing as provided in the Higher Education Act.

### **Unsubsidized Stafford Loans**

Unsubsidized Stafford Loans were available to students who did not qualify for Subsidized Stafford Loans due to parental and/or student income or assets in excess of permitted amounts. In other respects, the general requirements for Unsubsidized Stafford Loans were essentially the same as those for Subsidized Stafford Loans. The interest rate, the loan fee requirements and the Special Allowance Payment provisions of the Unsubsidized Stafford Loans were 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 benefit payments and the loan limitations were determined without respect to the expected family contribution. The borrower was required to pay interest from the time such loan was disbursed or capitalize the interest until repayment began.

### **PLUS Loan Program**

The Higher Education Act authorized PLUS Loans to be made to graduate students, professional students, or parents of eligible dependent students. Only graduate students, professional students and parents who did not have an adverse credit history were eligible for PLUS Loans. The basic provisions applicable to PLUS Loans were similar to those of Stafford Loans with respect to the involvement of Guaranty Agencies and the Secretary in providing federal reinsurance on the loans. However, PLUS Loans differ significantly from Subsidized Stafford Loans, particularly because federal interest benefit payments are not available under the PLUS Program and Special Allowance Payments are more restricted.

## **The Consolidation Loan Program**

The Higher Education Act authorized a program under which certain borrowers were permitted to consolidate their various student loans into a single loan insured and reinsured on a basis similar to Subsidized Stafford Loans. The authority to make such Consolidation Loans expired on June 30, 2010. Consolidation Loans were 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 Parent PLUS Loans) selected by the borrower, as well as loans made pursuant to the Perkins Loan Program, the Health Professions Student Loan Programs and the Direct Loan Program. Consolidation Loans made pursuant to the Direct Loan Program must conform to the eligibility requirements for Consolidation Loans under the Federal Family Education Loan Program. The borrowers could have been either in repayment status or in a grace period preceding repayment, but the borrower could not still be in school. Delinquent or defaulted borrowers were eligible to obtain Consolidation Loans if they agreed to re-enter repayment through loan consolidation. Borrowers were permitted to add additional loans to a Consolidation Loan during the 180-day period following origination of the Consolidation Loan. Further, a married couple who agreed to be jointly and severally liable was treated as one borrower for purposes of loan consolidation eligibility. A Consolidation Loan was federally insured or reinsured only if such loan was made in compliance with the requirements of the Higher Education Act.

The Higher Education Act authorizes the Secretary to offer the borrower a Direct Consolidation Loan with repayment provisions authorized under the Higher Education Act and terms consistent with a Consolidation Loan made pursuant to the FFEL Program. In addition, the Secretary may offer the borrower of a Consolidation Loan a Direct Consolidation Loan for one of three purposes: (a) providing the borrower with an income contingent repayment plan (or income-based repayment plan as of July 1, 2009) if the borrower's delinquent loan has been submitted to a Guaranty Agency for default aversion (or, as of July 1, 2009, if the loan is already in default); (b) allowing the borrower to participate in a public service loan forgiveness program offered under the Direct Loan Program; or (c) allowing the borrower to use the no accrual of interest for active duty service members benefit offered under the Direct Loan Program for not more than 60 months for loans first disbursed on or after October 1, 2008. In order to participate in the public service loan forgiveness program, the borrower must not have defaulted on the Direct Loan; must have made 120 monthly payments on the Direct Loan after October 1, 2007 under certain income based repayment plans, a standard 10-year repayment plan for certain Direct Loans, or a certain income contingent repayment plan; and must be employed in a public service job at the time of forgiveness and during the period in which the borrower makes each of his 120 monthly payments. A public service job is defined broadly and includes working at an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended and restated (the "IRC"), which is exempt from taxation under Section 501(a) of the IRC. No borrower may, however, receive a reduction of loan obligations under both the public service loan forgiveness program offered under the Direct Loan Program and the following programs: (i) the loan forgiveness program for teachers offered under both the FFEL Program and the Direct Loan Program; (ii) the loan forgiveness program for service in areas of national need offered under the FFEL Program; and (iii) the loan repayment program for civil legal assistance attorneys offered under the FFEL Program.

## **Federal Direct Student Loan Program**

The Student Loan Reform Act of 1993 established the Direct Loan Program. The first loans under the Direct Loan Program were made available for the 1994-1995 academic year. Under the Direct Loan Program, approved institutions of higher education, or alternative loan originators approved by the United States Department of Education (the "Department of Education"), make loans to students or parents without application to or funding from outside lenders or Guaranty Agencies. The Department of Education

provides the funds for such loans, and the program provides for a variety of flexible repayment plans, including extended, graduated and income contingent repayment plans, forbearance of payments during periods of national service and consolidation under the Direct Loan Program of existing student loans. Such consolidation permits borrowers to prepay existing student loans and consolidate them into a Federal Direct Consolidation Loan under the Direct Loan Program. The Direct Loan Program also provides certain programs under which principal may be forgiven or interest rates may be reduced. Direct Loan Program repayment plans, other than income contingent plans, must be consistent with the requirements under the Higher Education Act for repayment plans under the FFEL Program. Due to the enactment of HCEARA, FFELP Loans made pursuant to the Higher Education Act are no longer originated, and as of July 1, 2010 new federal student loans are originated solely under the Direct Loan Program.

## **Interest Rates**

***Subsidized and Unsubsidized Stafford Loans.*** Subsidized and Unsubsidized Stafford Loans made on or after October 1, 1998 but before 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 1.70%, with a maximum rate of 8.25%. Subsidized Stafford Loans and Unsubsidized Stafford Loans made on or after October 1, 1998 but before July 1, 2006 in all other payment periods bear interest at a rate equivalent to the 91-day T-Bill rate plus 2.30%, with a maximum rate of 8.25%. The rate is adjusted annually on July 1.

Subsidized Stafford Loans disbursed on or after July 1, 2006 and before July 1, 2010 bear interest at progressively lowered rates described below. Subsidized Stafford Loans made on or after July 1, 2006 but before July 1, 2008 bear interest at a rate equal to 6.80% per annum. Subsidized Stafford Loans made on or after July 1, 2008 but before July 1, 2009 bear interest at a rate equal to 6.00% per annum. Subsidized Stafford Loans made on or after July 1, 2009 but before July 1, 2010 bear interest at a rate equal to 5.60% per annum.

Unsubsidized Stafford Loans made on or after July 1, 2006 and before July 1, 2010 bear interest at a rate equal to 6.80% per annum.

***PLUS Loans.*** PLUS Loans made on or after October 1, 1998 but before July 1, 2006 bear interest at a rate equivalent to the 91-day T-Bill rate plus 3.10%, with a maximum rate of 9.00%. The rate is adjusted annually on July 1. PLUS Loans made on or after July 1, 2006 and before July 1, 2010 bear interest at a rate equal to 8.50% per annum.

***Consolidation Loans.*** Consolidation Loans for which the application was received by an eligible lender on or after October 1, 1998 and that was disbursed before July 1, 2010 bear interest at a fixed rate equal to the lesser of (a) the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest 1/8 of 1.00%; or (b) 8.25%. For Consolidation Loans disbursed before July 1, 1994, the applicable interest rate is fixed at the greater of 9% or the weighted average of the interest rates on the loans being consolidated, rounded to the nearest whole percent. For Consolidation Loans disbursed on or after July 1, 1994, based on applications received by the lender before November 13, 1997, the applicable interest rate is fixed and is based on the weighted average of the interest rates on the loans being consolidated, rounded up to the nearest whole percent. For Consolidation Loans (which do not include a HEAL loan) on which the application was received by the lender between November 13, 1997 and September 30, 1998, inclusive, the applicable interest rate is variable based on the bond equivalent rate of the 91-day Treasury bills, auctioned at the final auction before the preceding June, plus 3.1% (adjusted annually on July 1).

***Servicemembers Civil Relief Act—6.00% Interest Rate Limitation.*** As of August 14, 2008, FFELP Loans incurred by a servicemember, or by a servicemember and the servicemember's spouse

jointly, before the servicemember enters military service may not bear interest at a rate in excess of 6.00% during the period of military service.

### **Loan Disbursements**

The Higher Education Act generally required that Stafford Loans and PLUS 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. The Higher Education Act also generally required that the first installment of such loans made to a student who was entering the first year of a program of undergraduate education and who had not previously obtained a FFEL Program loan (a “First FFEL Student”) must have been presented by the institution to the student 30 days after the First FFEL Student begins a course of study. However, certain institutions whose cohort default rate was less than 10% prior to October 1, 2011 and less than 15% on or after October 1, 2011 for each of the three most recent fiscal years for which data was available were permitted to (a) disburse any such loan made in a single installment for any period of enrollment that was not more than a semester, trimester, quarter, or four months; and (b) deliver any such loan that was to be made to a First FFEL Student prior to the end of the 30-day period after the First FFEL Student began his or her course of study at the institution.

### **Loan Limits**

A Stafford Loan borrower was permitted to receive a subsidized loan, an unsubsidized loan, or a combination of both for an academic period. Generally, the maximum amount of Stafford Loans, made prior to July 1, 2007, for an academic year was not permitted to exceed \$2,625 for the first year of undergraduate study, \$3,500 for the second year of undergraduate study and \$5,500 per year for the remainder of undergraduate study. The maximum amount of Stafford Loans, made on or after July 1, 2007, for an academic year was not permitted to exceed \$3,500 for the first year of undergraduate study and \$4,500 for the second year of undergraduate study. The aggregate limit for undergraduate study was \$23,000 (excluding PLUS Loans). Dependent undergraduate students were permitted to receive an additional unsubsidized Stafford Loan of up to \$2,000 per academic year, with an aggregate maximum of \$31,000. Independent undergraduate students were permitted to receive an additional Unsubsidized Stafford Loan of up to \$6,000 per academic year for the first two years and up to \$7,000 per academic year thereafter, with an aggregate maximum of \$57,500. The maximum amount of subsidized loans for an academic year for graduate students was \$8,500. Graduate students were permitted to borrow an additional Unsubsidized Stafford Loan of up to \$12,000 per academic year. The Secretary had 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 (a) parents were permitted to borrow on behalf of each dependent student, or (b) graduate or professional students were permitted to borrow for any academic year was not permitted to exceed the student’s estimated cost of attendance minus other financial assistance for that student as certified by the eligible institution which the student attends.

### **Repayment**

**General.** Repayment of principal on a Stafford Loan does not commence while a student remains a qualified student, but generally begins six months after the date a borrower ceases to pursue at least a half-time course of study (the six-month period is the “Grace Period”). 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 10 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 borrowers standard, graduated, income-sensitive, or, as of July 1, 2009 for certain eligible borrowers, income-based repayment plans. Use of income-based repayment plans may extend the 10-year maximum term.

Effective July 1, 2009, a new income-based repayment plan became available to certain FFEL Program borrowers and Direct Loan Program borrowers. To be eligible to participate in the plan, the borrower's annual amount due on loans made to a borrower prior to July 1, 2010 with respect to FFEL Program borrowers and prior to July 1, 2014 with respect to Direct Loan Program borrowers (as calculated under a standard 10-year repayment plan for such loans) must exceed 15% of the result obtained by calculating the amount by which the borrower's adjusted gross income (and the borrower's spouse's adjusted gross income, if applicable) exceeds 150% of the poverty line applicable to the borrower's family size. With respect to any loan made to a new Direct Loan Program borrower on or after July 1, 2014, the borrower's annual amount due on such loans (as calculated under a standard 10-year repayment plan for such loans) must exceed 10% of the result obtained by calculating the amount by which the borrower's adjusted gross income (and the borrower's spouse's adjusted gross income, if applicable) exceeds 150% of the poverty line applicable to the borrower's family size. Such a borrower may elect to have his payments limited to the monthly amount of the above described result. Furthermore, the borrower is permitted to repay his loans over a term greater than 10 years. The Secretary will repay any outstanding principal and interest on eligible FFEL Program loans and cancel any outstanding principal and interest on eligible Direct Loan Program loans for borrowers who participated in the new income-based repayment plan and, for a period of time prescribed by the Secretary (but not more than 25 years for a borrower whose loan was made prior to July 1, 2010 with respect to FFEL Program loans and prior to July 1, 2014 with respect to Direct Loan Program loans and not more than 20 years for a Direct Loan Program borrower whose loan was made on or after July 1, 2014), have (a) made certain reduced monthly payments under the income-based repayment plan, (b) made certain payments based on a 10-year repayment period when the borrower first made the election to participate in the income-based repayment plan, (c) made certain payments based on a standard 10-year repayment period, (d) made certain payments under an income-contingent repayment plan for certain Direct Loan Program loans, or (e) have been in an economic hardship deferment.

Borrowers of Subsidized Stafford Loans and of the subsidized portion of Consolidation Loans, and borrowers of similar subsidized loans under the Direct Loan Program receive additional benefits under the new income-based repayment program: the Secretary will pay any unpaid interest due on the borrower's subsidized loans for up to three years after the borrower first elects to participate in the new income-based repayment plan (excluding any periods where the borrower has obtained economic hardship deferment). For both subsidized and unsubsidized loans, interest is capitalized when the borrower either ends his participation in the income-based repayment program or begins making certain payments under the program calculated for those borrowers whose financial hardship has ended.

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, subject to deferral. For parent borrowers whose loans were first disbursed on or after July 1, 2008, it is possible, upon the request of the parent, to begin repayment on the later of (a) six months and one day after the student for whom the loan is borrowed ceases to carry at least one-half of the normal full-time academic workload (as determined by the school); and (b) if the parent borrower is also a student, six months and one day after the date such parent borrower ceases to carry at least one-half such a workload. Similarly, graduate and professional student borrowers whose loans were first disbursed on or after July 1, 2008 may begin repayment six months and one day after such student ceases to carry at least one-half the normal full-time academic workload (as determined by the school). Repayment plans are the same as in the Subsidized and Unsubsidized Stafford Loan Program for all PLUS Loans except those PLUS Loans which are made, insured, or guaranteed on behalf of a dependent student; such excepted PLUS Loans are not eligible for the income-based repayment plan which became effective



on July 1, 2009. Furthermore, eligible lenders were permitted to determine for all PLUS Loan borrowers (i) whose loans were first disbursed on or after July 1, 2008 that extenuating circumstances existed if between January 1, 2007 through December 31, 2009, a PLUS Loan applicant (A) was or had been delinquent for 180 days or less on the borrower's residential mortgage loan payments or on medical bills; and (B) did not otherwise have an adverse credit history, as determined by the lender in accordance with the regulations promulgated under the Higher Education Act prior to May 7, 2008; and (ii) whose loans were first disbursed prior to July 1, 2008 that extenuating circumstances existed if between January 1, 2007 through December 31, 2009, a PLUS Loan applicant (A) was or had been delinquent for 180 days or less on the borrower's residential mortgage loan or on medical bills, and (B) was not and had not been delinquent on the repayment of any other debt for more than 89 days during the period.

Consolidation Loans enter repayment on the date the loan is disbursed. The first payment is due within 60 days after all holders of the loan have discharged the liabilities of the borrower on the loan selected for consolidation. Consolidation Loans which are not being paid pursuant to income-sensitive repayment plans (or, as of July 1, 2009, income-based repayment plans) must generally 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 for Consolidation Loans made after January 1, 1993). Consolidation Loans may also be repaid pursuant to the new income-based repayment plan which became effective on July 1, 2009. However, Consolidation Loans which have been used to repay a PLUS Loan that has been made, insured, or guaranteed on behalf of a dependent student were not eligible for this new income-based repayment plan.

FFEL Program borrowers who accumulate outstanding FFELP Loans on or after October 7, 1998 totaling more than \$30,000 were permitted to receive an extended repayment plan, with a fixed annual 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.

***Deferment and Forbearance Periods.*** No principal repayments need to be made during certain periods prescribed by the Higher Education Act ("Deferment Periods") but interest accrues and must be paid. Generally, Deferment Periods include periods (a) when the borrower has returned to an eligible educational institution on a half-time basis or is pursuing studies pursuant to an approved graduate fellowship or an approved rehabilitation training program for disabled individuals; (b) not in excess of three years while the borrower is seeking and unable to find full-time employment; (c) while the borrower is serving on active duty during a war or other military operation or national emergency, is performing qualifying National Guard duty during a war or other military operation or national emergency, and for 180 days following the borrower's demobilization date for the above described services; (d) during the 13 months following service if the borrower is a member of the National Guard, a member of a reserve component of the military, or a retired member of the military who (i) is called or ordered to active duty, and (ii) is or was enrolled within six months prior to the activation at an eligible educational institution; (e) if the borrower is in active military duty, or is in reserve status and called to active duty; and (f) 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 include, but are not limited to, 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.

## **Master Promissory Notes**

Since July 2000, all lenders were required to use a master promissory note (the “MPN”) for new Stafford Loans. Unless otherwise notified by the Secretary, each institution of higher education that participated in the FFEL Program was permitted to use a master promissory note for FFELP Loans. The MPN permitted a borrower to obtain future loans without the necessity of executing a new promissory note. Borrowers were not, however, required to obtain all of their future loans from their original lender, but if a borrower obtains a loan from a lender which does not presently hold an MPN for that borrower, that borrower was required to execute a new MPN. A single borrower may have several MPNs evidencing loans to multiple lenders. If multiple loans have been advanced pursuant to a single MPN, any or all of those loans may be individually sold by the holder of the MPN to one or more different secondary market purchasers.

## **Interest Benefit Payments**

The Secretary is to pay interest on Subsidized Stafford Loans while the borrower is a qualified student, during a Grace Period or during certain Deferment Periods. In addition, Consolidation Loans made after August 10, 1993 that repay only Subsidized Stafford Loans are eligible for Interest Benefit Payments. Consolidation Loans made on or after November 13, 1997, are eligible for Interest Benefit Payments on that portion of the Consolidation Loan that repays subsidized FFELP Loans or similar subsidized loans made under the Direct Loan Program are eligible for interest benefit payments. The Secretary is required to make interest benefit 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 benefit 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 formulas 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). Loans made or purchased with funds obtained by the holder from the issuance of tax-exempt obligations issued prior to October 1, 1993 have an effective minimum rate of return of 9.50%. Amounts derived from recoveries of principal on loans made prior to October 1, 1993 may only be used to originate or acquire additional loans by a unit of a state or local government, or non-profit entity not owned or controlled by or under common ownership of a for-profit entity and held directly or through any subsidiary, affiliate or trustee, which entity has a total unpaid balance of principal equal to or less than \$100,000,000 on loans for which special allowances were paid in the most recent quarterly payment prior to September 30, 2005. Such entities were permitted to originate or acquire additional loans with amounts derived from recoveries of principal until December 31, 2010. The Special Allowance Payments payable with respect to student loans acquired or funded with the proceeds of tax-exempt obligations issued after September 30, 1993 are equal to those paid to other lenders.

Public Law 112-74, dated December 23, 2011, amended the Higher Education Act, reflecting financial market conditions, to allow FFELP lenders to make an affirmative election to permanently change the index for Special Allowance Payment calculations on all FFELP Loans in the lender’s portfolio (with certain limited exceptions) disbursed after January 1, 2000 from the Three Month Commercial Paper Rate (as hereafter defined) to the One Month LIBOR Rate (as hereafter defined), commencing with the Special Allowance Payment calculations for the calendar quarter beginning on April 1, 2012. Such election to permanently change the index for Special Allowance Payment calculations must have been made by

April 1, 2012 and must also have waived all contractual, statutory or other legal rights to the Special Allowance Payment calculation formula in effect at the time the loans were first disbursed. The Department of Education has not indicated what index it will use to calculate Special Allowance Payments presently based upon the One Month LIBOR Rate if the One Month LIBOR Rate is no longer available.

Subject to the foregoing, the formulas for Special Allowance Payment rates for Subsidized 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 at a “bond equivalent rate” in the manner applied by the Secretary as referred to in Section 438 of the Higher Education Act. The term “Three 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. The term “One Month LIBOR Rate” means the one-month London Interbank Offered Rate for United States dollars in effect for each of the days in such quarter as compiled and released by Intercontinental Exchange Group (ICE).

Date of Loans	Annualized SAP Rate
On or after October 1, 1992	T-Bill Rate less Applicable Interest Rate + 3.10%
On or after July 1, 1995	T-Bill Rate less Applicable Interest Rate + 3.10% <sup>1</sup>
On or after July 1, 1998	T-Bill Rate less Applicable Interest Rate + 2.80% <sup>2</sup>
On or after January 1, 2000 (and before October 1, 2007)	Three Month Commercial Paper Rate <sup>6</sup> less Applicable Interest Rate + 2.34% <sup>3</sup>
On or after October 1, 2007 and before July 1, 2010 if an eligible not-for-profit lender (or an eligible lender trustee on its behalf) is the holder of the loan	Three Month Commercial Paper Rate <sup>6</sup> less Applicable Interest Rate + 1.94% <sup>4</sup>
On or after October 1, 2007 and before July 1, 2010 if an eligible lender other than an eligible not-for-profit lender (or an eligible lender trustee on its behalf) is the holder of the loan	Three Month Commercial Paper Rate <sup>6</sup> less Applicable Interest Rate + 1.79% <sup>5</sup>

<sup>1</sup> Substitute 2.50% in this formula while such loans are in the in-school or grace period.

<sup>2</sup> Substitute 2.20% in this formula while such loans are in the in-school or grace period.

<sup>3</sup> Substitute 1.74% in this formula while such loans are in the in-school or grace period.

<sup>4</sup> Substitute 1.34% in this formula while such loans are in the in-school or grace period.

<sup>5</sup> Substitute 1.19% in this formula while such loans are in the in-school or grace period.

<sup>6</sup> Substitute “One Month LIBOR Rate” for “Three Month Commercial Paper Rate” in this formula where lenders made the affirmative election by no later than April 1, 2012 under Public Law 112-74, dated December 23, 2011, to permanently change the index for Special Allowance Payment calculations for all loans in the lender’s portfolio.

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The formulas for Special Allowance Payment rates for PLUS Loans are as follows:

<b>Date of Loans</b>	<b>Annualized SAP Rate</b>
On or after October 1, 1992	T-Bill Rate less Applicable Interest Rate + 3.10%
On or after January 1, 2000 (and before October 1, 2007)	Three Month Commercial Paper Rate* less Applicable Interest Rate + 2.64%
On or after October 1, 2007 and before July 1, 2010 if an eligible not-for-profit lender (or an eligible lender trustee on its behalf) is the holder of the loan	Three Month Commercial Paper Rate* less Applicable Interest Rate + 1.94%
On or after October 1, 2007 and before July 1, 2010 if an eligible lender other than an eligible not-for-profit lender (or an eligible lender trustee on its behalf) is the holder of the loan	Three Month Commercial Paper Rate* less Applicable Interest Rate + 1.79%

\* Substitute “One Month LIBOR Rate” for “Three Month Commercial Paper Rate” in this formula where lenders made the affirmative election by no later than April 1, 2012 under Public Law 112-74, dated December 23, 2011, to permanently change the index for Special Allowance Payment calculations for all loans in the lender’s portfolio.

The formulas for Special Allowance Payment rates for Consolidation Loans are as follows:

<b>Date of Loans</b>	<b>Annualized SAP Rate</b>
On or after October 1, 1992	T-Bill Rate less Applicable Interest Rate + 3.10%
On or after January 1, 2000 (and before October 1, 2007)	Three Month Commercial Paper Rate* less Applicable Interest Rate + 2.64%
On or after October 1, 2007 and before July 1, 2010 if an eligible not-for-profit lender (or an eligible lender trustee on its behalf) is the holder of the loan	Three Month Commercial Paper Rate* less Applicable Interest Rate + 2.24%
On or after October 1, 2007 and before July 1, 2010 if an eligible lender other than an eligible not-for-profit lender (or an eligible lender trustee on its behalf) is the holder of the loan	Three Month Commercial Paper Rate* less Applicable Interest Rate + 2.09%

\* Substitute “One Month LIBOR Rate” for “Three Month Commercial Paper Rate” in this formula where lenders made the affirmative election by no later than April 1, 2012 under Public Law 112-74, dated December 23, 2011, to permanently change the index for Special Allowance Payment calculations for all loans in the lender’s portfolio.

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 benefit payments and Special Allowance Payments by the amount of origination fees and lender loan fees described under the caption “—Loan Fees” below.

The Higher Education 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 Guaranty Agencies’ requirements.

The Higher Education Act provides that for FFELP Loans first disbursed prior to April 1, 2006, lenders are entitled to retain interest income in excess of the special allowance support level in instances

when the loan rate exceeds the special allowance support level. However, lenders are not allowed to retain interest income in excess of the special allowance support level on FFELP Loans disbursed on or after April 1, 2006, and are required to rebate any such “excess interest” to the Secretary on a quarterly basis. This modification effectively limits lenders’ returns to the special allowance support level and could require a lender to rebate excess interest accrued but not yet received.

## **Loan Fees**

***Insurance Premium.*** For loans guaranteed before July 1, 2006, a Guaranty Agency was authorized to charge a premium, or guarantee fee, of up to 1.00% of the principal amount of the loan, which may be deducted proportionately from each installment of the loan. Generally, Guaranty Agencies had waived this fee since 1999. For loans guaranteed on or after July 1, 2006 that are first disbursed before July 1, 2010, a federal default fee equal to 1.00% of principal was required to be paid into such Guaranty Agency’s Federal Student Loan Reserve Fund (hereinafter defined as the “Federal Fund”).

***Origination Fee.*** Lenders were authorized to charge borrowers of Subsidized Stafford Loans and Unsubsidized Stafford Loans an origination fee in an amount not to exceed: 3.00% of the principal amount of the loan for loans disbursed prior to July 1, 2006; 2.00% of the principal amount of the loan for loans disbursed on or after July 1, 2006 and before July 1, 2007; 1.50% of the principal amount of the loan for loans disbursed on or after July 1, 2007 and before August 1, 2008; 1.00% of the principal amount of the loan for loans disbursed on or after August 1, 2008 and before July 1, 2009; and 0.50% of the principal amount of the loan for loans disbursed on or after July 1, 2009 and before July 1, 2010. The Secretary is authorized to charge borrowers of Direct Loans 4.00% of the principal amount of the loan for loans disbursed prior to February 8, 2006. A lender was permitted to charge a lesser origination fee to Stafford Loan borrowers so long as the lender did so consistently with respect to all borrowers who resided in or attended school in a particular state. For borrowers of Direct Loans other than Federal Direct Consolidation Loans and Federal Direct PLUS Loans, the Secretary may charge such borrowers as follows: 3.00% of the principal amount of the loan for loans disbursed on or after February 8, 2006 and before July 1, 2007; 2.50% of the principal amount of the loan for loans disbursed on or after July 1, 2007 and before August 1, 2008; 2.00% of the principal amount of the loan for loans disbursed on or after August 1, 2008 and before July 1, 2009; 1.50% of the principal amount of the loan for loans disbursed on or after July 1, 2009 and before July 1, 2010; and 1.00% of the principal amount of the loan for loans disbursed on or after July 1, 2010. These fees must be deducted proportionately from each installment payment of the loan proceeds prior to payment to the borrower. The lenders were required to pass the origination fees received under the FFEL Program on to the Secretary.

***Lender Loan Fee.*** The lender of any FFELP Loan was required to pay to the Secretary an additional origination fee equal to 0.50% of the principal amount of the loan for loans first disbursed on or after October 1, 1993, but prior to October 1, 2007. For all loans first disbursed on or after October 1, 2007 and before July 1, 2010, the lender was required to pay an additional origination fee equal to 1.00% of the principal amount of the loan.

The Secretary collects from the lender or subsequent holder of the loan the maximum origination fee authorized (regardless of whether the lender actually charges the borrower) and the lender loan fee, either through reductions in interest benefit payments or Special Allowance Payments or directly from the lender or holder of the loan.

***Rebate Fee on Consolidation Loans.*** The holder of any Consolidation Loan for which the first disbursement was made on or after October 1, 1993, is required to pay to the Secretary a Monthly Consolidation Rebate Fees equal to .0875% (1.05% per annum) of the principal amount plus accrued unpaid interest on the loan. However, for Consolidation Loans for which applications were received from

October 1, 1998 to January 31, 1999, inclusive, the Monthly Consolidation Rebate Fees is approximately equal to .0517% (.62% per annum) of the principal amount plus accrued interest on the loan.

## **Insurance and Guarantees**

A Guaranty Agency guarantees Federal Family Education Loans made to students or parents of students by eligible lenders. A Guaranty Agency generally purchases defaulted student loans which it has guaranteed with its reserve fund (as described under the caption “Guaranty Agency Reserves” below). 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 Guaranty Agency in accordance with the provisions of the Higher Education Act, the Guaranty Agency is to pay the holder a percentage of such amount of the loss subject to a reduction (as described in 20 U.S.C. § 1075(b)) within 90 days of notification of such default. The default claim package submitted to a Guaranty Agency must include all information and documentation required under the Federal Family Education Loan Program regulations and such Guaranty Agency’s policies and procedures.

The Higher Education Act gives the Secretary of Education various oversight powers over the Guaranty Agencies. These include requiring a Guaranty Agency to maintain its reserve fund at a certain required level and taking various actions relating to a Guaranty Agency if its administrative and financial condition jeopardizes its ability to meet its obligations.

***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 Guaranty Agency 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 Guaranty Agency capable of meeting such obligations or until a successor Guaranty Agency 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 Guaranty Agency in accordance with the provisions of the Higher Education Act, the eligible lender is reimbursed by the Guaranty Agency for a statutorily set percentage (100% for loans first disbursed prior to October 1, 1993, 98% for loans first disbursed on or after October 1, 1993, but before July 1, 2006, and 97% for loans first disbursed on or after July 1, 2006 but before July 1, 2010) of the unpaid principal balance of the loan plus accrued unpaid interest on any defaulted loan 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 Guaranty Agency which provides for federal reimbursement for amounts paid to eligible lenders by the Guaranty Agency with respect to defaulted loans.

***Guarantee Agreements.*** Pursuant to the Guarantee Agreements, the Secretary is to reimburse a Guaranty Agency for the amounts expended in connection with a claim resulting from the death of a borrower; bankruptcy of a borrower; total and permanent disability of a borrower (including those borrowers who have been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition); inability of a borrower to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted continuously for at least 60 months, or can be expected to last continuously for at least 60 months;

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 Guaranty Agency'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 Guaranty Agency for any amounts paid to satisfy claims not resulting from death, bankruptcy, or disability subject to reduction as described below. See the caption "—Education Loans Generally Not Subject To Discharge in Bankruptcy" 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 Guarantee Agreements, the Secretary is authorized to provide the Guaranty Agency 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 Guaranty Agency, ensure the uninterrupted payment of claims, or ensure that the Guaranty Agency 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 Guaranty Agency'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 Guaranty Agency; (b) any contract entered into by the Guaranty Agency with respect to the administration of the Guaranty Agency's reserve funds or assets purchased or 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 the reserve 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 Guaranty Agency. Finally, notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a Guaranty Agency (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 Guaranty Agency, minus any necessary liquidation or other administrative costs.

