

Section 1. Article 14 of the education law is amended by adding a new Part V to read as follows:

PART V

THE NEW YORK HIGHER EDUCATION LOAN PROGRAM

Section 690. Definitions.

691. Powers and duties.

692. Education loans; special requirements.

693. Repayment of loans.

694. Sale of education loans.

694-a. Miscellaneous.

694-b. Reporting.

§ 690. Definitions. As used in this part, the following terms shall have the following meanings unless otherwise specified:

1. "Education loan" shall mean any loan that is made under this program to finance or refinance higher education expenses at an eligible college.

2. "Eligible borrower" or "borrower" shall mean (i) a student who is a resident of New York state attending, or accepted for enrollment at, an eligible college, or (ii) the parent, legal guardian, or sponsor, as defined by the corporation in regulation, of a student attending, or accepted for enrollment at, an eligible college who is a resident of New York state, and who obtains an education loan from a lending institution to pay for or finance higher education expenses under this program.

3. "Eligible college" shall mean a post-secondary institution, located within New York state, eligible for funds under Title IV of the Higher Education Act of nineteen hundred sixty-five, as amended, or successor statute offering a two-year, four-year, graduate or professional degree granting or certificate program.

4. "Eligible co-signer" shall mean a parent, legal guardian or otherwise credit worthy individual over twenty-one years of age who satisfies applicable credit criteria approved by the corporation and is a resident of New York state.

5. "Higher education expenses" shall mean the cost of attendance at an eligible college and shall include tuition and fees, books, room and board, and other educationally related expenses, as determined by the corporation.

6. "Holder" shall mean, with respect to an education loan: (i) a lender; (ii) a public benefit corporation authorized to finance the purchase or making of education loans pursuant to the public authorities law; or (iii) any assignee of such lender or public benefit corporation.

7. "Lending institution" or "lender" shall mean any entity that itself or through an affiliate originates education loans, other than an entity authorized to finance the purchase or making of education loans through the issuance of bonds pursuant to the public authorities law.

8. "Program" shall mean the New York Higher Education Loan Program established by this article.

9. "Student" shall mean any individual who is enrolled at least half-time, as defined by the commissioner, in a two year, four year, graduate or professional degree granting or certificate program at an eligible college.

§ 691. Powers and duties. In furtherance of the purposes set forth in this part, the corporation shall have the following additional powers and duties:

1. To market, originate, disburse, service, collect, administer, guarantee, secure, finance, and purchase education loans not in default status made under this program or contract for these services.

2. To purchase defaulted education loans made under this program.

3. To establish and maintain one or more default reserve funds and accounts within such funds, in accordance with the terms of this program.

4. To develop and administer or contract to administer one or more financial literacy programs.

5. To provide or contract to provide default aversion services.

6. To establish criteria for eligible colleges, lenders, and other entities such as, but not limited to, servicers, and to enter into participation agreements with any such eligible colleges, lenders, and

other entities and any entity authorized to finance the purchase or making of education loans through the issuance of bonds pursuant to the public authorities law, and any subsequent purchaser of education loans made under this program.

7. To establish criteria for all lender underwriting, education loan purchases, servicing and default insurance payments.

8. To establish criteria for the distribution of education loans made under this program.

9. To audit lenders, servicers, holders, and eligible colleges for program compliance.

10. To adopt rules and regulations to implement this program.

§ 692. Education loans; special requirements. In any year in which fixed rate education loans are to be acquired using the proceeds of bonds issued by the state of New York mortgage agency or other public benefit corporation authorized to issue bonds for the purposes of this program, preference shall be given to education loans made to eligible borrowers for the benefit of students who demonstrate financial need based on such student's family gross income, pursuant to rules and regulations promulgated by the corporation after consultation with the state of New York mortgage agency or other public benefit corporation authorized to issue bonds for the purposes of this program. 1. Terms and conditions. (a) eligible borrowers shall apply for education loans under this program on forms prescribed by the corporation;

(b) except as may be provided by regulation, a student for whom an education loan is made shall be required to first apply for and exhaust: (i) their maximum eligibility of loans under the Federal Family Education Loan Program (FFELP) and the Federal Direct Student Loan Program (FDSLSP), excluding PLUS loans; (ii) any other federal student aid, other than HEAL loans and other aid permitted by the corporation to be excluded; (iii) any state student aid; and (iv) any other student aid as prescribed by the corporation before being eligible for any education loan under this program;

(c) borrowers shall successfully complete a financial literacy course as prescribed by the corporation;

(d) student borrowers must apply for education loans under this program with an eligible co-signer;

(e) a borrower, or co-signer, who is in default on an education loan made under this program, the Federal Family Education Loan Program, the Williams D. Ford Program, or has failed to comply with the terms and conditions of any award under this article and has failed to satisfactorily cure such default or non-compliance as prescribed by applicable law or regulation shall be ineligible to receive a loan under this program, and shall further be ineligible for any other state student aid while in default on an education loan made under this program; and

(f) participating eligible colleges, lending institutions, and other participants in this program shall be required to enter into a participation agreement with the corporation and comply with all reporting and processing requirements and procedures as established by the corporation. These participation agreements shall contain such other specific terms and conditions of the program as shall be determined by the corporation.

