

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY ACT

Act of Aug. 7, 1963, P.L. 549, No. 290

CL. 24

AN ACT

Creating the Pennsylvania Higher Education Assistance Agency; defining its powers and duties; conferring powers and imposing duties on the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, Superintendent of Public Instruction and the Department of Auditor General; and making appropriations. (Title amended Oct. 29, 1969, P.L.283, No.116)

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Establishment.--There is hereby created a body corporate and politic constituting a public corporation and government instrumentality which shall be known as the "Pennsylvania Higher Education Assistance Agency."

Section 2. Purpose.--The purpose of such agency shall be to improve the higher educational opportunities of persons who are residents of this State and who are attending approved institutions of higher education, in this State or elsewhere, by assisting them in meeting their expenses of higher education in accordance with the provisions of this act and by enabling the agency, lenders and postsecondary institutions to make loans available to students and parents for postsecondary education purposes.

(2 amended Dec. 29, 1982, P.L.1450, No.330)

Section 2.1. Definitions.--The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Residents of this State." The term shall include, but not be limited to:

(1) A student applicant who is under eighteen years of age at the time of application for a loan guaranty and who has a supporting parent or guardian who has been a domiciliary of this Commonwealth for at least thirty days immediately preceding the date of receipt by the agency of the application for such loan guaranty.

(2) A student applicant who is eighteen years of age or older at the time of application for a loan guaranty and has been a domiciliary of the Commonwealth for at least thirty days immediately preceding the date of receipt by the agency of the application for such loan guaranty.

(3) A student applicant who is accepted for enrollment in or is attending an approved institution of postsecondary education in this Commonwealth.

(4) A parent who is a domiciliary of this Commonwealth or a parent of a student if such student has been accepted for enrollment in or is attending an approved institution of postsecondary education in this Commonwealth.

(2.1 added July 12, 1981, P.L.264, No.89)

Section 3. Governing Bodies.--(3 repealed July 9, 2010, P.L.348, No.50)

Section 4. Powers and Duties.--In furtherance of the purposes set forth in this act, the board of directors shall have the following powers:

(1) To make, guarantee, undertake commitments to make or acquire and participate with lending or postsecondary institutions in the making of loans, service or otherwise provide loans of money upon such terms and conditions as the

board may prescribe within the limitations contained herein or applicable Federal law, at such rates of interest as are determined by the agency, to lenders, postsecondary institutions and to persons who are residents of this State and who plan to attend or are attending any approved institution of higher education eligible under this act or applicable Federal law, in this State or elsewhere to assist them in meeting their expenses of higher education. No such person shall receive any loan or loan guarantee in excess of annual and maximum limits as established by the board of directors or in compliance with limits established for loans funded, guaranteed or reinsured under Federal laws. Such loans or loan guarantees shall become due and payable at the direction of the board of directors. Loans made or guaranteed by the agency shall not be subject to the provisions of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, or to any other law which establishes a limit of interest rate which may be charged thereon. The board of directors of the agency shall have the sole authority and discretion to establish the interest rates on all loans made or guaranteed by the agency. ((1) amended Dec. 20, 1983, P.L.289, No.77)

(1.1) As a public corporation and body politic subject to examination by the Auditor General of the Commonwealth, the agency shall be deemed an "eligible lender" as defined in Part B of Title IV of the Federal Higher Education Act of 1965 and in Part C of the Health Professions Educational Assistance Act of 1976 and, pursuant to the provisions of those acts and any subsequent amendments thereto or other applicable Federal programs, be entitled to exercise all the authority, rights and privileges of an "eligible lender." Such authority, rights and privileges shall include but not be limited to the following:

(i) To do whatever is necessary to enable students who are parties to loans made, funded or guaranteed under this act to qualify for Federal interest subsidy, special allowance, loan forgiveness or other applicable benefits.

(ii) To charge and collect premiums for insurance on loans and other appropriate charges and pay such insurance premiums or a portion thereof and other charges as are appropriate or required by applicable Federal statutes or agreements.

(iii) To enter into contracts with schools, lenders, individuals, corporations, the Student Loan Marketing Association, other agencies of the Commonwealth, other states and the Federal Government to make, service, invest in, purchase, make commitments to purchase, take assignments of or administer loans made or insured under this act, the Health Professions Educational Assistance Act of 1976, or other programs approved by the board of directors and to provide for loan forgiveness, loan consolidation, loan referral service and graduated repayment. Loans to lenders or postsecondary institutions made under this clause may be made under terms and conditions requiring that the funds so loaned be used for the making of loans to categories of students as defined and established by the board. Any such contract of the agency to service student loans shall not be subject to the provisions of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law. For purposes of this clause, contract shall include schedules or exhibits relating to pricing or schedules relating to equipment, time charges, service charges or other charges pertinent to an agency contract to service student loans. Any citizen of the Commonwealth of Pennsylvania who desires to examine, inspect or copy any such contract shall apply to the Attorney General. Upon receipt of any such