**Reimbursement.** The amount of a reimbursement payment on defaulted loans made by the Secretary to a Guaranty Agency is subject to reduction based upon the annual claims rate of the Guaranty Agency 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:

<b>Claims Rate</b>	<b>Guaranty Agency Reinsurance Rate for Loans Made prior to October 1, 1993</b>	<b>Guaranty Agency Reinsurance Rate for Loans Made Between October 1, 1993 and September 30, 1998</b>	<b>Guaranty Agency Reinsurance Rate for Loans Made On or After October 1, 1998 and Prior to July 1, 2010*</b>
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

\* Student loans made pursuant to the lender-of-last resort program have an amount of reinsurance equal to 100%; student loans transferred by an insolvent Guaranty Agency have an amount of reinsurance ranging from 80% to 100%. The Consolidated Appropriations Act, 2016, Pub. L. 114-113, signed by the President on December 18, 2015 changed the applicable reinsurance percentage for guaranty agencies on default claims in the FFEL program from 95% to 100% if such guaranty agency's "trigger rate" is below 5.0%.

The amount of loans guaranteed by a Guaranty Agency which are in repayment for purposes of computing reimbursement payments to a Guaranty Agency means the original principal amount of all loans guaranteed by a Guaranty Agency 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 Guaranty Agency 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 by the borrower on a FFELP Loan guaranteed by a Guaranty Agency is received after reimbursement by the Secretary, the Secretary is entitled to receive an equitable share of the borrower's payment. The Secretary's equitable share of the borrower's payment equals the amount remaining after the Guaranty Agency has deducted from such payment: (a) the percentage amount equal to the complement of the reinsurance percentage in effect when payment under the Guarantee Agreement was made with respect to the loan; and (b) as of October 1, 2007, 16% of the borrower's payments (to be used for the Guaranty Agency's Operating Fund (hereinafter defined)). The percentage deduction for use of the borrower's payments for the Guaranty Agency's Operating Fund varied prior to October 1, 2007; from October 1, 2003 through and including September 30, 2007, the percentage in effect was 23% and prior to October 1, 2003, the percentage in effect was 24%. The Higher Education Act further provides that on or after October 1, 2006, a Guaranty Agency may not charge a borrower collection costs in an amount in excess of 18.50% of the outstanding principal and interest of a defaulted loan that is paid off through consolidation by the borrower; provided that the Guaranty Agency must remit to the Secretary a portion of the collection charge equal to 8.50% of the outstanding principal and interest of the defaulted loan. In addition, on or after October 1, 2009, a Guaranty Agency must remit to the Secretary any collection fees on defaulted loans paid off with consolidation proceeds by the borrower which are in excess of 45% of the Guaranty Agency's total collections on defaulted loans in any one federal fiscal year.



***Lender Agreements.*** Pursuant to most typical agreements for guarantee between a Guaranty Agency and the originator of the loan, any eligible holder of a loan insured by such a Guaranty Agency is entitled to reimbursement from such Guaranty Agency, subject to certain limitations, of any proven loss incurred by the holder of the loan resulting from default, death, permanent and total disability, certain medically determinable physical or mental impairment, or bankruptcy of the student borrower at the rate of 100% for loans first disbursed prior to October 1, 1993, 98% for loans first disbursed on or after October 1, 1993, but before July 1, 2006, and 97% for loans in default made on or after July 1, 2006 but prior to July 1, 2010. Certain holders of loans may receive higher reimbursements from Guaranty Agencies. For example, lenders of last resort may receive reimbursement at a rate of 100% from Guaranty Agencies.

Guaranty Agencies 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 Guaranty Agency 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 Guaranty Agency all right accruing to the holder under the note evidencing the loan. The Higher Education Act prohibits a Guaranty Agency from filing a claim for reimbursement with respect to losses prior to 270 days after the loan becomes delinquent with respect to any installment thereon.

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 Guaranty Agency has probable cause to believe that the holder has made misrepresentations or failed to comply with the terms of its agreement for guarantee, the Guaranty Agency may take reasonable action including withholding payments or requiring reimbursement of funds. The Guaranty Agency may also terminate the agreement for cause upon notice and hearing.

***Rehabilitation of Defaulted Loans.*** Under the Higher Education Act, the Secretary of Education is authorized to enter into an agreement with each Guaranty Agency pursuant to which a Guaranty Agency sells defaulted student loans that are eligible for rehabilitation to an eligible lender. For a defaulted student loan to be rehabilitated, the borrower must request rehabilitation and the applicable Guaranty Agency must receive an on-time, voluntary, full payment each month for 12 consecutive months. However, effective July 1, 2006, for a student loan to be eligible for rehabilitation, the applicable Guaranty Agency must receive nine payments made within 20 days of the due date during 10 consecutive months. Upon rehabilitation, a student loan is eligible for all the benefits under the Higher Education Act for which it would have been eligible had no default occurred.

A Guaranty Agency repays the Secretary an amount equal to 100% of the amount of the principal balance outstanding at the time of the sale of such student loan, multiplied by the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the student loan, and may charge to the borrower an amount not to exceed 16% of the outstanding principal and interest at the time of the loan sale. The amount of such repayment is deducted from the amount of federal reimbursement payments for the fiscal year in which such repayment occurs, for purposes of determining the reimbursement rate for that fiscal year.

***Loans Subject To Repurchase.*** The Higher Education Act requires a lender to repurchase student loans from a Guaranty Agency, under certain circumstances, after a Guaranty Agency has paid for the

student loan through the claim process. A lender is required to repurchase: (a) a student loan found to be legally unenforceable against the borrower; (b) a student loan for which a bankruptcy claim has been paid if the borrower's bankruptcy is subsequently dismissed by the court or, as a result of the bankruptcy hearing, the student loan is considered non-dischargeable and the borrower remains responsible for repayment of the student loan; (c) a student loan which is subsequently determined not to be in default; or (d) a student loan for which a Guaranty Agency inadvertently paid the claim.

### **Guaranty Agency Reserves**

Each Guaranty Agency is required to establish a Federal Fund which, together with any earnings thereon, is deemed to be property of the United States. Each Guaranty Agency is required to deposit into the Federal Fund any reserve funds plus reinsurance payments received from the Secretary, a certain percentage of default collections equal to the complement of the reinsurance percentage in effect when payment under the Guarantee Agreement was made, insurance premiums, 70% of payments received after October 7, 1998 from the Secretary for administrative cost allowances for loans insured prior to that date, and other receipts as specified in regulations. A Guaranty Agency 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 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 Guaranty Agency 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, is the property of the Guaranty Agency. A Guaranty Agency was permitted to 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 for loans originated on or after October 1, 2003 and first disbursed before July 1, 2010, 30% of payments received after October 7, 1998 for the administrative cost allowances for loans insured prior to that date, the account maintenance fee paid by the Secretary for Direct Loan Program loans in the amount of 0.06% of the original principal amount of the outstanding loans insured, any default aversion fee that is paid, the Guaranty Agency's 16% retention on collections of defaulted loans and other receipts as specified in the regulations. An Operating Fund must be used for application processing, loan disbursement, enrollment and repayment status management, default aversion, collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other student financial aid related activities. For Subsidized and Unsubsidized Stafford Loans guaranteed on or after July 1, 2006 and first disbursed before July 1, 2010, Guaranty Agencies were required to collect and deposit a federal default fee to the Federal Fund equal to 1.00% of the principal amount of the loan.

The Higher Education Act provides for a recall of reserves from each Federal Fund in certain years, but also provides for certain minimum reserve levels which are protected from recall. The Secretary is authorized to enter into voluntary, flexible agreements with Guaranty Agencies under which various statutory and regulatory provisions can be waived; provided, however, the Secretary is not authorized to waive, among other items, any deposit of default aversion fees by Guaranty Agencies. In addition, under the Higher Education Act, the Secretary is prohibited from requiring the return of all of a Guaranty Agency's reserve funds unless the Secretary determines that the return of these funds is in the best interest of the operation of the FFEL Program, or to ensure the proper maintenance of such Guaranty Agency's funds or assets or the orderly termination of the Guaranty Agency's operations and the liquidation of its assets. The Higher Education Act also authorizes the Secretary to direct a Guaranty Agency to: (a) return to the Secretary all or a portion of its reserve fund which the Secretary determines is not needed to pay for the Guaranty Agency's program fees and contingent liabilities; and (b) cease any activities involving the expenditure, use or transfer of the Guaranty Agency's reserve funds or assets which the Secretary determines is a misapplication, misuse or improper expenditure.

### **Lender-of-Last-Resort Program**

The FFEL Program allowed Guaranty Agencies and certain eligible lenders to act as lenders-of-last-resort before July 1, 2010. A lender-of-last-resort was authorized to receive advances from the Secretary in order to ensure that adequate loan capital exists in order to make loans to students before July 1, 2010. Students and parents of students who were otherwise unable to obtain FFELP Loans (other than Consolidation Loans) were permitted to apply to receive loans from the state's lenders-of-last-resort before July 1, 2010.

### **Education Loans Generally Not Subject To Discharge in Bankruptcy**

Under the U.S. Bankruptcy Code, educational loans are not generally dischargeable. Title 11 of the United States Code at Section 523(a)(8)(A)(i)-(ii) provides that a discharge under Section 727, 1141, 1228(a), 1228(b), or 1328(b) of Title 11 of the United States Code does not discharge an individual debtor from any debt for an education benefit overpayment or loan made, insured, or guaranteed by a governmental unit or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend unless excepting such debt from discharge under this section will impose an undue hardship on the debtor and the debtor's dependents.

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**APPENDIX B**

**AUDITED FINANCIAL STATEMENTS OF THE FOUNDATION**

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**NEW MEXICO  
STUDENT  
LOANS**

*We invest in you.*

NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

# Financial Statements

JUNE 30 | 2021





**NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**  
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## Independent Auditors' Report

The Board of Directors  
New Mexico Educational Assistance Foundation  
Albuquerque, New Mexico

### Report on the Financial Statements

We have audited the accompanying financial statements of New Mexico Educational Assistance Foundation (the "Foundation"), which comprise the statement of net position as of June 30, 2021, and the related statements of revenues, expenses, and changes in net position and cash flows for the year then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

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#### OFFICE LOCATIONS

TEXAS | Waco | Temple | Hillsboro | Houston  
NEW MEXICO | Albuquerque



We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

### ***Opinions***

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Foundation as of June 30, 2021 and the changes in its net position and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### ***Other Matters***

#### *Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 4 through 13 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

#### *Other Information*

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The Schedule of Expenditures of Federal Awards as required by *Title 2 U.S. Code of Federal Regulations (CFR) Part 200*, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the financial statements as a whole.

***Other Reporting Required by Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated October 12, 2021 on our consideration of the Foundation's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Foundation's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Foundation's internal control over financial reporting and compliance.

*Pattillo, Brown & Hill, LLP*

Pattillo, Brown & Hill, L.L.P.  
Albuquerque, New Mexico  
October 12, 2022

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Management's Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020

### Overview

The New Mexico Educational Assistance Foundation (the Foundation) functions as loan servicer to meet the financial needs of New Mexico students seeking post-secondary education. Funding of student loans was achieved through underwritings of tax-exempt and taxable debt securities issued by the Foundation for resale primarily to institutional investors. The Foundation provides the following additional services:

- Collection services for defaulted loans educational debt and other past due accounts;
- Assessment and collection of late and legal fees on delinquent balances;
- Statewide Higher Education Outreach Plan

As of June 30, 2021, the Foundation had 53,641 loans outstanding to 16,081 current and former students at a total principal value, net of an allowance of doubtful accounts, of approximately \$305.3 million.

This Management's Discussion and Analysis is required supplementary information under Governmental Accounting Standards Board Statement (GASB) 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.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Management's Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020

### **I. Brief Discussion of Financial Statements**

The financial statements presented herein are the following:

- Statement of Net Position;
- Statement of Revenues, Expenses and Changes in Net Position;
- Statement of Cash Flows.

The Statement of Net Position 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 position. 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 Position 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 Position. The increase or decrease in net position computed on the Statement of Revenues, Expenses and Changes in Net Position is added to or subtracted from the beginning net position on the Statement of Net Position to yield ending net position 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 Position.

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 position 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 position, 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, 2021 and 2020

### II. Condensed Financial Information

Condensed financial information is presented below (in thousands).

	At June 30		
	2021	2020	2019
Capital Assets	\$ 4,331	\$ 4,682	\$ 4,696
Student Loan Receivables & Other Assets	350,066	388,123	457,851
Total Assets	\$ 354,397	\$ 392,805	\$ 462,547
Long-Term Liabilities	\$ 226,812	\$ 260,548	\$ 315,081
Other Liabilities	23,762	27,194	42,401
Total Liabilities	250,574	287,742	357,482
Deferred Inflows of Resources	624	677	622
Total Liabilities and Deferred Inflows of Resources	251,198	288,419	358,104
Net Position:			
Invested in Capital Assets	4,331	4,682	4,696
Unrestricted	23,793	23,498	23,255
Restricted	75,075	76,206	76,492
Total Net Position	103,199	104,386	104,443
Total Liabilities, Deferred Inflows of Resources and Net Position	\$ 354,397	\$ 392,805	\$ 462,547
	Year Ended June 30		
	2021	2020	2019
Revenues:			
Borrower Interest Income & Fees	\$ 15,702	\$ 17,994	\$ 20,399
Federal Subsidies	(5,767)	(2,541)	369
Investment Revenue	35	585	962
Loan Servicing & Other Revenue	3,504	3,962	3,052
Total Revenues	13,474	20,000	24,782
Expenses:			
Direct Costs (Recovery) – Federal Family Education Loan Program	7,975	12,795	15,959
Overhead Costs – Federal Family Education Loan Program	5,371	5,444	5,884
Loan Servicing	1,386	1,426	3,276
Total Expenses	14,732	19,665	25,119
Income (Loss) on Equity Method Investment	71	(392)	(73)
Change in Net Position	(1,187)	(57)	(410)
Net Position, Beginning of the Year	104,386	104,443	104,853
Net Position, End of the Year	\$ 103,199	\$ 104,386	\$ 104,443

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

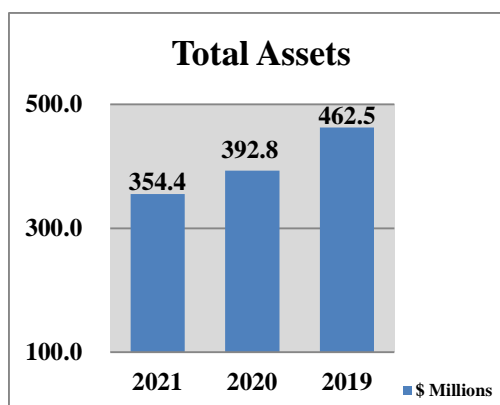
## Management's Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020

### III. Analysis of Overall Financial Position and Results of Operations

#### Analysis of Financial Position:

The Foundation's Total Assets at June 30, 2021 were at approximately \$354.4 million, a decrease of approximately \$38.4 million from the balance at June 30, 2020. Total assets at June 30, 2020 were just over \$392.8 million, a decrease of approximately \$69.7 million over the balance at June 30, 2019. Significant (approximate) changes in total assets components included:

- As of June 30, 2021, there was a reduction of \$23.7 million in student loans receivable representing a 7.2% decrease. As of June 30, 2020, there was a reduction of \$42.3 million in student loans receivable representing an 11% decrease. The decreases in both years was largely due to borrower payments and Direct Loan Consolidations with the United States Department of Education.
- Borrower interest receivable and interest subsidy receivable increased \$0.4 million as of June 30, 2021 from the amount outstanding June 30, 2020. In 2020, Borrower interest receivable and interest subsidy receivable increased \$1 million as of June 30, 2020 from the amount outstanding June 30, 2019. The increases in both years was caused by the pause in student loan collections due to the pandemic and loans in IBR repayment plans that do not require payments that cover outstanding interest.
- During January of 2019, the Foundation invested \$1 million in Collections Resources, Inc. (CRI), a collection agency within the state of New Mexico. CRI recognized income of \$71 thousand during 2021 which increases the investment held by the Foundation by the same amount. CRI realized operating losses of over \$0.3 million during 2020 which reduced the equity investment at the end of the year.
- Other investments decreased by \$11.8 million as of June 30, 2021 and \$22.3 million as of June 30, 2020 from the amount outstanding the prior year. These decreases primarily resulted from lower investment balances due to mandatory and voluntary bond redemptions that occurred during the fiscal years.
- Cash and cash equivalents decreased \$1.3 million over the prior year as of June 30, 2021. Unrestricted cash decreased by \$0.7 million due to funds used to purchase rehabilitated loans from the New Mexico Student Loan Guarantee Corporation. Restricted cash decreased \$0.6 million due to lower payment collection levels. As of June 30, 2020, cash and cash equivalents decreased \$6 million over the prior year. Unrestricted cash decreased by \$5.3 million due to funds used to purchase rehabilitated loans from the New Mexico Student Loan Guarantee Corporation. Restricted cash decreased \$0.7 million due to transfers to investment near year-end
- As of June 30, 2021, student loan late and legal fees, net decreased \$0.4 million during the year due to a smaller outstanding portfolio along with removal of late fees assessed on



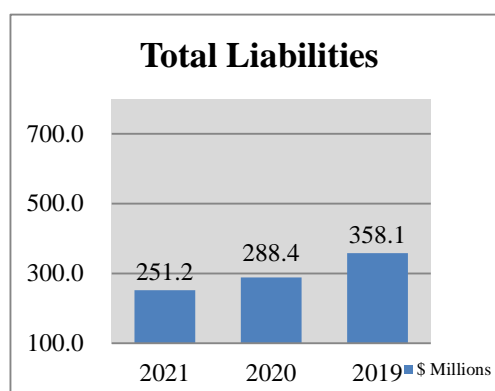
## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020

delinquent accounts during the pandemic. Other assets decreased by \$1.2 million due to collections of amounts due during the year, the retirement of the derivative associated with the 2009 bond, and lower prepaid balances. In 2020, student loan late and legal fees, net and other receivable amounts increased by \$0.3 million due to an increase in service fee receivables for new activity, an amount due from CRI, and an offsetting decrease in late and legal fees receivable.

- Net Property, Plant, and Equipment declined by \$0.4 million for the year ending June 30, 2021. Purchases of capital assets exceeded deletions and depreciation by a small amount for the year ended June 30, 2020.

Total liabilities decreased by approximately \$37.2 million to \$251.2 million as of June 30, 2021 as compared to a decrease of approximately \$69.7 million to \$288.4 million as of June 30, 2020. Significant decreases and increases in liabilities were driven by the following primary changes (in approximate amounts):

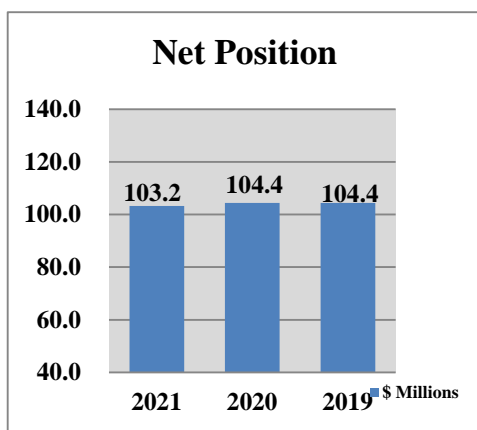


- Current and long-term bonds payable decreased \$43.2 million as of June 30, 2021 from the amount outstanding June 30, 2020. As of June 30, 2020, current and long-term bonds payable decreased by \$77.4 million. The decreases in both years was due to debt retirements during the fiscal years.
- Notes payable increased by \$6.4 million as of June 30, 2021 due to use of the Bank of America Line of Credit to fund the purchases of the New Mexico Student Loan Guarantee Corporation rehabilitated loans in the amount of \$5.6 million and a Paycheck Protection Program loan of nearly \$0.8 million granted during the year. It is anticipated that this loan will be forgiven in fiscal year 2022. As of June 30, 2020, notes payable increased by \$7.2 million compared to June 30, 2019 due to rehabilitated loan purchases.
- The year-end interest accrual had a decrease of \$0.1 million in fiscal year 2021 and a decrease of \$0.9 million in 2020 over the prior years. The decreases in both years were due to a reduction in the underlying debt.
- In 2021 and 2020, the rates were low enough to prevent earnings that would produce yields above the restricted amount for all bond issues.
- There was a \$0.3 million decrease in accounts payable and accrued liabilities as of June 30, 2021 due to primarily due to decreases in accounts and filing fees payable during the year. As of June 30, 2020, there was not a significant change in accounts payable and accrued liabilities.
- As of June 30, 2021, special allowance payable remained consistent as the liability continued to be calculated using low rates of interest. As of June 30, 2020, special allowance payable increased \$1.4 million due to decreases in the underlying market rates



## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020

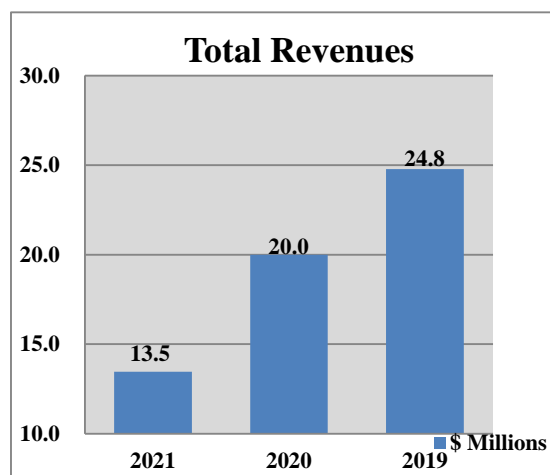


used in the special allowance calculations toward the latter part of the year and higher borrower interest rates on variable loans set at the beginning of the year.

Net position decreased by less than 0.1% to \$103.2 million and net position comprised approximately 29% of total assets at June 30, 2021. Net position decreased by 0.1% to \$104.4 million and net position comprised approximately 27% of total assets at June 30, 2020.

#### Analysis of Results of Operations:

In 2021, total revenues were \$13.5 million, a decrease of \$6.5 million from June 30, 2020. Total revenues for the Year Ended June 30, 2020 were approximately \$20 million, a decrease of \$4.8 million from the prior year. The fluctuations are primarily attributable to (in approximate amounts):



- In 2021 and 2020, decreased student loan receivable balances and lower rates that were used to calculate special allowance produced net decreases in student loan interest, interest subsidy and special allowance.
- In 2021, there was a \$0.5 million decrease in the fair market value of the derivative instruments caused by lower notional amounts and reductions in the remaining term of the 2010-1 derivative instrument and retirement of the 2009 debt during the year. In 2020, there was a slight increase in the fair market value of the derivative instruments due to lower notional amounts and reductions in the remaining terms of the derivative instruments being partially offset by lower interest rates.
- In 2021, collections fees fell by \$0.7 million compared to the amount in 2020 due to federal government restrictions on collections on defaulted accounts as a result of the pandemic. In 2020, the Foundation earned an additional \$0.3 million in revenue from collections fees than in 2019.
- In 2020, the Foundation began servicing a new contract with the Deloitte Consulting LLP to assist constituents of New Mexico with filing for unemployment benefits. The foundation earned \$1 million and \$0.3 thousand servicing the needs of New Mexico residents under this contract in 2021 and 2020, respectively. In 2021 and 2020 loan servicing and other fees increased in total due to increases in the services provided.
- For the year ended June 30, 2021, Debt Fund revenue decreased \$5.2 million over the previous year primarily due a decrease of \$5.1 million in revenue from student loan

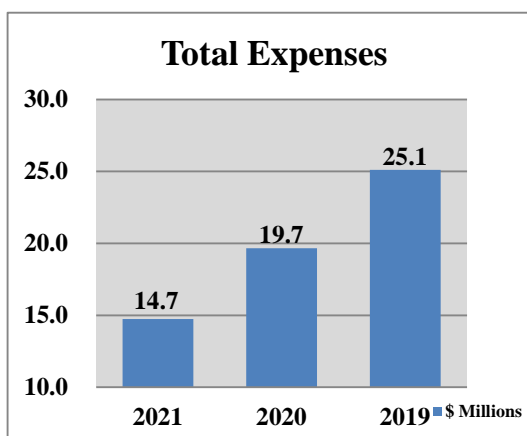
## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020

activity including borrower interest, interest subsidy and special allowance. General Fund revenue decreased \$0.8 million primarily due to decreased collections fees. For the year ended June 30, 2020, investment revenue in the Debt Fund decreased by \$0.5 million and interest and special allowance revenue for the Debt Fund decreased \$5.5 million. General Fund revenue increased \$1.2 million due to increased collections fees, new and enhanced service agreements and purchased rehabilitation loans.

Total expenses for the year ended June 30, 2021 were \$14.7 million, which was a decrease of \$4.9 million or more than 25% under the prior year expense. Total expenses for the year ended June 30, 2020 were \$19.7 million, which was a decrease of \$5.4 million or more than 21% under the prior year expense. The primary drivers behind the changes were:

- Due to lower bonds payable outstanding, interest expense decreased \$4.5 million and \$3.9 million in 2021 and 2020, respectively.
- During fiscal years 2021 and 2020 other expenses increased by \$0.1 million and decreased by \$1.5 million, respectively. The increase in 2021 was primarily due to fees paid by the Foundation in analyzing the benefits of restructuring its current debt agreements.
- In 2021, the Debt Fund expenses decreased by \$4.9 million due to a maturing portfolio and lower balances of bonds outstanding. The General Fund operating expenses decreased by \$17 thousand mainly due to lower salaries, fringe benefits, depreciation, and interest expense which were offset partially by increases in credit card expenses and professional fees paid for debt restructure analysis. In 2020, the Debt Fund expenses decreased by \$5.3 million due to a maturing portfolio and lower balances of bonds outstanding. The General Fund operating expenses decreased by \$0.8 million mainly due to lower salaries, fringe benefits, depreciation, and interest expense.



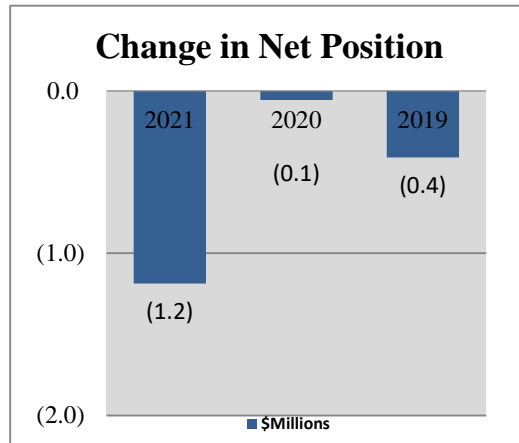
For the year ended June 30, 2021, the Change in Net Position (deficiency of revenue) was \$1.2 million, a decrease of \$1.1 million from the prior year. The Change in Net Position was primarily due to lower student loan revenues (including defaulted loan collections) and decreases of value recognized on derivative instruments that were partially offset by decreases

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management’s Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020

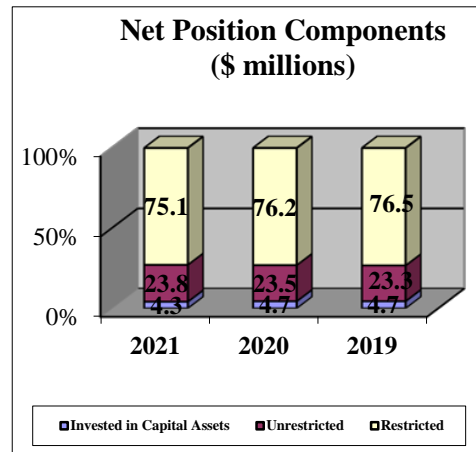
in salaries and fringe benefits and reduced debt carrying costs. For the year ended June 30, 2020, the Change in Net Position (deficiency of revenue) was \$57 thousand, an increase of \$0.4 million from the prior year. The Change in Net Position was primarily due to lower outstanding debt, salaries and fringe expenses offset by a \$0.3 million loss on equity investment.

- As of June 30, 2021, the Debt Fund decreased net position by \$1.1 million while the General Fund decreased net position by \$0.1 million. The Debt Fund’s decrease to net position was primarily due to the reduction in borrower interest on the maturing student loan portfolio and a decrease of value recognized on derivative instruments. The General Fund’s decrease was primarily due to reduced default revenue collections and debt restructuring fees. In comparison, for the year ended June 30, 2020, the Debt Fund decreased net position by \$0.3 million while the General Fund increased net position by \$0.3 million. The Debt Fund’s decrease to net position was primarily due to the reduction in borrower interest on the maturing student loan portfolio. The General Fund’s increase was primarily due to additional revenue sources and efficiencies in operating expenses.



The primary inter-fund 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 45% of the General Fund’s Total Revenues for the year ended June 30, 2021 while the dollar amount decreased 12%. In 2020, the allowance comprised 46% of the General Fund’s Total Revenues for the year ended June 30, 2020 while the dollar amount decreased 14%. The allowance is driven by the 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 Position.

The amount of net position invested in capital assets at June 30, 2021 was \$4.3 million, a decrease of \$0.3 million from the prior year. The amount of net position invested in capital assets at June 30, 2020 was \$4.7 million, increase of \$13 thousand from the prior year. In 2021, the decrease was primarily due to lower purchases by the Foundation and continued depreciation on existing assets. In 2020, the increase was primarily due to gains in hardware and software during the year that more than offset the decline in value of the other depreciable assets held by the Foundation. For the Fiscal Year Ended June 30, 2021, the Restricted Net Position balance of \$75.1



## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Management's Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020

million, which must be reserved to collateralize outstanding bond debt – decreased by \$1.1 million. The restricted net position balance of \$76.5 million, which must be reserved to collateralize outstanding bond debt, decreased by \$0.3 million in fiscal year 2020. Unrestricted net position, which is unencumbered, increased by \$0.2 million to \$23.7 million as of June 30, 2021 and increased by \$0.2 million to \$23.5 million as of June 30, 2020.