2. Citizenship. A borrower must be (a) a citizen of the United States, or

(b) an alien lawfully admitted for permanent residence in the United States, or

(c) an individual of a class of refugees paroled by the attorney general of the United States under his or her parole authority pertaining to the admission of aliens to the United States.

3. Loan limits. Education loans made under this program shall have annual and cumulative loan limits as approved from time to time by the corporation, subject to the approval of the state of New York mortgage agency, or other public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program, with respect to loans that are expected to be financed by such entity.

4. Interest rates. The interest rate of loans made under this program shall be established in a manner that shall be approved at least annually by the corporation, subject to the approval of the state of New York mortgage agency, or other subject to public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program, with respect to loans that are expected to be financed by such entity.

5. Default fee. A percentage of the education loan shall be paid as a default fee, by or on behalf of the borrower or the lender, in an amount to be established at least annually by the corporation subject to the approval of the state of New York mortgage agency, or other public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program, with respect to loans that are expected to be financed by such entity. The default fee established by the corporation, subject to the approval of the state of New York mortgage agency, or other public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program, with respect to education loans that are expected to be financed by such entity, shall be a percentage of the principal amount of such loans, as determined by the corporation, that, together with other amounts on deposit in the applicable default reserve fund, shall not exceed an amount sufficient to ensure that the balance of such funds satisfies the obligations of such default reserve fund and permits such loans to be financed. This fee may be considered part of the cost of attendance for the purposes of calculating the loan amount for this program and shall be transmitted to the corporation in accordance with rules or regulations promulgated by the corporation. The corporation shall deposit these funds into a designated account within the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

6. Consolidation. Education loans made pursuant to this program may be eligible for consolidation upon the terms and conditions established by the corporation. Any person consolidating education loans under this program shall be considered a borrower for purposes of this part.

7. Default reserve funds. (a) General provisions. One or more default reserve funds shall be established in the custody of the comptroller pursuant to sections seventy-eight-a and seventy-eight-b of the state finance law. One or more default reserve funds shall be established in the custody of the state of New York mortgage agency pursuant to subdivision six of section two thousand four hundred five-a of the public authorities law. These funds shall be used by the corporation to pay default claims to participating lenders and holders of education loans made pursuant to this program.

(b) Deposits. The corporation shall promptly deposit or transfer into the New York higher education loan program variable rate default reserve

fund created by section seventy-eight-a of the state finance law, the New York higher education loan program fixed rate default reserve fund created by section seventy-eight-b of the state finance law or the state of New York mortgage agency New York higher education loan program default reserve fund created by subdivision six of section two thousand four hundred five-a of the public authorities law, with respect to education loans, described in such provisions, any moneys received in connection with this program other than payments of principal and interest of education loans that are not in default status, including, but not limited to: (i) default fees; (ii) fees received from eligible colleges; (iii) funds received for the repayment of defaulted education loans, the unpaid principal, capitalized and unpaid accrued interest of which have been paid from the funds, including without limitation all such amounts received through the operation of voluntary collection activities, administrative wage garnishment or credit of tax overpayments less any amounts received for collection fees assessed by the corporation; (iv) contractual penalties and subsidy fees; (v) any amount that may be appropriated to the corporation; (vi) any amount received by the corporation or any agent from any other source for deposit therein; and (vii) interest and investment income earned by the funds.

8. Lender due diligence. Participating lenders shall be required to perform all due diligence requirements as prescribed by the corporation and incorporated into the participation agreement and into regulations promulgated by the corporation.

9. Eligible college requirements. (a) Participating eligible colleges shall be required to certify loan eligibility upon forms prescribed by the corporation and incorporated into the participation agreement and pursuant to regulations promulgated by the corporation.

(b) Participating eligible colleges shall be required to contribute a one percent fee prescribed by the corporation, subject to the approval of the state of New York mortgage agency, or other public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program, with respect to loans that are expected to be financed by such entity, based upon the loan dollar volume or have the contribution made on its behalf, pursuant to the terms of the participation agreement. This fee shall be deposited into a designated account within the New York higher education loan program variable rate default reserve fund the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as described in subdivision seven of this section as applicable. This fee, or any other college fee, shall not be assessed to the student or eligible borrower in connection with this program.

§ 693. Repayment of loans. 1. Terms of repayment. The terms of repayment of education loans made under this program shall be established in rules and regulations promulgated by the corporation subject to the approval of the state of New York mortgage agency or other public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program with respect to loans that are expected to be financed by such entity.

2. Grace period. The terms of any grace period for education loans made under this program shall be established in rules and regulations promulgated by the corporation subject to the approval of the state of New York mortgage agency or other public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program with respect to loans that are expected to be financed by such

entity. Notwithstanding, the grace period established shall be no less than six months.

3. Forbearance and deferments. Education loans made under this program shall be eligible for in-school and military deferments pursuant to rules and regulations promulgated by the corporation, or pursuant to such additional deferments and/or forbearance as offered by an eligible lender, in each case, subject to the approval of the state of New York mortgage agency, or other authorized public benefit corporation authorized to issue bonds under the public authorities law for purposes of this program, with respect to loans that are expected to be financed by such entity. Upon the assignment of a defaulted education loan made under this program for collection as described in subdivision five of this section, the borrower shall no longer be eligible for any forbearance or deferments while such loan remains in default.