application, the Attorney General shall cause a review of the contract to determine if the disclosure of the contents of the contract could cause a loss of revenue to any Commonwealth fund or to the agency. If the Attorney General determines that it is unlikely that a loss of revenue to any Commonwealth fund or the agency could occur, the Attorney General may grant the application and order the agency to permit the citizen to examine, inspect or copy the contract. Otherwise, the Attorney General shall deny the application. The Attorney General shall also have the power to determine that portions of the contract may be examined, inspected or copied and other portions may not. The agency may adopt and enforce reasonable rules, subject to the approval of the Attorney General, governing the examination, inspection or copying of any such contracts. The Attorney General shall make a determination for any application within thirty days of receipt thereof.

(iv) To purchase stocks, securities, and the obligations issued by the Student Loan Marketing Association, and to use its insured and other student loans as security for loans and other forms of advances from the Student Loan Marketing Association or others, including lenders and postsecondary institutions participating or investing in loans made under this act.

(v) To be issued certificates of loan insurance as set forth in section 732, Part C, Title IV of the Health Professions Educational Assistance Act of 1976 or other appropriate Federal legislation.

(1.2) To guarantee loans to parents as authorized by Federal law Part B, Title IV, of the Federal Higher Education Act, as amended, and to other persons for purposes of attending postsecondary educational institutions from funds other than those appropriated by the Commonwealth and to pay such interest and costs or any parts thereof and for such period of time as may be authorized by the board of directors of the agency and on loans guaranteed for individual students and parents who otherwise would not qualify for Federal or other interest subsidy.

(1.3) To establish annually the award of the "assistance grant" in the act of July 18, 1974 (P.L.483, No.174), known as "The Institutional Assistance Grants Act" by dividing the total amount annually appropriated to the "agency" pursuant to that act by the number of "Pennsylvania State scholarship students" certified to the "agency" pursuant to that act.

(2) To pay costs and fees incurred by lenders and others in making loans, advancing funds representing loans issued through a line of credit advanced by the agency or the lender and performing other functions on behalf of the agency.

(3) To take, hold, administer, assign, lend, encumber, mortgage, invest or otherwise dispose of, at public or private sale, on behalf of the agency and for any of its purposes, real property, personal property and moneys or any interest therein including any mortgage or loan interest owned by it or under its control or in its possession and the income therefrom either absolutely or in trust. The board may acquire property or moneys for such purpose by purchase or lease and by the acceptance of gifts, grants, bequests, devises or loans. The board may, with the approval of the Governor, borrow moneys by making and issuing notes, bonds and other evidences of indebtedness of the agency and by making and issuing refunding notes, bonds and other evidences of indebtedness, as the board may from time to time determine necessary to make and issue for the purposes of purchasing, making or guaranteeing loans to students or parents,

or to lending institutions or to postsecondary institutions for the purpose of student loans, but no obligation of the agency shall be a debt of the State and it shall have no power to pledge the credit or taxing power of the State nor to make its debts payable out of any moneys except those of the corporation. All accrued and future earnings from funds invested by the board of directors and such other accrued and future nonappropriated funds including but not limited to those funds obtained from the Federal Government, insurance premiums, charges assessed by the agency, loan servicing revenues, and contributions for the same purpose shall be available to the agency and shall be deposited in the State Treasury and may be utilized at the discretion of the board of directors for carrying out any of the corporate purposes of the agency. Any placement of such funds by the State Treasurer in depositories or investments shall be consistent with guidelines approved by the board of directors. For the purpose of administration, the agency shall be subject to the following provisions of "The Administrative Code of 1929:" sections 610, 613 and 614. ((3) amended May 13, 1983, P.L.10, No.5)

(4) To enter into contracts with or provide funds to approved and eligible institutions of higher education upon such terms as may be agreed upon between the board and any such institution, to provide for the administration by such institutions of any loan made, guaranteed or serviced by the agency including applications therefor and disbursement and payment thereof, and to acquire Federal moneys to establish loan programs for students attending such institutions.

(5) To establish and from time to time revise and publish a list of approved or eligible institutions of higher education.

(6) To adopt rules and regulations not inconsistent with law governing matters relating to its activities including rules and regulations to assure that student applicants for admission or students enrolled are not discriminated against because such applicants and students have not or will not qualify as a recipient for aid under programs administered by the agency and to adopt such other rules and regulations and to perform such other acts as may be necessary or appropriate to comply with applicable Federal legislation.

(7) To perform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the agency as specified in this act.

