§ 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.