4. Delinquency. A borrower shall be considered delinquent on an education loan under this program after thirty days of non-payment. The holder shall notify the corporation promptly after the first day of delinquency and the corporation shall undertake actions to return the borrower to repayment pursuant to rules and regulations established by the corporation. Such actions shall include, but not be limited to, attempts at: (i) locating and contacting the borrower and/or co-signer, as applicable, regarding the delinquent status of their loan; (ii) explaining the account history and clarifying any discrepancies; (iii) counseling the borrower and/or co-signer, as applicable, regarding all available repayment options, inducing deferments, and any public assistance available to them; (iv) providing the borrower and/or co-signer, as applicable, with documentation in connection with their loan or loans; (v) informing the borrower and/or co-signer, as applicable, of the consequences of default; and (vi) any other assistance that would prevent a default by a borrower.

5. Default. Any education loan under this program that is delinquent for one hundred eighty days shall be deemed in default. Upon default, the holder shall file a claim with the corporation and, if applicable, the state of New York mortgage agency, for payment from the New York education loan program variable rate default reserve fund, the New York education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York education loan program default reserve fund, as described in subdivision seven of section six hundred ninety two of the education law, as applicable, pursuant to regulations promulgated by the corporation. Upon receipt of a claim, the corporation shall notify the borrower that their loan is being assigned to the corporation for collection. The lender, or holder shall be paid one hundred percent of the outstanding principal, and of the capitalized and unpaid accrued interest. Upon such payment, this amount shall be the principal owed by the borrower.

All collection payments received by the corporation from a borrower, or on behalf of borrowers, in default on loans made under this program, except collection fees shall be deposited into a designated account within the New York higher education loan program variable rate default reserve fund, New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

6. Collection fee. The corporation shall assess a collection fee, in an amount to be determined by the corporation at least annually, on all defaulted education loans under this program. This fee shall be retained by the corporation for the administration of the program. The aggregate

annual revenue generated by such fee shall not exceed the actual costs incurred by the corporation, in the preceding year, in collecting a defaulted loan under this program on which the corporation has paid a claim, except in the initial year for which such fee shall not exceed the fee charged by the corporation for the collection of defaulted loans under the federal family education loan program. Any amounts in excess of actual cost shall be used to reduce the fee charged in the subsequent year.

7. Administrative wage garnishment. (a) Notwithstanding any provision of law to the contrary, the corporation shall be entitled to garnish the disposable pay of an individual to collect the amount owed by the individual, if such individual fails to make required voluntary payments under a repayment agreement with the corporation, provided that:

(i) The amount deducted for any pay period does not exceed fifteen percent of disposable pay. However, the amount deducted for any period may exceed fifteen percent with the written consent of the individual;

(ii) Prior to garnishment the individual shall have been given thirty days written notice to the individual's last known address advising such individual of the nature of the obligation, amount of the loan obligation, the corporation's intent to garnish and an explanation of the individual's rights under this section including the right to inspect and copy records relating to the debt;

(iii) The individual shall have been given an opportunity within the aforementioned thirty days to enter into a written repayment agreement with the corporation to avoid garnishment of wages;

(iv) The individual shall have been provided an opportunity for a hearing pursuant to the requirements of paragraph (f) of this subdivision.

(b) The individual's employer shall pay to the corporation amounts as directed in the withholding order and shall be liable for failure to comply with said order. The corporation may sue an employer in a court of competent jurisdiction to recover from such employer the amount the employer fails to withhold from the individual's wages following receipt of the order of withholding with interest thereon plus attorneys' fees and costs;

(c) The notice of withholding served upon the employer shall contain only such information as is necessary for the employer to comply with the withholding order.

(d) No amount may be deducted from the wages of an individual who has been involuntarily separated from employment and has not been continuously employed for twelve months. An individual must prove that separation from employment was involuntary. Separation due to incarceration shall not qualify as involuntary separation.

(e) An employer may not discharge from employment, take disciplinary action against or refuse to employ an individual by reason of the fact that such individual's wages are subject to an order of withholding. Such individual may take action against said employer in a court of competent jurisdiction for reinstatement, back pay or such further relief as may be just and necessary.

(f) A hearing as described in subparagraph (iv) of paragraph (a) of this subdivision shall be provided prior to an order of withholding if the individual submits a written request for a hearing on or before the fifteenth day following the notice described in subparagraph (ii) of paragraph (a) of this subdivision in accordance with procedures set forth by the corporation. If an individual fails to submit a written request in the time frame provided, the corporation shall still provide

a hearing upon receipt of a written request, but such hearing need not be provided prior to an order of withholding being issued to the employer. The hearing shall not be conducted by a party under the supervision or control of the corporation except that nothing shall prohibit the corporation from appointing an administrative law judge. A hearing decision shall be issued no later than sixty days after the filing of the petition requesting the hearing.

(g) For purposes of this section "disposable pay" shall mean that part of the compensation of any individual from an employer remaining after deduction of amounts required to be withheld by law.

(h) All funds received through administrative wage garnishment shall be deposited into a designated account within the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

8. New York state tax offset. The corporation shall be entitled to receive credits of New York state tax overpayments pursuant to section one hundred seventy-one-d and paragraph three of subdivision (e) of section six hundred ninety-seven of the tax law with respect to defaulted education loans under this program. All funds, or credits, received through such tax offsets shall be deposited into a designated account within the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

9. Data share. The corporation shall be entitled to receive data from the New York state department of taxation and finance pursuant to section one hundred seventy-one-a and paragraph three of subdivision (e) of section six hundred ninety-seven of the tax law with respect to defaulted education loans under this program.