(8) To take, hold and administer for the purpose of the agency, real property, personal property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, by the acceptance of gifts, grants, bequests, devises or loans, but no obligation of the agency shall be a debt of the Commonwealth and it shall have no power to pledge the credit or taxing power of the Commonwealth or to make the agency's debts payable out of any moneys except those of the agency.

(9) To conduct investigations to determine whether applications or income tax and other data submitted to the agency contain any misrepresentations or false statements made for the purpose of cheating or defrauding. Whoever, by any false pretense, knowingly and with intent to defraud, procures, obtains, or attempts to obtain, or aids, assists, or abets, in obtaining or attempting to obtain from or through the Pennsylvania Higher Education Assistance Agency or under this act any moneys, scholarship awards, educational assistance grants, loans or loan guarantees shall be liable to the agency for an amount equal to three times the amount obtained.

(10) To establish an investigation unit which shall have the power and duty to:

(i) investigate alleged violations of all criminal statutes related to fraud or a breach of fiduciary obligation committed by any person who has obtained or attempted to obtain, or aids, assists, or abets in obtaining or attempting to obtain, scholarship awards, educational assistance grants, loans or loan guarantees or other moneys from the agency;

(ii) work in conjunction with the appropriate prosecuting authorities in the prosecution of cases where it is determined that evidence of criminal activity exists. In the enforcement of criminal statutes or investigations related to fraud or a breach of fiduciary obligation under this clause, the staff of the investigation unit shall have the powers of law enforcement officers; and

(iii) present to the board of directors of the agency, evidence of probable violations of criminal statutes related to fraud or a breach of fiduciary obligation and request the board to issue an order of subpoena duces tecum to obtain original documents submitted by individuals for the purpose of obtaining loans or loan guarantees or other moneys from the agency. The board of directors shall have the power to issue a subpoena duces tecum for such purposes under the hand of its chairman upon a majority vote of its membership of a finding that a probable violation of such criminal statutes has occurred.

(11) To execute by writ of execution upon wages, salaries or commissions in the hands of an employer or any other person in order to enforce money judgments for the repayment of all loans authorized, serviced, insured, made, funded or guaranteed under this act or Federal law: Provided, however, That such power of execution may not be assigned to any other person or agency nor be employed for any other purpose by the agency. Such power of execution may be exercised at the discretion of the agency, but under no circumstances may an amount in excess of ten percent of the pay of an obligor be subject to execution during any given pay period.

(12) In addition to the powers granted in clause (3), to acquire and hold title in the name of the agency to the property known as the Towne House, including the Annex thereto leased by the agency, located at 660 Boas Street in the 7th Ward of the City of Harrisburg, more particularly bounded and described in a Deed dated April 25, 1974, and recorded in Dauphin County Deed Book T, Volume 60, Page 877, the property located on the southwest corner of Herr Street and Fox Alley in the 7th Ward of the City of Harrisburg, more particularly bounded and described in a Deed dated October 5, 1979, and recorded in Dauphin County Record Book 101, Page 142, and in a Deed dated October 6, 1965, and recorded in Dauphin County Deed Book E, Volume 51, Page 48, the property located at 945 North 7th Street in the 7th Ward of the City of Harrisburg, more particularly bounded and described in a Deed dated March 27, 1963, and recorded in Dauphin County Deed Book N, Volume 48, Page 325, and to make such arrangements as may be necessary to finance such acquisitions. ((12) added Oct. 3, 1986, P.L.1416, No.130)

(4 amended Dec. 29, 1982, P.L.1450, No.330)

Compiler's Note: The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, referred to in par. (4)(1.1), was repealed by the act of Feb. 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Section 4.1. Ineligibility for Loan Assistance.--(a) The agency may deny all forms of financial assistance to any student:

(1) Who is convicted by any court of record of a criminal offense which was committed after the effective date of this act which, under the laws of the United States or Pennsylvania, would constitute a misdemeanor involving moral turpitude or a felony; or

(2) Who has been expelled, dismissed or denied enrollment by an approved institution of higher learning for refusal to obey, after the effective date of this act, a lawful regulation or order of any institution of higher education, which refusal, in the opinion of the institution, contributed to a disruption of the activities, administration or classes of such institution; or

(3) Who has been convicted in any court of record of any offense committed in the course of disturbing, interfering with or preventing, or in an attempt to disturb, interfere with or prevent the orderly conduct of the activities, administration or classes of an institution of higher education.

(b) Each institution of higher education shall immediately furnish to the agency, the name and address of any student who is a resident of the Commonwealth of Pennsylvania who is expelled, dismissed or denied enrollment for the reasons set forth in clause (2) of subsection (a) of this section or of whom the institution of higher education has knowledge that he has been convicted of offenses as set forth in clauses (1) and (3) of subsection (a) of this section.