#### **IV. Analysis of Significant Budgetary Variations**

In June 2020 and June 2019, respectively, the Foundation's board of directors adopted the fiscal year 2020-2021 and 2019-2020 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 2021, actual total revenues of \$13.5 million was above the budgeted \$13.3 million by \$.15 million or 1.0%. The increase in revenues was due to higher than projected student loan portfolios in the operating fund realizing \$.5 million higher in student loan revenues than forecasted coupled with higher revenues earned from the State of New Mexico in assisting with unemployment applications due to the extension of the contract to later in the fiscal year. These gains were offset by a \$.5 million recognized loss in the fair market value of the derivative instruments held by the Foundation and lower collections revenues than projected. Total expenses (combined operating and non-operating) of \$14.7 million were favorable to the budget by \$1.9 million or approximately 11.7% under budget primarily due to lower than projected interest and bad debt expenses for the year. The change in net position of a \$781 thousand decrease was less than the budgeted decrease in net position of \$3.3 million by \$2.6 million.

In fiscal year 2020, actual total revenues of \$20.0 million was below the budgeted \$21.7 million by \$1.7 million or 7.8%. Most of the decrease in revenues was due to student loan and investment portfolios realizing \$2.5 million lower in interest revenues than forecasted, which was partially offset by collection agency activity revenues \$0.2 million higher than projected, revenues earned from the State of New Mexico in assisting with unemployment applications, and other service fee revenue. Total expenses (combined operating and non-operating) of \$19.7 million were favorable to the budget by \$3.3 million or approximately 14.1% under budget primarily due to salary and fringe benefit savings. The change in net position of a \$5 thousand decrease was less than the budgeted decrease in net position of \$1.2 million by \$1.2 million.

#### **V. Description of Significant Capital Asset and Long-Term Debt Activity**

##### Capital Assets:

The approved capital budget for the year ended June 30, 2021 was \$221 thousand. The total capital expenditures for the year were \$195 thousand or \$26 thousand under budget. The major categories of capital expenditures during the year were Information Technology (IT) Hardware and IT Software along with Building Improvements.

## **NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**

### **Management's Discussion and Analysis Fiscal Years Ended June 30, 2021 and 2020**

The approved capital budget for the year ended June 30, 2020 was \$548 thousand. The total capital expenditures for the year were \$490 thousand or \$102 thousand under budget. The major categories of capital expenditures during the year were Information Technology (IT) Hardware and IT Software along with Building Improvements.

#### **Long-Term Debt:**

There were no new debt issuances.

#### **Requests for Information**

This report is designed to provide an overview of NMEAF's finances for those with an interest in this area. Questions concerning any of the information found in this report or requests for additional information should be directed to the Assistant Vice President of Finance, 7400 Tiburon NE, Albuquerque, NM 87109.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Statements of Net Position As of June 30, 2021 and 2020

	June 30, 2021	June 30, 2020
<b><u>ASSETS</u></b>		
<b>Current Assets:</b>		
Cash and Cash Equivalents	\$ 2,412,140	\$ 3,158,239
Cash and Cash Equivalents – Restricted	1,445,062	2,048,647
Funds Held In Custody for Others	120,780	123,758
Investments	19,115,534	30,953,420
Receivables:		
Current Portion of Student Loans Receivable, Net of Allowance of \$506,683 and \$399,721	32,240,004	57,854,200
Student Loan Interest Receivable, Net of Allowance of \$155,863 and \$170,093	18,908,800	18,444,792
Interest Subsidy Receivable	170,605	255,092
Student Loan Late and Legal Fees Receivable, Net of Allowance of \$836,541 and \$539,964	613,833	999,930
Other	635,087	1,291,777
Total Current Assets	75,661,845	115,129,855
<b>Long-Term and Other Assets:</b>		
Student Loans Receivable, Net, Less Current Portion	273,038,300	271,098,423
Equity Method Investment	606,460	535,529
Derivative Investment	462,658	978,436
Prepaid Interest	296,476	380,952
Total Long-Term and Other Assets	274,403,894	272,993,340
<b>Capital Assets:</b>		
Property, Plant & Equipment, Net	4,331,180	4,682,461
Total Assets	\$ 354,396,919	\$ 392,805,656
<b><u>LIABILITIES</u></b>		
<b>Current Liabilities:</b>		
Accounts Payable and Accrued Liabilities	\$ 941,420	\$ 1,233,187
Bonds Payable, Current Portion	4,244,794	13,740,834
Special Allowance Payable	1,598,553	1,573,132
Accrued Interest on Bonds & Notes Payable	827,504	946,956
Notes Payable	16,149,525	9,700,000
Total Current Liabilities	23,761,796	27,194,109
<b>Long-Term Liabilities:</b>		
Bonds Payable, Less Current Portion	226,811,550	260,547,793
Total Long-Term Liabilities	226,811,550	260,547,793
<b>Deferred Inflow of Resources:</b>		
Other Deferred Gain	624,033	676,976
Total Deferred Inflow of Resources	624,033	676,976
Total Liabilities and deferred inflows of resources	251,197,379	288,418,878
<b><u>NET POSITION</u></b>		
Invested in Capital Assets	4,331,180	4,682,460
Unrestricted	23,792,660	23,497,860
Restricted, Bond Indenture	75,075,700	76,206,458
Total Net Position	103,199,540	104,386,778
Total Liabilities, deferred inflows and Net Position	\$ 354,396,919	\$ 392,805,656

See accompanying notes to financial statements

NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Statements of Revenues, Expenses, and Changes in Net Position  
Fiscal Years Ended June 30, 2021 and 2020

	<u>June 30, 2021</u>	<u>June 30, 2020</u>
<b><u>OPERATING REVENUES:</u></b>		
Student Loan Interest	\$ 15,712,314	\$ 17,779,267
Interest Subsidy and Special Allowance	(5,766,930)	(2,541,228)
Change in Fair Market Value of Derivative Instruments	(515,778)	45,171
Investment Revenue	35,222	583,054
Student Loan Late and Legal Fees, Net	(10,814)	214,368
Servicing and Administration Agreements:		
New Mexico Student Loan Guarantee Corporation	1,249,344	1,158,477
Servicing Fees	1,292,656	553,028
Other	1,477,884	2,208,322
Total Operating Revenues	<u>13,473,898</u>	<u>20,000,459</u>
<b><u>OPERATING EXPENSES:</u></b>		
Interest Expense on Bonds and Notes Payable	4,401,203	8,893,899
General and Administration:		
Salaries and Employee Benefits	5,356,020	5,538,248
Depreciation and Amortization	542,598	503,197
Provision for Student Loan Losses	134,002	349,849
U.S. Department of Education Fees	1,540,362	1,685,983
Other Student Loan Related Costs	-	72,177
Other	2,491,016	2,368,295
Trustee Fees, Amortization of Debt Issuance Costs, Commitment Fees and Other Trust Expenses	266,866	253,842
Total Operating Expenses	<u>14,732,067</u>	<u>19,665,490</u>
Operating (Loss) Income	<u>(1,258,169)</u>	<u>334,969</u>
<b><u>NON-OPERATING RECOVERIES (EXPENSES):</u></b>		
Contributions		
Gain (Loss) on Equity Method Investment	70,931	(392,063)
Change in Net Position	<u>(1,187,238)</u>	<u>(57,094)</u>
<b><u>NET POSITION:</u></b>		
Beginning	104,386,778	104,443,872
Ending	<u>\$ 103,199,540</u>	<u>\$ 104,386,778</u>

See accompanying notes to financial statements.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Statements of Cash Flows Fiscal Years Ended June 30, 2021 and 2020

	<b>June 30, 2021</b>	<b>June 30, 2020</b>
<b><i>Cash Flows From Operating Activities:</i></b>		
Cash Received From or on Behalf of Borrowers	\$ 40,132,410	\$ 60,600,154
Cash Disbursed to or Paid on Behalf of Borrowers	(8,116,953)	(4,148,014)
Cash Received From Others	4,231,257	3,020,025
Cash Paid to Employees	(5,356,020)	(5,577,484)
Cash Paid to Suppliers	(1,782,783)	(2,339,032)
Cash Received From Investments	37,966	1,154,808
Cash Paid for Interest on Bonds/Notes	(5,196,318)	(10,360,070)
Net Cash Provided by Operating Activities	23,949,559	42,350,387
<b><i>Cash Flows From Non-Capital Financing Activities:</i></b>		
Proceeds on Bonds and Notes	6,449,525	7,200,000
Payments on Bonds and Notes	(43,131,450)	(77,167,000)
Trust Expenditures	(266,866)	(253,842)
Net Cash Used by Non-Capital Financing Activities	(36,948,791)	(70,220,842)
<b><i>Cash Flows From Capital and Related Financing Activities:</i></b>		
Purchase of Property & Equipment	(191,317)	(489,948)
Proceeds from Sale of Property & Equipment	-	5,000
Net Cash Used by Capital and Related Financing Activities	(191,317)	(484,948)
<b><i>Cash Flows From Investing Activities:</i></b>		
Redemption of Investments	65,848,339	105,816,729
Purchases of Investments	(54,010,452)	(83,518,027)
Funds Held in Custody for Others	2,978	9,141
Net Cash Used by Investing Activities	11,840,865	22,307,843
Net (Decrease in Cash and Cash Equivalents)	(1,349,684)	(6,047,560)
Cash and Cash Equivalents, Beginning of Year	5,206,886	11,254,446
Cash and Cash Equivalents, End of Year	\$ 3,857,202	\$ 5,206,886

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NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Statements of Cash Flows  
Fiscal Years Ended June 30, 2021 and 2020

	<u>June 30, 2021</u>	<u>June 30, 2020</u>
<b><i>Reconciliation of Operating Income (Loss) to Net Cash Provided by Operating Activities:</i></b>		
Operating Income (Loss)	\$ (1,258,169)	\$ 334,969
Adjustments to Reconcile Operating Income (Loss) to Net Cash Provided by Operating Activities:		
Decrease in Fair Market Value of Derivative Instrument	515,778	(45,171)
Depreciation and Amortization Expense	542,598	503,197
Trustee Fees, Amortization of Debt Issuance Costs, Commitment Fees & Trust Expense,	266,866	253,842
Amortization of Bond Premium	(100,833)	(192,144)
Unrealized Gains and Losses	(52,943)	55,450
Gain on the Disposal of Fixed Assets	-	(5,000)
Changes in Assets & Liabilities:		
Decrease in Student Loans Receivable, Net	23,674,318	42,254,835
(Increase)Decrease in Student Loan Interest Receivable, Interest Subsidy & Special Allowance Receivable, and Late & Legal Fees Receivable	31,997	623,928
(Increase)Decrease in Investment Income Receivable	2,744	81,758
(Increase)Decrease in Other Current Assets	656,156	(659,235)
(Increase) in Prepaid Interest on Bonds	84,476	84,476
(Decrease) in Accounts Payable and Accrued Liabilities	(413,429)	(940,519)
Net Cash Provided by Operations	<u>\$ 23,949,559</u>	<u>\$ 42,350,386</u>
<b><i>Supplemental Disclosures of Cash Flow Information:</i></b>		
Interest Collected on FFELP Student Loans	<u>\$ 7,545,083</u>	<u>\$ 9,284,747</u>
Interest Subsidy and Special Allowance (Paid to) Collected from the U.S. Department of Education	<u>\$ (5,411,500)</u>	<u>\$ (1,074,992)</u>
Payments on Notes Payable	<u>\$ -</u>	<u>\$ -</u>
Proceeds on Notes Payable	<u>\$ 6,449,525</u>	<u>\$ 7,200,000</u>
Principal Amount of Bonds Issued	<u>\$ -</u>	<u>\$ -</u>
Principal Amount of Bonds Refunded or Retired	<u>\$ (43,131,450)</u>	<u>\$ (77,167,000)</u>
Proceeds from Notes Payable	<u>\$ 6,449,525</u>	<u>\$ 7,200,000</u>

See accompanying notes to financial statements.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

### **(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 services loans and provides administrative support and other services for in-state educational and lending institutions. 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).

The Foundation’s primary purpose was to provide a program for making, financing, holding, and purchasing federally insured educational loans. On March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (H.R. 4872/P.L. 111-152) was signed into law. This act eliminated the disbursement of new loans under the Federal Family Education Loan Program. As of July 1, 2010, the Foundation no longer originates or disburses student loans under this program.

During 2019, the Foundation created a wholly owned for-profit entity and invested \$1 million in this newly created entity. The purpose of this entity was to purchase the assets of an established business to provide an additional source of revenue to support the mission of the Foundation. Management has reviewed the relevant accounting guidance and has determined that this entity is not a component unit and should be accounted for as an investment. The Foundation has no component units.

### **(2) Summary of Significant Accounting Policies**

#### ***(a) Basis of Accounting***

The Foundation 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 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 and 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 Position, a Statement of Revenues, Expenses and Changes in Net Position, and Statement of Cash Flows. The Foundation carries on no governmental activities. It has neither fiduciary funds nor component units that are fiduciary in nature.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

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.

Amounts reported as program revenues include:

- Borrower interest income and fees;
- Federal subsidies;
- Investment interest income;
- Loan servicing and other revenue.

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 (income) are from the earnings on the Foundation's equity method investment.

When both restricted and unrestricted net position 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 Position of the Fund generally are restricted for the repayment of Debt Fund obligations and to satisfy certain reserve requirements specified by the various indentures.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

#### *(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, arbitrage rebate and excess earnings liabilities, and the derivative instruments 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*

The Foundation 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 NMEAF operations and are shown as Cash and Cash Equivalents – Restricted on the Statement of Net Position. The Foundation considers all other invested funds to be Investments.

Funds held by Bond trustees, recorded as investments on the Statement of Net Position, 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.

The Foundation follows GASB 72 and records all investments at fair value. On January 29, 2019, NMEAF's wholly owned for-profit entity purchased the assets, including the name of Collection Resources, Inc. (CRI). The initial investment has been adjusted for the earnings and losses as of the year-end. The adjustment is recorded in the Statement of Revenues, Expenses, and Changes in Net Position as Loss on Equity Method Investment. Dividends received from the Investment decreases the carrying amount of the Investment.

#### *(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, the Foundation holds and disburses funds for the institutions to qualified students.

#### *(f) Premiums and Borrower Incentive Plan Fees*

The Foundation deferred 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 Position.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to the Financial Statements  
Fiscal Years Ended June 30, 2021 and 2020

### ***(g) Student Loan Late and Legal Fees Receivable***

The Foundation 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***

The Foundation 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 is insured by the ED between 97% and 100%, depending on the year of origination, of the principal and interest balance during the year. Student Loans guaranteed by the Federal Government for the years ended June 30, 2021 and 2020 were \$302,627,959 and \$325,330,025, respectively.

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.

### ***(i) Derivative Instruments***

The Foundation accounts for derivative instruments using GASB Statement No. 53, Accounting and Financial Reporting for Derivative Instruments (GASB 53). This Statement requires the Foundation to report its derivative instruments at fair value. Changes in fair value for effective hedges are to be reported as deferred inflow and outflow of resources on the Statements of Net Position. Changes in fair value of derivative instruments not meeting the criteria for an effective hedge, or that are associated with investments are to be reported in the Statements of Revenues, Expenses and Changes in Net Position.

The Foundation has determined that its interest rate swaps associated with variable rate obligations are derivative instruments under GASB 53. See Note 7 Derivative Instruments for further discussion related to the Foundation's interest rate swaps.

### ***(j) Premiums and Gains/Losses on Refunding***

Bond premiums and gains/losses on refunding (including gains/losses related to interest rate swap transactions) are deferred and amortized over the term of the new bonds using the effective interest method. Bonds payable are reported net of the applicable bond premiums. Gains/losses on refunding are reported as deferred inflows or outflows of resources.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to the Financial Statements  
Fiscal Years Ended June 30, 2021 and 2020

## ***(k) Bond Issuance Costs***

Bond issuance costs, including underwriter's fees are expensed at issuance.

## ***(l) 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 capital assets are as follows:

Building	30 years
Building improvements	10 years
Furniture and fixtures	10 years
Software Development and Building Equipment	5 years
Data processing hardware, other than personal computers	4 years
Data processing hardware, personal computers	3 years
Data processing software	3 years
Vehicles	3 years

Maintenance and repairs that do not extend the assets' useful lines are charged to expense as incurred.

## ***(m) Restricted Net Position***

Assets held as collateral on outstanding Bonds and Notes Payable are classified as Restricted Net Position.

## ***(n) Revenue Recognition***

The Foundation 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

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

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. Effective April 1, 2012, the Foundation elected to waive the 3-month commercial paper rate in favor of the 1-month LIBOR rate in accordance with the H.R. 2055, the Consolidated Appropriations Act.

The Foundation records interest subsidy and special allowance, net of any negative special allowance, as revenue when earned.

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. Collection revenue on defaulted student loans and school receivables is recognized and accrued in the time period earned.

### ***(o) Reserves for Excess Earnings and Arbitrage Rebate***

Arbitrage rebate and excess earnings that are owed to the United States Department of Treasury are recorded as separate reserves and are based on calculations performed by independent valuation specialists on an ongoing basis.

### ***(p) Income Taxes***

The Foundation is a tax-exempt, quasi-governmental organization under Section 501(c) (3) of the Internal Revenue Code (IRC). The Foundation recognized unrelated taxable business income fiscal year 2020 of \$4,987 for rents received and interest from a note from Collections Resources Inc. (CRI) thus incurring a tax expense of \$837. Interest from the note in fiscal year 2021 was \$3,451 with an anticipated tax liability of \$725.

### ***(q) Recent Accounting Pronouncements***

GASB Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans—an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32*, is effective for fiscal years beginning after June 15, 2021 but early adoption is recommended for sections of the statement. The objective of this Statement is to improve consistency and comparability of reporting deferred compensation and other employee benefit plans. Management has reviewed the immediate disclosure requirements of this statement and it does not appear that the Foundation needs to implement this statement as we already do not disclose the defined contribution plan as separate.

GASB Statement No. 87, *Leases*, was issued in June 2017 and would have been effective for fiscal year 2020 is effective for fiscal years beginning after June 15, 2021 but early application is encouraged. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities. Management is assessing the impact of this Statement on the Foundation's equipment leases and their tenant leases.

GASB Statement No. 93, *Replacement of Interbank Offered rates*, was issued in March of 2020. Removal of LIBOR as an appropriate benchmark interest rate is effective for reporting periods ending after December 31, 2022, while the other requirements of this Statement are effective for reporting periods beginning after June 15, 2021. This statement addresses the expected upcoming expiration of the London Interbank Offered Rate (LIBOR) at the end of 2021 and governments are prompted to amend or replace financial instruments by replacing LIBOR with other reference rates. This change in reference rate may also trigger aspects of Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments* and Statement No. 87, *Leases*. While the Foundation is not under the same obligation to terminate or change the index rate on a Hedge transaction, the Foundation has a derivative SWAP agreement on a bond issue that is affected by this pronouncement. Special Allowance amounts calculated by the Department of Education for the Foundation are primarily calculated by the LIBOR rate. The Department of Education is anticipated to transition calculations for special allowance that utilize LIBOR to the Secured Overnight Financing Rate.

Recent pronouncements effecting future periods include:

- GASB Statement 96, *Subscription-Based Information Technology Arrangements (SBITAs)*, will go into effect for fiscal years beginning after June 15, 2022 and will be effective for fiscal year. SBITAs, as defined in this statement, are contracts that convey control of the right to use another party's information technology software, along or in combination with tangible capital assets. This will require a government to report a subscription assets and subscription liability for a SBITA and to disclose essential information about the arrangement. To the extent relevant, the standards for SBITAs are based on the standards established for Leases in Statement No. 87, as amended.
- Also related to Leases is GASB Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements (PPP)*, issued in March of 2020 and will be effective for fiscal year 2023 after being postponed one year by Statement No. 95 due to COVID 19.
- GASB Statement No. 92, *Omnibus 2020*, was issued in January of 2020 and covers several requirements including defined contribution plans and leases as well as and recent implementation guides. Implementation dates vary, early implementation is encouraged, and GASB Statement No. 95 due to COVID 19 has postponed dates one year. Management is reviewing in tandem with the preceding statements for the applicability to the Foundation.



# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to the Financial Statements  
Fiscal Years Ended June 30, 2021 and 2020

## *(r) Subsequent Events*

The Foundation has evaluated subsequent events through October 12, 2021, which is the date the financial statements have been issued and have determined no events require disclosure or adjustment to the financial statements.

## **(3) Cash and Cash Equivalents and Investments**

The Foundation considers cash deposits in banks (both restricted and unrestricted), 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. 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, 2021, 0% of total cash and investments are in Investment Agreements as defined by the trust indentures. Over 74% 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, 2020, 0% of total cash and investments are in Investment Agreements as defined by the trust indentures. Nearly 73.3% 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 the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

Cash and cash equivalents and investments balances, June 30, 2021:

	<b>Maturity</b>	<b>Rating</b>	<b>Fair Value</b>
Money Market Funds – Northern Inst. Funds	N/A	Aaa	\$ 8,478,758
Money Market Funds – Wells Fargo Treasury	N/A	Aaa	6,691,908
JP Morgan 100% US Treas	N/A	Aaa	495,401
CD – Bank of Oklahoma	N/A	Aaa	2,225,000
Cash – Zions Bancorp	N/A	N/A	1,224,250
Money Market Funds – Fidelity-Treasury	N/A	Aaa	217
Total Investments			19,115,534
Money Market Fund – Bank of the West	N/A	N/A	146,411
Demand Deposits and Cash on Hand	N/A	N/A	3,710,791
Total			\$ 22,972,736

Cash and cash equivalents and investments balances, June 30, 2020:

	<b>Maturity</b>	<b>Rating</b>	<b>Fair Value</b>
Money Market Funds – Northern Inst. Funds	N/A	Aaa	\$ 19,993,107
Money Market Funds – Wells Fargo Treasury	N/A	Aaa	7,539,432
JP Morgan 100% US Treas	N/A	Aaa	1,060,402
CD – Bank of Oklahoma	N/A	Aaa	2,225,000
Cash – Zions Bancorp	N/A	N/A	135,262
Money Market Funds – Fidelity-Treasury	N/A	Aaa	217
Total Investments			30,953,420
Money Market Fund – Bank of the West	N/A	N/A	146,396
Demand Deposits and Cash on Hand	N/A	N/A	5,060,490
Total			\$ 36,160,306

**(c) Investment Fair Value Measurement**

GASB Statement No.72 *Fair Value Measurements and Disclosures* provides the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs.

Investment and derivative instruments measured at fair value are as follows:

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

Investments by fair value level	Total as of June 30, 2021	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Debt Securities</b>				
Money Market Accounts	\$ 16,890,534	\$ 16,890,534	\$ -	\$ -
Total Debt Securities	\$ 16,890,534	\$ 16,890,534	\$ -	\$ -
<b>Certificates of Deposit</b>				
Various Bank CDs	\$ 2,225,000	\$ 2,225,000	\$ -	\$ -
Total Certificates of Deposit	\$ 2,225,000	\$ 2,225,000	\$ -	\$ -
 Total Investments by Fair Value Level	 \$ 19,115,534	 \$ 19,115,534	 \$ -	 \$ -
<b>Investment Derivative Instruments</b>				
Fixed Interest Rate Swaps	\$ 462,658	\$ -	\$ 462,658	\$ -
Total Investment Derivative Instruments	\$ 462,658	\$ -	\$ 462,658	\$ -
Investments by fair value level	Total as of June 30, 2020	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Debt Securities</b>				
Money Market Accounts	\$ 28,728,420	\$ 28,728,420	\$ -	\$ -
Total Debt Securities	\$ 28,728,420	\$ 28,728,420	\$ -	\$ -
<b>Certificates of Deposit</b>				
Various Bank CDs	\$ 2,225,000	\$ 2,225,000	\$ -	\$ -
Total Certificates of Deposit	\$ 2,225,000	\$ 2,225,000	\$ -	\$ -
 Total Investments by Fair Value Level	 \$ 30,953,420	 \$ 30,953,420	 \$ -	 \$ -
<b>Investment Derivative Instruments</b>				
Fixed Interest Rate Swaps	\$ 978,436	\$ -	\$ 978,436	\$ -
Total Investment Derivative Instruments	\$ 978,436	\$ -	\$ 978,436	\$ -

#### ***(d) Equity Method Investment***

The initial investment in Collections Resources, Inc. (CRI) was \$1,000,000. During the year ended June 30, 2021, CRI had net income of \$70,931. The carrying amount of the investment is \$606,460 at June 30, 2021. During the year ended June 30, 2020, CRI had a loss of \$392,063. The carrying amount of the investment was \$535,529 at June 30, 2020. The Foundation entered into a contingent consideration as part of the investment agreement. If certain net income from operations targets are met, CRI will pay the former CRI shareholders a portion of the income. This consideration will be reflected through the income of loss recorded under the equity method.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

#### (4) Student Loans Receivable

Student loans receivable by bond issue and status, June 30, 2021.

Bond Issue	Status		Total
	Student	Repayment	
General Fund	\$ -	\$ 11,409,540	\$ 11,409,540
Bank of America LOC	1,500	5,132,066	5,133,566
2001 Series A & B	22,713	17,094,018	17,116,731
2002 Series A	28,537	18,399,781	18,428,318
2003 Series A	114,787	27,183,210	27,297,997
2004 Series A	22,207	44,537,061	44,559,268
2007 Series A	350,605	54,514,074	54,864,679
2009 Series A, B, & C	211,906	46,486,285	46,698,191
2016	160,499	41,855,685	42,016,184
2018	-	8,584,086	8,584,086
Series 2010-1	-	12,603,215	12,603,215
Series 2010-2	-	17,073,212	17,073,212
Total	912,754	304,872,233	305,784,987
Less allowance for uncollectible principal	(1,512)	(505,171)	(506,683)
Total	\$ 911,242	\$ 304,367,062	\$ 305,278,304

Student loans receivable by bond issue and status, June 30, 2020:

Bond Issue	Status		Total
	Student	Repayment	
General Fund	\$ 10,857	\$ 10,246,334	\$ 10,257,191
Bank of America LOC	-	11,009,543	11,009,543
2001 Series A & B	1,500	5,800,744	5,802,244
2002 Series A	40,828	19,176,537	19,217,365
2003 Series A	28,542	20,698,396	20,726,938
2004 Series A	133,636	29,992,233	30,125,869
2007 Series A	43,408	49,643,311	49,686,719
2009 Series A, B & C	444,296	60,412,014	60,856,310
2016	-	9,134,181	9,134,181
2018	-	14,039,366	14,039,366
Series 2010-1	230,398	51,738,531	51,968,929
Series 2010-2	184,712	46,342,977	46,527,689
Total	1,118,177	328,234,167	329,352,344
Less allowance for uncollectible principal	(1,357)	(398,364)	(399,721)
Total	\$ 1,116,820	\$ 327,835,803	\$ 328,952,623

Student loans receivable had variable and fixed interest rates, ranging from 2.43% to 9% at June 30, 2021, and from 2.85% to 9% at June 30, 2020.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

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 \$32.2 million or about 11.8% of the outstanding balance of student loans receivable is due within one year for 2021. Generally, student loans are structured with a ten-year repayment period.

### (5) Capital Assets

Capital asset activity, year ended June 30, 2021:

	<b>Balance</b>		<b>Balance</b>		<b>Balance</b>
	<b>July 1, 2020</b>	<b>Additions</b>	<b>Deletions</b>	<b>June 30, 2021</b>	
<i>Capital Assets, Not Being Depreciated:</i>					
Land	\$ 1,011,520	\$ -	\$ -	\$ 1,011,520	
Total Capital Assets, Not Being Depreciated	1,011,520	-	-	1,011,520	
 <i>Capital Assets, Being Depreciated:</i>					
Building, Building Equipment and Improvements	6,962,531	14,587	(28,743)	6,948,375	
Furniture and Fixtures	702,170	4,650		706,820	
Data Processing Hardware	2,473,881	153,634		2,627,515	
Data Processing Software	3,413,258	18,446		3,431,704	
Vehicles	23,864			23,864	
Total Capital Assets, Being Depreciated	13,575,704	191,317	(28,743)	13,738,278	
 <i>Less Accumulated Depreciation:</i>					
Building, Building Equipment and Improvements	(3,828,904)	(298,653)	28,743	(4,098,814)	
Furniture and Fixtures	(661,464)	(11,579)		(673,043)	
Data Processing Hardware	(2,215,870)	(127,059)		(2,342,929)	
Data Processing Software	(3,191,233)	(97,352)		(3,288,585)	
Vehicles	(7,292)	(7,955)		(15,247)	
Total Accumulated Depreciation	(9,904,763)	(542,598)	28,743	(10,418,618)	
Total Capital Assets, Being Depreciated, Net	3,670,941	(351,281)	-	3,319,660	
<b>Capital Assets, Net</b>	<b>\$ 4,682,461</b>	<b>\$ (351,281)</b>	<b>\$ -</b>	<b>\$ 4,331,180</b>	

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

Capital asset activity, year ended June 30, 2020:

	<b>Balance</b>	<b>Additions</b>	<b>Deletions</b>	<b>Balance</b>
	<b>July 1, 2019</b>	<b>June 30, 2020</b>	<b>June 30, 2020</b>	<b>June 30, 2020</b>
<i>Capital Assets, Not Being Depreciated:</i>				
Land	\$ 1,011,520	\$ -	\$ -	\$ 1,011,520
Total Capital Assets, Not Being Depreciated	1,011,520	-	-	1,011,520
 <i>Capital Assets, Being Depreciated:</i>				
Building, Building Equipment and Improvements	6,891,527	81,848	(10,844)	6,962,531
Furniture and Fixtures	719,042	14,230	(31,102)	702,170
Data Processing Hardware	2,535,928	152,270	(214,317)	2,473,881
Data Processing Software	3,356,728	217,736	(161,206)	3,413,258
Vehicles	89,550	23,864	(89,550)	23,864
Total Capital Assets, Being Depreciated	13,592,775	489,948	(507,019)	13,575,704
 <i>Less Accumulated Depreciation:</i>				
Building, Building Equipment and Improvements	(3,542,928)	(296,820)	10,844	(3,828,904)
Furniture and Fixtures	(682,124)	(10,442)	31,102	(661,464)
Data Processing Hardware	(2,322,825)	(107,362)	214,317	(2,215,870)
Data Processing Software	(3,271,158)	(81,281)	161,206	(3,191,233)
Vehicles	(89,550)	(7,292)	89,550	(7,292)
Total Accumulated Depreciation	(9,908,585)	(503,197)	507,019	(9,904,763)
Total Capital Assets, Being Depreciated, Net	3,684,190	(13,249)	-	3,670,941
<b>Capital Assets, Net</b>	<b>\$ 4,695,710</b>	<b>\$ (13,249)</b>	<b>\$ -</b>	<b>\$ 4,682,461</b>

Depreciation expense, segregated by classification, is as follows:

	<b>Year Ended</b>	<b>Year Ended</b>
	<b>June 30, 2021</b>	<b>June 30, 2020</b>
Building and Building Improvements	\$ 298,653	\$ 296,820
Furniture and Fixtures	11,579	10,442
Data Processing Hardware	127,059	107,362
Data Processing Software	97,352	81,281
Vehicles	7,955	7,292
Total Accumulated Depreciation	\$ 542,598	\$ 503,197

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

### (6) Bonds Payable and Notes Payable

Long-term liabilities for the year ended June 30, 2021:

	*Balance			Due Within	Balance
	July 1, 2020	Increases	Decreases	One Year	June 30, 2021
Bonds Payable	\$ 274,133,000	\$ -	\$ (43,131,450)	\$ (4,190,000)	\$ 226,811,550
Bond Premium Payable	155,627	-	(100,833)	(54,794)	54,793
Total Long-Term Liabilities	<u>\$ 274,288,627</u>	<u>\$ -</u>	<u>\$ (43,232,283)</u>	<u>\$ (4,244,794)</u>	<u>\$ 226,811,550</u>

Long-term liabilities for the year ended June 30, 2020:

	*Balance			Due Within	Balance
	July 1, 2019	Increases	Decreases	One Year	June 30, 2020
Bonds Payable	\$ 351,300,000	\$ -	\$ (77,167,000)	\$ (13,640,000)	\$ 260,493,000
Bond Premium Payable	347,771	-	(192,144)	(100,834)	54,793
Total Long-Term Liabilities	<u>\$ 351,647,771</u>	<u>\$ -</u>	<u>\$ (77,359,144)</u>	<u>\$ (13,740,834)</u>	<u>\$ 260,547,793</u>

\*Beginning balance includes current portion of long-term liabilities.