10. Statute of limitation. Notwithstanding any provision of law to the contrary, there shall be no statute of limitations to bring suit or otherwise collect an education loan under this program. Judgments in favor of the corporation under this program shall not expire and there shall be no statute of limitations upon which to enforce or collect said judgment.

11. Capacity of minors. Any person otherwise qualifying for an education loan under this program shall not be disqualified by reason of his or her being under the age of eighteen years and for the purposes of applying for, receiving and repaying such a loan, any such person shall be deemed to have full legal capacity to act. The corporation, in collecting education loans under this program, shall not be subject to a defense raised by any borrower based on a claim of infancy.

12. Usury. Notwithstanding any provision of law to the contrary the rate or amount of interest or fees payable on education loans made under this program shall not exceed twenty-five per centum per annum or its equivalent rate for a longer or shorter period.

13. Death and disability discharge. Upon the death of a student, for the funding of whose higher education expenses an education loan was made, the education loan made under this program shall be deemed discharged. If such a student becomes totally and permanently disabled, the education loan under this program shall be deemed discharged. A total or permanent disability shall mean a condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. The holder

of such discharged education loans shall be paid the outstanding principal, capitalized and unpaid accrued interest due from the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable.

14. Bankruptcy. Education loans under this program shall be considered non-dischargeable pursuant to section 523(a)(8) of the U.S. Bankruptcy Code.

15. Notwithstanding any other provision of law, other than section one thousand six hundred eighty two and section two thousand four hundred five-a of the public authorities law, a security interest in education loans shall be perfected only by the filing of a financing statement in the manner provided under section 9-310 of the uniform commercial code, and shall attach and be assigned priority in the manner provided under the uniform commercial code with respect to security interests perfected by such a filing, and a description of collateral consisting of education loans in any financing statement shall be conclusively deemed to be legally sufficient if it refers to records identifying such loans retained by the corporation, provided that any such security interest shall be subject to any applicable lien under section two thousand four hundred five-a of the public authorities law. The owner of any education loan shall advise the corporation of any sale or assignment of such loan at the time and in the manner required by the corporation.

16. Notwithstanding any other provision of law, any eligible public college or public career education institution is hereby authorized to enter into one or more agreements with the corporation and any entity authorized to finance education loans pursuant to the public authorities law providing for the participation of such college or career education institution in the program and to perform or contract the performance of its obligations under any such agreement. Such obligations may include without limitation the payment obligations described in this title.

§ 694. Sale of education loans. 1. The corporation and holders shall be authorized to enter into one or more agreements for the sale of education loans made pursuant to this program.

2. Education loan purchases may be financed (i) by bonds issued by the state of New York mortgage agency, or other entity authorized to issue bonds for such purpose pursuant to the public authorities law, in an amount approved by the director of the division of the budget; or (ii) by other non-state sources in amounts established pursuant to an agreement with the corporation.

3. The corporation shall establish the criteria and terms upon which lenders may sell education loans subject to the approval of the state of New York mortgage agency or any other entity authorized to issue bonds under this program with respect to loans that are expected to be financed by such entity.

§ 694-a. Miscellaneous. 1. No education loan shall be deemed subject to section one hundred eight of the banking law, to article nine of the banking law or to any other provisions of law governing the qualifications to make loans or the terms or conditions of loans described in this part, including, without limitation, the interest rates, fees and charges applicable thereto. Neither the corporation nor any entity authorized to finance education loans pursuant to the public authorities law shall be subject to any licensing requirements in connection with its education lending activities. No entity shall be considered a lender

for purposes of any other provision of law solely as a result of its interest in an education loan made under this part.

2. Funds may be appropriated to the corporation and/or the state of New York mortgage agency, or other entity authorized to issue bonds under this program, for the administration of this program.

3. Interest paid on education loans made under this program shall be allowed as a deduction in computing the net taxable income of any such person for purposes of any income or franchise tax imposed by the state or any political subdivision thereof.

4. Any agreement of an entity authorized to issue bonds under the public authorities law for purposes of this program to acquire education loans from a lender shall be subject to the availability to such entity of funding for such purpose upon terms and conditions approved by such entity and shall not require the expenditure by such entity of funds from any source other than amounts obtained through the issuance of bonds or notes, including earnings thereon, and any appropriations thereof.

5. The corporation, the state of New York mortgage agency, any lender, and any public benefit corporation authorized to issue bonds under the public authorities law for the purposes of this program shall not be subject to Title 5 of the general obligations law with respect to education loans and such education loans shall not be subject to such title.

6. To the extent that the provisions of this part are inconsistent with the provisions of any other part of this article, the provisions of this part shall be controlling.