(c) Nothing in this section shall be construed to limit the freedom of any student to verbal expression of individual views or opinions.

(d) Any institution of higher learning which refuses to execute an agreement with the agency to comply with subsection (b) of this section shall be denied the status of an approved institution under the provisions of this act.

(4.1 added Oct. 29, 1969, P.L.283, No.116)

Section 4.2. Loans to State Employees.--Any person who has received a loan made or guaranteed pursuant to this act or from funds which include State-appropriated funds provided to an institution receiving State aid and who at anytime becomes or is an employe of the Commonwealth or any of its agencies shall be deemed to have agreed as a condition of their employment with the Commonwealth, and shall be deemed to have consented to voluntary or involuntary withholding of their wages, to repay such loan. Any such employe who has defaulted or does default on the repayment of such loan shall, within sixty days after service of a notice of default by the agency to the employing agency, establish a loan repayment schedule which is agreed to by the agency with the salary-status employe making such payments through payroll deductions and employes other than salary-status making payment in accordance with a repayment plan approved by the agency. Under no circumstances may an amount in excess of ten per cent of the pay of such employe be required by the agency as part of a repayment schedule or plan. If such employe fails to establish a repayment schedule within the specified period of time or fails to meet the terms and conditions of the agreed-to or approved repayment schedule as authorized by this section, such employe shall be deemed to have breached an essential condition of employment and shall be deemed to have consented to the involuntary withholding of his wages or salary for the repayment of the loan. Under no

circumstances may an amount in excess of ten per cent of the pay of such employee be withheld.

(4.2 amended Dec. 29, 1982, P.L.1450, No.330)

Section 4.3. Administrative Loan Collection Process.--(a)

The agency is hereby authorized and directed to maintain a record of administrative and legal actions and proceedings which it undertakes in regard to the collection of student loans. All such records shall be kept in the administrative offices of the agency and at reasonable times the record of a person against whom a statement of claim has been filed as provided herein shall be available for inspection by that person. The agency shall furnish, under seal of the agency when required for evidence in court, any accounts or records of accounts, papers or documents filed in the agency, relative to the granting of financial assistance to any appropriate borrower when required as evidence in any court and such certification shall be competent evidence thereof. The agency shall adopt and renew from time to time a seal of office, an impression of which shall be filed in the office of the Secretary of the Commonwealth.

(b) In addition to the remedies and procedures provided by law for the collection and enforcement of contractual rights, the agency may initiate action against borrowers whom it deems to be indebted to it by filing a statement of claim in the records maintained by the agency.

(c) The agency shall serve a summary of the statement of claim upon the borrower by first-class mail addressed to the most recent address as provided to the agency by the borrower, pursuant to the terms of the written obligation executed by the borrower, or otherwise acquired by the agency. The summary of the statement of claim shall contain such information as the agency deems necessary but in all instances shall contain the following:

(1) Identification of the agency as the body corporate and politic constituting a public corporation and government instrumentality, together with its address to which the borrower may respond.

(2) Name and last known address of the borrower.

(3) Principal amount of money which the agency claims is due and owing to it including interest and late or other charges thereon and the material facts on which the claim is based.

(4) The following notice which shall be prominently displayed on the first page of the claim:

NOTICE

Legal action has been taken against you. If you do not file in writing your response to this action within thirty days of this notice, an order of default may be entered against you. You may lose money or property or other rights important to you by garnishment of your wages, salary or commission or other compensation or by levy of execution against your property or assets. You should take this paper to your lawyer immediately. If you do not have a lawyer or cannot afford one, you should call or write the office set forth below. You may qualify for free legal assistance.

(5) The name and address of a lawyer referral service operated by the Pennsylvania Bar Association or one operating in the county in which the borrower was last known to reside.

(6) A statement that an order of default may be entered against the borrower without further notice.

(d) If the borrower does not file a response within thirty days from the date of service by first-class mail, the executive

director of the agency may recommend to the board of directors of the agency that an order be entered by default and the board, in its discretion, may enter such an order of default to be lodged in the agency records.

(e) The borrower shall file a response to the statement of claim within the prescribed time after service by first-class mail. The response shall admit or deny all averments contained in the statement of claim. An averment in the statement of claim shall be deemed to be denied only if proof thereof is demanded and the borrower states either:

(1) that after reasonable investigation the borrower is without knowledge or information sufficient to form a belief as to the truth of the averment; or

(2) that the borrower is without such knowledge or information because the means of proof are within the exclusive control of an adverse party or hostile person. The response shall set forth all defenses and objections which the borrower has to the statement of claim and any objections or defenses not so presented shall be deemed to have been waived. The pleadings in any action pursuant to this act shall be limited to a statement of claim and a response thereto.