Student Loan Revenue bonds activity and balances by bond issue for the year ended June 30, 2021:

Bond Issue	Interest Rate Range	Maturity Range	Bonds	Issued/ (Retired)	Bonds
			Outstanding June 30, 2020	FY 2021	Outstanding June 30, 2021
2001 Series A-1	3.75%	9/1/2031	6,250,000	-	6,250,000
2002 Series A-2	3.80%	11/1/2032	5,850,000	-	5,850,000
2003 Series A-2	3.80%	9/1/2033	10,000,000	-	10,000,000
2004 Series A-1	3.88%	4/1/2034	11,650,000	-	11,650,000
2007 Series A	Variable	4/1/2037	64,400,000	-	64,400,000
2009 Series B & C	3.90% to 4.10%	9/1/2018-9/1/2020	8,030,000	(8,030,000)	-
Series 2010-1	Variable	12/1/18-12/1/38	52,865,000	(5,805,000)	47,060,000
Series 2010-2	Variable	12/1/20-12/1/38	44,620,000	(4,445,000)	40,175,000
Series 2013-1	Variable	1/2/2025	49,988,000	(22,244,450)	27,743,550
Series 2016	Variable	6/30/2024	7,469,000	(890,000)	6,579,000
Series 2018	Variable	12/13/2021	13,011,000	(1,717,000)	11,294,000
			274,133,000	(43,131,450)	231,001,550
2009 Series A, B & C and 2010-1 Bond Premium			155,627	(100,833)	54,794
			<u>\$ 274,288,627</u>	<u>\$ (43,232,283)</u>	<u>\$ 231,056,344</u>

As of June 30, 2021, interest rates for the variable bond issues are as follows: 2007 Series A1 2.03%, 2007 Series A2 (taxable) 1.44%, 2010 Series A-3 1.33%, Series 2010-2-A2 1.43%, Series 2010-2-A3 1.35%, Series 2013-1 (taxable) A-1 .873%, Series 2016 1.085%, and Series 2018 .885%.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

Student Loan Revenue bonds activity and balances by bond issue for the year ended June 30, 2020:

Bond Issue	Interest Rate Range	Maturity Range	Bonds Outstanding June 30, 2019	Issued/ (Retired) FY 2020	Bonds Outstanding June 30, 2020
2001 Series A-1	3.75%	9/1/2031	6,250,000	-	6,250,000
2002 Series A-2	3.80%	11/1/2032	5,850,000	-	5,850,000
2003 Series A-2	3.80%	9/1/2033	10,000,000	-	10,000,000
2004 Series A-1	3.88%	4/1/2034	11,650,000	-	11,650,000
2007 Series A	Variable	4/1/2037	64,400,000	-	64,400,000
2009 Series B & C	3.90% to 4.10%	9/1/2018-9/1/2020	30,405,000	(22,375,000)	8,030,000
Series 2010-1	Variable	12/1/18-12/1/38	62,310,000	(9,445,000)	52,865,000
Series 2010-2	Variable	12/1/20-12/1/38	53,800,000	(9,180,000)	44,620,000
Series 2013-1	Variable	1/2/2025	79,878,000	(29,890,000)	49,988,000
Series 2016	Variable	6/30/2024	9,634,000	(2,165,000)	7,469,000
Series 2018	Variable	12/13/2021	17,123,000	(4,112,000)	13,011,000
			351,300,000	(77,167,000)	274,133,000
2009 Series A, B & C and 2010-1 Bond Premium			347,771	(192,144)	155,627
			\$ 351,647,771	\$ (77,359,144)	\$ 274,288,627

As of June 30, 2020, interest rates for the variable bond issues are as follows: 2007 Series A1 2.13%, 2007 Series A2 (taxable) 1.44%, 2010 Series A-3 1.55%, Series 2010-2-A2 1.65%, Series 2010-2-A3 1.51%, Series 2013-1(taxable) A-1 .873%, Series 2016 1.085%, and Series 2018 .885%.

Interest is payable on a semi-annual basis except for certain taxable bonds, the 2016 and the 2018 which are paid monthly, and the 2010-A-1, A-2 and A-3, 2010-2 A-2 and A-3 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.

Principal maturity and interest requirements on bonds payable are as follows:

June 30, 2021		
Year	Bond Principal	Bond Interest
2022	4,190,000	4,330,406
2023	3,100,000	4,313,801
2024	1,700,000	4,238,300
2025-2029	36,022,550	23,704,613
2030-2034	33,750,000	17,811,962
2035-2039	140,945,000	6,674,536
2049	11,294,000	999,293
	\$ 231,001,550	62,072,911

Bond interest for the variable bond issues was calculated using the Securities Industry and Financial Market Association (SIFMA), and the London Inter-Bank Offer Rate (LIBOR) rates as of June 30, 2021 (see bonds activity schedules for lists of variable rates at June 30, 2021 and 2020).



## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

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, 2021, there are no arbitrage rebate liabilities.

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. 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, 2021 and 2020, there are no excess earnings liabilities.

NMEAF maintains a line of credit with a financial institution to cover operational liquidity. The borrowing limit on the line of credit is \$20 million. The line of credit had an outstanding balance of \$15,350,000 and \$9,700,000 as of June 30, 2021 and 2020, respectively. Interest is due monthly and is set at the current Libor rate plus 70 basis points for the used portion of the line or 1.17% as of June 30, 2021 and 1.28% as of June 30, 2020. The unused portion has a fixed interest rate of 0.40%. \$5,650,000 was drawn on the line during 2021.

NMEAF was granted a Paycheck Protection Program loan from Bank of the West in March 2021 for \$799,525 in order to offset lost revenues from collections activities. The loan had an outstanding balance of \$799,525 as of June 30, 2021. The loan was issued pursuant to the Paycheck Protection Program under Division A, Title I of the CARES Act, which was enacted March 27, 2020. The loan matures on Feb 25, 2026 and bears interest of 1% per annum, and principal/interest monthly commence January 25, 2021. The funds from the loan may only be used for payroll costs, costs used to continue group healthcare benefits, rent, utilities, and other covered expenditures through September 9, 2021. Under the terms of the Act, certain amounts of the loan may be forgiven and interest foregone if they are used for qualifying expenses. NMEAF intends to use the entire loan amount for these qualifying expenses.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to the Financial Statements  
Fiscal Years Ended June 30, 2021 and 2020

### (7) Derivative Instrument

#### (a) Summary

At June 30, 2021, NMEAF had the following derivative instruments outstanding:

Type	Notional Amount	Effective Date	Maturity Date	Terms	Fair Value
Receive Fixed Interest Rate Swap	\$ 10,690,000	9/22/2010	11/28/2025	Floating Monthly LIBOR Rate Spread +.699%	\$ 462,658
Total Fair Value					<u>\$ 462,658</u>

At June 30, 2020, NMEAF had the following derivative instruments outstanding:

Type	Notional Amount	Effective Date	Maturity Date	Terms	Fair Value
Receive Fixed Interest Rate Swap	\$ 16,300,000	9/22/2010	11/28/2025	Floating Monthly LIBOR Rate Spread +.699%	\$ 939,081
Receive Fixed Interest Rate Swap	\$ 8,030,000	9/16/2009	9/1/2020	Receive 3.075% pay daily average 3 Month LIBOR	\$ 39,355
Total Fair Value					<u>\$ 978,436</u>

It was determined that these derivative instruments did not meet the criteria for hedge effectiveness and therefore the decrease in value of \$515,778 and increase in value of \$45,171 is reported as investment revenue for the years ended June 30, 2021 and 2020, respectively. The fair value of the interest rate swaps were estimated based on the present value of the estimated future cash flows.

#### (b) Risks

##### *Credit risk*

The counter party to these interest rate swaps is Royal Bank of Canada. The credit ratings for Royal Bank of Canada are Aaa (long term) and P-1 (short term) by Moody's Investor Service and AA and F1+ by Fitch Ratings.

NMEAF's policy is to require counterparty collateral posting provisions in its derivative instruments. The terms of this interest rate swap require full collateralization in an asset position net of the effect of netting arrangements should the counterparty's credit rating fall below A2 and P-1 as issued by Moody's Investor Service and A and F1 as issued by Fitch Ratings. Collateral posted is to be in the form of Cash, U.S Treasury or Agency Securities.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

The fair value of this interest rate swap represents the maximum loss that would be recognized at the reporting date if the counterparty failed to perform as contracted.

### *Interest Rate Risk*

The Foundation is exposed to interest rate risk on its interest rate swap. As LIBOR increases, NMEAF's net payment on the swap increases.

## **(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, 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 \$1,258,164 and \$1,222,884 based upon estimated costs for the Corporation's years ended September 30, 2021 and 2020, respectively.

### ***(b) Collection Fees***

NMEAF under the entity name of 180 Resolutions has entered into an agreement to provide collections services for the NMSLGC's loan portfolio. The collection fee will be based on the default placement with the last collection agency.

## **(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 3.5% of his or her pay to the Plan. The Foundation contributes 7% of the participant's compensation 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 1,000 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, 2021 and 2020, the Foundation's contribution was \$237,263 and \$265,111, respectively.

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

### **(10) Related Parties**

The Foundation's board of directors is made up of five members. The Foundation no longer requires regents of post-secondary schools to be represented on the Board, but does require two Board members to represent educational institutions, because NMEAF no longer originates or disburses student loans. In addition, the State Treasurer and two members representing financial institutions are required members of the Board.

The Foundation has bank deposits 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 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.

The Foundation has entered into a shared services agreement with CRI to provide operational support and the renting of office space. Operational support provided may be charged to CRI at the cost of the service provided by the Foundation. Office space provided is at a cost equal to the same amount charged to others renting office space from the Foundation. There were charges for operational support in fiscal years 2021 and 2020 of \$107 thousand and \$0 respectively. Rent received by the Foundation from CRI was \$0 and \$3,200 for the years ended June 30, 2021 and 2020, respectively. In addition, during the year ended June 30, 2020, the Foundation provided a line of credit to CRI at a rate of 1.66%, compounded monthly. The balance was \$127,047 at year-end.

### **(11) 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 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.

The ED conducted a site visit in December 2019 for a review covering the period of October 1, 2017 through September 30, 2019. On March 30, 2021, the ED issued a program review report. NMEAF has sent responses as a follow up to this report which was still open as of June 30, 2021.

The ED conducted a site visit in December 2017 for a review covering the period of October 1, 2015 through September 30, 2017. A final program review determination letter was issued

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

### Notes to the Financial Statements Fiscal Years Ended June 30, 2021 and 2020

February 18, 2020, which states that all requirements have been satisfactorily addressed. The program review was closed and no further actions are required.

#### *(c) 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. The Foundation carries commercial insurance to cover losses related to such risks to which it may be exposed.

#### *(d) Lease Commitments*

During the year ended June 30, 2021 and 2020 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. The monthly minimum recurring charge associated with this agreement is \$4,146, with an initial term of 36 months. A new agreement was made with the service provider and the agreement is effective September 1, 2021 through March 2, 2022 and will auto-renew thereafter. The monthly minimum recurring charge associated with this agreement is \$2,771.

The Foundation leases its Copier/Printing Equipment from Xerox. This operating lease was entered into on June 10, 2017 for a 12-month term. This term automatically renews unless the lessee or lessor notifies the other party within thirty days that it does not wish to renew. The current minimum monthly amount is \$103.

The total expense relating to these lease commitments included on the Statement of Revenues, Expenses and Changes in Net Position as General and Administration – Other Expense for the years ended June 30, 2021 and 2020 was \$58,396 and \$62,522, respectively.

The total minimum lease expense commitment under the above leases is due as follows, as of June 30, 2021:

#### Minimum Lease Commitment

	As of June 30, 2021
Year ending June 30, 2021	37,238
	<u>\$ 37,238</u>

#### *(e) Special Allowance Revenue*

During the year ended June 30, 2021 and 2020, Independent Auditors completed agreed-upon procedures engagements of the 9.5% floor according to Department of Education's specifications. The June 30, 2021 and 2020 reports were completed without findings.

## NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

Notes to the Financial Statements  
Fiscal Years Ended June 30, 2021 and 2020

### *(f) Mandatory Redemptions*

In addition to scheduled maturities, mandatory redemptions are required in series 2013-1 A-1, 2016, 2018, 2010-1 A-1 and A-3 and 2010-2 A-2 and A-3. The amount of these redemptions is determined on a quarterly basis (monthly for the 2013, 2016 and 2018 series), according to the availability of cash not already earmarked for expenses and debt service. Budgeted mandatory redemptions are included as short-term bonds payable in the amounts of \$4,190,000 and \$13,640,000 as of June 30, 2021 and 2020, respectively.

**NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**

Schedule of Expenditures of Federal Awards  
For the Year Ended June 30, 2021

<u>Federal Agency</u>	<u>Federal CFDA Number</u>	<u>Expenditures</u>
U.S. Department of Education direct:		
Federal Family Education Loan Program - Lender	84.032-L	
Interest Subsidies		\$ <u>733,032</u>
Total Department of Education Direct Program		\$ <u>733,032</u>
<b>Total expenditures of federal awards</b>		\$ <u>733,032</u>

# NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION

## Schedule of Expenditures of Federal Awards For the Year Ended June 30, 2021

### **NOTE 1. ORGANIZATION**

The New Mexico Educational Assistance Foundation (NMEAF) dba New Mexico Student Loans 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. NMEAF's primary purpose is to provide a program for making, financing, holding and purchasing federally insured educational loans. NMEAF also services loans and provides administrative support and other services for in-state educational and lending institutions; federal financial aid programs; and the New Mexico Student Loan Guarantee Corporation (NMSLGC), a quasi-governmental, not-for-profit entity designated to operate as a guarantee agency under the Federal Family Education Loan Program (FFELP).

### **NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

#### *a. Basis of Presentation*

The accompanying Schedule of Expenditures of Federal Awards includes all federal assistance to NMEAF that had activity during fiscal year 2021. This schedule has been prepared on the accrual basis of accounting. Revenues are recorded for financial reporting purposes when NMEAF has met the qualifications of the respective program. The accompanying schedule of expenditures of federal awards (the "Schedule") includes the federal grant activity of NMEAF under programs of the federal government for the year ended June 30, 2021. The information in this Schedule is presented in accordance with the requirements of the Office of Management and Budget (OMB) Uniform Guidance. Because the Schedule presents only a selected portion of the operations of NMEAF, it is not intended to and does not present the financial positions, changes in financial position or cash flows of NMEAF.

#### *b. Federal Financial Assistance*

NMEAF receives interest subsidies on behalf of eligible students during qualified periods and special allowance on all qualifying loans. To receive payments of interest subsidies and special allowance, NMEAF must submit quarterly reports to the U.S. Department of Education.

### **NOTE 3. STUDENT LOAN NOTES**

The U.S. Government pays NMEAF interest on eligible Stafford loans from the date of acquisition until the end of the grace period. In addition, for certain eligible loans, a special allowance is paid at the end of each quarter, which represents supplemental interest on outstanding insured loans. The special allowance is calculated using an annual rate, which is determined periodically and is based on the average interest rate for 91-day U.S. Treasury Bills, or the average 3-month commercial paper rate. Effective April 1, 2012, the Foundation elected to waive the 3-month commercial paper rate in favor of the 1-month LIBOR rate.



## **NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**

### **Schedule of Expenditures of Federal Awards For the Year Ended June 30, 2021**

Student loan notes originated or purchased by NMEAF have been guaranteed by the NMSLGC and reinsured by the U.S. government, provided applicable program requirements have been met by the original lender or NMEAF with respect to such loans. Guaranteed Student Loans Receivable, under Federal Family Education Loan Program is \$302,627,959 at June 30, 2021. NMEAF did not originate any loans under Federal Family Education Loan Program during the Fiscal Year Ended June 30, 2021. The Foundation has elected not to use the 10% de minimis indirect cost rate allowed under the Uniform Guidance.



**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

The Board of Directors  
New Mexico Educational Assistance Foundation  
Albuquerque, New Mexico

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of New Mexico Educational Assistance Foundation (the "Foundation"), which comprise the statement of net position as of June 30, 2021, and the related statements of revenues, expenses, and changes in net position and cash flows for the year then ended, and the related notes to the financial statements, and have issued our report thereon October 12, 2021.

**Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the Foundation's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Foundation's internal control. Accordingly, we do not express an opinion on the effectiveness of the Foundation's internal control.

*A deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

**OFFICE LOCATIONS**

**TEXAS** | Waco | Temple | Hillsboro | Houston  
**NEW MEXICO** | Albuquerque





## Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Foundation's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

## Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*Pattillo, Brown & Hill, LLP*

Pattillo, Brown & Hill, L.L.P.  
Albuquerque, New Mexico  
October 12, 2021

## OFFICE LOCATIONS

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**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR THE MAJOR PROGRAM  
AND REPORT ON INTERNAL CONTROL OVER COMPLIANCE IN ACCORDANCE WITH  
THE UNIFORM GUIDANCE**

The Board of Directors  
New Mexico Educational Assistance Foundation  
Albuquerque, New Mexico

**Report on Compliance for the Major Federal Program**

We have audited the New Mexico Educational Assistance Foundation's (the Foundation's) compliance with the types of compliance requirements described in the *OMB Compliance Supplement* that could have a direct and material effect on the Foundation's major federal program for the year ended June 30, 2021. The Foundation's major federal program is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

**Management's Responsibility**

Management is responsible for compliance with federal statutes, regulations, and the terms and conditions of its federal awards applicable to its federal programs.

**Auditor's Responsibility**

Our responsibility is to express an opinion on compliance for the Foundation's major federal program based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Foundation's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of the Foundation's compliance.

**Opinion on Each Major Federal Program**

In our opinion, the Foundation complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on its major federal programs for the year ended June 30, 2021.

---

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### Report on Internal Control over Compliance

Management of the Foundation is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the Foundation's internal control over compliance with the types of requirements that could have a direct and material effect on the major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the Foundation's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that were not identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

*Pattillo, Brown & Hill, LLP*

Pattillo, Brown & Hill, L.L.P.  
Albuquerque, New Mexico  
October 12, 2021

#### OFFICE LOCATIONS

TEXAS | Waco | Temple | Hillsboro | Houston  
NEW MEXICO | Albuquerque

**NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**

Schedule of Findings and Questioned Costs  
Year Ended June 30, 2021

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**SECTION I – SUMMARY OF AUDITOR’S RESULTS**

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***Financial Statements***

Type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP: *Unmodified*

Internal control over financial reporting:  
Material Weakness(es) identified? No  
Significant deficiency(ies) identified? None reported

Noncompliance material to financial statements noted? No

***Federal Awards***

Internal control over major federal programs:  
Material weakness(es) identified? No  
Significant deficiency(ies) identified? None reported

Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)? No

Identification of major programs:

<i>CFDA Number(s)</i>	<i>Name of Federal Program or Cluster</i>	<i>Type of Auditor’s Report Issued on Compliance for the Major Federal Program</i>
84.032-L	Federal Family Education Loan Program – Lenders	Unmodified

Dollar threshold used to distinguish Between type A and type B programs: \$750,000

Auditee qualified as low-risk auditee? Yes

**NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**

Schedule of Findings and Questioned Costs  
Year Ended June 30, 2021

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**SECTION II – FINDINGS – FINANCIAL STATEMENT AUDIT**

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No matters reported

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**SECTION III – FINDINGS AND QUESTIONED COSTS – MAJOR FEDERAL AWARD  
PROGRAMS AUDIT**

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No matters reported



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**APPENDIX C**  
**FORM OF THE INDENTURE**

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**CONFORMED**

**INDENTURE OF TRUST**

by and between

**NEW MEXICO EDUCATIONAL ASSISTANCE FOUNDATION**

and

**ZIONS FIRST NATIONAL BANK,**  
as Trustee

\$110,000,000  
New Mexico Educational Assistance Foundation  
Education Loan Bonds

Senior Series 1998A-1  
Senior Series 1998A-2  
Senior Series 1998A-3 (Taxable)

and

First Subordinate Series 1998B-1

and

Second Subordinate Series 1998C-1

Dated as of February 1, 1998

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INDENTURE OF TRUST

**THIS INDENTURE OF TRUST**, dated as of February 1, 1998 (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 **ZIONS FIRST NATIONAL BANK**, a national banking association duly organized and existing under the laws of the United States having its principal trust office at Suite 930, 600 Seventeenth Street, Denver, Colorado 80202 (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 Foundation also provides a student loan program involving the origination of student loans which are not made under the Higher Education Act; 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 \$110,000,000, consisting of \$44,400,000 of Education Loan Bonds, Senior Series 1998A-1 (the "Series 1998A-1 Bonds"), \$44,400,000 of Education Loan Bonds, Senior Series 1998A-2 (the "Series 1998A-2 Bonds"), \$10,000,000 of Education Loan Bonds, Senior Series 1998A-3 (Taxable) (the "Series 1998A-3 Taxable Bonds") (the Series 1998A-1 Bonds, the Series 1998A-2 Bonds and the Series 1998A-3 (Taxable) Bonds are collectively referred to herein as the "Series 1998A Bonds"), \$9,200,000 of Education Loan Bonds, First Subordinate Series 1998B-1 (the "Series 1998B Bonds") and \$2,000,000 of Education Loan Bonds, Second Subordinate Series 1998C-1 (the "Series 1998C Bonds") (the Series 1998A Bonds, the Series 1998B Bonds and the Series 1998C Bonds are collectively referred to herein as the "Series 1998 Bonds"), and, to secure the payment of the Series 1998 Bonds and any additional bonds on a parity with any of the Series 1998 Bonds (the "Additional Bonds") (the Series 1998 Bonds and any Additional Bonds are referred to herein as the "Bonds") and the payments to any Reciprocal Payor, it has by proper corporate action authorized the execution and delivery of this Indenture; 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 any Reciprocal Payor (the Reciprocal Payor evidencing its consent by its execution and delivery of a Derivative Product) 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 any Derivative Product by a Reciprocal Payor 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 any Reciprocal Payor (to secure the payment of any and all amounts which may from time to time become due and owing to a Reciprocal Payor pursuant to any Derivative Product), 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 5.01(a) hereof;

#### GRANTING CLAUSE C

The Financed Eligible Loans;

#### GRANTING CLAUSE D

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

#### GRANTING CLAUSE E

The rights of the Foundation in and to any Derivative Product; provided, however, that this Granting Clause E shall not be for the benefit of a Reciprocal Payor with respect to its Derivative Product; 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 payments due and payable to any Reciprocal Payor) or on the Bonds, and for the performance of and compliance with the obligations, covenants, and conditions of this Indenture, as if all the Bonds and other Obligations 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 payments due and payable to any Reciprocal Payor), then this Indenture (other than Sections 4.13 and 7.04 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 in Exhibits D and E hereto and 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 5.01(a)(i) hereof and further described in Section 5.02 hereof, including any Accounts and Subaccounts created therein.

“*Additional Bonds*” shall mean any Bonds issued pursuant to Section 2.12 of this Indenture.

“*Administration Fund*” shall mean the fund by that name created in Section 5.01(a)(iv) and hereof further described in Section 5.06 hereof.

“*Administrative Expenses*” shall mean (a) the fees and expenses of the Trustee, the Auction Agent, the Market Agent, any Broker-Dealer and any paying agent, registrar or fiduciary; (b) the fees and expenses of any remarketing agent then acting under a Supplemental Indenture with respect to variable rate Bonds; (c) the fees and expenses due to any credit provider following the date of issuance of any Bonds for which a credit facility or liquidity facility is in place; (d) the fees of the Servicer under any servicing agreement; (e) 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; (f) commitment fees, transfer fees, purchase premiums and loan origination fees on Financed Eligible Loans; (g) fees and expenses associated with the delivery of a substitute credit facility or liquidity facility under a Supplemental Indenture; (h) fees and expenses associated with (but not payments under) Derivative Products; (i) the costs of remarketing any variable rate Bonds, (j) fees and expenses in connection with the Foundation’s plan for doing business and complying therewith, (k) fees and expenses incurred in connection with calculating rebate and Excess Interest amounts relating to any Tax-Exempt Bonds; (l) interest on the Fuji Note and costs incurred in connection with the Fuji Note and the Fuji Line; and (m) expenses incurred for the Foundation’s maintenance and operation of its Program as a direct consequence of this Indenture, the Bonds 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.

“*Agent Member*” shall mean a member of, or participant in, the Securities Depository.

“*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 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.

“*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, with respect to the Series 1998 Tax-Exempt Bonds, the yield on the Series 1998 Tax-Exempt Bonds computed in accordance with the Tax Regulatory Certificate and, with respect to any Additional Bonds issued as Tax-Exempt Bonds, the yield on such Additional Bonds computed in accordance with the Code.

“*Bonds*” shall mean the Series 1998 Bonds and any Additional Bonds.

“*Business Day*” shall mean (a) with respect to the Series 1998C Bonds, 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, and (b) with respect to the Series 1998A Bonds and the Series 1998B Bonds, the definition of Business Day found in Exhibit D or Exhibit E to this Indenture, as applicable.

“*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 Tax-Exempt 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.

“*Computation Date*” shall mean each date described as such in the Tax Regulatory Certificate.

“*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, with respect to the Series 1998 Bonds, February 24, 1998, and with respect to any Additional Bonds, the date of original issuance and delivery of such Bonds to the Underwriter.

“*Debt Service Reserve Fund*” shall mean the Fund by that name created in Section 5.01(a)(iii) hereof and further described in Section 5.04 hereof, including any Accounts and Subaccounts created therein.

“*Debt Service Reserve Fund Requirement*” shall mean (a) an amount equal to 5% of the principal amount of the Series 1998 Bonds then Outstanding (the Debt Service Reserve Fund Requirement for the Tax-Exempt Debt Service Reserve Account being an amount equal to 5% of the principal amount of the Series 1998 Tax-Exempt Bonds then Outstanding and the Debt Service Reserve Fund Requirement for the Taxable Debt Service Reserve Account being an amount equal to 5% of the principal amount of the Series 1998A-3 (Taxable) Bonds then Outstanding) plus (b) an amount, if any, required to be on deposit in such Debt Service Reserve Fund upon the issuance of any Additional Bonds pursuant to the Supplemental Indenture authorizing the issuance of such Additional Bonds; provided, however, that the aggregate Debt Service Reserve Fund Requirement shall never be reduced to less than \$300,000. [As amended by the Fourteenth Supplemental Indenture (December 2021).

“*Derivative Payment Date*” shall mean, with respect to a Derivative Product, any date specified in the Derivative Product on which both or either of the Foundation Derivative Payment and/or a Reciprocal Payment is due and payable under the Derivative Product.

“*Derivative Product*” shall mean a written contract or agreement between the Foundation and a Reciprocal Payor, which provides that the Foundation’s obligations thereunder will be conditioned on the absence of (i) a failure by the Reciprocal Payor to make any payment required thereunder when due and payable, or (ii) a default thereunder with respect to the financial status of the Reciprocal Payor, and:

(a) under which the Foundation is obligated to pay (whether on a net payment basis or otherwise) on one or more scheduled and specified Derivative Payment Dates, the Foundation Derivative Payments in exchange for the Reciprocal Payor’s obligation to pay (whether on a net payment basis or otherwise), or to cause to be paid, to the Foundation, Reciprocal Payments on one or more scheduled and specified Derivative Payment Dates in the amounts set forth in the Derivative Product;

(b) for which the Foundation’s obligation to make Foundation Derivative Payments may be secured by a pledge of and lien on the Trust Estate on an equal and ratable basis with any class of the Foundation’s Outstanding Bonds and which Foundation

Derivative Payments may be equal in priority with any priority classification of the Foundation’s Outstanding Bonds; and

(c) under which Reciprocal Payments are to be made directly to the Trustee for deposit into the Revenue Fund.

“*Derivative Value*” shall mean the value of the Derivative Product, if any, to the Reciprocal Payor, provided that such value is defined and calculated in substantially the same manner as amounts are defined and calculated pursuant to the applicable provisions of an ISDA Master Agreement.

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

“*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 (a) 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) or (b) otherwise permitted to be acquired or originated by the Foundation pursuant to its Program (provided that loans described in this clause (b) shall not be originated or acquired pursuant to this Indenture unless the Trustee and the Foundation shall have received a Favorable Opinion (with respect to the use of the proceeds of Tax-Exempt Bonds) and a written confirmation from each Rating Agency that the origination or acquisition of such additional loans (or a particular amount thereof) will not adversely affect the Rating on any of the Bonds then Outstanding).

“*Eligible Loan Acquisition Certificate*” shall mean a certificate signed by an Authorized Officer of the Foundation in substantially the form attached as Exhibit K hereto.

“*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 Tax-Exempt 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 Regulatory 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 Regulatory Certificate or as shall otherwise be necessary, in the opinion of Bond Counsel, to prevent the Tax-Exempt 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 Regulatory 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 Tax-Exempt Bonds.