§ 694-b. Reporting. The corporation, after consultation with the state of New York mortgage agency, and any other public benefit corporation that shall have issued bonds under the public authorities law for purposes of this program, with respect to loans that have been financed by or that are expected to be financed by such entity, shall report annually with respect to education loans made under this program for the prior academic year to the governor, the temporary president of the senate, the speaker of the assembly, the director of the division of the budget, the senate finance committee, the assembly ways and means committee and the standing committees of the legislature having jurisdiction of higher education on the number and characteristics of students who received fixed rate and/or variable rate loans under this program, including, but not limited to, the interest rate charged, the default and collection fees established, the grace period established if other than six months, the number of students who received loans that demonstrated financial need pursuant to section six hundred ninety-two of this part, the income established by the corporation pursuant to section six hundred ninety-two of this part, the number of students who received fixed rate loans, the number of students who received variable rate loans, the number of default claims received by the corporation, the number of borrowers subject to administrative wage garnishment, and a list of the lenders and holders, if known, who have provided variable rate loans. Such annual report shall be submitted by the first day of December following the close of the academic year for which such education loans were made.

§ 2. Subdivision 2 of section 653 of the education law, as added by chapter 942 of the laws of 1974, is amended to read as follows:

2. a. To submit to the governor, the temporary president of the senate, the speaker of the assembly, the senate finance committee, the assembly ways and means committee and the standing committees of the legislature having jurisdiction of higher education, at such times as

the director of the budget may prescribe a student aid and loan budget request for the following state fiscal year. The budget request shall include, but not be limited to estimates of the number and characteristics of students eligible for aid and loans, other than education loans made under the New York higher education loan program pursuant to part V of this article which budget request shall be developed by the president after consultation with the board of regents in order to implement the student financial aid and loan programs, other than education loans made under the New York higher education loan program pursuant to part V of this article provided for in this article. Notwithstanding, the budget request shall also include an estimate of the amounts needed for state operations within the New York higher education loan program account for purposes of the New York higher education loan program established pursuant to part V of this article. A copy of the budget request shall be transmitted to the commissioner for his information. The budget request submitted by the board shall be subject to approval annually as part of the executive budget.

b. At the time and in the format prescribed by the Director of the Budget, the Board shall submit to the Division of the Budget an administrative and operating budget request. This budget request shall be subject to approval annually as part of the executive budget.

c. In order further to assure the payment by the corporation to lending institutions for defaulted loans, other than education loans made under the New York higher education loan program pursuant to part V of this article in the respective amounts as guaranteed by the corporation pursuant to contract, there shall be annually apportioned and paid to the corporation such estimated amount, if any, as shall be certified by the board to the governor and director of the budget as necessary to provide for the payment of all such defaults for the next ensuing state fiscal year. The board shall, as part of its annual budget request, make and deliver to the governor and director of the budget, its certificate stating the estimated amount, if any, required to pay such defaults for the ensuing state fiscal year, if any, and said sums shall be apportioned and paid to the corporation during such fiscal year.

§ 3. Section 656 of the education law, as added by chapter 942 of the laws of 1974, is amended to read as follows:

§ 656. Contributions to corporation; tax deduction thereof. Notwithstanding the provisions of any general or special law all domestic corporations or associations organized for the purpose of carrying on business in this state, and any person, are hereby authorized to make contributions to the New York state higher education services corporation or to the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency higher education loan program default reserve fund, as applicable and such contributions shall be allowed as deductions in computing the net taxable income of any such person, corporation or association for purposes of any income or franchise tax imposed by the state or any political subdivision thereof.

§ 4. Subdivision 2 of section 657 of the education law, as added by chapter 942 of the laws of 1974, is amended to read as follows:

2. The state of New York [covenants] does hereby pledge to and agree with the holders of the [obligations and] bonds, notes [issued by], or other obligations of the corporation pursuant to this article, or of the state of New York mortgage agency authorized in section two thousand four hundred six of the public authorities law for the corporate

purposes authorized in section two thousand four hundred five-a of the public authorities law, or of any other state entity authorized to issue bonds or notes under the New York education loan program codified in part V of this article that are issued for such purpose, and with the holders of such education loans, that the provisions of law applicable to the New York education loan program variable rate default reserve fund, the New York education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York education loan program default reserve fund, as applicable, and to the powers of the corporation to receive and deposit in each such fund the applicable amounts described therein shall not be amended in a manner adversely affecting the interests of such holders without adequate provision being made to protect such interests and that the corporation shall not be required to pay any taxes or assessments upon any of its property or upon its activities pursuant to the provisions of this article, or upon any moneys, funds, revenues or other income held or received by the corporation, and that the obligations and notes of the corporation and the income therefrom shall at all times be exempt from taxation, except for estate and gift taxes and taxes on transfers. Each of the corporation, the state of New York mortgage agency and any such other public benefit corporation, is authorized to include this pledge and agreement of the state in any agreements with the holders of such bonds and with the holders of such education loans.

§ 5. Subdivision 1 of section 661 of the education law, as amended by chapter 844 of the laws of 1975, is amended to read as follows:

1. Applicability. The eligibility requirements and conditions established in this section shall apply to all general awards, academic performance awards and student loans other than education loans made pursuant to part V of this article.