(f) The rules relating to discovery as promulgated by the Pennsylvania Supreme Court, and as amended from time to time, shall be applicable to all proceedings initiated pursuant to this act.

(g) If the borrower files a response the agency shall accord the borrower such administrative review as provided for in regulations and procedures to be promulgated by the board of directors including but not limited to the right of appeal to the board of directors. Upon a final determination of debt by the agency and the board of directors, the executive director may recommend that an order of default be entered by the board of directors which may, in its discretion, enter such order of default in the agency records.

(h) (1) The executive director may transfer the record and an order of default to the court of common pleas of the district in which the borrower resides or when residence within the Commonwealth cannot be ascertained, to the Court of Common Pleas of Dauphin County, to be entered as a judgment. Thereafter it shall be the duty of the prothonotary, at the request of the executive director, to issue execution, or such other process as may be necessary and proper, to carry into effect the judgment entered upon such order of the board, subject to the applicable provisions of law or rules or procedure concerning stay of execution upon judgment.

(2) Within twenty days after entry of an order of default, the borrower may apply to the board of directors of the agency to vacate such order.

(3) Within twenty days after entry of judgment, the borrower may apply to the court in which the judgment is entered to set aside such judgment. Such relief shall be granted by a judge of such court if the borrower proves by a preponderance of the evidence that notice of the action was not made in proper manner or the borrower has a good faith defense to the statement of claim.

(4) Any person aggrieved by an order of default entered by the board of directors may appeal such order to the court of common pleas of the district in which the borrower resides or the Court of Common Pleas of Dauphin County. All such appeals shall be governed by the provisions of 2 Pa.C.S. § 701, et seq. and Chapter 15 of the Pennsylvania Rules of Appellate Procedure as heretofore adopted and subsequently amended by the

Pennsylvania Supreme Court. Notwithstanding any of the foregoing, if the court determines that the petition for review and the answer thereto, if any, allege facts which would require a trial by jury, the court may schedule a hearing de novo. Any party to the action shall thereupon be entitled to a trial by jury. Such trial by jury shall be governed by the Rules of Civil Procedure as heretofore adopted and subsequently amended by the Pennsylvania Supreme Court.

(i) After an order of default has been entered by the board of directors or the court and the time for appeal has expired, the agency may execute upon the wages, salaries or commissions in the hands of an employer or any other person including the debtor when self-employed in order to effect the repayment of any sums due to the agency as determined by the provisions of this act. An employer shall include any person, partnership, association, corporation, institution, governmental body, unit or agency, school district or municipality, or any other entity employing one or more persons for a salary, wage, commission or other compensation. Execution shall comply with the following:

(1) The agency shall initiate such action by sending to the debtor's last known address notice of its intent and to the employer a notice of execution upon wages and upon receipt of such notice, the employer shall certify to the agency the amount of wages, salary, commissions or other compensation earned by the debtor. The employer shall pay to the agency such percentage of that amount as the agency demands, not to exceed ten per cent of the wages, salary, commissions or other compensation paid to the debtor during a given pay period, on a timely basis, but not less than once a month or over an extended period if agreed to by the agency. If the agency has instituted a notice of execution upon wages to recover money owed the agency, the agency may assess a civil penalty, not to exceed the amount of the notice of execution, against an employer if the employer does any of the following:

(i) Fails to pay the agency the amount due within the prescribed amount and limits of time.

(ii) Dismisses the responsible debtor from its employment because of the filing of the notice of execution.

(iii) Takes disciplinary action against the responsible debtor because of the filing of the notice of execution.

(2) The agency may execute upon assets or property of a borrower by writ of execution or such other process as may be necessary or proper to carry into effect the judgment entered upon any order of the board. In the case of a writ of execution upon wages to recover moneys owed the agency, failure of an employer to pay to the agency the amount due within the prescribed amount and limits of time shall place the employer in contempt of the court issuing such writ of execution.

(3) Nothing in this subsection shall deny to any debtor the rights afforded debtors under Federal and State exemption laws.

((i) amended July 13, 1988, P.L.544, No.96)

(j) There shall be no limitation of time restricting the filing of a statement of claim in the records of the agency or the entering of a judgment pursuant to this act, and no statute of limitations heretofore enacted shall apply to any causes of actions, claims or demands of the agency to recover any defaulted student loans or any moneys owed to the agency.

(k) The board of directors of the agency shall have the power and its duty shall be to adopt rules and regulations pursuant to the act of July 31, 1968 (P.L.769, No.240), referred

to as the Commonwealth Documents Law and not inconsistent with law governing matters relating to this section.

(4.3 added Apr. 29, 1982, P.L.365, No.102)

Section 5. Capacity of Minors.--Any person otherwise qualifying for a loan made, guaranteed, serviced or otherwise provided for by the agency, shall not be disqualified by reason of being under the age of eighteen years and any such person shall be deemed to have full legal capacity to act and shall have all the rights, powers, privileges and obligations of a person of full age with respect thereto.

