

AGENDA

MEETING OF THE
UTAH STATE BOARD OF REGENTS

October 19, 2004

**Utah State Board of Regents
Office of the Commissioner
of Higher Education
Board of Regents Building, The Gateway
60 South 400 West
Salt Lake City, Utah 84101-1284**

STATE BOARD OF REGENTS MEETING
BOARD OF REGENTS OFFICES, THE GATEWAY
SALT LAKE CITY, UTAH
October 19, 2004

AGENDA

9:00 a.m. - WELCOME AND REVIEW OF AGENDA
9:15 a.m.

9:15 a.m. - MEETINGS OF BOARD COMMITTEES
10:15 p.m.

Academic, Career and Technical Education, and Student Success Committee
Board Room

ACTION:

1. Proposed Revisions to Policy R401, *Approval of New Programs, Program Additions, or Program Changes* Tab A

INFORMATION/DISCUSSION:

2. Utah Valley State College – Deaf Studies Minor Tab B
3. New Career-Oriented Websites Tab C
4. Consideration of Name Change for Committee Tab D

Finance, Facilities and Accountability Committee
Executive Conference Room, 4th Floor

ACTION:

1. UHEAA – Substitution of Letter of Credit – State Board of Regents, Student Loan Revenue Bonds, Series 1993A Tab E
2. University of Utah – Authorizing Resolution for the Execution and Delivery of a First Amendment To Huntsman Cancer Institute Sublease Agreement Tab F

INFORMATION/DISCUSSION:

3. USHE – Fall 2004-2005 Enrollment Report Tab G
4. UHEAA – Board of Directors Report on UESP Tab H
5. Letter of Response Regarding Q&P Process to the State Building Board Tab I

10:15 a.m. - BREAK
10:30 a.m.

10:30 a.m. - COMMITTEE OF THE WHOLE AND REGULAR BUSINESS MEETING OF THE BOARD
12:30 p.m. Board Room

1. Report of the Chair
2. Report of the Commissioner
3. Reports of Board Committees
 - Academic Committee -- Tabs A - D
 - Finance Committee – Tabs E - I
4. General Consent Calendar Tab J
5. USHE – Proposed 2005-2006 Budget Request Tab K
6. Consideration of Resolution and Support of Constitutional Amendment 2,
Resolution-Exception to Subscribing to Stock Prohibitions Tab L
7. Discussion of Initiative 1, *Utah Clean Water, Quality Growth, and Open Space Initiative* Tab M

12:30 p.m. LUNCHEON
Regents (Executive Session) – 4th Floor Executive Conference Room
Business Officers – EdNet Room
Others – 5th Floor Board Room

* * * * *

Projected times for the various meetings are estimates only. The Board Chair retains the right to take action on either day. In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify ADA Coordinator, 60 South 400 West, Salt Lake City, UT 84180 (801-321-7135), at least three working days prior to the meeting. TDD # 801-321-7130.

MEMORANDUM

October 12, 2004

TO: State Board of Regents

FROM: Richard E. Kendell

SUBJECT: R401, Approval of New Programs, Program Changes, and Discontinued Programs – Action Item

Issue

The Commissioner's staff worked with the Council of Presidents (COP) and the Chief Academic Officers (CAO) to streamline the program proposal process. All three groups believe that the document is ready to be reviewed and approved by the Board of Regents.

Background

During the Regents' September 2004 meeting, the Board lifted the Moratorium on all new programs. The Moratorium and its exceptions had been incorporated into the R401 document to provide the necessary guidelines which reflected the Regents' intent to limit programs during the Moratorium.

Now that the Moratorium has been lifted, the institutions are ready to send forward programs that were in the planning stages prior to and during the Moratorium. These programs have been reviewed through their institutional processes and approved by their boards of trustees.

Policy Changes

The Commissioner's staff and the CAOs clarified and shortened the process, where appropriate. The following changes were made:

* A Preamble, written by the CAOs, expresses the purpose of higher education, defines the rigorous process of institutional program review, and underscores the commitment to offer the highest quality programs to USHE students.

* In the Summary of the Program Review Committee (PRC) Process for the Letter of Intent (#7), faculty are expected to consult with their peers in similar programs across the system before submitting a proposal.

* Programs that are submitted and require no additional resources, meet academic quality standards, and have strong student support may be placed in the Abbreviated or Condensed Tracks which greatly shorten the approval process (5.1.4.)

* Program "Emphases" that share 50 percent or more of an already-approved core may come to the Regents as Information instead of Action (4.1.3., 4.1.5.).

* Certificates of Completion and Diplomas greater than 900 clock or 30 semester hours will undergo a regional review and, if successful, will be placed on the Information Calendar rather than the Action Calendar (3.3.)