§ 6. Paragraph c of subdivision 6 of section 661 of the education law, as added by chapter 637 of the laws of 1985, subparagraph 1 as amended by chapter 212 of the laws of 1988, is amended to read as follows:

c. A student who has defaulted on a guaranteed student loan or has failed to make a refund of an award may notwithstanding be considered eligible for a further guaranteed student loan under the federal student aid programs or an award or both, **[if] provided:**

(1) (i) the student, except for the default, shall be eligible for the guaranteed student loan or the award; and (ii) the student has entered into a plan of repayment of the amount outstanding on the defaulted loan or refund satisfactory to the corporation, and has made satisfactory payments thereunder for a period of six months prior to the application to the corporation for the guaranteed student loan or the award; and (iii) in the case of a default in the payment of a guaranteed student loan, the student has demonstrated to the satisfaction of the president, that at the time the default occurred the student was entitled to a deferment or could have been granted forbearance of payment on the loan by the lender if a request for forbearance had been made;

(2) application for the further loan or award as authorized by this paragraph shall be on such forms and supported by such documentation as shall be prescribed by the president. The determination on the application by the president may be made without a hearing and shall be deemed final administrative action;

(3) anything to the contrary herein notwithstanding the corporation may offset any award to which the student shall be entitled against a

refund due for a previous award, as provided under the provisions of subdivision four of section six hundred sixty-five of this article.

§ 7. Section 682 of the education law is REPEALED.

§ 8. Section 683 of the education law is REPEALED.

§ 8-a. Section 684 of the education law is REPEALED.

§ 8-b. Section 651 of the education law is amended by adding a new subdivision 7 to read as follows:

7. "Lend" shall include one or more of the following services: the origination, disbursement, servicing, and/or collection of any student or parent education loan made by or on behalf of a lending institution a government entity, or an institution of higher education for the purpose of paying for higher education expenses as well as serving as a secondary market for these loans.

§ 9. Section 2405-a of the public authorities law is REPEALED and a new section 2405-a is added to read as follows:

§ 2405-a. Education loans. (1) For purposes of this section, the following words and terms shall have the following meaning unless the context shall indicate another or different meaning or intent:

(a) "Corporation" shall mean the New York state higher education services corporation.

(b) "Education Loan" shall mean: (i) a New York higher education loan program loan made pursuant to part v of article fourteen of the education law; or (ii) a loan under Part B of Title IV of the Higher Education Act of nineteen hundred sixty-five, as amended, including but not limited to a loan described in subdivision ten of section twenty-four hundred two of this part; provided, that the borrower shall be required to apply the net proceeds of such loans to pay the student's costs of post-secondary education or to repay one or more such loans incurred for such purpose.

(2) In addition to the powers of the agency pursuant to the other sections of this title, the agency shall have power:

(a) To enter into one or more agreements with the corporation and to perform or contract for the performance of its obligations under any such agreement;

(b) To make and contract to make and to acquire and contract to acquire education loans and to enter into advance commitments for the purchase of said education loans;

(c) Subject to any agreement with bondholders or noteholders, to invest moneys of the agency not required for immediate use, including proceeds from the sale of any bonds or notes, in education loans;

(d) To make and execute contracts for the marketing, origination, servicing, collection, administration, guarantee, securing, and financing of education loans originated or acquired by the agency pursuant to this title, and to pay the reasonable value of services rendered to the agency pursuant to those contracts;

(e) Subject to any agreement with bondholders or noteholders, to renegotiate or refinance any education loan that has been acquired by the agency or which the agency has committed to purchase that is in default; to waive any default or consent to the modification of the terms or any such education loan; to forgive all or part of any indebtedness; and to commence any action or proceeding to protect or enforce any right conferred upon it with respect to any such education loan by law, loan agreement, contract or other agreement;

(f) To prescribe standards and criteria for the origination of education loans to be eligible for acquisition by the agency and for education loans purchased by the agency;

(g) Subject to any agreement with bondholders or noteholders, to sell any education loans made or acquired by the agency at public or private sale and at such price or prices and on such terms as the agency shall determine;

(h) To establish, revise from time to time, charge and collect such premiums or fees in connection with education loans and its participation in the New York higher education loan program as the agency shall determine; and

(i) Subject to any agreement with bondholders or noteholders, to invest moneys pledged to secure bonds issued for the corporate purposes authorized by this section not required for immediate use in investments authorized for investment of state funds under section ninety-eight or ninety-eight-a of the state finance law.

(3) The agency shall have the power and is hereby authorized from time to time to issue its bonds and notes pursuant to section two thousand four hundred six of this title for the corporate purposes authorized by this section, including without limitation for the purposes of financing and refinancing education loans and of refunding any bonds or notes issued for such purpose.

(4) Each lender or service provider who makes a representation or warranty to the agency with respect to an education loan shall be liable to the agency for any damages suffered by the agency by reason of the untruth of such representation or the breach of such warranty and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, such person shall, at the option of the agency, repurchase the education loan for the price provided in the applicable financing agreement, as the agency may determine.

(5) It is the intent of the legislature that any pledge by the agency of education loans or of earnings, revenues or other moneys receivable from any source, including without limitation default payments by the New York higher education loan program variable rate default reserve fund, the New York higher education loan program fixed rate default reserve fund, or the state of New York mortgage agency New York higher education loan program default reserve fund, as applicable, with respect to education loans financed by the agency, shall be valid and binding from the time when the pledge is made. The education loans, earnings, revenues or other moneys so pledged and thereafter received by the agency or its agent, including without limitation the higher education services corporation or any education loan servicer, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency or its agent, including without limitation the higher education services corporation or any education loan servicer, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) The state of New York mortgage agency New York higher education loan program default reserve fund. (a) There is hereby created and established in the sole custody of the state of New York mortgage agency a special fund to be known as the state of New York mortgage agency New York higher education loan program default reserve fund which shall be for the exclusive benefit of the holders of education loans that the agency has acquired, or agreed to acquire, under the New York higher education loan program, codified in part V of article fourteen of the education law.