(5 amended Dec. 29, 1982, P.L.1450, No.330)

Section 5.1. Bonds, Notes and other Indebtedness.--(a) Subject to the limitations contained in this section, the board may from time to time by resolution and with the approval of the Governor, authorize issuance of negotiable bonds, notes and other evidences of indebtedness, including certificates of participation, in such amounts, bearing such interest rates and terms and maturing in such amounts and at such times as the board of directors may prescribe by resolution.

(a.1) The proceeds realized from the sale of notes, bonds or similar indebtedness shall be used for the purpose of purchasing, making or guaranteeing loans to students or parents, or to lending institutions or postsecondary institutions for the purpose of student loans and the cost of issuance of the indebtedness, the establishment of reserve funds from the proceeds of the indebtedness, administration of the loans purchased, made or guaranteed and other costs associated with loans purchased, made or guaranteed with funds from the proceeds of the indebtedness. The aggregate principal amount of bonds, notes and similar evidences of indebtedness of the agency shall not exceed twenty per cent of the total of loans purchased, made or guaranteed by the agency. ((a.1) amended July 13, 1988, P.L.544, No.96)

(b) Except as otherwise required by the agency, the bonds, notes and other evidences of indebtedness of the agency shall be limited obligations of the agency payable out of the proceeds of loans made under this act, reserve funds created therefor by the agency, any insurance contracts pertaining thereto and other lawfully available money, subject only to any agreements with the holders of the bonds, notes or other evidences of indebtedness of the agency, pledging any particular receipts or revenues. Bonds, notes or other evidences of indebtedness issued under the provisions of this act shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. All such bonds, notes and other evidences of indebtedness shall contain on the face thereof a statement to the foregoing effect and to the effect that the agency shall be obligated to pay the same or the interest thereon only from such moneys or revenues, proceeds, reserve funds, insurance contracts and such other moneys of the agency and that neither the faith and credit nor the taxing power of the Commonwealth is pledged to the payment of the principal of or the interest on such bonds, notes or other evidences of indebtedness.

(c) The bonds, notes and other evidences of indebtedness of the agency shall be signed by the chairman who may use a facsimile signature for this purpose. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The obligations of the agency shall bear interest at such rate or rates, be in such denominations, have such registration privileges, be executed in such manner,

be payable in such medium of payment, at such place or places within or without the Commonwealth, be subject to such terms of redemption and maturity and contain such other terms as the board of directors may determine. The notes and bonds of the agency may be sold by the agency at public or private sale at such price or prices as the board of directors determines. If the chairman of the board of directors whose signature appears on any notes or bonds or coupons ceases to act in that capacity before the delivery of such notes or bonds, his signature shall be valid and sufficient for all purposes as if he had remained in office until such delivery.

(d) The agency may issue refunding obligations to refund any obligations then outstanding which have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any statutory purpose of the agency.

(e) No director of the agency nor any person executing bonds, notes or other evidences of indebtedness of the agency shall be subject to personal liability or accountability solely by reason of his execution of such obligations or the issuance thereof.

(f) To secure payment of such bonds, notes or other evidences of indebtedness, the agency may establish in the Educational Loan Assistance Fund one or more reserve funds and prescribe by resolution the sources of deposits therein, the investment of amounts therein and the limitations on withdrawals from such funds. Without limiting the generality of the foregoing, the agency may create one or more debt service reserve funds wherein specified deposits may be made and may require that such deposits shall be used solely for the payment of principal of, redemption premiums, if any, and interest on the agency's bonds, notes or other obligations. The agency may require that withdrawals of amounts in any such debt service reserve fund not be made at any time in such amount as to reduce the amount in such reserve fund to less than the amount which the agency shall determine by resolution to be reasonably necessary for the purposes of such reserve fund (referred to herein as the debt service fund requirement) except for the purpose of paying principal of, redemption premium, if any, and interest on the bonds, notes or any obligations secured by such reserve fund for the payment of which other specified moneys of the agency are not available and except that any income or interest earned by, or any increment to, any such reserve fund by reason of investment of amounts therein may be transferred to any other fund or account of the agency to the extent such transfer does not reduce the amount in such debt service reserve fund below the amount of its debt service reserve fund requirement. ((f) added May 13, 1983, P.L.10, No.5)

(5.1 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.2. Agreements with Bondholders; Lien of Pledge.--(a) The agency in issuing any bonds, notes or other obligations may contract with the holders thereof as to:

(1) Pledging revenues of the agency to secure the payment of the bonds, notes or other obligations subject to such agreements with holders of obligations of the agency as may then exist.