“*Financed*” or “*Financing*,” when used with respect to Eligible Loans, shall mean or refer to Eligible Loans (a) acquired or originated by the Foundation with balances in the Acquisition Fund or otherwise deposited in or accounted for in the Acquisition Fund or otherwise constituting a part of the Trust Estate and (b) Eligible Loans substituted or exchanged for Financed Eligible Loans, but does not include Eligible Loans released from the lien of this Indenture and sold or transferred, to the extent permitted by this Indenture.

“*First Subordinate Bonds*” shall mean the Series 1998B Bonds and any Additional Bonds secured on a parity with the Series 1998B Bonds.

“*First Subordinate Obligations*” shall mean First Subordinate Bonds and any Derivative Product, the priority of payment of which is equal with that of First Subordinate Bonds.

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

“*Fitch*” means Fitch IBCA, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns.

“*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 Derivative Payment*” shall mean a payment required to be made by or on behalf of the Foundation due to a Reciprocal Payor pursuant to a Derivative Product.

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

“*Fuji Bank*” shall mean The Fuji Bank, Limited, Chicago Branch.

“*Fuji Line*” shall mean the Loan and Collateral Agreement dated as of June 1, 1997, as amended, between the Foundation and Fuji Bank.

“*Fuji Note*” means the promissory note of the Foundation to Fuji Bank dated June 1, 1997, outstanding in the principal amount of \$60,230,000.

“*Funds*” shall mean each of the Funds created pursuant to Section 5.01(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 Guaranty 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.

“*Highest Priority Obligations*” shall mean, (a) at any time when Senior Obligations are Outstanding, the Senior Obligations, (b) at any time when no Senior Obligations are Outstanding, the First Subordinate Obligations, and (c) at any time when no Senior Obligations or First Subordinate Obligations are Outstanding, the Second Subordinate Obligations.

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

“*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 100% 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 1998 Tax-Exempt Bonds, May 1 and November 1 of each year, commencing May 1, 1998 with respect to the Series 1998A-1 Bonds, the Series 1998A-2 Bonds and the Series 1998B Bonds, and November 1, 1998 with respect to the Series 1998C Bonds, (b) with respect to the Series 1998A-3 (Taxable) Bonds, the first Business Day following the end of each Interest Period therefor, commencing March 24, 1998, and (c) with respect to any Additional Bonds, the Interest Payment Dates specified for such Additional Bonds in the Supplemental Indenture authorizing the issuance of such Additional Bonds.

“*Investment Agreement*” shall mean, collectively, the two Investment Agreements, each dated February 24, 1998 and each between the Trustee and Bayerische Landesbank Girozentrale, acting through its New York Branch, the Master Repurchase Agreement dated as of May 18, 1999 between Société Générale, New York Branch and the Trustee, and any other investment agreement approved by each Rating Agency. [As amended by Second Supplemental (May 1999)]

“*Investment Instructions*” shall mean the investment instructions delivered to the Foundation and the Trustee by Bond Counsel on the Date of Issuance, and any amendments or supplements thereto.

“*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) interest-bearing time or demand deposits, certificates of deposit or other similar banking arrangements with a maturity of six 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 “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch; [As amended by Second Supplemental (May 1999)]

(c) 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 6 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 “Aa3/P-1” or higher by Moody’s and, if rated by Fitch, “AA-/F-1+” or higher, and, if commercial paper is outstanding, commercial paper which is rated “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch; [As amended by Second Supplemental (May 1999) and Thirteenth Supplemental (May 2013)]

(d) 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 “Aa2/P-1” or higher by Moody’s and, if rated by Fitch, “AA/F-1+” or

higher and, if commercial paper is outstanding, commercial paper which is rated “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch; [As amended by Second Supplemental (May 1999) and Thirteenth Supplemental (May 2013)]

(e) 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 Fitch, “AAA” by Fitch; 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;

(f) 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 “Aa2/P-1” or higher by Moody’s and, if rated by Fitch, “AA/F-1+” or higher and, if commercial paper is outstanding, commercial paper which is rated “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch; [As amended by Thirteenth Supplemental (May 2013)]

(g) 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 “Aa3/P-1” or higher by Moody’s and, if rated by Fitch, “AA-/F-1+” or higher and, if commercial paper is outstanding, commercial paper which is rated “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch or a counterparty approved in writing by Moody’s and Fitch, respectively; [As amended by Second Supplemental (May 1999) and Thirteenth Supplemental (May 2013)]

(h) 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 “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch for agreements or contracts with a maturity of 12 months or less; (ii) unsecured long-term debt is rated “Aa3/P-1” or higher by Moody’s and, if rated by Fitch, “AA-/F-1+” or higher and, if commercial paper is outstanding, commercial paper which is rated “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch for agreements or contracts with a maturity of 24 months or less, but more than 12 months, or (iii) unsecured long-term debt which is rated “Aa2/P-1” or higher by Moody’s and, if rated by Fitch, “AA/F-1+” or higher and, if commercial paper is outstanding, commercial paper which is rated “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch for agreements or contracts with a maturity of more than 24 months, or, in each case, by an insurance company whose claims-paying ability is so rated. [As amended by Second Supplemental (May 1999) and Thirteenth Supplemental (May 2013)]

(i) 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);

(j) “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 Moody’s and, if rated by Fitch, by Fitch for long-term or short-term debt or shares of a so-called money market or mutual fund rated “Aaa” by Moody’s and, if rated by Fitch, “AAA” or higher by Fitch, 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[As amended by Thirteenth Supplemental (May 2013)];

(k) commercial paper, including that of the Trustee, which is rated in the single highest classification, “P-1” by Moody’s and, if rated by Fitch, “F-1+” by Fitch, and which matures not more than 270 days after the date of purchase;

(l) investments in a money market fund rated “Aaa” by Moody’s and, if rated by Fitch, “AAA” by Fitch, including funds for which the Trustee or an affiliate thereof acts as investment advisor or provides other similar services[As amended by Thirteenth Supplemental (May 2013)];

(m) the Investment Agreement; and

(n) any other investment which each Rating Agency confirms will not adversely affect its Rating on any of the Bonds.

“ISDA Master Agreement” shall mean the ISDA Interest Rate and Currency Exchange Agreement, copyright 1992, as amended from time to time, and as in effect with respect to any Derivative Product.

“Moody’s” shall mean Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns.

“Obligations” shall mean Senior Obligations, First Subordinate Obligations and Second Subordinate Obligations and any other Additional Bonds subordinate thereto.

“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 a Derivative Product, a Derivative Product which has not expired or been terminated, unless in all cases provision has been made for such payment pursuant to Section 10.02 hereof, excluding Bonds which have been replaced pursuant to Section 2.09 hereof.

“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 allocable to the Tax-Exempt Series 1998 Bonds, the composite yield on the date of calculation of the portfolio of such Financed Eligible Loans computed in accordance with the Tax Regulatory Certificate, assuming no additional Eligible Loans are acquired or originated and allocable to the Tax-Exempt Series 1998 Bonds and, with respect to Financed Eligible Loans allocable to the Additional Bonds that are Tax-Exempt Bonds, the composite yield on the date of calculation on the portfolio of such Financed Eligible Loans computed in accordance with the Code, assuming no additional Eligible Loans are acquired or originated and allocable to such Additional Bonds.

“Principal Office” shall mean the principal office of the party indicated, as set forth in Section 9.01 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 Fitch or any other Rating Agency, provided Moody’s or Fitch or any such other Rating Agency, as the case may be, is currently rating any of the Bonds.

“Rating Agency” shall mean (i) with respect to the Bonds Outstanding under the Indenture other than the Series 2021 Bonds, Moody’s and Fitch and their successors and assigns so long as any such entity is rating any of such Bonds, or any other rating agency requested by the Foundation to maintain a Rating on any of such Bonds, (ii) with respect to the Series 2021 Bonds, Moody’s and its successors and assigns so long as any such entity is rating any of such Bonds, or any other rating agency requested by the Foundation to maintain a Rating on any of such Bonds and (iii) with respect to any Additional Bonds issued after the Series 2021 Bonds and Outstanding under the Indenture, any rating agency requested by the Foundation to maintain a Rating on any of such Bonds.[As amended by the Fourteenth Supplemental (December 2021)]

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

“Rebate Fund” shall mean the Fund by that name created in Section 5.01 hereof and further described in Section 5.05 hereof.

“Reciprocal Payments” shall mean any payment to be made to, or for the benefit of, the Foundation under a Derivative Product.

“*Reciprocal Payor*” shall mean a third party which, at the time of entering into a Derivative Product, has at least an “Aa2/P-1” rating, or its equivalent, from a Rating Agency, and which is obligated to make Reciprocal Payments under a Derivative Product.

“*Record Date*” shall mean (a) with respect to the Series 1998C Bonds, the 15th day of the calendar month preceding each Interest Payment Date, (b) with respect to the Series 1998A Bonds and the Series 1998B Bonds, the Regular Record Date as set forth in Exhibit D or Exhibit E hereto, as applicable, and (c) with respect to any Additional Bonds, the Record Date established for such Additional Bonds pursuant to the Supplemental Indenture authorizing the issuance of such Additional Bonds.

“*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.

“*Refunded Bonds*” shall mean, collectively, the following:

(a) obligations of the Foundation issued under the Refunded Bonds 1992 Indenture with respect to which \$4,425,000 in principal amount of Student Loan Revenue Bonds, Series 1992-A maturing on April 1, 1998 is to be paid from the proceeds of the Series 1998 Tax-Exempt Bonds; and

(b) obligations of the Foundation issued under the Refunded Bonds 1993 Indenture with respect to which \$4,455,000 in principal amount of Student Loan Purchase Bonds, 1995 Series IV maturing or subject to special redemption on March 1, 1998 is to be paid from the proceeds of the Series 1998 Tax-Exempt Bonds.

“*Refunded Bonds 1992 Indenture*” shall mean the Indenture of Trust, dated as of December 1, 1992, between the Foundation and the Refunded Bonds 1992 Trustee, as supplemented and amended.

“*Refunded Bonds 1993 Indenture*” shall mean the Trust Indenture, dated as of September 1, 1993, between the Foundation and the Refunded Bonds 1993 Trustee, as supplemented and amended.

“*Refunded Bonds 1992 Trustee*” shall mean Norwest Bank Minnesota, National Association, as successor trustee to The First National Bank of Santa Fe, as trustee under the Refunded Bonds 1992 Indenture.

“*Refunded Bonds 1993 Trustee*” shall mean Norwest Bank Minnesota, National Association, as successor trustee to The First National Bank of Santa Fe, as trustee under the Refunded Bonds 1993 Indenture.

“*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 a Derivative Product, any Reciprocal Payor unless the context otherwise requires.

“*Revenue*” or “*Revenues*” shall mean all payments, 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 payments received by the Foundation pursuant to a Derivative Product.

“*Revenue Fund*” shall mean the Fund by that name created in Section 5.01(a)(ii) hereof and further described in Section 5.03 hereof.

“*Second Subordinate Bonds*” shall mean the Series 1998C Bonds and any Additional Bonds secured on a Parity with the Series 1998C Bonds.

“*Second Subordinate Obligations*” shall mean Second Subordinate Bonds and any Derivative Product, the priority of payment of which is equal with that of Second Subordinate Bonds.

“*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.

“*Senior Bonds*” shall mean the Series 1998A Bonds and any Additional Bonds secured on a parity with the Series 1998A Bonds.

“*Senior Obligations*” shall mean Senior Bonds, and any Derivative Product, the priority of payment of which is equal with that of Senior Bonds.

“*Series 1998 Bonds*” shall mean the Series 1998A Bonds, the Series 1998B Bonds and the Series 1998C Bonds issued pursuant to this Indenture in the aggregate principal amount of \$110,000,000.

“*Series 1998 Tax Regulatory Certificate*” shall mean the Tax Regulatory Certificate of the Foundation dated as of February 1, 1998, as amended.

“*Series 1998 Taxable Acquisition Proceeds Subaccount*” shall mean the Subaccount by that name created pursuant to Section 5.01(a)(i) hereof.

“*Series 1998 Tax-Exempt Acquisition Proceeds Subaccount*” shall mean the Subaccount by that name created pursuant to Section 5.01(a)(i) hereof.

“*Series 1998 Tax-Exempt Bonds*” shall mean, collectively, the Series 1998A-1 Bonds, the Series 1998A-2 Bonds, the Series 1998B Bonds and the Series 1998C Bonds.

“*Series 1998A Bonds*” shall mean the Series 1998A-1 Bonds, the Series 1998A-2 Bonds and the Series 1998A-3 (Taxable) Bonds issued pursuant to this Indenture in the aggregate principal amount of \$98,800,000.

“*Series 1998A-1 Bonds*” shall mean the Foundation’s Education Loan Bonds, Senior Series 1998A-1 issued pursuant to this Indenture in the aggregate principal amount of \$44,400,000.

“*Series 1998A-2 Bonds*” shall mean the Foundation’s Education Loan Bonds, Senior Series 1998A-2 issued pursuant to this Indenture in the aggregate principal amount of \$44,400,000.

“*Series 1998A-3 (Taxable) Bonds*” shall mean the Foundation’s Education Loan Bonds, Senior Series 1998A-3 (Taxable) issued pursuant to this Indenture in the aggregate principal amount of \$10,000,000.

“*Series 1998B Bonds*” shall mean the Foundation’s Education Loan Bonds, First Subordinate Series 1998B-1 issued pursuant to this Indenture in the aggregate principal amount of \$9,200,000.

“*Series 1998C Bonds*” shall mean the Foundation’s Education Loan Bonds, Second Subordinate Series 1998C-1 issued pursuant to this Indenture in the aggregate principal amount of \$2,000,000.

“*Servicer*” shall mean the Foundation and any other servicer so long as the Foundation shall have received written confirmation from each Rating Agency 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.

“*Special Record Date*” shall have the meaning set forth in Section 2.01(a) hereof and in Exhibits D and E hereto.

“*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.

“*Student Loan Purchase Agreement*” shall mean a loan purchase agreement entered into for the purchase of Eligible Loans into the Trust Estate.

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

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

“*Tax Regulatory Certificate*” shall mean any Tax Regulatory Certificate or similar agreement or certificate with respect to any series of Tax-Exempt Bonds, as amended from time to time, including without limitation the Series 1998 Tax Regulatory Certificate.

“*Taxable Acquisition Account*” shall mean the Account by that name created pursuant to Section 5.01(a)(i) hereof.

“*Taxable Redemption Subaccount*” shall mean the Subaccount by that name created pursuant to Section 5.01(a)(i) hereof. [Renamed in Thirteenth Supplemental Indenture (May 2013)]

“*Taxable Bonds*” shall mean the Series 1998A-3 (Taxable) Bonds and any Additional Bonds issued and delivered pursuant to this Indenture, the interest on which does not purport to be excluded from the federal gross income of the Registered Owners thereof.

“*Taxable Debt Service Reserve Account*” shall mean the Account by that name created pursuant to Section 5.01(a)(iii) hereof.

“*Taxable First Subordinate Bonds*” shall mean First Subordinate Bonds which are Taxable Bonds, if any.

“*Taxable Revenue Account*” shall mean the Account by that name created pursuant to Section 5.01(a)(ii) hereof.

“*Taxable Second Subordinate Bonds*” shall mean Second Subordinate Bonds which are Taxable Bonds, if any.

“*Taxable Senior Bonds*” shall mean Senior Bonds which are Taxable Bonds.

“*Tax-Exempt Acquisition Account*” shall mean the Account by that name created pursuant to Section 5.01(a)(i) hereof.

“*Tax-Exempt Redemption Subaccount*” shall mean the Subaccount by that name created pursuant to Section 5.01(a)(i) hereof. [Renamed in Thirteenth Supplemental Indenture (May 2013)]

“*Tax-Exempt Bonds*” shall mean the Series 1998 Tax-Exempt Bonds and any Additional Bonds which do not constitute Taxable Bonds.

“*Tax-Exempt Debt Service Reserve Account*” shall mean the Account by that name created pursuant to Section 5.01(a)(iii) hereof.

“*Tax-Exempt First Subordinate Bonds*” shall mean First Subordinate Bonds which are Tax-Exempt Bonds.

“*Tax-Exempt Revenue Account*” shall mean the Account by that name created pursuant to Section 5.01(a)(ii) hereof.

“*Tax-Exempt Second Subordinate Bonds*” shall mean Second Subordinate Bonds which are Tax-Exempt Bonds.

“*Tax-Exempt Senior Bonds*” shall mean Senior Bonds which are Tax-Exempt Bonds.

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

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

“*Trustee Guarantee Agreement*” means the Lender Participation Agreement, dated February 20, 1998 between the Trustee and the Guaranty Agency, and any amendment thereof which is hereafter entered into.

“*Underwriter*” shall mean, with respect to the Series 1998 Bonds, Smith Barney Inc., Dain Rauscher Incorporated and William R. Hough & Co., and, with respect to any Additional Bonds, the underwriter or underwriters of such Additional Bonds.

“*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;

(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) with respect to any Investment Securities of an investment company, the bid price of the shares as reported by the investment company plus accrued but unpaid interest;

(d) 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*): 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; and

(e) 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*: (i) 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 or (ii) the bid price published by a nationally recognized pricing service plus accrued but unpaid interest.

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 2.01. Series 1998 Bond Details.

(a) Except for Series 1998 Bonds authenticated and delivered upon transfer of, or in exchange for, or in lieu of Bonds pursuant to Sections 2.08 and 2.09 hereof, the aggregate principal amount of the Series 1998 Bonds which may be initially authenticated and delivered under this Indenture is limited to \$110,000,000, consisting of the following:

Series	Principal Amount
Education Loan Bonds, Senior Series 1998A-1	\$44,400,000
Education Loan Bonds, Senior Series 1998A-2	44,400,000
Education Loan Bonds, Senior Series 1998A-3 (Taxable)	10,000,000
Education Loan Bonds, First Subordinate Series 1998B-1	9,200,000
Education Loan Bonds, Second Subordinate Series 1998C-1	2,000,000

No other Bonds shall be issued hereunder except for Additional Bonds as provided in Section 2.12 hereof. The Series 1998 Bonds of each series or subseries shall each be lettered “R” and shall be numbered separately from 1 upwards. The Series 1998 Bonds shall be issuable only as fully registered bonds in the denominations of \$100,000 and integral multiples thereof. Payments of the principal of and interest on all Bonds shall be made in lawful money of the United States. The Series 1998A Bonds shall constitute Senior Bonds, the Series 1998B Bonds shall constitute First Subordinate Bonds, and the Series 1998C Bonds shall constitute Second Subordinate Bonds. The Series 1998A-3 (Taxable) Bonds shall be Taxable Bonds. **Additional provisions relating to the Series 1998A-1 Bonds, the Series 1998A-2 Bonds and the Series 1998B Bonds are set forth**

**in Exhibit D hereto, and additional provisions relating to the Series 1998A-3 Taxable Bonds are set forth in Exhibit E to this Indenture.**

The Series 1998A Bonds and the Series 1998B Bonds shall be dated the Date of Issuance, and the Series 1998C Bonds shall be dated as of February 1, 1998. The Series 1998 Bonds shall mature on November 1 in the years and in the principal amounts as follows:

<b>Series 1998A-1 Bonds</b>	
<b>Year</b>	<b>Principal Amount</b>
2009	\$44,400,000

<b>Series 1998A-2 Bonds</b>	
<b>Year</b>	<b>Principal Amount</b>
2028	\$44,400,000

<b>Series 1998A-3 Taxable Bonds</b>	
<b>Year</b>	<b>Principal Amount</b>
2028	\$10,000,000

<b>Series 1998B Bonds</b>	
<b>Year</b>	<b>Principal Amount</b>
2028	\$9,200,000

<b>Series 1998C Bonds</b>	
<b>Year</b>	<b>Principal Amount</b>
2010	\$2,000,000

The Series 1998 Bonds shall bear interest from their date to maturity, payable on each Interest Payment Date, except that Series 1998 Bonds which are issued upon transfer, exchange or other replacement thereof shall bear interest from the most recent Interest Payment Date to which interest has been paid, or if no interest has been paid, from the respective date of the Series 1998 Bonds. Interest on the Series 1998A-1 Bonds, the Series 1998A-2 Bonds and the Series 1998B Bonds shall be computed as provided in Exhibit D; interest on the Series 1998A-3 (Taxable) Bonds shall be computed as provided in Exhibit E; and interest on the Series 1998C Bonds shall accrue at the rate of 5.50% per annum on the basis of a 360-day year composed of twelve 30-day months.

Subject to the rules and procedures of the Securities Depository, the principal of the Series 1998 Bonds shall be payable at the Principal Office of the Trustee upon presentation and surrender of the Series 1998 Bonds, and payment of interest on any Series 1998 Bond shall be made to the Registered Owner thereof by check or draft mailed on the Interest Payment Date by the Trustee to the Registered Owner at his address as it last appears on the registration books kept by the Trustee at the close of business on the Record Date for such interest payment date, but any such interest not so timely paid or duly provided for shall cease to be payable to the Registered Owner thereof at the close of business on the Record Date and shall be payable to the Registered Owner thereof at the close of business on a

special record date (a "Special Record Date") for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of such Special Record Date shall be given to the Registered Owners of the Series 1998 Bonds not less than 10 days prior thereto by first-class mail to each such Registered Owner as shown on the Trustee's registration books on the date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest, which payment date shall not be more than 15 nor less than 10 days subsequent to the Special Record Date. Notwithstanding the foregoing, payment of interest to the Securities Depository or its nominee shall, and at the written request addressed to the Trustee of any other Registered Owner owning at least \$1,000,000 aggregate principal amount of the Series 1998 Bonds, payments of interest shall be paid by wire transfer to the bank account number within the United States filed no later than the Record Date or Special Record Date with the Trustee for such purpose. All payments on the Series 1998 Bonds shall be made in lawful money of the United States of America.

(b) Except as otherwise provided in this Section, the Series 1998 Bonds in the form of one global bond for each Stated Maturity date for each series or subseries shall be registered in the name of the Securities Depository or its nominee and ownership thereof shall be maintained in book-entry form by the Securities Depository for the account of the Agent Members. Initially, each Series 1998 Bond shall be registered in the name of CEDE & Co., as the nominee of The Depository Trust Company. Except as provided in subsection (d) of this Section, the Series 1998 Bonds may be transferred, in whole but not in part, only to the Securities Depository or a nominee of the Securities Depository or to a successor Securities Depository selected or approved by the Foundation or to a nominee of such successor Securities Depository. Each global bond shall bear a legend substantially to the following effect: "Except as otherwise provided in the Indenture, so long as this global bond is held by a Securities Depository or its nominee, this global bond may be transferred, in whole but not in part, only to another nominee of the Securities Depository (as defined in the Indenture) or to a successor Securities Depository or to a nominee of a successor Securities Depository."

(c) The Foundation and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Securities Depository or any Agent Member with respect to any beneficial ownership interest in the Series 1998 Bonds, (ii) the delivery to any Agent Member, beneficial owner of the Series 1998 Bonds or other Person, other than the Securities Depository, of any notice with respect to the Series 1998 Bonds or (iii) the payment to any Agent Member, beneficial owner of the Series 1998 Bonds or other Person, other than the Securities Depository, of any amount with respect to the principal of or interest on the Series 1998 Bonds. So long as the Series 1998 Bonds issued under this Indenture are not issued pursuant to subsection (d) of this Section, the Foundation and the Trustee may treat the Securities Depository as, and deem the Securities Depository to be, the absolute owner of the Series 1998 Bonds for all purposes whatsoever, including, without limitation, (A) the payment of principal of and interest on such Series 1998 Bonds, (B) giving notices of redemption and other matters with respect to such Series 1998 Bonds and (C) registering transfers with respect to such Series 1998 Bonds. In connection with any notice or other communication to be

provided to the Registered Owners pursuant to this Indenture by the Foundation or the Trustee with respect to any consent or other action to be taken by the Registered Owners, the Foundation or the Trustee, as the case may be, shall establish a record date for such consent or other action and, if the Securities Depository shall hold all of the Series 1998 Bonds, give the Securities Depository notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible. Such notice to the Securities Depository shall be given only when the Securities Depository is the sole Registered Owner. Neither the Foundation nor the Trustee shall have any responsibility with respect to obtaining consents from anyone other than the Registered Owners.

(d) If at any time the Securities Depository notifies the Foundation and the Trustee that it is unwilling or unable to continue as Securities Depository with respect to any or all of the Series 1998 Bonds or if at any time the Securities Depository shall no longer be registered or in good standing under the Securities Exchange Act or other applicable statute or regulation and a successor Securities Depository is not appointed by the Foundation within 90 days after the Foundation receives notice or becomes aware of such condition, as the case may be, then Sections 2.01(b) and 2.01(c) hereof shall no longer be applicable, and the Foundation shall execute and the Trustee shall authenticate and deliver certificates representing the Series 1998 Bonds as provided below. In addition, the Foundation may determine at any time that the Series 1998 Bonds shall no longer be represented by global certificates and that the provisions of Sections 2.01(b) and 2.01(c) hereof shall no longer apply to the Series 1998 Bonds. In such event, the Foundation shall execute and the Trustee shall authenticate and deliver certificates representing the Series 1998 Bonds as provided below. Certificates for the Series 1998 Bonds issued in exchange for a global bond pursuant to this subsection shall be registered in such names and authorized denominations as the Securities Depository, pursuant to instructions from the Agent Members or otherwise, shall instruct the Trustee in writing, and upon which written instructions the Trustee may rely without investigation. The Trustee shall promptly deliver such certificates representing the Series 1998 Bonds to the Persons in whose names such Series 1998 Bonds are so registered.

**Section 2.02. Redemption of the Series 1998 Bonds.**

(a) **Optional Redemption.**

(i) The Series 1998A Bonds and the Series 1998B Bonds shall be subject to redemption, at the option of the Foundation as a whole or in part, on any date, at a redemption price equal to 100% of the Outstanding principal amount thereof, plus accrued interest to the date fixed for redemption.

(ii) The Series 1998C Bonds shall be subject to redemption, at the option of the Foundation as a whole or in part, on any date on and after May 1, 2008, at a redemption price equal to the following percentages of the Outstanding principal amount thereof during the following periods, plus accrued interest to the date fixed for redemption:

Period (both dates inclusive)	Redemption Price
May 1, 2008 through April 30, 2009	102%
May 1, 2009 through April 30, 2010	101
May 1, 2010 and thereafter	100

(b) **Mandatory Sinking Fund Redemption.** The Series 1998A-1 Bonds, the Series 1998A-2 Bonds and the Series 1998B Bonds are subject to mandatory sinking fund redemption in part by lot on November 1, 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:

**Series 1998A-1**

Year	Principal Amount
2001	\$ 400,000
2004	18,000,000
2005	13,800,000
2008	4,300,000
2009*	7,900,000

**Series 1998A-2**

Year	Principal Amount
2009	\$13,400,000
2010	2,700,000
2028*	28,300,000

\*Final Maturity

**Series 1998B**

Year	Principal Amount
2001	\$ 100,000
2004	2,100,000
2005	1,600,000
2008	500,000
2009	2,400,000
2028*	2,500,000

\*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 Series 1998A 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 Series 1998A Bonds which prior to said date have been redeemed pursuant to Section 2.02(a) or (c) hereof and cancelled by the Trustee and not theretofore applied as a credit against any sinking fund redemption obligation for such Series 1998 Bonds. Each Series 1998 Bond so delivered or previously redeemed pursuant to Section 2.02(a) or (c) 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 Series 1998 Bonds as directed by the Foundation. If Series 1998A Bonds subject to mandatory sinking fund redemption have been redeemed pursuant to Section 2.02(a) or (c) 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.

(c) ***Mandatory Redemption from Acquisition Fund Amounts.***

(i) The Series 1998 Bonds are subject to mandatory redemption in part on September 1, 2000 from, in the case of the Series 1998A-1 Bonds, the Series 1998A-2 Bonds, the Series 1998B Bonds and the Series 1998C Bonds, amounts on deposit in the Series 1998 Tax-Exempt Acquisition Proceeds Subaccount, and in the case of the Series 1998A-3 (Taxable) Bonds, from amounts on deposit in the Series 1998 Taxable Acquisition Proceeds Subaccount, representing the balance thereof on deposit therein on the fifth Business Day prior to the last date on which a redemption notice can be given (such balance not including any Financed Eligible Loans), subject to the right of the Foundation to extend such date of redemption upon receipt of a confirmation from each Rating Agency that such extension will not adversely affect the ratings assigned by such Rating Agency on any Bonds, at a redemption price equal to 100% of the principal amount of the Series 1998 Bonds to be redeemed, plus interest accrued thereon to the date fixed for redemption.

(ii) If Eligible Loans are not permitted to be originated or acquired from amounts on deposit in the Tax-Exempt Acquisition Recycling Account or the Taxable Recycling Account pursuant to Section 5.02 hereof, the Series 1998 Bonds are subject to mandatory redemption from, in the case of the Series 1998A-1 Bonds, the Series 1998A-2 Bonds, the Series 1998B Bonds and the Series 1998C Bonds, amounts in the Tax-Exempt Redemption Subaccount, and in the case of the Series 1998A-3 (Taxable) Bonds, amounts in the Taxable Redemption Subaccount, on the fifth Business Day prior to the last date on which a redemption notice can be given under the Indenture, representing amounts in excess of the amount of principal due on all Bonds on the next November 1, in part at any time, at a redemption price equal to 100% of the principal amount of the Series 1998 Bonds to be redeemed, plus interest accrued thereon to the date fixed for redemption.

(iii) The Series 1998 Bonds are subject to mandatory redemption in part on any date from, in the case of the Series 1998A-1 Bonds, the Series 1998A-2 Bonds, the Series 1998B Bonds and the Series 1998C Bonds, amounts on

deposit in the Series 1998 Tax-Exempt Acquisition Proceeds Subaccount or the Tax-Exempt Redemption Subaccount, and in the case of the Series 1998A-3 (Taxable) Bonds, amounts on deposit in the Series 1998 Taxable Acquisition Proceeds Subaccount or the Taxable Redemption Subaccount, to the extent that the Foundation reasonably determines that such amounts will not be used to acquire or originate Eligible Loans, at a redemption price equal to 100% of the principal amount of the Series 1998 Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption.

(d) ***Notice of Redemption.*** Upon Foundation Order, 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 Series 1998 Bonds designated for redemption in whole or in part, at its address as the same shall last appear upon the registration books, in each case (i) not less than 30 days prior to the redemption date for Series 1998C Bonds, and (ii) not more than 30 nor less than 10 days prior to the redemption date for Series 1998A Bonds and Series 1998B Bonds; 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 Series 1998 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.