(b) Amounts held in this fund shall not be, or be deemed, funds of the state or funds under the management of the state, the agency, or the corporation. The obligations of such fund shall not be, or be deemed, the debts or obligations of the state and the state shall not be, or be deemed, in any way obligated to: any holder of any such education loan; any holder of bonds issued pursuant to section two thousand four hundred six of this part for the corporate purposes authorized in section two thousand five-a of this article; any fiduciary or provider of any credit facility, liquidity facility or interest rate exchange agreement with respect to such bonds; or any other creditor of this fund.

(c) Such fund shall consist of: (i) all moneys received by the higher education services corporation pursuant to paragraph (b) of subdivision seven of section six hundred ninety-two of the education law, in connection with education loans that the agency has acquired or agreed to acquire under the New York higher education loan program education loans; (ii) any transfers from the New York higher education loan program variable rate default reserve fund created by section seventy-eight-a of the state finance law or from the New York higher education loan program fixed rate default reserve fund created by section seventy-eight-b of the state finance law; and (iii) any appropriation payment or transfer to the agency for such purpose.

(d) The agency shall establish accounts within the fund and priorities of payment from such accounts and shall invest the fund in investments authorized for investment of state funds under section ninety-eight or ninety-eight-a of the state finance law.

(e) This fund, including all sub-accounts thereof, shall be segregated from all other funds kept by the agency and shall not be used for any other purpose beyond those set forth in part V of article fourteen of the education law or in this section. The agency shall utilize monies in the fund solely to pay the outstanding principal, capitalized and unpaid accrued interest on defaulted education loans described in paragraph a of this subdivision.

(f) Nothing contained in this section shall prevent the agency, or the corporation, from receiving grants, gifts or bequests for the purposes of this fund and depositing them into the fund according to law, rules, or regulations.

(g) The agency shall make payments from the monies in this fund in amounts and at times required pursuant to part V of article fourteen of the education law.

§ 10. Section 201 of the state finance law is amended by adding a new subdivision 16 to read as follows:

16. The comptroller is hereby authorized to deduct from the salary of any state employee such amount as such employee may specify in writing to be filed with the payroll officer of the employee's agency for the purpose of making payments on outstanding education loans made pursuant to part V of article fourteen of the education law and to transmit deductions so withheld to the appropriate collecting agent designated by the higher education services corporation for receipt thereof. Any such written authorization may be withdrawn by such employee at any time upon filing written notice of such withdrawal with the comptroller. The comptroller is hereby authorized to make such rules and regulations as may be necessary to provide for deductions for this purpose.

§ 11. The state finance law is amended by adding a new section 78-a to read as follows:

§ 78-a. New York higher education loan program variable rate default reserve fund. 1. There is hereby created and established in the sole

custody of the state comptroller a special fund to be known as the New York higher education loan program variable rate default reserve fund which shall be for the exclusive benefit of the holders of variable rate education loans originated pursuant to the New York higher education loan program codified in part V of article fourteen of the education law, other than variable rate education loans described in subdivision six of section two thousand four hundred five-a of the public authorities law.

2. Amounts held in this fund shall not be, or be deemed, funds of the state or funds under the management of the state or the higher education services corporation. The obligations of the fund shall not be, or be deemed, the debts or obligations of the state and the state shall not be, or be deemed, in any way obligated to: any holder of any such education loan; any holder of bonds issued pursuant to the public authorities law for the purposes of the New York higher education loan program; any fiduciary or provider of any credit facility, liquidity facility or interest rate exchange agreement with respect to such bonds; or any other creditor of this fund.

3. Such fund shall consist of all moneys received by the higher education services corporation pursuant to paragraph (b) of subdivision seven of section six hundred ninety-two of the education law, in connection with variable rate education loans made under part V of article fourteen of the education law, other than variable rate education loans described in subdivision six of section two thousand four hundred five-a of the public authorities law. The state comptroller, at the request of the higher education services corporation, shall establish accounts within the fund and priorities of payment from such accounts and shall invest the fund in compliance with applicable state laws concerning the investment of public funds. Moneys in the fund shall be segregated from all other funds kept by the state comptroller and shall not be used for any other purpose beyond those set forth in part V of article fourteen of the education law or in this section.

4. The state comptroller shall make payments from the fund in amounts and at times required by the higher education services corporation pursuant to part V of article fourteen of the education law. Notwithstanding subdivision one of this section, upon certification by the State of New York mortgage agency that a variable rate education loan described in subdivision three of this section has been acquired by the agency or has become subject to the agreement of the agency to acquire such education loan, the state comptroller shall make transfers from the monies in the variable rate New York higher education loan program default reserve fund to the corporation for deposit into the state of New York mortgage agency New York higher education loan program default reserve fund created by subdivision six of section two thousand four hundred five-a of the public authorities law in amounts certified by the agency and the corporation as properly allocable to such education loan.