(2) Pledging assets of the agency to secure the payment of the bonds, notes or other obligations subject to such agreements with holders of obligations of the agency as may then exist.

(3) The setting aside of reserves or sinking funds and the regulation and disposition thereof.

(4) Limitations on the purpose to which the proceeds of sale of bonds, notes or other obligations may be applied and pledging such proceeds to secure the payment of the bonds, notes or other obligations or of any issue thereof.

(5) Limitations on the issuance and terms of additional bonds, notes or other obligations and the refunding of outstanding or other bonds, notes or other obligations.

(6) The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of bonds, notes or other obligations the holders of which must consent to such amendment or abrogation and the manner in which such consent may be given.

(7) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the board of directors may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this act and limiting or abrogating the right of the bondholders to appoint a trustee under this act or limiting the rights, powers and duties of such trustee.

(8) Defining the acts which shall constitute a default in the obligations and duties of the agency to the holders of the bonds, notes or other obligations and providing for the rights and remedies of the holders of the bonds, notes and other obligations in case of such default, but such rights and remedies shall not be inconsistent with the general laws of this Commonwealth and the other provisions of this act.

(9) Any other matters, of like or different character, which in any way affect the security or protection of the holders of the bonds, notes or other obligations.

(b) Any pledge made by the agency is valid and binding from the time when the pledge is made. The revenues, moneys or property so pledged and thereafter received by the agency are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all persons having claims of any kind in tort, contract or otherwise against the agency, whether or not such persons have notice thereof. Neither the proceedings of the agency relating to the bonds, notes or other obligations nor any other instrument by which a pledge is created need be recorded.

(5.2 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.3. Trust Indenture.--Bonds, notes or other evidences of indebtedness issued by the agency may be secured by a trust indenture or trust indentures by and between the agency and a corporate trustee, which may be any trust company or bank having the power of a trust company within or outside this Commonwealth. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the holders thereof, as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the exercise of its statutory powers and the custody, safeguarding and application of all moneys. The agency may provide by such trust indenture for the payment of the proceeds of such obligations of the agency and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the board of directors may determine. All expenses incurred in carrying out such trust indenture may be treated as part of the operating expenses of the agency. Such trust indenture may limit or abrogate the right of the holders of any bonds, notes or

other obligations of the agency to appoint a trustee under this act or limit the rights, powers and duties of such trustee.

(5.3 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.4. Rules and Regulations.--The rules and regulations of the agency under section 4(6) relating to the making of loans to lending institutions shall require that such loans:

(1) be evidenced by instruments delivered by each lending institution to the agency constituting such loan indebtedness a general obligation of such lending institution or other form of collateral acceptable to the board of directors; and

(2) be secured as to payment by a pledge of a lien upon collateral security.

The agency may require that any such security be lodged with a bank or trust company, located within or outside the Commonwealth, designated by the agency as custodian therefor.

(5.4 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.5. Bonds, Notes and Obligations as Legal Investments.--The bonds, notes and other evidences of indebtedness of the agency are securities in which all public officers and bodies of the Commonwealth and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth may properly and legally invest funds, including capital in their control or belonging to them.

(5.5 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.6. Tax Exemption.--It is hereby determined that the creation of the agency is in all respects for the benefit of the people of the Commonwealth, for the improvement of their health and welfare, and for the promotion of the economy, and that such purposes are public purposes and the agency will be performing an essential governmental function in the exercise of the powers conferred upon it by this act, and the Commonwealth covenants with the purchasers and all subsequent holders and transferees of bonds, notes and other obligations that the bonds, notes and other obligations of the agency issued pursuant to this act and the income therefrom shall at all times be free from taxation, except for estate or gift taxes and taxes on transfers.

(5.6 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.7. Covenant by Commonwealth not to Limit or Alter Powers Vested in Agency.--The Commonwealth of Pennsylvania does hereby pledge to, covenant and agree with the holders of any bonds, notes or other obligations issued pursuant to the authority of this act, that the Commonwealth will not limit or alter the rights or powers hereby vested in the agency to perform and fulfill the terms of any agreement made with the holders of such bonds, notes or other obligations, or in any way impair the rights or remedies of such holders.

(5.7 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.8. Severability.--(a) Except as provided in subsection (b), the provisions of this act are severable, and if any part or provisions hereof, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this act or the application of such provision to any other

person or circumstance, but shall be confined in its operation to the provision, person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

(b) The provisions of section 5.1 which state that the bonds, notes or evidences of indebtedness of the agency shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit or the taxing power of the Commonwealth are expressly made nonseverable.

(5.8 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.9. Venue.--Venue for all legal actions in which the agency is a party shall be proper in Dauphin County and, in the discretion of the agency, in any other county authorized by law.