(c) ***Partial Redemption of Series 1998 Bonds.***

(i) If less than all of the Series 1998 Bonds are to be redeemed pursuant to Section 2.02(a) or Section 2.02(c) hereof, the Foundation shall, subject to the provisions of Section 2.02(c), determine the series or subseries and Stated Maturity or Stated Maturities of the Series 1998 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 Series 1998 Bonds of any Stated Maturity of any series or subseries of the Series 1998 Bonds are to be redeemed and there is more than one Registered Owner of the Series 1998 Bonds of such Stated Maturity of such series or subseries, such Series 1998 Bonds of the same Stated Maturity to be redeemed shall be selected by lot in such manner as the Trustee shall determine. Notwithstanding the foregoing, Series 1998B Bonds may not be redeemed pursuant to Section 2.02(a) or (c) hereof unless (A) after such redemption the Aggregate Market Value of the Trust Estate will equal at least 110% of the aggregate principal amount of all Senior Bonds Outstanding or (B) such redemption shall not adversely affect any Rating on any of the Bonds and the

Trustee shall have received written confirmation from each Rating Agency; and Series 1998C Bonds may not be optionally redeemed unless (1) after such redemption the Aggregate Market Value of the Trust Estate will equal at least 102% of the aggregate principal amount of all Senior Bonds and all First Subordinate Bonds Outstanding or (2) such redemption shall not adversely affect any Rating on any of the Bonds and the Trustee shall have received written confirmation from each Rating Agency.

(ii) In case a Series 1998 Bond is of a denomination larger than \$100,000 the Trustee shall treat such Series 1998 Bond as representing that number of Series 1998 Bonds which is obtained by dividing the principal amount of such Series 1998 Bond by \$100,000 and any such portion of such Series 1998 Bond may be redeemed. Upon surrender of any Series 1998 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 Series 1998 Bond or Series 1998 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 Series 1998 Bond surrendered.

**Section 2.03. 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 2.04. 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 2.01 hereof.

**Section 2.05. 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 2.06. Delivery of Series 1998 Bonds.** Upon the execution and delivery of this Indenture, the Foundation shall execute and deliver to the Trustee and the Trustee shall authenticate the Series 1998 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 Series 1998 Bonds, there shall have been filed with or delivered to the Trustee the following:

(a) A resolution duly adopted by the Foundation, certified by the Secretary or Assistant Secretary or other Authorized Officer thereof, authorizing the refunding of the Refunded Bonds in accordance with this Indenture, the execution and delivery of this Indenture and the Series 1998 Tax Regulatory Certificate, and the issuance of the Series 1998 Bonds.

(b) Duly executed copies of this Indenture, the Auction Agent Agreements, the Market Agent Agreements, the Series 1998 Tax Regulatory Certificate and the Broker-Dealer Agreements.

(c) The written order of the Foundation as to the delivery of the Series 1998 Bonds, signed by an Authorized Officer.

**Section 2.07. Trustee's Authentication Certificate.** The Trustee's authentication certificate upon the Series 1998 Bonds shall be substantially in the forms provided in Exhibits A-1, A-2, A-3, B and C hereof. No Series 1998 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 Series 1998 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 Series 1998 Bonds issued hereunder.

**Section 2.08. 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 2.04 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 2.09. Temporary Bonds.** Pending the preparation of definitive Bonds, the Foundation may execute and the Trustee shall authenticate and deliver temporary Bonds. Temporary Bonds shall be issuable as fully registered Bonds without coupons, of any denomination, and substantially in the form of the definitive Bonds but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the Foundation. Every temporary Bond shall be executed by the Foundation and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable the Foundation shall execute and shall furnish definitive Bonds and thereupon temporary Bonds may be surrendered in exchange therefor without charge at the principal office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds a like aggregate principal amount of definitive Bonds. Until so exchanged the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds.

**Section 2.10. Application of Proceeds.** Upon delivery of the Series 1998 Bonds, the Trustee shall transfer the proceeds of the Series 1998 Bonds (\$109,997,027.78) and make such other deposits as follows:

(a) The proceeds of the Series 1998 Tax-Exempt Bonds (\$99,997,027.78) shall be deposited as follows:

(i) an amount equal to \$4,765,000 shall be transferred to the Refunded Bonds 1992 Trustee in exchange for an equal amount of cash held under the Refunded Bonds 1992 Indenture, with the instruction from the Foundation that the Refunded Bonds 1992 Trustee apply such amounts to the payment of principal of the Student Loan Revenue Bonds, Series 1992-A as described in the definition of Refunded Bonds in Article I hereof;

(ii) an amount equal to \$4,115,000 shall be transferred to the Refunded Bonds 1993 Trustee in exchange for an equal amount of cash held under the Refunded Bonds 1993 Indenture, with the instruction from the Foundation that the Refunded Bonds 1993 Trustee apply such amounts to the payment of principal of the Student Loan Purchase Bonds, 1995 Series IV as described in the definition of Refunded Bonds in Article I hereof;

(iii) an amount equal to \$60,230,000 shall be transferred or deemed transferred to Fuji Bank to immediately pay the principal of the Fuji Note, in exchange for an equal amount of cash held under the Fuji Line;

(iv) an amount equal to \$22,752,630 shall be deposited to the Series 1998 Tax-Exempt Acquisition Proceeds Subaccount;

(v) an amount equal to \$5,000,000 shall be deposited to the Tax-Exempt Debt Service Reserve Account;

(vi) an amount equal to \$2,272,500 (representing capitalized interest) and an amount equal to \$7,027.78 (representing accrued interest) shall be deposited to the Tax-Exempt Revenue Account; and

(vii) an amount equal to \$854,870 shall be deposited to the Administration Fund and used to pay costs of issuing the Series 1998 Tax-Exempt Bonds, including all underwriting fees therefor.

(b) The proceeds of the Series 1998A-3 (Taxable) Bonds (\$10,000,000) shall be deposited as follows:

(i) an amount equal to \$9,071,517 shall be deposited to the Series 1998 Taxable Acquisition Proceeds Subaccount;

(ii) an amount equal to \$500,000 shall be deposited to the Taxable Debt Service Reserve Account;

(iii) an amount equal to \$227,500 shall be deposited to the Taxable Revenue Account (representing capitalized interest); and

(iv) an amount equal to \$200,983 deposited to the Administration Fund (of which amount \$85,580 shall be used to pay costs of issuing the Series 1998A-3 (Taxable) Bonds including all underwriting fees therefor and \$115,403 shall be paid to the Foundation to reimburse the Foundation for interest on the Fuji Note and costs incurred in connection with the Fuji Note and the Fuji Line).

(c) The Trustee shall deposit the \$69,110,000 received or deemed received from the Refunded Bonds 1992 Trustee, the Refunded Bonds 1993 Trustee and Fuji Bank to the Series 1998 Tax-Exempt Acquisition Proceeds Subaccount.

**Section 2.11. Forms of Series 1998 Bonds, Notice and Demand for Payment and Instructions for Payment.** The Series 1998A-1 Bonds, the Series 1998A-2 Bonds, the Series 1998A-3 (Taxable) Bonds, the Series 1998B Bonds and the Series 1998C Bonds shall be in substantially the forms set forth in Exhibits A-1, A-2, A-3, B and C hereto, respectively, with such variations, omissions and insertions as may be necessary.

**Section 2.12. Issuance of Additional Bonds.**

(a) The Foundation shall have the authority, upon complying with the provisions of this Section, to authenticate and deliver from time to time Additional Bonds secured by the Trust Estate on a parity with either the Senior Bonds, the First Subordinate Bonds or the Second Subordinate Bonds, or subordinate to the Second Subordinate Bonds, secured hereunder as shall be determined by the Foundation. In addition, the Foundation may enter into any Derivative Products it deems necessary or desirable with respect to any or all of the Series 1998 Bonds and any such Additional Bonds.

(b) No Additional Bonds shall be authenticated and delivered pursuant to this Indenture until the following conditions have been satisfied:

(i) The Foundation and the Trustee have entered into a Supplemental Indenture (which Supplemental Indenture shall not require the approval of the Registered Owners of any of the Outstanding Bonds or Derivative Products) providing the terms and forms of the Additional Bonds, including the designation of such Additional Bonds as Senior Bonds, First Subordinate Bonds or Second Subordinate Bonds (or subordinate to such Second Subordinate Bonds), whether such Additional Bonds are Taxable Bonds or Tax-Exempt Bonds, the redemption provisions applicable to such Additional Bonds, and the Debt Service Reserve Fund Requirement with respect to such Additional Bonds, if any.

(ii) The Trustee shall have received written evidence from each Rating Agency which has assigned a Rating or Ratings to the Bonds that such Rating or Ratings will not be reduced or withdrawn as a result of the issuance of the proposed Additional Bonds.

(iii) The Trustee shall have received an opinion of Bond Counsel to the effect that the issuance of the proposed Additional Bonds will not adversely affect the excludability of interest from gross income with respect to any Outstanding Bonds which are Tax-Exempt Bonds.

(iv) The Trustee shall have received an opinion of Bond Counsel to the effect that all of the foregoing conditions to the issuance of the proposed Additional Bonds have been satisfied.

(v) Upon the issuance of the Additional Bonds, an amount equal to the Debt Service Reserve Fund Requirement with respect to such Additional Bonds, if any, shall be deposited in the Debt Service Reserve Fund.

(c) The Trustee is authorized to set up any additional Funds or Accounts or Subaccounts under this Indenture which it deems necessary or convenient in connection with the issuance and delivery of any Additional Bonds.

**ARTICLE III**

**PARITY AND PRIORITY OF LIEN; OTHER OBLIGATIONS;  
AND DERIVATIVE PRODUCTS**

**Section 3.01. 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.

**Section 3.02. Other Obligations.**

(a) 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. If any Financed Eligible Loan is found to have been subject to a lien at the time such Financed Eligible Loan was acquired, the Foundation shall cause such lien to be released, shall purchase such Financed Eligible Loan from the Trust Estate for a purchase price equal to its principal amount plus any unamortized premium and interest accrued thereon or shall replace such Financed Eligible Loan with another Eligible Loan with substantially identical characteristics which replacement Eligible Loan shall be free and clear of liens at the time of such replacement. 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; and provided further that any subordinate lien hereon (i.e., subordinate to the lien securing the Senior Obligations, the First Subordinate Obligations, the Second Subordinate Obligations and any other Additional Bonds) shall be entitled to no payment from the Trust Estate, nor may any remedy be exercised with respect to such subordinate lien against the Trust Estate until all Obligations have been paid or deemed paid hereunder.

**Section 3.03. Derivative Products; Reciprocal Payments; Foundation Derivative Payments.** The Foundation hereby authorizes and directs the Trustee to acknowledge and agree to any Derivative Product hereafter entered into by the Foundation and a Reciprocal Payor under which (a) the Foundation may be required to make, from time to time, Foundation Derivative Payments and (b) the Trustee may receive, from time to time, Reciprocal Payments for the account of the Foundation. No Derivative Product shall be entered into unless the Trustee shall have received confirmation from each Rating Agency that such Derivative Product will not adversely affect the Rating on any of the Bonds. Anything in this Indenture to the contrary notwithstanding, any Revenues representing Reciprocal Payments shall not be available to make a Foundation Derivative Payment or to pay any other amounts owed to a Reciprocal Payor under a Derivative Product.

No later than the fourth Business Day immediately preceding each Bond Payment Date on which a Reciprocal Payment or Foundation Derivative Payment is due pursuant to the applicable Derivative Product through and including the termination date of a Derivative Product, the Foundation shall give written notice to the Trustee for the account of the Foundation stating either (a) the amount of any Reciprocal Payment due to be received by the Trustee for the account of the Foundation on the third Business Day immediately preceding such Bond Payment Date or (b) the amount of any Foundation Derivative Payment to be paid to the Reciprocal Payor on the third Business Day immediately preceding such Bond Payment Date. If the Trustee fails to receive such written notification from the Foundation by the end of such fourth Business Day, it shall immediately notify the Foundation of such fact in writing.

On the third Business Day immediately preceding each Bond Payment Date on which a Reciprocal Payment is due pursuant to the applicable Derivative Product in accordance with the written notification received from the Foundation, the Trustee shall deposit all moneys received representing such Reciprocal Payment in the Revenue Fund to be applied in accordance with the provisions of Section 5.03 hereof. The Trustee shall notify the Foundation on such Business Day, if (a) the amount received from the Reciprocal Payor is not equal to the amount specified in the written notification of the Foundation, (b) no amount is received from the Reciprocal Payor or (c) the amount received is not received in freely transferable funds.

On the third Business Day immediately preceding any Bond Payment Date with respect to which a Foundation Derivative Payment is due in accordance with the written notification received from the Foundation or, with respect to a payment in respect of an early termination date, from the Foundation, the Trustee shall make payment to the Reciprocal Payor from moneys in the Revenue Fund of the amount of the Foundation Derivative Payment specified in such written notification of the Foundation, due on such date by the deposit or wire transfer of freely transferable funds to the credit of the account of the Reciprocal Payor specified in such written notification of the Foundation, but only to the extent such payment will not result in a deficiency in the amount due on the next succeeding Bond Payment Date to the Registered Owners of any class of Obligations having a priority equal to or higher than such Reciprocal Payor under such Derivative Product.

If any payment to such a Reciprocal Payor described in the paragraph above would result in a deficiency in the amounts required to make payments to the Registered Owners of the Obligations referred to in the paragraph above on the next succeeding Bond Payment Date, then the Trustee shall delay the making of such payment to the Reciprocal Payor until the first date on which no deficiency would result from such payment or until such next Bond Payment Date, whichever is earlier.

#### ARTICLE IV

##### PROVISIONS APPLICABLE TO THE BONDS; DUTIES OF THE FOUNDATION

**Section 4.01. 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. Notwithstanding the foregoing, the Foundation may designate any series of Bonds to be secured by other assets or to constitute general obligations of the Foundation. The Foundation hereof designates the Series 1998C Bonds to be general obligations of the Foundation, and, to the extent insufficient moneys are available in the Trust Estate to pay the principal of or interest on the Series 1998C Bonds, debt service on the Series 1998C Bonds shall be paid by the Foundation from any of its general funds or assets, subject to any other pledges 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.

**Section 4.02. 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 4.03. 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 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 4.04. 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 Registered Owners.

**Section 4.05. 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 (to the extent the same are made under the Higher Education Act) 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 4.06. Enforcement and Amendment of the Guarantee Agreement.** So long as any Bonds 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 4.07. Enforcement and Amendment of Certificates of Insurance and Contract of Insurance.** So long as any Bonds 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 4.08. Acquisition, Origination, Collection and Assignment of Eligible Loans.** The Foundation shall acquire and originate only Eligible Loans with moneys in the Acquisition Fund and shall diligently cause to be collected all principal and interest payments (subject to Section 4.09 hereof) on all the Financed Eligible Loans and other sums to which the Foundation is entitled pursuant to any Student Loan Purchase Agreement, 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 will have such Plan approved by the Governor 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. [As amended by the Second Supplemental (May 1999)]

#### **Section 4.09. Enforcement of Financed Eligible Loans.**

(a) The Foundation shall, subject to Section 4.09(b) and the last sentence of this Section 4.09(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 4.09(b) and the last sentence of this Section 4.09(a), permit the release of the obligations of any borrower under any Financed Eligible Loan and shall, subject to Section 4.09(b) and the last sentence of this Section 4.09(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 4.09(b) and the last sentence of this Section 4.09(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 (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 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 Tax-Exempt 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.

\* The provisions of clause (iv) of paragraph (a) and the provisions of paragraph (b), each of Section 4.09 of the Original Indenture notwithstanding, the Foundation agrees hereby that it shall not include expenses, premiums on the acquisition of Eligible Loans or provide discounts or other borrower benefits with respect to the principal of or interest on Financed Eligible Loans as described in such provisions in amounts in excess of those established for such expenses, premiums, discounts or borrower benefits in the most recent cash flows provided to Moody's which have received a determination in writing (which may include a rating letter of Moody's received upon the issuance of additional Obligations) to the Foundation and the Trustee that such cash flows would not have an

adverse effect on the then existing Ratings by Moody's with respect to Outstanding Obligations. [Per Directions to Trustee in Seventh Supplemental (April 2004) through Thirteenth Supplemental (May 2013)]

#### **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 Owner.

(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) transfer such Financed Eligible Loan to the Rebate Fund in exchange for moneys therein equal to the principal balance of, and accrued borrower interest on, such Financed Eligible Loan, (ii) 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 (iii) 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.

#### **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 Trustee or its agent or bailee on behalf of the Trustee unless release of such notes to a Servicer (including the Foundation as Servicer) is necessary to the enforcement thereof. 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 shall 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 Trustee for purposes of perfecting the interests of the Trustee therein; provided, however, that the Trustee upon advice of counsel may require that it hold possession of such notes and/or related documentation as deemed necessary to protect its security interests in the Financed Eligible Loans. 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 Trustee 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 Servicer shall indemnify and hold the Trustee harmless to the same extent provided with respect to the Foundation in the Servicing Agreement.

(iv) No amendment, modification or addition to any Servicing Agreement shall be effective with respect to the Trustee regarding servicing of Financed Eligible Loans on behalf of the Trustee without the written approval of the Trustee. No assignment or purported assignment by the Foundation of any note evidencing a Financed Eligible Loan held by a Servicer on behalf of the Trustee 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 Trustee and on related documentation, including all moneys and proceeds derived therefrom or relating thereto.

**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.

#### **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 Tax-Exempt 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 Regulatory Certificate, the Investment Instructions 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 Tax-Exempt 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 Tax-Exempt Bonds does not exceed the Bond Yield by an amount greater than may be consistent with the Investment Instructions and the Tax Regulatory 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 Tax-Exempt 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 Investment Instructions and the Tax Regulatory 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 X 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 Tax-Exempt 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, the Student Loan Purchase Agreements, Tax Regulatory 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. Amendment of Student Loan Purchase Agreements.** No amendment to Student Loan Purchase Agreements shall be made which would eliminate the requirement of the seller thereby to repurchase student loans which have lost their Guarantee or Insurance due to actions of the seller.

**Section 4.17. 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 4.18. 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 depository 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 depository 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 depository may determine;

(iii) any amounts held by such depository 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 depository 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 4.19. 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 not or at any time hereafter in force which may affect the covenants and agreements contained in this Indenture or in the Bonds and all benefit or advantage of any such law or laws is hereby expressly waived by the Foundation.

**ARTICLE V**

**FUNDS**

**Section 5.01. 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 for the benefit of the Registered Owners:

(i) Acquisition Fund, including a Tax-Exempt Acquisition Account (and a Series 1998 Tax-Exempt Acquisition Proceeds Subaccount and a Tax-Exempt Redemption Subaccount therein) and a Taxable Acquisition Account (including a Series 1998 Taxable Acquisition Proceeds Subaccount and a Taxable Redemption Subaccount therein); [Recycling subaccounts renamed Redemption Subaccounts in Thirteenth Supplemental Indenture (May 2013)]

(ii) Revenue Fund, including a Tax-Exempt Revenue Account and a Taxable Revenue Account therein;

(iii) Debt Service Reserve Fund, including a Tax-Exempt Debt Service Reserve Account and a Taxable Debt Service Reserve Account therein; 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 (except as provided in Section 5.09 hereof) 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 and for the administration of any Additional Bonds issued hereunder to create further Accounts or Subaccounts in any of the various Funds and Accounts established hereunder which are deemed necessary or desirable.

Any and all accounts and subaccounts established under the Indenture which shall be held and maintained by the Trustee for the benefit of the Registered Owners shall be separate and identifiable accounts which are segregated trust accounts. [Per Direction to Trustee in Thirteenth Supplemental (May 2013)]

**Section 5.02. Acquisition Fund.** [1] On the Date of Issuance, there shall be transferred to the Series 1998 Tax-Exempt Acquisition Proceeds Subaccount the amounts set forth in Section 2.10(a)(iv) and Section 2.10(c) hereof and there shall be transferred to the Series 1998 Taxable Acquisition Proceeds Subaccount the amount set forth in Section 2.10(b)(i) hereof. Thereafter, there shall be deposited into the Tax-Exempt Redemption Subaccount moneys transferred thereto from the Tax-Exempt Revenue Account and the Tax-Exempt Debt Service Reserve Account pursuant to Section 5.03(a)(iv)(I) and 5.04(c) hereof, respectively, and there shall be deposited in the Taxable Redemption Subaccount, moneys transferred thereto from the Taxable Revenue Account and the Taxable Debt Service Reserve Account pursuant to Section 5.03(b)(iv)(H) and 5.04(f) hereof, respectively. Financed Eligible Loans shall be held by the

Trustee or its agent or bailee and shall be pledged to and accounted for as a part of the Acquisition Fund; provided, however, that Financed Eligible Loans need not be so held by the Trustee or its agent or bailee so long as the Trustee shall otherwise have a perfected security interest therein. . [As amended by Second Supplemental (May 1999)]

[2] Moneys on deposit in the Acquisition Fund shall be used, upon receipt by the Trustee of a Foundation Order, solely to redeem Bonds in accordance with Sections 2.02(b) and (c) hereof or as specified in a Supplemental Indenture and to pay the principal of Bonds when due, and, upon receipt by the Trustee of an Eligible Loan Acquisition Certificate, to originate Eligible Loans or acquire Eligible Loans at a price not in excess of amounts permitted under applicable law; provided, that the Foundation shall not purchase any Eligible Loan at a premium if as a result of such purchase the Foundation would have paid a premium on more than 60% in aggregate principal amount of Eligible Loans originated or acquired under this Indenture; provided that such restriction may be eliminated if each Rating Agency confirms, based on new cash flow analyses containing such assumptions as the Foundation shall reasonably determine, that the Ratings on the Bonds will not be adversely affected; and provided further that no amount on deposit in the Series 1998 Tax-Exempt Acquisition Proceeds Subaccount or the Series 1998 Taxable Acquisition Proceeds Account will be used to acquire or originate Eligible Loans after September 1, 2000 unless the Rating Agency confirms that origination or acquisition will not adversely affect the Ratings on any of the Bonds, and no moneys in the Tax-Exempt Redemption Subaccount or the Taxable Redemption Subaccount shall be used to originate or acquire Eligible Loans unless the Rating Agency confirms that a later date will not adversely affect the Ratings on any of the Bonds. ~~The Foundation will not acquire or originate (a) Eligible Loans which constitute proprietary school loans in an aggregate principal amount in excess of \$28,499,047 and (b) Eligible Loans which constitute consolidation loans in an aggregate principal amount in excess of \$32,298,920, unless it receives confirmation from Moody's that additional acquisitions or originations of such Eligible Loans will not adversely affect its Ratings on any of the outstanding Bonds.\*\*~~ The Foundation shall at least quarter-annually, as promptly as reasonably available, deliver to each Rating Agency a report as to the dollar amount of Eligible Loans held under the Indenture set forth in categories as to loan type (Stafford, PLUS, etc.) and school type (public, proprietary, two-year, four-year, etc.).\*\* It shall be the responsibility of the Foundation to monitor the preceding restrictions related to the acquisition and origination of Eligible Loans. If the Foundation determines that all or any portion of such moneys cannot be so used, or that any of the other conditions described in Section 2.02(c) hereof or any Supplemental Indenture exist then an Authorized Officer of the Foundation may by Foundation Order direct the Trustee to redeem Bonds in accordance with Section 2.02(c) hereof and any Supplemental Indenture. At such time as amounts are determined to be applied to redemption as required in the prior sentence, to the extent amounts (representing less than an Authorized Denomination) in the Acquisition Fund are not available to effect such redemption, the Trustee may transfer such amounts to the applicable account of the Revenue Fund.\*\* Any such Foundation Order shall state that such proposed use of moneys in the Acquisition Fund is a compliance with the provisions of this Indenture. [As amended by Second Supplemental (May 1999)] \*\*[As amended by Third Supplemental Indenture (October 2000).]

[3 new] The Foundation acknowledges that prior to recycling moneys held under the Indenture into Eligible Loans the Foundation is to assure itself that such moneys shall not be then

required for payment of debt service or expenses under the Indenture. [Added by Third Supplemental Indenture (October 2000).]

[3] If, as of September 1, 2000, the composition of the Financed Eligible Loans acquired into the Trust Estate as collateral varies by 10% or more in terms of school type (four-year, two-year and proprietary), loan type (Subsidized Stafford, Unsubsidized Stafford, PLUS, SLS, Consolidation), loan status or yield as compared to the closing cash flow projections, Fitch shall receive immediate notice from the Foundation.

[4] No amount credited to the Tax-Exempt Acquisition Account shall be used to acquire or originate any Eligible Loan unless it was or is made for or on behalf of a student who is or was at the time the Eligible Loan was made a resident of the State and/or who is or was, at the time the Eligible Loan was made, enrolled at an educational institution located in the State (notwithstanding the foregoing, the Foundation may, to the extent permitted by law, acquire or originate Eligible Loans from the Tax-Exempt Acquisition Account not meeting the foregoing requirements so long as at least 95% of the proceeds of the Series 1998 Tax-Exempt Bonds, without regard to amounts deposited in the Tax-Exempt Debt Service Reserve Account, shall be used directly or indirectly to acquire or originate Eligible Loans described in the preceding portion of this sentence).

[5] Notwithstanding the foregoing, if on any Bond Payment Date or any Derivative Payment Date there are not sufficient moneys on deposit in the Tax-Exempt Revenue Account to make the transfers required by Section 5.03(a)(iv)(A) through (F) hereof, then, an amount equal to any such deficiency shall be transferred directly from the Tax-Exempt Acquisition Account (first from the Tax-Exempt Redemption Subaccount and then from any "proceeds" Subaccount); and if on any Bond Payment Date or Derivative Payment Date there are not sufficient moneys on deposit in the Taxable Revenue Account to make the transfers required by Section 5.03(b)(iv)(A) through (E) hereof, then an amount equal to any such deficiency shall be transferred directly from the Taxable Acquisition Account (first from the Taxable Redemption Subaccount and then from any "proceeds" Subaccount).

[6] Financed Eligible Loans may be sold, transferred or otherwise disposed of\* (including transfers or sales to other trust estates) free from the lien of this Indenture at any time pursuant to a Foundation Order and if the Trustee is provided with the following:

(a) a Foundation Order stating the purchase price and directing that Financed Eligible Loans be sold, transferred or otherwise disposed of and delivered to the Person named therein; provided, however, that if the Eligible Loan is originated under the Higher Education Act and the Higher Education Act requires any such Eligible Loan to be held only by an Eligible Lender, such Person must be an Eligible Lender under the Higher Education Act; and

(b) a certificate signed by an Authorized Officer of the Foundation to the effect that:

(i) the disposition price is equal to or in excess of the principal amount thereof (plus accrued interest) or equal to or in excess of the purchase

price paid by the Foundation for such Financed Eligible Loan (less principal amounts received with respect to such Financed Eligible Loan); or

(ii) the disposition price is lower than the principal amount thereof (plus accrued interest), and (A) the Foundation reasonably believes that the Revenues expected to be received (after giving effect to such disposition) would be at least equal to the Revenues expected to be received assuming no such sale, transfer or other disposition occurred, or (B) the Foundation shall remain able to pay debt service on the Bonds and make payment on any other Obligations on a timely basis (after giving effect to such sale, transfer or other disposition) whereas it would not have been able to do so on a timely basis if it had not sold, transferred or disposed of the Financed Eligible Loans at such discounted amount, or (C) the Aggregate Market Value of the Trust Estate (after giving effect to such sale, transfer or other disposition) will be at least equal to 100% of the aggregate principal amount of the Obligations plus accrued interest.\*\*

\* The provisions of the sixth paragraph of Section 5.02 of the Original Indenture with respect to the sale, transfer or disposition of Financed Eligible Loans by the Foundation shall be limited as to any sale, transfer or disposition of Financed Eligible Loans (other than (A) a substantially equivalent exchange of Financed Eligible Loans with other trust estates of the Foundation for other Eligible Loans of comparable characteristics or (B) as set forth in the cash flows as delivered to Moody's in connection with the issuance of the Series 2021 Bonds) unless (i) (and to the extent) the Foundation shall determine in a Foundation Order that the aggregate principal amount of Financed Eligible Loans being so sold, transferred or otherwise disposed of (other than an intra-Foundation exchange as noted above) shall not since the original delivery date of the most recently issued Obligations exceed 10% of the aggregate principal amount of all Financed Eligible Loans as of such original delivery date or (ii) not less than thirty (30) days prior to any such proposed sale, transfer or disposition the Foundation has given Moody's notice in adequate detail of the proposal and the effects thereof and the Foundation further agrees that it shall not complete such sale, transfer or disposition unless prior thereto the Foundation and the Trustee shall have received written notice from Moody's that the completion of such sale, transfer or disposition as proposed shall not have an adverse effect on the then existing Ratings by Moody's with respect to any Outstanding Obligations. [Per Directions to Trustee in Seventh Supplemental (April 2004) through Fourteenth Supplement (December 2021)]

\*\* The provisions of clause (b)(ii)(C) of the sixth paragraph of Section 5.02 of the Original Indenture with respect to permitting the sale, transfer or disposition of Financed Eligible Loans by the Foundation at a price lower than the principal amount thereof (plus accrued interest) if the Aggregate Market Value of the Trust (after giving effect to such sale, transfer or other disposition) will be at least equal to 100% of the aggregate principal amount of the Outstanding Obligations plus accrued interest shall not apply unless not less than thirty (30) days prior to any such proposed sale, transfer or disposition the Foundation has

given Moody's notice in adequate detail of the proposal and the effects thereof and the Foundation further agrees that it shall not complete such sale, transfer or disposition unless prior thereto the Foundation and the Trustee shall have received written notice from Moody's stating that the completion of such sale, transfer or disposition as proposed shall not have an adverse effect on the then existing Ratings by Moody's with respect to any Outstanding Obligations. [Per Directions to Trustee in Seventh Supplemental (April 2004) through Fourteenth Supplement (December 2021)]

[7] Further, Financed Eligible Loans may also be sold, transferred or otherwise disposed of pursuant to a Foundation Order in which the Foundation determines that such disposition of Financed Eligible Loans from the Trust Estate is necessary in order to avoid the occurrence of an Event of Default hereunder, in such amount and at such times and prices as may be specified in such Foundation Order. The Trustee, following receipt of the foregoing and of a certificate of the Foundation indicating that such purchaser or transferee is one of the entities described in clause (a) above, if applicable, shall deliver such Financed Eligible Loans free from the lien of this Indenture upon the receipt of the purchase price or consideration specified in the Foundation Order, in compliance with the foregoing. The proceeds to be received upon any disposition may consist of cash, Investment Securities and/or Eligible Loans. The Trustee shall deposit the proceeds of any such sale, transfer or other disposition into the Account with respect to which such Financed Eligible Loans being disposed of were attributable. Notwithstanding any of the foregoing, the Foundation shall not direct the Trustee to sell, transfer or otherwise dispose of Financed Eligible Loans if such disposition would have an adverse effect on the exclusion from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes.

