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January 30, 2004

(b)(6)

121 South 13th Street, Suite 201
Lincoln, NB 68508

Re: Request for Opinion

Dear (b)(6)

This letter is in response to the request made through (b)(6) for an opinion relating to the transfer of certain Federal Family Education Loan Program (FFEL) loans to a trust estate securing the issuance by Nelnet Education Loan Funding, Inc. ("Nelf") of $1,010,000,000 of its Series 2004-1 Notes (the "Series 2004-1 Notes"). Specifically, you have asked us to opine on whether FFEL loans which were originated or financed through means other than tax-exempt bond estates created prior to October 1, 1993 and/or were originated, sold, acquired or otherwise transferred to a pre-October 1, 1993 tax-exempt trust estate of Nelf prior to their transfer into the trust estate securing the Series 2004-1 Notes, would be entitled to the special allowance paid by the U.S. Department of Education (the "Department") under the rules applicable to loans made or purchased with the proceeds of such tax-exempt bonds as calculated pursuant to section 438(b)(2)(B)(i) and (ii) of the Higher Education Act of 1965, as amended (the "Higher Education Act").

This letter reflects our review of the Higher Education Act, applicable regulations, correspondence with the Department, and other information sources, including informal discussions with the Department's current staff. Importantly, while we are advising you that loans held under tax-exempt bond estates created prior to October 1, 1993 are eligible for special allowance applicable to loans made or purchased with the proceeds of such tax-exempt bonds, the Department's guidance on this subject has been unclear and at times contradictory. The Department's sometimes conflicting guidance reflects, we believe, a sense that current policy is producing results that were unanticipated and not, in the view of some, in the best interests of the Department.

Assumptions of Fact

In rendering this opinion, we have not made any independent investigation of the facts referred to below, but have relied solely on certifications received by Nelf and its parent, Nelnet, Inc. ("Nelnet"), confirming that the facts and assumptions below are true. We understand such facts to be as follows:

1. Nelf was a private, non-profit qualified scholarship funding corporation as described in section 150(d)(2) of the Internal Revenue Code of 1986, as amended (the "Code") that issued certain tax-exempt bonds. Nelf was converted to a for-profit corporation on April 1, 1998, pursuant to the provisions of section 150(d)(3) of the Code.

2. Nelf is issuing the Series 2004-1 Notes pursuant to an Indenture of Trust dated as of January 1, 2004, and a related supplemental indenture (collectively, the "Indenture").

3. The Series 2004-1 Notes are not tax-exempt bonds.

4. All of the Identified Loans (as defined below) will have been originated by, sold or otherwise transferred by Nelf into one or more pre-October 1, 1993 tax-exempt trust estates of Nelf with proceeds from the related tax-exempt bond obligations or from collections on FFEL loans securing such tax-exempt bond obligations, prior to their transfer into the trust estate securing the Series 2004-1 Notes. "Identified Loans" means loans identified by Nelnet to (i) in the case of FFEL loans transferred on the date of the initial issuance of the Series 2004-1 Notes (a) Credit Suisse First Boston LLC and Deutsche Bank Securities Inc., as representatives of the initial purchasers of the Series 2004-1 Notes, and (b) the rating agencies rating the Series 2004-1 Notes, and (ii) in the case of FFEL loans transferred during the Revolving Period (as defined in the Indenture), those loans specified in the related Loan Transfer Addendum, in each case, as being eligible for the special allowance payments calculated pursuant to Section 438(b)(2)(B)(i) and (ii) of the Higher Education Act.

5. The Trust Estate (as defined in the Indenture) securing the Series 2004-1 Notes will acquire the Identified Loans with the net proceeds from the offering of the Series 2004-1 Notes and, during the Revolving Period, with certain collections on FFEL loans securing the Series 2004-1 Notes.

6. None of the pre-October 1, 1993 tax-exempt trust estates to which the Identified Loans were originated, sold or otherwise transferred have been retired or defeased in full.

All of the Identified Loans were made or insured on or after October 1980.

8. Nelf, at all times since the Identified Loans were originated, sold or otherwise transferred to a pre-October 1, 1993 Nelf tax-exempt trust estate, acting through its eligible lender trustee, has retained an interest in the Identified Loans.

9. Nelf intends for the Identified Loans to be eligible for the special allowance payments calculated pursuant to Section 438(b)(2)(B)(i) and (ii) of the Higher Education Act.

Opinion

Based on the assumptions of fact specified above, it is our opinion that Identified Loans to be refinanced and transferred into the trust estate securing the Series 2004-1 Notes would be made eligible for the special allowance payments calculated pursuant to Section 438(b)(2)(B)(i) and (ii) of the Higher Education Act both while owned and pledged under a pre-October 1, 1993 tax-exempt bond estate and after transfer out of such estate to the trust estate securing the Series 2004-1 Notes provided that (i) Nelf issued the related tax-exempt bond obligations, (ii) Nelf, acting through its eligible lender trustee, retains legal interest in the Identified Loans, and (iii) the related tax-exempt obligations involved have not been retired or defeased in full.