(5.9 added Dec. 29, 1982, P.L.1450, No.330)

Section 5.10. Educational Loan Assistance Fund.--There is hereby created a fund within the State Treasury to be known as the Educational Loan Assistance Fund. The fund shall be a continuing fund in which may be deposited moneys received from repayments of principal on loans from the fund and payments of interest and other fees and charges with respect to loans made pursuant to this act, insurance premiums and charges assessed and collected by the agency on loans made from the fund, appropriations made to the fund by the General Assembly, proceeds of the sale of notes, bonds or other indebtedness to the extent and in the manner provided in the resolution of the board authorizing issuance thereof, other moneys received from any other source for the purpose of the fund, and moneys received from the Federal Government for the purposes of the fund or this act. Except as otherwise provided for in any contract with the bondholders, all appropriations and payments made into the fund are hereby appropriated to the board and may be applied and reapplied as the board shall direct and shall not be subject to lapsing.

(5.10 added May 13, 1983, P.L.10, No.5)

Section 6. Contributions to Agency; Tax Deduction Thereof.--Notwithstanding the provisions of any general or special law or the provisions of any certificate of incorporation, charter or other article of organization, any person and all corporations or associations, organized for the purpose of carrying on business in this State or authorized to do business in this State, are hereby authorized to make contributions to the Pennsylvania Higher Education Assistance Agency 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 tax imposed by the State of Pennsylvania.

Section 7. Tax Exemption of Corporation.--The property, income, and activities of the Pennsylvania Higher Education Assistance Agency shall be exempt from all taxes and assessments and the loans guaranteed under this act, their transfer and the income therefrom (including any profit made on the sale thereof) and for the purpose of determining the actual value of shares under Article VII and Article VIII, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," the value thereof, shall be at all times free from taxation, other than inheritance or gift taxes, imposed by the Commonwealth or any of its political subdivisions.

(7 amended Dec. 30, 1974, P.L.1111, No.357)

Compiler's Note: Section 10 of Act 66 of 1983 provided that section 7 is repealed to the extent it applies to Article XVI and to the determination of the values of shares

under Articles VII and VIII of the act of March 4, 1971, P.L.6, No.2, known as the Tax Reform Code of 1971.

Section 7.1. Banks, etc., Authorized to Invest in Loans.--All banks, bank and trust companies, trust companies, savings banks, private banks, building and loan associations, credit unions and saving and loan associations organized under the laws of this Commonwealth or the United States and all insurance companies, pension funds and trusts, the State Employees' Retirement Fund, the Public School Employees' Retirement Fund, and corporations and associations approved by the board of directors, may invest in loans guaranteed or made by the agency for the payment of expenses incurred or to be incurred in acquiring an education at a postsecondary institution of higher learning. Any bank, banking institution or trust company, and savings and loan association which is designated as a depository for State moneys shall be permitted to pledge notes representing State or Federally insured loans to students or parents of students as collateral for the deposit of State funds or any of its political subdivisions and the market value of such pledge of student loans shall approximate no less than 120% of the value of the funds deposited.

(7.1 amended Dec. 20, 1983, P.L.289, No.77)

Section 8. Audits and Reports.--The activities of the Pennsylvania Higher Education Assistance Agency under this act shall be subject to the audit of the Department of Auditor General, but the agency shall not be required to pay a fee for any such audit. It shall make an annual report to the Governor, and the Legislature showing its condition at the end of the Commonwealth's fiscal year.

(8 amended Oct. 29, 1969, P.L.283, No.116)

Section 9. Dissolution.--Upon the dissolution of the Pennsylvania Higher Education Assistance Agency or the cession of its activities, all the property and moneys of such corporation in excess of its obligations shall become the property of the Commonwealth.

Section 10. Funds; Appropriations.--(a) The sum of one million two hundred twenty-five thousand dollars (\$1,225,000) is hereby specifically appropriated to the agency to be deposited in the Higher Education Assistance Fund, hereby created, which shall be held as a reserve to guarantee payment of possible losses for loans guaranteed under the provisions of this act.

(b) The sum of seventy-five thousand dollars (\$75,000) is hereby appropriated to the agency for the payment of expenses in carrying out the provisions of this act. The sum of one hundred twenty thousand dollars (\$120,000) is hereby appropriated to the agency for the payment of expenses in carrying out the provisions of this act for the fiscal year commencing July 1, 1965.

(10 amended May 11, 1965, P.L.53, No.41)

Section 11. The Pennsylvania Higher Education Assistance Agency shall not be subject to any provisions of the act of May 15, 1933 (P.L.624), known as the "Banking Code."

Section 12. This act shall take effect immediately upon the adoption by the electorate of an amendment to the Constitution of Pennsylvania authorizing grants or loans for higher educational purposes.