#### **Section 5.03. Revenue Fund.**

(a) ***Tax-Exempt Revenue Account.***

(i) The Trustee shall deposit into the Tax-Exempt Revenue Account all Revenues derived from Financed Eligible Loans acquired or originated by the Foundation from moneys on deposit in the Tax-Exempt Acquisition Account, and all other Revenue derived from moneys or assets on deposit in the Tax-Exempt Acquisition Account, the Tax-Exempt Debt Service Reserve Account, the Tax-Exempt Revenue Account and the Administration Fund, all amounts designated in Section 2.10(a)(vi) hereof, all Reciprocal Payments with respect to Tax-Exempt Bonds and any other amounts deposited thereto upon receipt of a Foundation Order.

(ii) Upon receipt of a Foundation Order directing the same, moneys in the Tax-Exempt Revenue Account shall be used, on any date, to make a transfer to the Administration Fund, subject to Section 5.06 hereof.

(iii) All Recoveries of Principal constituting a portion of the Revenue deposited in the Tax-Exempt Revenue Account and so identified to the Trustee, shall be transferred, as soon as practicable, to the Tax-Exempt Redemption Subaccount.

(iv) In addition, on each Bond Payment Date and Derivative Payment Date, money in the Tax-Exempt Revenue Account shall be used and transferred to other funds or Persons in the following order of precedence (any money not so transferred or paid to remain in the Tax-Exempt Revenue Account until subsequently applied pursuant to this Section):

(A) to the Rebate Fund, if necessary to comply with the Investment Instructions and the Tax Regulatory Certificate with respect to rebate or Excess Interest;

(B) on a parity basis, to pay interest due on any Tax-Exempt Senior Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Tax-Exempt Senior Bonds due on such Derivative Payment Date, and to the extent there are insufficient moneys available in the Taxable Revenue Account, to pay interest due on any Taxable Senior Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Taxable Senior Bonds due on such Derivative Payment Date;

(C) on a parity basis, to pay the principal of or premium, if any, on any Tax-Exempt Senior Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Tax-Exempt Senior Bonds), and to the extent there are insufficient moneys available in the Taxable Revenue Account, to pay the principal of or premium, if any, on any Taxable Senior Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Taxable Senior Bonds);

(D) on a parity basis, to pay interest due on any Tax-Exempt First Subordinate Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Tax-Exempt First Subordinate Bonds due on such Derivative Payment Date, and to the extent there are insufficient moneys available in the Taxable Revenue Account, to pay interest due on any Taxable First Subordinate Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Taxable First Subordinate Bonds due on such Derivative Payment Date;

(E) on a parity basis, to pay the principal of or premium, if any, on any Tax-Exempt First Subordinate Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Tax-Exempt First Subordinate Bonds), and to the extent there are insufficient moneys available in the Taxable Revenue Account, to pay the principal of or premium, if any, on any Taxable First Subordinate Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or

mandatory sinking fund redemption date with respect to such Taxable First Subordinate Bonds);

(F) On a parity basis (i) first to reimburse the issuer of any Surety in the Tax-Exempt Debt Service Reserve Account, the amount, if any, by which such Surety has been drawn upon for purposes of such Tax-Exempt Debt Service Reserve Account, and any interest or related charges thereon, and, second to the Tax-Exempt Debt Service Reserve Account the amount, if any, required by Section 5.04(b) hereof and (ii) first, to reimburse the issuer of any Surety in the Taxable Debt Service Reserve Account, the amount, if any, by which such Surety has been drawn upon for purposes of such Taxable Debt Service Reserve Account, and any interest or related charges thereon, and, second to the Taxable Debt Service Reserve Account the amount, if any, required by Section 5.04(c) hereof; [As amended by Third Supplemental (October 2000)]

(G) on a parity basis, to pay interest on Tax-Exempt Second Subordinate Bonds on such Bond Payment Date and to make any Foundation Derivative Payment secured on a parity with such Tax-Exempt Second Subordinate Bonds due on such Derivative Payment Date, and to the extent there are insufficient moneys available in the Taxable Revenue Account, to pay interest due on any Taxable Second Subordinate Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Taxable Second Subordinate Bonds due on such Derivative Payment Date;

(H) on a parity basis, to pay the principal of or premium, if any, on any Tax-Exempt Second Subordinate Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Tax-Exempt Second Subordinate Bonds), and to the extent there are insufficient moneys available in the Taxable Revenue Account, to pay the principal of or premium, if any, on any Taxable Second Subordinate Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Taxable Second Subordinate Bonds);

(I) at the option of the Foundation and upon Foundation Order, to the Tax-Exempt Redemption Subaccount; and

(J) at the option of the Foundation and upon Foundation Order, to the Foundation to the extent permitted by Section 5.07 hereof.

(b) ***Taxable Revenue Account.***

(i) The Trustee shall deposit into the Taxable Revenue Account all Revenues derived from Financed Eligible Loans acquired or originated by the Foundation from moneys on deposit in the Taxable Acquisition Account, and all other Revenue derived from moneys or assets on deposit in the Taxable Acquisition Account, the Taxable Debt Service Reserve Account and the Taxable Revenue Account, all amounts designated in Section 2.10(b)(iii) hereof, all Reciprocal Payments with respect to Taxable Bonds, and any other amounts deposited thereto upon receipt of a Foundation Order.

(ii) Upon receipt of a Foundation Order directing the same, moneys in the Taxable Revenue Account shall be used, on any date, to make a transfer to the Administration Fund, subject to Section 5.06 hereof.

(iii) All Recoveries of Principal constituting a portion of the Revenue deposited in the Taxable Revenue Account and so identified to the Trustee, shall be transferred, as soon as practicable, to the Taxable Redemption Subaccount.

(iv) In addition, on each Bond Payment Date and Derivative Payment Date, money in the Taxable Revenue Account shall be used and transferred to other funds or Persons in the following order of precedence (any money not so transferred or paid to remain in the Taxable Revenue Account until subsequently applied pursuant to this Section):

(A) on a parity basis, to pay interest due on any Taxable Senior Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Taxable Senior Bonds due on such Derivative Payment Date, and to the extent there are insufficient moneys available in the Tax-Exempt Revenue Account, to pay interest due on any Tax-Exempt Senior Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Tax-Exempt Senior Bonds due on such Derivative Payment Date;

(B) on a parity basis, to pay the principal of or premium, if any, on any Taxable Senior Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Taxable Senior Bonds), and to the extent there are insufficient moneys available in the Tax-Exempt Revenue Account, to pay the principal of or premium, if any, on any Tax-Exempt Senior Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Tax-Exempt Bonds);

(C) on a parity basis, to pay interest due on any Taxable First Subordinate Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Taxable First Subordinate

Bonds due on such Derivative Payment Date, and to the extent there are insufficient moneys available in the Tax-Exempt Revenue Account, to pay interest due on any Tax-Exempt First Subordinate Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Tax-Exempt First Subordinate Bonds due on such Derivative Payment Date;

(D) on a parity basis, to pay the principal of or premium, if any, on any Taxable First Subordinate Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Taxable First Subordinate Bonds), and to the extent there are insufficient moneys available in the Tax-Exempt Revenue Account, to pay the principal of or premium, if any, on any Tax-Exempt Senior Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Tax-Exempt First Subordinate Bonds);

(E) on a parity basis, (i) first, to reimburse the issuer of any Surety in the Taxable Debt Service Reserve Account, the amount, if any, by which such Surety has been drawn upon for purposes of such Taxable Debt Service Reserve Account, and any interest or related charges thereon, and, second to the Taxable Debt Service Reserve Account the amount, if any, required by Section 5.04(e) hereof and (ii) first, to reimburse the issuer of any Surety in the Tax-Exempt Debt Service Reserve Account, the amount, if any, by which such Surety has been drawn upon for purposes of such Tax-Exempt Debt Service Reserve Account, and any interest or related charges thereon, and, second to the Tax-Exempt Debt Service Reserve Account the amount, if any, required by Section 5.04(b) hereof; [As amended by Third Supplemental Indenture (October 2000)]

(F) on a parity basis, to pay interest on Taxable Second Subordinate Bonds on such Bond Payment Date and to make any Foundation Derivative Payment secured on a parity with such Taxable Second Subordinate Bonds due on such Derivative Payment Date, and to the extent there are insufficient moneys available in the Tax-Exempt Revenue Account, to pay interest due on any Tax-Exempt Second Subordinate Bonds on such Bond Payment Date and any Foundation Derivative Payment secured on a parity with the Tax-Exempt Second Subordinate Bonds due on such Derivative Payment Date;

(G) on a parity basis, to pay principal the principal of or premium, if any, on any Taxable Second Subordinate Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Taxable Second Subordinate Bonds), and to the extent there are insufficient moneys available in the Tax-Exempt Revenue Account, to pay the

principal of or premium, if any, on any Tax-Exempt Second Subordinate Bonds due on such Bond Payment Date (if such Bond Payment Date is a Stated Maturity or mandatory sinking fund redemption date with respect to such Tax-Exempt Junior Subordinate Bonds);

(H) at the option of the Foundation and upon Foundation Order, to the Taxable Redemption Subaccount; and

(I) at the option of the Foundation and upon Foundation Order, to the Foundation to the extent permitted by Section 5.07 hereof.

#### **Section 5.04. Debt Service Reserve Fund.**

(a) The Trustee shall deposit to the Tax-Exempt Debt Service Reserve Account the amount specified therefor in Section 2.10(a)(v) hereof including any Surety therefor. On each Bond Payment Date or Derivative Payment Date, to the extent there are insufficient moneys in the Tax-Exempt Revenue Account to make the transfers required by Sections 5.03(a)(iv)(A) through (H) hereof, then, after any required transfer from the Tax-Exempt Acquisition Account, the amount of such deficiency shall be paid directly first, from moneys other than the Surety and second to the extent such moneys are insufficient, from the Surety in the Tax-Exempt Debt Service Reserve Account; provided, however, that no such transfer shall be made with respect to the Second Subordinate Obligations pursuant to Section 5.03(a)(iv)(G) or (H) hereof unless no Senior or First Subordinate Obligations remain Outstanding hereunder.

(b) If the Tax-Exempt Debt Service Reserve Account (including any Surety therein) is used for the purposes described in Section 5.04(a) hereof, the Trustee shall reimburse the issuer of the Surety and restore the Tax-Exempt Debt Service Reserve Account to the Debt Service Reserve Fund Requirement with respect thereto by transfers from the Tax-Exempt Revenue Account on the next Bond Payment Date pursuant to Section 5.03(a)(iv)(F) hereof and from the Taxable Revenue Account on the next Bond Payment Date pursuant to Section 5.03(b)(iv)(E) hereof. If the full amount required to reimburse the issuer of the Surety and restore the Tax-Exempt Debt Service Reserve Account to the applicable Debt Service Reserve Fund Requirement is not available in such Accounts on such next succeeding Bond Payment Date, the Trustee shall continue to transfer funds from such Accounts as they become available and in accordance with Section 5.03(a)(iv)(F) and 5.03(b)(iv)(E) until the issuer of the Surety has been reimbursed and the deficiency in the Tax-Exempt Debt Service Reserve Account has been eliminated.

(c) On any day that the amount in the Tax-Exempt Debt Service Reserve Account 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 Tax-Exempt Redemption Subaccount.

(d) The Trustee shall deposit to the Taxable Debt Service Reserve Account the amount specified therefor in Section 2.10(b)(ii) including any Surety therefor. On

each Bond Payment Date or Derivative Payment Date, to the extent there are insufficient moneys in the Taxable Revenue Account to make the transfers required by Sections 5.03(b)(iv)(A) through (G) hereof, then, after any required transfer from the Taxable Acquisition Account, the amount of such deficiency shall be paid directly first, from moneys other than the Surety and second to the extent such moneys are insufficient, from the Surety in the Taxable Debt Service Reserve Account; provided, however, that no such transfer shall be made with respect to the Second Subordinate Obligations pursuant to Section 5.03(b)(iv)(F) or (G) hereof unless no Senior or First Subordinate Obligations remain Outstanding hereunder.

(e) If the Taxable Debt Service Reserve Account is used for the purposes described in Section 5.04(d) hereof, the Trustee shall reimburse the issuer of the Surety and restore the Taxable Debt Service Reserve Account to the Debt Service Reserve Fund Requirement with respect thereto by transfers from the Taxable Revenue Account on the next Bond Payment Date pursuant to Section 5.03(b)(iv)(E) hereof and from the Tax-Exempt Revenue Account on the next Bond Payment Date pursuant to Section 5.03(a)(iv)(F) hereof. If the full amount required to reimburse the issuer of the Surety and restore the Taxable Debt Service Reserve Account to the applicable Debt Service Reserve Fund Requirement is not available in such Accounts on such next succeeding Bond Payment Date, the Trustee shall continue to transfer funds from such Accounts as they become available and in accordance with Sections 5.03(b)(iv)(E) and 5.03(a)(iv)(F) until the issuer of the Surety has been reimbursed and the deficiency in the Taxable Debt Service Reserve Account has been eliminated.

(f) On any day that the amount in the Taxable Debt Service Reserve Account 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 Taxable Redemption Subaccount.

[As amended by Third Supplemental (October 2000)]

#### **Section 5.05. Rebate Fund.**

(a) The Trustee shall, in accordance with Section 5.03(a)(iv)(A) hereof, withdraw from the Tax-Exempt Revenue Account 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 calculated as of the Computation Date pursuant to written instructions from the Foundation. Computation of the amounts on deposit in each Fund and of the Rebate Amount shall be furnished to the Trustee by or on behalf of the Foundation in accordance with the Investment Instructions and the Tax Regulatory 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 Investment Instructions and the Tax Regulatory Certificate, shall pay to the United States of America from the Rebate Fund (i) not later than 60 days after November 1, 2002 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 calculated as of the end of the most recent Computation Date and (ii) not later than 60 days after the date on which all of the Series 1998 Bonds have been paid or redeemed, 100% of the Rebate Amount as of the end of the final Computation Date.

(c) The Trustee shall, in accordance with Section 5.03(a)(iv)(A) hereof, withdraw from the Tax-Exempt Revenue Account 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 Regulatory 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 Tax-Exempt 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 Tax-Exempt Revenue Account.

**Section 5.06. Administration Fund.** The Trustee shall deposit to the Administration Fund the amount specified in Section 2.10(a)(vii) and Section 2.10(b)(iv) hereof. The Administration Fund shall be used solely to pay Administrative Expenses and the costs of issuance with respect to any Bonds. Amounts shall be disbursed therefrom for such purpose upon receipt by the Trustee of a Foundation Order.

The amount deposited in the Administration Fund by transfer from the Revenue Fund and, if necessary, from the Acquisition Fund, and the schedule of deposits shall be determined by the Foundation, but the amount so transferred in any one Fiscal Year shall not exceed the amount or amounts budgeted by the Foundation as Administrative Expenses for such Fiscal Year with respect to the Bonds and as may be limited by a Supplemental Indenture, and 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 written confirmation from each Rating Agency 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 an amended budget, the Foundation may requisition from the Trustee the amount which it is anticipated will be required to pay the Administrative Expenses not in excess of the amount budgeted with respect to the Bonds for the period to the next deposit into the Administration Fund. 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 currently budgeted for that year as Administrative Expenses or as may be further limited by a Supplemental Indenture.

Upon the receipt of such requisition, the Trustee shall withdraw the amount requisitioned from the Revenue Fund, and if necessary, from the Acquisition Fund (or so much thereof as is then on deposit in such Funds) 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 and the Acquisition 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 5.07. Transfers to Foundation.** Transfers from the Revenue Fund to the Foundation may be made in accordance with Sections 5.03(a)(iv)(J) and 5.03(b)(iv)(I); provided, however, that no transfer of assets to the Foundation (other than from the Administration Fund as otherwise permitted in Article V of the Indenture) shall be made if there is not on deposit in the Debt Service Reserve Fund an amount equal to at least the Debt Service Reserve Fund Requirement, and unless the Trustee has received (a) an opinion of Bond Counsel stating that 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 Excess Interest and Portfolio Yield and to the rebate of certain amounts to the federal government as such obligations would be calculated upon the date of such opinion in accordance with the Tax Regulatory Certificate and Investment Instructions and that such transfer will not affect adversely the exclusion from federal income taxation of interest on Tax-Exempt Bonds and (b) a Certificate of an Authorized Officer of the Foundation to the effect that all rebate liability as calculated pursuant to the Tax Regulatory Certificate and Investment Instructions through the date of such transfer has been paid or deposited in the Rebate Fund; and further provided, that no transfer shall be made to the Foundation unless immediately after taking into account any such transfer, the Aggregate Market Value of the assets in the Trust Estate will be equal to at least 112% of the unpaid principal amount of the Senior Bonds Outstanding and 103% of all Senior and First Subordinate Bonds Outstanding.

Subject to compliance with Section 4.13 hereof, the amounts so transferred to the Foundation may be used for any proper purpose of the Foundation and investment earnings thereon shall be the property of the Foundation.

[The Fourteenth Supplemental Indenture (December 2021) provided that the requirement for receipt of an opinion of Bond Counsel contemplated by Section 5.07(a) of the Original Indenture for release of monies shall not apply to the releases described in the Fourteenth Supplemental Indenture.]

**Section 5.08. 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 clause (a) of the definition of the Investment Securities. 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 respective Account of the Revenue Fund as provided in Sections 5.03(a)(i) and 5.03(b)(i) 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.

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 5.09. Release.** The Trustee shall, upon Foundation Order and subject to the provisions of this Indenture, take all actions reasonably necessary to effect the release of any Financed Eligible Loans from the lien of this Indenture to the extent the terms hereof permit the sale, disposition or transfer of such Financed Eligible Loans.

**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.

## ARTICLE VI

### DEFAULTS AND REMEDIES

**Section 6.01. 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 Senior Bonds when due or failure to make any payment due under any other Senior Obligations when due;
- (b) if no Senior Obligations are Outstanding hereunder, default in the due and punctual payment of the principal of or interest on any of the First Subordinate Bonds when due or failure to make any payment due under any other First Subordinate Obligations when due;
- (c) if no Senior Obligations or First Subordinate Obligations are Outstanding hereunder, default in the due and punctual payment of the principal of or interest on any of the Second Subordinate Bonds when due or failure to make any payment due under any other Second Subordinate Obligations when due;
- (d) 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;
- (e) the occurrence of an Event of Bankruptcy; and
- (f) the occurrence of an “event of default” under the Tax Regulatory Certificate.

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 Highest Priority Obligations at the time Outstanding.

**Section 6.02. Remedy on Default; Possession of Trust Estate.** Subject to Section 6.09 hereof, upon the happening and continuance of any Event of Default, the Trustee personally or by its attorneys or agents may 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 and all other proper outlays herein authorized, 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 Obligations shall have become due, first, to the payment of the interest in default on the Senior Bonds and to the payment of all Foundation Derivative Payments secured on a parity with the Senior Bonds 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 Senior Bonds on which such interest shall be in default and any such Foundation Derivative Payments as provided in the ISDA Master Agreement then due, such payments to be made ratably to the parties entitled thereto without discrimination or preference, second, to the payment of the interest in default on the First Subordinate Bonds and to the payment of all Foundation Derivative Payments secured on a parity with the First Subordinate Bonds then due, in order of the maturity of the installments of such interest and any such Foundation Derivative Payments, with interest on the overdue installments thereof at the same rates, respectively, as were borne by the First Subordinate Bonds on which such interest shall be in default and any such Foundation Derivative Payments then due, such payments to be made ratably to the parties entitled thereto without discrimination or preference and, third, to the payment of the interest in default on the Second Subordinate Bonds and to the payment of all Foundation Derivative Payments secured on a parity with such Second Subordinate Bonds then due, in order of the maturity of the installments of such interest and any such Foundation Derivative Payments, with interest on the overdue installments thereof at the same rates, respectively, as were borne by the Second Subordinate Bonds on which such interest shall be in default and any such Foundation Derivative Payments then due, such payments to be made ratably to the parties entitled thereto without discrimination or preference, except as may be provided in a Supplemental Indenture; and

(b) if the principal of any of the Obligations shall have become due by declaration of acceleration or otherwise, first to the payment of the interest in default on the Senior Bonds and all Foundation Derivative Payments secured on a parity with the Senior Bonds 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 Senior Bonds on which such interest shall be in default and such Foundation Derivative Payments as provided in the ISDA Master Agreement then due, as the case may be, second, to the payment of the principal of all Senior Bonds then due and any amount owed to a Reciprocal Payor secured on a parity with Senior Obligations under the ISDA Master Agreement, such payments to be made ratably to the parties entitled thereto without discrimination or preference, third, to the payment of the interest in default on the First Subordinate Bonds and all Foundation Derivative Payments secured on a parity with the First Subordinate Bonds 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 First Subordinate Bonds on which such interest shall be in default and such Foundation Derivative Payments as provided in the ISDA Master Agreement then due, as the case may be, fourth, to the payment of the principal of all First Subordinate Bonds then due and any amount owed to a Reciprocal Payor secured on a parity with First Subordinate Obligations under the ISDA Master Agreement, such payments to be made ratably to the parties entitled thereto without discrimination or preference, fifth, to the payment of the interest in default on the Second Subordinate Bonds and all Foundation Derivative Payments secured on a parity with such Second Subordinate Bonds 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 Second Subordinate Bonds on which such interest shall be in default and such Foundation Derivative Payments as provided in the ISDA Master Agreement then due, as the case may be, and sixth, to the payment of the principal of all Second Subordinate Bonds then due and any amount owed to a Reciprocal Payor secured on a parity with Second Subordinate Obligations under the ISDA Master Agreement, such payments to be made ratably to the parties entitled thereto without discrimination or preference, except as may be provided in a Supplemental Indenture.

(c) (i) if the principal of none of the Obligations shall have first become due, after making provisions, in the priority described, for subsection (a) above, then moneys shall be applied to the payment of the interest in default on the obligations subordinate to Second Subordinate Bonds and to the payment of all Foundation Derivative Payments secured on a parity with such obligations subordinate to Second Subordinate Bonds then due, in order of the maturity of the installments of such interest and any such Foundation Derivative Payments, with interest on the overdue installments thereof at the same rates, respectively, as were borne by the obligations subordinate to Second Subordinate Bonds on which such interest shall be in default and any such Foundation Derivative Payments then due, such payments to be made ratably to the parties entitled thereto without discrimination or preference, except as may be provided in a Supplemental Indenture; and (ii) if the principal of any of the Obligations shall become due, after making provisions, in the priority described, for subsection (b) above, then moneys shall be applied to the payment of the interest in default on the obligations subordinate to Second Subordinate Bonds and all Foundation Derivative Payments secured on a parity with such obligations subordinate to Second Subordinate Bonds 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 obligations subordinate to Second Subordinate Bonds on which such interest shall be in default and such Foundation Derivative Payments then due, as the case may be, and, then, to the payment of the principal of all obligations subordinate to Second Subordinate Bonds then due and any amount owed to a Reciprocal Payor secured on a parity with obligations subordinate to Second Subordinate Obligations, such payments to be made ratably to the parties entitled thereto without discrimination or preference, except as may be provided in a Supplemental Indenture. [Added by Twelfth Supplemental Indenture (September 2009)]

**Section 6.03. 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 6.04. Remedies on Default; Sale of Trust Estate.** Upon the happening of any Event of Default and if the principal of all of the Outstanding Obligations 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 the Trustee has received an opinion of Bond Counsel stating that 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 opinion in accordance with the Tax Regulatory Certificate and that such transfer will not affect adversely the exclusion from federal income taxation of interest on the Tax-Exempt Bonds afforded by Section 103 of the Code. 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 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 25% of the collective aggregate principal amount of the Highest Priority Obligations at the time Outstanding; provided, however, that a declaration of acceleration upon a default pursuant to Section 6.01 (d) hereof shall require the consent of 100% of the Registered Owners of the collective aggregate principal amount of the Highest Priority Obligations then Outstanding. [As amended by Twelfth Supplemental (September 2009)]

**Section 6.05. Appointment of Receiver.** In case an Event of Default occurs, and if all of the Outstanding Obligations 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 6.06. 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 6.07. 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 6.08. 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 6.02 hereof, and then to the Foundation or whomsoever shall be lawfully entitled thereto.

**Section 6.09. 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 at least 25% of the collective aggregate principal amount of the Highest Priority Obligations then Outstanding, shall declare, the principal of all Obligations then Outstanding, and the interest thereon, if not previously due, immediately due and payable, anything in the Obligations or this Indenture to the contrary notwithstanding; provided, however, that for a declaration of acceleration upon a default pursuant to Section 6.01(d) hereof shall require the consent of 100% of the Registered Owners of the collective aggregate principal amount of the Highest Priority Obligations then Outstanding.

**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, the Registered Owners of at least 25% of the collective aggregate principal amount of the Highest Priority Obligations then Outstanding, shall have the right by an instrument or instruments in writing delivered to the Trustee to direct and control the Trustee as to the method of taking any and all proceedings for any sale of any or all of the Trust Estate, or for the appointment of a receiver, if permitted by law, and may at any time cause any proceedings authorized by the terms hereof to be so taken or to be discontinued or delayed; provided, however, that such Registered Owners shall not be entitled to cause the Trustee to take any proceedings which in the Trustee's opinion would be unjustly prejudicial to non-assenting Registered Owners of Obligations, but the Trustee shall be entitled to assume that the action requested by the Registered Owners of 25% of the collective aggregate principal amount of the Highest Priority Obligations then Outstanding will not be prejudicial to any non-assenting Registered Owners unless the Registered Owners of more than 50% of the collective aggregate principal amount of the non-assenting Registered Owners of such Highest Priority Obligations, in writing, show the Trustee how they will be prejudiced. Provided, however, that anything in this Indenture to the contrary notwithstanding, the Registered Owners of a majority of the collective aggregate principal amount of the Highest Priority Obligations then Outstanding together with the Registered Owners of a majority of the collective aggregate principal amount of all other Obligations then Outstanding 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 Obligations then Outstanding shall have made written request upon the Trustee 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 not less than a majority of the collective aggregate principal amount 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 Obligations, 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 Highest Priority Obligations then Outstanding; provided, however, that there shall not be waived (a) any Event of Default in the payment of the principal of or premium on any Outstanding Obligations at the date of Stated Maturity or redemption thereof, or any default in the payment when due of the interest on any such Obligations, unless prior to such waiver or rescission, all arrears of interest or all arrears of payments of principal and premium, if any (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 Obligations 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 7.04 hereof. 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 7.01. 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 7.02. 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 7.03. 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) 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) 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 7.04. 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 7.01(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 6.01(a), (b), (c) or (d) hereof) unless and until it shall have been specifically notified in writing at the address in Section 9.01 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 for, and to hold it harmless against, any loss, liability, or expenses incurred without negligence, willful misconduct or bad faith on its part,

arising out of or in connection with the acceptance or administration of the trust or trusts hereunder or under the Auction Agent Agreements, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder or thereunder.

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) 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) 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 7.05. 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; provided, however, that the Trustee's entering of any such agreement does not relieve the Trustee of any obligation it might have. [As amended by Twelfth Supplemental (September 2009)]

**Section 7.06. 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 7.07. 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 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 Highest Priority Obligations then Outstanding.

**Section 7.08. 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 7.09. 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 Highest Priority Obligations 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 Bonds at the address of each Registered Owner appearing on the bond registration books maintained by the Registrar.

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 Trustee) 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 Section 4.08 or 4.11(b) hereof.

So long as any Bonds are Outstanding, the Trustee (a) will maintain the Trustee Guarantee Agreement; and (b) 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 Trustee Guarantee Agreement or any similar or supplemental agreement which in any manner will adversely affect the rights of the Registered Owners.

So long as any Bonds are Outstanding, the Trustee (a) will maintain its participation in the Federal Family Education Loan Program as reflected in the letter of February 18, 1998 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 comply with the Higher Education Act and 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 8.01 hereof) if the Higher Education Act is hereafter amended so as to be contrary to the terms of this Indenture.

(c) The Trustee hereby covenants that 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.

**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 clause (a) of the definition of Investment Securities.

**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 change, expiration, extension, or renewal of this Indenture, (b) redemption or defeasance of any or 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. The Trustee shall also promptly deliver to the Rating Agencies duplicate copies of all correspondence, notices, certificates, audits, reports or other communications prepared by the Trustee and sent by the Trustee to the Registered Owners in accordance with this Indenture. All notices and other items to the Rating Agencies required under this Section shall be in writing at the following addresses:

Fitch IBCA, Inc.  
One State Street Plaza  
New York, New York 10004  
Attention: Structured Finance

Moody's Investors Service  
99 Church Street  
New York, New York 10007  
Attention: Asset-Backed and Pooled Risk Finance Group

The Trustee also acknowledges that each Rating Agency's periodic review for maintenance of a Rating on any series of the Bonds may involve discussions and/or meetings with representatives of the Trustee at mutually agreeable times and places.

**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. Special Circumstances Leading to Resignation of Trustee.** Because the Trustee serves as trustee hereunder for Obligations of different priorities, it is possible that circumstances may arise which will cause the Trustee to resign from its position as trustee for one or more of the Obligations. In the event that the Trustee makes a determination that it should so resign, due to the occurrence of an Event of Default or potential default hereunder, or otherwise, the Foundation may permit such resignation as to one or more of the Obligations or request the Trustee's resignation as to all Obligations, as the Foundation may elect. If the Foundation should determine that a conflict of interest has arisen as to the trusteeship of any of the Obligations, it may authorize and execute a Supplemental Indenture with one or more successor Trustees, under which the administration of certain of the Obligations would be separated from the administration of the other Obligations.