Discussion

Section 438(b)(2)(B)(i) and (ii) of the Higher Education Act (20 U.S.C. 1087-1(b)(2)(B)(1)(i) and (ii)) read as follows:

> (i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954 shall be one-half the quarterly rate of the special allowance established under subparagraph (A), except that, in determining the rate for the purpose of this division, subparagraph (A)(iii) shall be applied by substituting "3.5 percent" for "3.10 percent". Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds. This subparagraph shall not apply to loans which were made or insured prior to October 1, 1980.
>
> (ii) The quarterly rate of the special allowance set under division (i) of this subparagraph shall not be less than 9.5 percent minus the applicable interest rate on such loans, divided by 4."

The regulations implementing the statutory provision are found at 34 C.F.R. 682.302 (the "Regulation"). Under 682.302, special allowance is paid on an FFEL loan by the

Department when the return to the lender falls below a level considered to reflect a market return to the holder of the loan. Section 682.302(c) provides that the special allowance rate is calculated quarterly by determining the bond equivalent average rates of 91-day Treasury bills auctioned during the quarter, subtracting the applicable interest rate for the loan, and adding an additional percentage as specified in the regulation by the type of FFEL loan involved. Subsections 682.302(c) and (e) specify when the Department will pay the holder of a qualifying student loan full special allowance ("full SAP") and when the holder is to be paid reduced SAP, subject to specified minimums. A copy of 34 C.F.R. 682.302 is attached to this letter.

Under paragraph (c)(3) of the Regulation, SAP paid on loans made or guaranteed on or after October 1, 1980 that were made or purchased with funds obtained by the holder from the proceeds of a tax-exempt obligation issued prior to October 1, 1993 is one-half of the full SAP rate otherwise payable, subject to certain minimum floors. Paragraph (c)(2) of the Regulation provides that the Department will pay a special allowance at full SAP for a loan which was made or purchased with the proceeds of a tax-exempt obligation issued prior to October 1, 1993 after the loan is pledged or otherwise transferred in consideration of funds derived from sources other than pre-October 1, 1993 tax-exempt obligations if either the authority no longer retains a legal or equitable interest in the loan, or the tax-exempt obligation is retired or defeased.

The Regulation created the unanticipated opportunity under the current rate environment for holders such as the Nelf to substantially increase the SAP paid on certain loans by transferring them to a pre-October 1, 1993 tax-exempt bond estate even if such loans are subsequently transferred out of the bond estate, provided that Nelf, acting through its eligible lender trustee, retained a legal or equitable interest in the loan and provided that the involved tax-exempt obligation has not been retired or defeased.

It is this circumstance that has, in our opinion, contributed to contradictory guidance reportedly being provided by the Department on this issue. The history of 34 C.F.R. 682.302 suggests, however, that the Department wrote the Regulation as it did without appreciating the possibility of the current financial results of it. In 1992, when the Regulation was promulgated, floor yield was not applicable on loans because of the prevailing interest rate environment. At the time, half SAP significantly reduced the yield on loans. This circumstance encouraged FFEL loan providers to explore means of converting loans to full SAP eligibility through refinancing loans with taxable bonds and through other means.

In part, the Regulation appears to have been written with the intention of making such transactions more difficult. By curtailing the conversion of loans from floor yield/half SAP to full SAP, the Department's costs associated with such loans were substantially reduced.

The Department's rationale for the Regulation was explained in Questions and Answers included as part of a "Dear Colleague" letter issued in March, 1996 entitled, "Summary:

Clarification and interpretative guidance on certain provisions in the Federal Family Education Loan (FFEL) Program regulations published on December 18, 1992." The letter is designated as 96-L-186, 96-G-287. It is accessible on the Internet at: www.ifap.ed.gov/dpcletters/doc0628_bodyoftext.htm.