§ 12. The state finance law is amended by adding a new section 78-b to read as follows:

§ 78-b. New York higher education loan program fixed rate default reserve fund. 1. There is hereby created and established in the sole custody of the state comptroller a special fund to be known as the New York higher education loan program fixed rate default reserve fund which shall be for the exclusive benefit of the holders of fixed rate education loans originated pursuant to the New York higher education loan program codified in part V of article fourteen of the education law,

other than fixed rate education loans described in subdivision six of section two thousand four hundred five-a of the public authorities law.

2. Amounts held in this fund shall not be, or be deemed, funds of the state or funds under the management of the state or the higher education services corporation. The obligations of the fund shall not be, or be deemed, the debts or obligations of the state and the state shall not be, or be deemed, in any way obligated to: any holder of any such education loan; any holder of bonds issued pursuant to the public authorities law for the purposes of the New York higher education loan program; any fiduciary or provider of any credit facility, liquidity facility or interest rate exchange agreement with respect to such bonds; or any other creditor of this fund.

3. Such fund shall consist of all moneys received by the higher education services corporation pursuant to paragraph (b) of subdivision seven of section six hundred ninety-two of the education law, in connection with fixed rate education loans, other than fixed rate education loans described in subdivision six of section two thousand four hundred five-a of the public authorities law. The state comptroller, at the request of the higher education services corporation, shall establish accounts within the fund and priorities of payment from such accounts and shall invest the fund in compliance with applicable state laws concerning the investment of public funds. Moneys in the fund shall be segregated from all other funds kept by the state comptroller and shall not be used for any other purpose beyond those set forth in part V of article fourteen of the education law or in this section.

4. The state comptroller shall make payments from the fund in amounts and at times required by the higher education services corporation pursuant to part V of article fourteen of the education law. Notwithstanding subdivision one of this section, upon certification by the state of New York mortgage agency that a fixed rate education loan described in subdivision three of this section has been acquired by the agency or has become subject to the agreement of the agency to acquire such education loan, the state comptroller shall make transfers from the monies in the fixed rate New York higher education loan program default reserve fund to the corporation for deposit into the state of New York mortgage agency New York higher education loan program default reserve fund created by subdivision six of section two thousand four hundred five-a of the public authorities law in amounts certified by the agency and the corporation as properly allocable to such education loan.

§ 13. The public authorities law is amended by adding a new section 1679-c to read as follows:

§ 1679-c. The New York higher education loan program. 1. For purposes of this section, the following words and terms shall have the following meaning unless the context shall indicate another or different meaning or intent:

(a) "Corporation" shall mean the New York state higher education services corporation.

(b) "Education loan" shall mean a loan made under the New York higher education loan program established pursuant to part v of article fourteen of the education law.

2. In addition to the powers of the authority pursuant to the other sections of this title, the authority shall have power:

(a) To enter into one or more agreements with the corporation, which agreement may provide for the securing of education loans in accordance with part V of article fourteen of the education law, and to perform or

contract for the performance of its obligations under any such agreement;

(b) To make and contract to make and to acquire and contract to acquire education loans and to enter into advance commitments for the purchase of said education loans;

(c) Subject to any agreement with bondholders or noteholders, to invest moneys of the authority not required for immediate use, including proceeds from the sale of any bonds or notes, in education loans;

(d) To service and execute contracts for the servicing of education loans acquired by the authority pursuant to this title, and to pay the reasonable value of services rendered to the authority pursuant to those contracts;

(e) To prescribe standards and criteria for education loans purchases, insofar as such standards and criteria are not inconsistent with the applicable agreement with the corporation;

(f) Subject to any agreement with bondholders or noteholders, to sell any education loans made or acquired by the authority at public or private sale and at such price or prices and on such terms as the authority shall determine; and

(g) To establish, revise from time to time, charge and collect such premiums or fees in connection with education loans and its participation in the New York higher education loan program as the authority shall determine.

3. The authority shall have the power and is hereby authorized from time to time to issue bonds and notes, including without limitation for the purposes of financing and refinancing education loans and of refunding any bonds or notes issued for such purpose pursuant to part V of article fourteen of the education law.

§ 14. Subdivision 4-a of section 1682 of the public authorities law, as amended by chapter 817 of the laws of 1976, is amended to read as follows:

4-a. Any pledge of or other security interest in moneys, earnings, income, revenues, accounts, contract rights, general intangibles or other personal property made or created by the authority shall be valid, binding and perfected from the time when such pledge or other security interest attaches, without any physical delivery of the collateral or further act. The lien of any such pledge or other security interest shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or other security interest is created nor any financing statement need be recorded or filed. This subdivision shall apply notwithstanding the provisions of the uniform commercial code. Any moneys, earnings, income, revenues, accounts, contract rights, general intangibles or other personal property held or received by the authority or on behalf of the authority by any lender, servicer, trustee, custodian, collection agent or institution of higher education, pursuant to any resolution, trust agreement or other agreement authorized by, or entered into in connection with, the program established pursuant to section sixteen hundred seventy nine-c of this title and pledged by the authority pursuant to a resolution, trust agreement or such other agreement for the benefit of bondholders shall constitute moneys, earnings, income, revenues, accounts, contract rights, general intangibles or other personal property pledged by the authority for all purposes of this subdivision.

§ 15. This act shall take effect July 1, 2009.