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES

**Section 8.01. 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 change as shall be necessary in order to obtain and maintain for any of the Bonds an investment grade Rating from a nationally recognized rating service, which changes, in the opinion of the Trustee are not to the prejudice of the Registered Owner of any of the Obligations;
- (h) to make any changes necessary to comply with the Higher Education Act or the Code;
- (i) to provide for the issuance of Additional Bonds pursuant to the provisions of the Indenture, including the creation of appropriate Funds, Accounts and Subaccounts with respect to such Additional Bonds;
- (j) to make the terms and provisions of this Indenture, including the lien and security interest granted herein, applicable to a Derivative Product, and to modify Section 3.03 hereof with respect to any particular Derivative Product;
- (k) to create any additional Funds or Accounts or Subaccounts under this Indenture deemed by the Trustee to be necessary or desirable;
- (l) to amend the Indenture to allow for any Bonds to be supported by a letter of credit or insurance policy or a liquidity agreement, including amendments with respect to repayment to such a provider on a parity with any Bonds or Derivative Product and providing rights to such provider under this Indenture, including with respect to defaults and remedies;
- (m) to amend the Indenture to provide for use of a surety bond or other financial guaranty instrument in lieu of cash and/or Investment Securities in all or any portion of the Debt Service Reserve Fund, so long as such action shall not adversely affect the Ratings on any of the Bonds; or
- (n) 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.

**Section 8.02. Supplemental Indentures Requiring Consent of Registered Owners.** Exclusive of Supplemental Indentures covered by Section 8.01 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 Obligations then Outstanding which in the opinion of the Trustee 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 Obligations, (i) an extension of the Stated Maturity date or mandatory sinking fund redemption date, or the interest on any Obligation, or (ii) a reduction in the principal amount of any Obligation or the rate of interest thereon, or (iii) a privilege or priority of any Obligation or Obligations over any other Obligation or Obligations except as otherwise provided herein, or (iv) a reduction in the aggregate principal amount of the Obligations required for consent to such Supplemental Indenture, or (v) the creation of any lien other than a lien ratably securing all of the Obligations 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.

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 shown on the registration books or listed in any Derivative Product. 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 Obligations 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, no Registered Owner of any Obligation 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 8.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**Section 8.03. Additional Limitation on Modification of Indenture.** None of the provisions of this Indenture (including Sections 8.01 and 8.02 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 Tax-Exempt Bonds.

No amendment to this Indenture or the indentures supplemental thereto shall be effective with respect to the rights of the issuer of any Surety thereunder without the prior written consent of the such issuer of the Surety being provided to the Trustee. Further, each **Surety issuer's written consent** prior thereto shall be required with respect to the adoption of any indenture

supplemental hereto or the removal of the Trustee of the appointment of a successor thereto. [Added by Third Supplemental (October 2000)]

## ARTICLE IX GENERAL PROVISIONS

**Section 9.01. 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.

The amount of Bonds held by any person executing such instrument as a Registered Owner of Bonds and the fact, amount, and numbers of the Bonds held by such person and the date of his holding the same may be proved by a certificate executed by any responsible trust company, bank, banker, or other depository in a form approved by the Trustee, showing that at the date therein mentioned such person had on deposit with such depository the Bonds described in such certificate; provided, however, that at all times the Trustee may require the actual deposit of such Bond or Bonds with the Trustee.

All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, telex, telecopy or facsimile or similar writing) 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  
3900 Osuna, N.E.  
Albuquerque, New Mexico 87109  
Attention: President  
Telephone: (505) 345-3371  
Telecopier: (505) 345-6381

If intended for the Trustee: Zions First National Bank  
Suite 930 South  
600 Seventeenth Street  
Denver, Colorado 80202  
Attention: Corporate Trust Department  
Telephone: (303) 534-7483  
Telecopier: (303) 534-7495

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 telex or 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 telex or telecopier or registered first-class mail, postage prepaid.

**Section 9.02. 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 9.03. 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 9.04. 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 9.05. 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 9.06. Nonliability of Directors; No General Obligation Except as Provided Herein.** 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 (except as otherwise specifically provided herein or in any Supplemental Indenture) 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 (except as otherwise specifically provided herein or in any Supplemental Indenture) 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.

**Section 9.07. 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 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 9.08. Security Agreement.** This Indenture constitutes a Financing Statement and a Security Agreement under the New Mexico Uniform Commercial Code.

**Section 9.09. 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 9.10. Severability.** Of 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 9.11. Exhibits.** The terms of the Exhibits attached to this Indenture are incorporated herein in all particulars.

**Section 9.12. 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 9.13. 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 9.14. Reciprocal Payor Rights.** Notwithstanding any provision of this Indenture, no Reciprocal Payor which shall be in default under any Derivative Product with the

Foundation shall have any of the rights granted to a Reciprocal Payor or as the Registered Owner of an Obligation hereunder.

**Section 9.15. Aggregate Principal Amount of Obligations.** Whenever in this Indenture reference is made to the aggregate principal amount of any Obligations, such phrase shall mean, at any time, the principal amount of any Bonds and the Derivative Value of any Derivative Product.

**Section 9.16. Financed Eligible Loans.** The Foundation expects to acquire and originate Eligible Loans and to transfer Eligible Loans to the Trustee, in accordance with this Indenture, which Eligible Loans, upon becoming subject to the lien of this Indenture, constitute Financed Eligible Loans, as defined herein. 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.

## ARTICLE X

### PAYMENT AND CANCELLATION OF BONDS AND SATISFACTION OF INDENTURE

**Section 10.01. 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 Foundation Derivative Payments are fully paid or provision made for its payment as provided in this Article.

**Section 10.02. 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, and amounts due and owing as Carry-over Amount, if any, at the times and in the manner stipulated in this Indenture, (ii) to each Reciprocal Payor, all Foundation Derivative Payments then due and (iii) to the United States of America, the amount required to be rebated in satisfaction of its obligations as described in the Investment Instructions and the Tax Regulatory 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 amounts due and owing as Carry-over Amount, if any, and to each Reciprocal Payor all Reciprocal Payments then due, at the times and in the manner stipulated in this Indenture and in the

Derivative Product, such Bonds and each Reciprocal Payor 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 each Reciprocal Payor 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 10.02(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 10.02(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 (fully insured by the Federal Deposit Insurance Foundation or fully collateralized by Governmental Obligations) 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 and Carry-over Amount, if any, to become due on such Bond on and prior to the redemption date or Stated Maturity thereof, as the case may be. 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 Tax-Exempt 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 and Carry-over Amount, if any, 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) Any Foundation Derivative Payments are deemed to have been paid and the applicable Derivative Product terminated when payment of all Foundation Derivative Payments due and payable to each Reciprocal Payor under its respective Derivative Product have been made or duly provided for to the satisfaction of each Reciprocal Payor and the respective Derivative Product has been terminated.

(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.

(e) The provisions of this Section are applicable to the Bonds and the Foundation Derivative Payments and any portion of the Bonds.

**Section 10.03. Cancellation of Paid Bonds.** Any Bonds which have been paid or purchased by the Foundation, mutilated Bonds replaced by new Bonds, and any temporary Bond for which definitive Bonds have been delivered shall (unless otherwise directed by the Foundation by Foundation Order) forthwith be cancelled by the Trustee and, except for temporary Bonds, returned to the Foundation.

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]

Attest:

By \_\_\_\_\_  
Chairman

By \_\_\_\_\_  
Secretary

By \_\_\_\_\_  
President

ZIONS FIRST NATIONAL BANK, as Trustee

By \_\_\_\_\_  
Vice President

[EXHIBITS A-J DELETED AS NO LONGER APPLICABLE]

**EXHIBIT K**  
**ELIGIBLE LOAN ACQUISITION CERTIFICATE**

This Eligible Loan Acquisition Certificate is submitted pursuant to the provisions of Section 5.02 of the Indenture of Trust, dated as of February 1, 1998 (the "Indenture"), between New Mexico Educational Assistance Foundation (the "Foundation") and Zions First National Bank, as Trustee. All capitalized terms used in this Certificate and not otherwise defined herein shall have the same meanings given to such terms in the Indenture. In your capacity as Trustee, you are hereby authorized and requested to disburse to \_\_\_\_\_ (the "Lender") the sum of \$ \_\_\_\_\_ (or, in the case of an exchange, the Student Loans listed in Exhibit A hereto) for the acquisition of Eligible Loans. With respect to the Eligible Loans so to be acquired, the Foundation hereby certifies as follows:

1. The Eligible Loans to be acquired are those specified in Schedule A attached hereto (the "Acquired Eligible Loans"). The remaining unpaid principal amount of each Acquired Eligible Loan is as shown on such Schedule A.
2. The amount to be disbursed pursuant to this Certificate does not exceed the amount permitted by Section 5.02 of the Indenture (or, if a Financed Eligible Loan is being sold in exchange for an Acquired Eligible Loan under the provisions of Section \_\_\_\_ of the Indenture, the aggregate unpaid principal amount of, and accrued interest on, such Financed Student Loan does not exceed the amount permitted by Section 5.02 of the Indenture).
3. Each Acquired Eligible Loan is an Eligible Loan authorized so to be acquired by the Indenture.
4. You have been previously, or are herewith, provided with the following items (the items listed in (a), (b) and (c) have been received and are being retained, on your behalf, by the Foundation):
  - (a) a copy of the Student Loan Purchase Agreement between the Foundation and the Eligible Lender with respect to the Acquired Eligible Loans;
  - (b) with respect to each Insured Loan included among the Acquired Eligible Loans, the Certificate of Insurance relating thereto;
  - (c) with respect to each Guaranteed Loan included among the Acquired Eligible Loans, a certified copy of the Guarantee Agreement relating thereto;
  - (d) an opinion of counsel to the Foundation specifying each action necessary to perfect a security interest in all Eligible Loans to be acquired by the Foundation pursuant to the Student Loan Purchase Agreements in favor of the Trustee in the manner provided for by the provisions of 20 U.S.C. § 1087-2(d)(3) (you are authorized to rely on the advice of a single blanket opinion of Counsel to the Foundation until such time as the Foundation shall provide any amended opinion to you);

(e) a certificate of an Authorized Officer of the Foundation to the effect that (i) the Foundation is not in default in the performance of any of its covenants and agreements made in the Student Loan Purchase Agreement relating to the Acquired Eligible Loans; (ii) with respect to all Acquired Eligible Loans which are Insured, Insurance is in effect with respect thereto, and with respect to all Acquired Eligible Loans which are Guaranteed, the Guarantee Agreement is in effect with respect thereto; and (iii) the Foundation is not in default in the performance of any of its covenants and agreements made in any Contract of Insurance or the Guarantee Agreement applicable to the Acquired Eligible Loans;

(f) evidence that the promissory notes evidencing each Acquired Eligible Loan have had stamped thereon or affixed thereto a notice specifying that they have been assigned to the Trustee with all necessary endorsements; and

(g) instruments duly assigning the Acquired Eligible Loans to the Trustee.

5. The Foundation is not, on the date hereof, in default under the Indenture or the Student Loan Purchase Agreement applicable to the Acquired Eligible Loans, and, to the best knowledge of the Foundation, the Eligible Lender is not in default under the Student Loan Purchase Agreement applicable to the Acquired Eligible Loans. The Foundation is not aware of any default existing on the date hereof under any of the other documents referred to in paragraph 4 hereof, nor of any circumstances which would reasonably prevent reliance upon the opinion of counsel referred to in paragraphs 4(d) hereof.

6. All of the conditions specified in the Student Loan Purchase Agreement applicable to the Acquired Eligible Loans and the Indenture for the acquisition of the Acquired Eligible Loans and the disbursement hereby authorized and requested have been satisfied; provided that the Foundation may waive the requirement of receiving an opinion of counsel from the counsel to the Lender.

7. If a Financed Student Loan is being sold in exchange for an Acquired Eligible Loan, the final expected maturity date of such Acquired Eligible Loan is no later than three months after the final expected maturity date of such Financed Student Loan.

8. The undersigned is authorized to sign and submit this Certificate on behalf of the Foundation.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_.

NEW MEXICO EDUCATIONAL  
ASSISTANCE FOUNDATION

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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## APPENDIX D

### FORM OF BOND COUNSEL OPINION

December 8, 2021

New Mexico Educational Assistance Foundation  
7400 Tiburon, N.E.  
Albuquerque, NM 87109

Re: New Mexico Educational Assistance Foundation Education Loan Bonds, Senior Series 2021-1A and Senior Series 2021-1B (Taxable)

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We have acted as bond counsel to the New Mexico Educational Assistance Foundation (the “Foundation”) in connection with the issuance by the Foundation of its Education Loan Bonds, Senior Series 2021-1A (the “Series 2021A Bonds”) and Senior Series 2021-1B (Taxable) (the “Series 2021B Bonds”) and, collectively with the Series 2021A Bonds, the “Bonds”) in the aggregate principal amount of \$208,000,000. The Foundation was authorized to be formed by the Educational Assistance Act, Sections 21-21A-1 to 21-21A-25, 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 “Nonprofit Act”), of the State.

The Bonds are issued pursuant to the provisions of the Educational Assistance Act, the Nonprofit Act, a resolution of the Foundation's Board of Directors adopted on October 19, 2021 (the “Resolution”) and an Indenture of Trust dated as of February 1, 1998, as previously amended and supplemented (the “Original Indenture”) and as further amended and supplemented by a Fourteenth Supplemental Indenture of Trust, dated as of December 1, 2021 (the “Fourteenth Supplemental Indenture” and collectively with the Original Indenture, the “Indenture”), each between the Foundation and Zions Bancorporation, 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, various certificates of the Foundation, the Trustee and others, opinions of counsel to the Foundation and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

We have not undertaken to verify independently, and have assumed, the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by any parties other than the Foundation. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents and of the legal conclusions contained in the opinions, referred to in the immediately preceding paragraph hereof. Furthermore, we have assumed compliance with the covenants and agreements contained in the Indenture and various certificates of the Foundation, the Trustee and others.

Based on and subject to the foregoing, we are of the opinion, under existing law, as follows:

1. The Foundation is a nonprofit corporation under the Nonprofit Act and the Educational

Assistance Act, duly organized and validly existing under the laws of the State and has lawful authority to issue the Bonds.

2. The Bonds have been duly authorized, executed and delivered by the Foundation and 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 pledged under the Indenture, 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 of the State 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. Under existing law as enacted and construed on the date hereof, interest on the Series 2021A Bonds (including any original issue discount properly allocable to an owner thereof) (i) is excludable from gross income for federal income tax purposes, and (ii) is an item of tax preference for purposes of computing the federal alternative minimum tax. The opinions set forth in this paragraph 5 assume, and are subject to the condition, that the Foundation comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Series 2021A Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The Foundation has covenanted to comply with these requirements. Failure to comply with certain of these requirements may cause interest on the Series 2021A Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2021A Bonds.

6. Interest on the Series 2021B Bonds is not excludable from gross income for federal tax purposes.

7. Under the laws of the State of New Mexico as enacted and construed on the date hereof, interest on the Bonds is excludable from net income of the owners thereof for State of New Mexico income tax purposes.

We express no opinion regarding the accuracy, completeness or sufficiency of any offering material relating to the Bonds. Further, we express no opinion regarding the perfection or priority of the lien on revenues or other funds pledged under the Indenture or tax consequences arising with respect to the Bonds other than as expressly set forth in this opinion.

The rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and by equitable principles, whether considered at law or in equity.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

Respectfully submitted,



## APPENDIX E

### FORM OF CONTINUING DISCLOSURE AGREEMENT

**THIS CONTINUING DISCLOSURE AGREEMENT** (the “Continuing Disclosure Agreement”) is executed and delivered by the New Mexico Educational Assistance Foundation (the “Obligated Person”) in connection with the issuance of \$208,000,000 aggregate principal amount of its Education Loan Bonds, Series 2021, consisting of its Education Loan Bonds, Senior Series 2021-1A (AMT) and Education Loan Bonds, Senior Series 2021-1B (Taxable) (collectively, the “Series 2021 Bonds”). The Series 2021 Bonds are being issued pursuant to the Indenture of Trust, dated as of February 1, 1998, as heretofore supplemented and amended and as further supplemented and amended by a Fourteenth Supplemental Indenture of Trust dated as of December 1, 2021 (the “Indenture”), between the Foundation and Zions Bancorporation, National Association, as trustee (the “Trustee”). The Obligated Person undertakes and agrees as follows:

**Section 1. Purpose of the Continuing Disclosure Agreement.** This Continuing Disclosure Agreement is being executed and delivered by the Obligated Person for the benefit of the Registered Owners and beneficial owners of the Series 2021 Bonds and in order to assist the Underwriters (as defined below) in complying with the Rule (as defined below).

**Section 2. Definitions.** In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Continuing Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Financial Information*” shall mean any Annual Financial Information provided by the Obligated Person pursuant to, and as described in, Sections 3 and 4 of this Continuing Disclosure Agreement.

“*Dissemination Agent*” shall mean any Dissemination Agent designated by the Obligated Person.

“*EMMA*” means the Electronic Municipal Market Access facility for municipal securities disclosure of the MSRB.

“*Financial Obligation*” means (a) a debt obligation, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (c) a guarantee of either clause (a) or (b) above. The term “Financial Obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

“*Listed Event*” shall mean any of the events listed in Section 5(a) of this Continuing Disclosure Agreement.

“*MSRB*” shall mean the Municipal Securities Rulemaking Board, and any successors or assigns, or any other entities or agencies approved under the Rule.

“*Offering Memorandum*” shall mean the Offering Memorandum, dated December 1, 2021, of the Obligated Person with respect to its offering of the Series 2021 Bonds.

“*Repository*” shall mean, until otherwise designated by the SEC, the Electronic Municipal Market Access website of the MSRB located at <http://emma.msrb.org>.

“Rule” shall mean Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as amended, as such rule may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Underwriters” means each “participating underwriter” as that term is defined in the Rule, and in relation to the Series 2021 Bonds, shall mean RBC Capital Markets, LLC and BofA Securities Inc. and any successors known to the Obligated Person.

### **Section 3. Provision of Annual Financial Information.**

(a) The Obligated Person shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of the Obligated Person’s fiscal year, commencing with the report of the fiscal year ending June 30, 2022, provide to the Repository, at [www.emma.msrb.org](http://www.emma.msrb.org), in such electronic format accompanied by such identifying information (the “Prescribed Form”) as shall have been prescribed by the MSRB and which shall be in effect on the date of filing of such information, the Annual Financial Information which is consistent with the requirements of Section 4 of this Continuing Disclosure Agreement.

(b) The Annual Financial Information may be submitted as a single document or as separate documents comprising a package, or by specific cross reference to other documents which have been submitted to the Repository and available to the public on the Repository’s website or filed with the SEC. If the document so referenced is a final offering document within the meaning of the Rule, such final offering document must be available from the Repository. The Obligated Person shall clearly identify each such other document so incorporated by cross-reference.

(c) If the financial statements of the Obligated Person are audited, the audited financial statements of the Obligated Person must be submitted if and when available but may be submitted separately from the balance of the Annual Financial Information and later than the date required above for the filing of the Annual Financial Information if they are not available by that date.

**Section 4. Content of Annual Financial Information.** The Obligated Person’s Annual Financial Information shall contain or incorporate by reference the following:

(a) annual financial statements prepared in accordance with accounting principles generally accepted in the United States of America;

(b) an update and a discussion of the financial information and operating data in the Offering Memorandum under the headings “THE FOUNDATION,” “SERVICING OF THE FINANCED ELIGIBLE LOANS” (but only with respect to the table titled “FFELP Net Reject Rate”) and “CHARACTERISTICS OF THE FINANCED ELIGIBLE LOANS”;

(c) The following Indenture information:

(i) balances in the Debt Service Reserve Fund (including the 2021 Supplemental Reserve Subaccount), the Revenue Fund, the Administration Fund and the Redemption Subaccount; and

(ii) outstanding principal amount of the Series 2021 Bonds of each subseries issued under the Indenture then outstanding; and

(d) a discussion of any material impact on the Obligated Person of any changes to the Higher Education Act.

**Section 5. Reporting of Significant Events.**

(a) Pursuant to the provisions of this Section, the Obligated Person shall give, or cause to be given, on behalf of itself and any other persons providing undertakings under the Rule with respect to the Series 2021 Bonds, notice to the Repository of the occurrence of any of the following events with respect to the Series 2021 Bonds:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (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, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2021 Bonds, or other material events affecting the Series 2021 Bonds;
- (vii) modifications to rights of Registered Owners of the Series 2021 Bonds, if material;
- (viii) any call of any Series 2021 Bonds, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution or sale of property securing repayment of the Series 2021 Bonds, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership, or similar event of the Obligated Person;
- (xiii) the consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (xv) incurrence of a Financial Obligation of the Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Obligated Person, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Obligated Person, any of which reflect financial difficulties.

(b) If the Obligated Person obtains knowledge of the occurrence of a Listed Event, the Obligated Person shall file, in a timely manner not in excess of ten (10) Business Days after the occurrence of the Listed Event, a notice of such occurrence in Prescribed Form with EMMA.

(c) The Obligated Person shall provide, in a timely manner, to the MSRB in Prescribed Form in accordance with EMMA, notice of any failure of the Obligated Person to timely provide the Annual Financial Information as specified in Section 4 hereof.

(d) If the Obligated Person changes its fiscal year, it shall provide in Prescribed Form notice of the change of fiscal year to the Trustee and to the MSRB.

**Section 6. Termination of Reporting Obligation.** The Obligated Person's obligations under this Continuing Disclosure Agreement shall terminate upon the earliest to occur of (a) the legal defeasance, prior redemption or payment in full of all of the Series 2021 Bonds; or (b) the date that the Obligated Person shall no longer constitute an "obligated person" with respect to the Series 2021 Bonds within the meaning of the Rule (or, if later, the date on which the Obligated Person determines to no longer voluntarily comply with the Rule in the event that the Rule does not apply to the Series 2021 Bonds at the time). The Obligated Person shall file a notice of any such termination with the Repository in the Prescribed Form in accordance with EMMA.

**Section 7. Dissemination Agent.** The Obligated Person may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Continuing Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

**Section 8. Amendment: Waiver.** Notwithstanding any other provision of this Continuing Disclosure Agreement, the Obligated Person may amend this Continuing Disclosure Agreement, and any provision of this Continuing Disclosure Agreement may be waived, if such amendment or waiver is consistent with the Rule, as determined by an opinion of counsel experienced in federal securities laws selected by the Obligated Person. Written notice of any such amendment or waiver shall be provided by the Obligated Person to the MSRB in Prescribed Form in accordance with EMMA, and the next Annual Financial Information shall explain in narrative form the reasons for the amendment and the impact of any change in the type of information being provided. If any 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 statement or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**Section 9. Additional Information.** Nothing in this Continuing Disclosure Agreement shall be deemed to prevent the Obligated Person from disseminating any other information, using the means of dissemination set forth in this Continuing Disclosure Agreement or any other means of communication, or including any other information in any Annual Financial Information or notice of occurrence of a Listed Event, in addition to that which is required by this Continuing Disclosure Agreement. If the Obligated Person chooses to include any information in any Annual Financial Information or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Continuing Disclosure Agreement, the Obligated Person shall have no obligation under this Continuing Disclosure Agreement to update such information or include it in any future Annual Financial Information or notice of occurrence of a Listed Event.

**Section 10. Default.** In the event of a failure of the Obligated Person to comply with any provision of this Continuing Disclosure Agreement, any Registered Owner or beneficial owner of the Series 2021 Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Obligated Person to comply with its obligations under this Continuing Disclosure Agreement. A default under this Continuing Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Continuing Disclosure Agreement in the event of any failure of the Obligated Person to comply with this Continuing Disclosure Agreement shall be an action to compel performance.

**Section 11. Beneficiaries.** This Continuing Disclosure Agreement shall inure solely to the benefit of the Obligated Person, the Dissemination Agent, the Underwriters, the Registered Owners and beneficial owners from time to time of the Series 2021 Bonds and shall create no rights in any other person or entity.

Date: December \_\_\_\_, 2021

NEW MEXICO EDUCATIONAL  
ASSISTANCE FOUNDATION

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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## APPENDIX F

### WEIGHTED AVERAGE LIFE ANALYSIS OF THE TAX-EXEMPT TERM BONDS AND THE TAXABLE TERM BONDS

The following information with respect to the Tax-Exempt Term Bonds and the Taxable Term Bonds has been prepared by the Underwriters in consultation with the Foundation. No representation is made by the Foundation, the Underwriters or any of their respective agents concerning the actual average life of the Tax-Exempt Term Bonds, the Taxable Term Bonds or the Financed Eligible Loans and how it compares to the various forward-looking average life estimates herein.

*Prospective purchasers of the Tax-Exempt Term Bonds and the Taxable Term Bonds are urged to base their decisions whether to purchase the Tax-Exempt Term Bonds or the Taxable Term Bonds upon the purchaser's own determinations about anticipated rates of prepayments with respect to the Financed Eligible Loans and the estimated weighted average life of the Tax-Exempt Term Bonds and the Taxable Term Bonds.*

Prepayments of loans may be measured by a prepayment standard or model. The model used herein is the constant prepayment rate ("CPR") model. CPR represents a constant rate of prepayment on the Financed Eligible Loans each month relative to the then outstanding aggregate principal balance of the Financed Eligible Loans in repayment status for the life of such Financed Eligible Loans.

The tables below indicate the Weighted Average Life ("WAL") of the (a) Tax-Exempt Term Bonds based on the assumption that Financed Eligible Loans allocable to the Series 2021A Bonds prepay at the respective indicated percentages of CPR (the "CPR Prepayment Assumption Rates") and (b) Taxable Term Bonds based on the assumption that Financed Eligible Loans allocable to the Series 2021B Bonds prepay at the respective indicated CPR Prepayment Assumption Rates. It is unlikely that the Financed Eligible Loans will prepay at any of the CPR Prepayment Assumption Rates presented, and the timing of changes in the rate of prepayments actually experienced on the Financed Eligible Loans is unlikely to follow the pattern described for the CPR Prepayment Assumption Rates presented.

Each Weighted Average Life is likely to vary, perhaps significantly, from that set forth in the table below due to the differences between the actual rate of prepayments on the related Financed Eligible Loans and the assumptions described herein.

#### Estimated Weighted Average Life of Tax-Exempt Term Bonds

Prepayment Speed/Cash Flow Scenario	Estimated WAL (Years)	First Bond Retirement Date	Last Bond Retirement Date	Average Maturity Date
0% CPR	11.19	3/1/2031	3/1/2037	2/16/2033
6% CPR	9.41	9/1/2026	9/1/2035	5/6/2031
10% CPR	7.05	3/1/2024	3/1/2034	12/27/2028
14% CPR	4.48	9/1/2023	3/1/2032	5/29/2026
20% CPR	2.28	3/1/2023	3/1/2026	3/20/2024

**Estimated Weighted Average Life of Taxable Term Bonds**

<b>Prepayment Speed/Cash Flow Scenario</b>	<b>Estimated WAL (Years)</b>	<b>First Bond Retirement Date</b>	<b>Last Bond Retirement Date</b>	<b>Average Maturity Date</b>
0% CPR	8.52	9/1/2029	3/1/2031	6/16/2030
6% CPR	2.79	9/1/2023	9/1/2026	9/22/2024
10% CPR	1.65	3/1/2023	3/1/2024	8/1/2023
14% CPR	1.26	9/1/2022	9/1/2023	3/12/2023
20% CPR	0.90	9/1/2022	3/1/2023	11/2/2022

Weighted average lives (WALs) are influenced by, among other things, the initial parity ratio, cash releases, actual prepayments, bond interest rates, bond redemptions, reinvestment income, the future path of interest rates, loan interest rates, borrower delinquencies and defaults, default recoveries, program expenses, allocation of loans between applicable tax-exempt and taxable series, compliance with IRS yield restrictions and the issuance of Additional Bonds in the future under the Indenture. Actual results will vary from assumptions made in the base case. The following assumptions were used in estimating the weighted average lives of the Tax-Exempt Term Bonds and the Taxable Term Bonds:

1. WALs are computed from the expected closing date for the Series 2021 Bonds.
2. WALs assume the Foundation releases cash in the amounts and at the times permitted under the transaction documents.
3. All scenarios assume no defaults, no delinquencies, deferment, or forbearance, and that interest rates remain static at current levels.
4. All scenarios assume there are government payment delays of 60 days for Interest Subsidy Payments and Special Allowance Payments, and that a Monthly Consolidation 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 to the Department of Education.
5. Scenarios do not take into account any Additional Bonds that may be issued under the Indenture in the future.



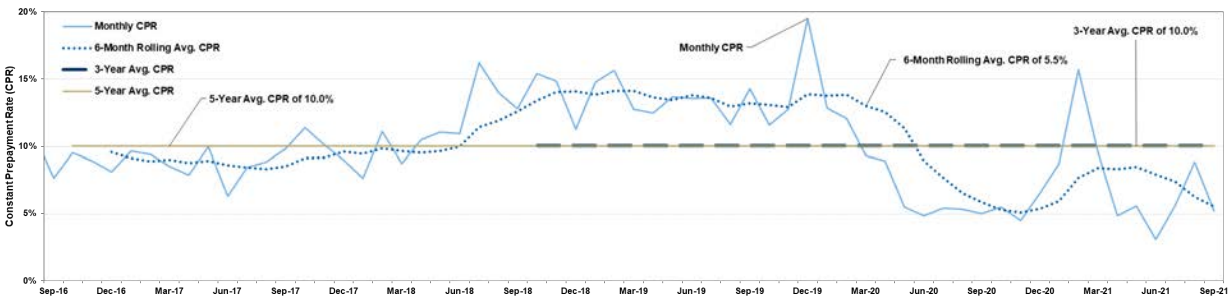
## Constant Prepayment Rate History

The Foundation’s voluntary and involuntary constant prepayment rate (“CPR”) for loans held unencumbered by the Foundation and financed pursuant to the Line of Credit, the Prior Indentures and the Indenture was steadily increasing prior to the COVID-19 Pandemic, averaging 10.0% over the last five years. As of September 2021, the six-month rolling average CPR was approximately 5.5%, the three-year average CPR was approximately 10.0% and the five-year average was approximately 10.0%. For illustrative example purposes, the monthly CPRs provided in the chart below are calculated as follows (rounding may impact calculations)<sup>(1)</sup>:

<ul style="list-style-type: none"> <li>▪ Loan Principal (LP), as of August 2021 = \$301,762,368</li> <li>▪ Voluntary and Involuntary Prepayments (PP), as of September 2021 = \$1,351,885</li> </ul>	}	<ul style="list-style-type: none"> <li>▪ Single Monthly Mortality (SMM) = <math>\frac{PP}{LP} = 0.45\%</math></li> <li>▪ Constant Prepayment Rate (CPR) = <math>1 - (1 - SMM)^{12} = 5.25\%</math></li> </ul>
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<sup>(1)</sup> For these purposes, the denominator used in the Single Monthly Mortality (SMM) calculation is not reduced by scheduled principal received. This results in a lower CPR than otherwise.

### Constant Prepayment Rate (CPR): Monthly, 6-Month Rolling Average, 3-Year Average, and 5-Year Average



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# New Mexico Educational Assistance Foundation



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