Question and Answer 30 of the "Dear Colleague Letter" reads as follows

> "30. Section 682.302(e), which pertains to eligibility for special allowance for loans made or acquired with obligations on which the interest is exempt from taxation (tax-exempt obligations), has been revised in the 1992 regulations. What is the significance of the change?
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> "Section 682.302(e) was revised to reflect a shift in the Department's policy regarding loans made or acquired with the proceeds of tax-exempt obligations. The regulations in effect prior to December 18, 1992 stated that a lender was paid special allowance on a loan made or acquired with the proceeds of a tax-exempt obligation based on the rules applicable to loans financed with taxable obligations after the loan was refinanced with the proceeds of a taxable obligation and the prior tax-exempt obligation was retired or defeased. The regulations were silent as to the method of calculating the applicable special allowance rate for a loan made or acquired with a tax-exempt obligation that was subsequently refinanced with the proceeds of a taxable obligation, but the prior tax-exempt obligations remained outstanding. The Department's prior guidance stated that the current funding source defined the applicable special allowance provisions—if a loan was financed with the proceeds of a tax-exempt obligation, the tax-exempt special allowance rule applied. If the loan was financed with the proceeds of a taxable obligation, the taxable special allowance rules applied.
>
> "In the December 18, 1992 regulations, the Department changed this policy. *Under the regulations, if a loan made or acquired with the proceeds of a tax-exempt obligation is refinanced with the proceeds of a taxable obligation, the loan remains subject to the tax-exempt special allowance provisions if the authority retains legal interest in the loan.* If, however, the original tax-exempt obligation is retired or defeased, special allowance is paid based on the rules applicable to the new funding source (taxable or tax-exempt).
>
> "This change is effective as of the effective date of the 1992 regulations, February 1, 1993, and applies to all loans transferred from a tax-exempt obligation to a taxable obligation on or after that date.
>
> "Adjustments to ED 799 billings and current billings for any loans covered by this policy should be made using the applicable tax-exempt special allowance codes for the periods that the holder retains legal interest in the loan and the original tax-exempt obligation has not been retired or defeased." (Emphasis added).

Discussion of Legislative Risk

In considering this transaction, the possibility of the Department or Congress changing the treatment of loans held currently or in the past in pre-October 1, 1993 bond estates must be kept in mind. Revision of regulations, or a legislative change in the Higher Education Act, could result in loans transferred into bond estates created prior to October 1, 1993 and subsequently transferred out being no longer subject to the special allowance payments calculated pursuant to Section 438(b)(2)(B)(i) and (ii) of the Higher Education Act. Such a change would, in our view, most likely entail a determination that loans held in a qualifying pre-October 1, 1993 tax-exempt bond estate would cease to be subject to the special allowance payments calculated pursuant to Section 438(b)(2)(B)(i) and (ii) of the Higher Education Act if they are transferred out of that bond estate after a specified future date. We do not believe it legally possible for the Department or Congress to retroactively determine that loans formerly held in a pre-October 1, 1993 tax-exempt bond estate that were not eligible for the special allowance payments calculated pursuant to Section 438(b)(2)(B)(i) and (ii) of the Higher Education Act or that any special allowance received prior to the date of such a legislative or regulatory change would have to be refunded to the Department.

We believe that if the Department attempted to revise the relevant policies relating to pre-October 1, 1993 tax-exempt bond estates without formal regulatory action, the resulting policies would be subject to legal challenge.

This firm has no opinion on the probability of the Department or Congress taking such action or other action that could result in a prospective change in the treatment of the loans involved, but advise you that legislative risk must be considered in evaluating this transaction.

As noted above, we are providing you with an opinion based on our review of the statute, regulations, and applicable interpretative bulletins. This opinion is also limited to our review of the applicable sections of the Higher Education Act of 1965, as amended, and regulations issued pursuant to it. We express no opinion with regard to any other law or issue.

This opinion may be relied upon only by Nelnet and its affiliates, by Credit Suisse First Boston, LLC, Deutsche Bank Securities Inc., J.P. Morgan Securities Inc., Morgan Stanley & Co. Incorporated, and McKee Nelson LLP exclusively in connection with issuance of the Series 2004-1 Notes. It may not be relied upon by any other party or for any other purpose without our express written consent.

Please let us know if this memo meets your needs. We would be pleased to discuss this matter with you in additional detail.

Sincerely,

DEAN BLAKEY

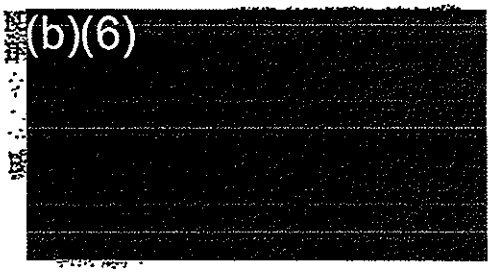
By: _____
John E. Dean
Partner

ATTACHMENT

EXHIBIT A

CERTIFICATE OF NELNET EDUCATION LOAN FUNDING, INC.

The undersigned officer of Nelnet Education Loan Funding, Inc. (the "Company") hereby certifies that he/she has reviewed the facts assumed under the headings "Assumptions of Fact" contained in the opinion of Dean Blakey dated the date hereof with respect to certain matters regarding the refinancing of certain student loans and hereby certifies that the facts assumed therein, as they relate to the Company, are correct.



Date: January 30, 2004

EXHIBIT B

CERTIFICATE OF NELNET, INC.

The undersigned officer of Nelnet, Inc. (the "Company") hereby certifies that he/she has reviewed the facts assumed under the headings "Assumptions of Fact" contained in the opinion of Dean Blakey dated the date hereof with respect to certain matters regarding the refinancing of certain student loans and hereby certifies that the facts assumed therein, as they relate to the Company, are correct.

NELNET, INC.

By: (b)(6)

Date: January 30, 2004