* UCAT Certificates of Proficiency will undergo a regional review with subsequent inclusion on the Information Calendar (3.1.).

Commissioner's Recommendation

The Commissioner recommends that the Regents review the R401, raise issues, request additional information, and, if satisfied, approve the R401, Approval of New Programs, Program Changes, and Discontinued Programs, as the program approval policy for the Utah System of Higher Education.

Richard E. Kendell, Commissioner

REK/PCS
Attachment

R401, Approval of New Programs, Program Changes, and Discontinued Programs

Preamble*

Academic programs are the center of the educational mission of our state's colleges and universities, and the pursuit of knowledge is the driving consideration for the students we serve. Additionally, the Board of Regents and the universities and colleges are committed to provide our students with a range of degrees and other credentials that are appropriate to the respective missions of our institutions and that meet, if not exceed, national standards.

The process of degree approval is rigorous. The idea for a new degree comes from faculty responding to changes in a specific field, accreditation standards, student demand or market forces. Before academic programs are sent to the Board of Regents for review, they undergo careful scrutiny by academic departments, college or division committees, academic senates, executive officers, and institutional boards of trustees. Thus, institutional and regent reviews hold academic programs to high standards of quality and assure that graduates who earn these degrees and credentials are prepared to live successfully in and contribute to the welfare of the state and its citizens. (* The Preamble was adopted by the Chief Academic Officers of the Utah System of Higher Education in September 2004.)

R401. Summary of Program Review Committee (PRC) Process for the Letter of Intent (LOI).

R401 provides procedures and guidelines for Board of Regents approval and notification of new programs and programmatic and administrative changes in academic and career and technical education programs. Leadership at the institutions should work within their campus to insure that a thoughtful, selective institutional prioritization and review process is in place for all program changes. Each institution should insure that programs sent for approval have undergone institutional prioritization. Once institutional processes are completed, a three to five page Letter of Intent (LOI) will be submitted to the Program Review Committee (PRC) emphasizing the following criteria:

- 1. Program description:** A brief description of the program. (Place course descriptions of any new courses in the appendix.)
- 2. Mission fit:** Is the program within the current R312 description for the institution?
- 3. Current Faculty Preparedness:** Include information on current faculty preparedness to deliver the new program. (Faculty credentials should be placed in the appendix.)
- 4. Market Demand:** Specific data on market demand or the utility of the degree, how the program will accommodate a changing market, and hiring patterns including local, state and national trends (long term market needs and numbers to be included).

5. Student Demand: Student demand, as demonstrated in student surveys, petitions, etc. with expectations and preparation for the program to be identified.

6. Five-year Revenue and Expense Projections: Data on all sources of funding to include grants, donations, etc. If internal reallocation is to be made, state which programs will be adjusted to support the proposed program and the anticipated amount of funding from each reallocation. (Specific figures are needed.)

7. Similar programs already offered in the USHE: Identify similar programs already approved and functioning in USHE institutions; describe consultations with faculty and administrators who work with these existing programs. Include efforts to collaborate and articulate courses, and justify why an additional program is needed.

R401-1. Purpose.

To provide guidelines and procedures for Board approval and notification of new programs and programmatic and administrative changes in academic and career and technical education programs. In addition, this policy includes notification of discontinued programs and other program-related items that institutions shall provide to the Office of the Commissioner.

R401-2. References.

2.1. Utah Code [§53B-16-102](#), (Changes in Curriculum)

2.2. Policy and Procedures [R220](#), Delegation of Responsibilities to the President and Board of Trustees

2.3. Policy and Procedures [R312](#), Configuration of the Utah System of Higher Education and Institutional Missions and Roles

2.4. Policy and Procedures [R315](#), Service Area Designations and Coordination of Off-Campus Courses and Programs

2.5. Policy and Procedures [R355](#), Planning, Funding, and Delivery of Courses and Programs via Statewide Telecommunications Networks

2.6. Policy and Procedures [R411](#), Review of Existing Programs

2.7. Utah Code [§53B-16-102](#) (Continuing Education and Community Service [R430](#))

2.8. Policy and Procedures [R465](#), General Education

2.9. Policy and Procedures [R467](#), Lower Division Major Requirements

R401-3. Regional Approval Process for Certificates of Completion and Diplomas.

3.1. UCAT Certificates of Proficiency: Programs of up to 900 clock hours will be approved by the local Board of Directors. As appropriate, the regional campus will award a local “Certificate of Proficiency” designed to reflect the campus, area of competency, and its UCAT affiliation. If financial aid is provided for programs of 600 to 900 clock hours, the CAO will submit a Letter of Intent, with appropriate supporting documentation, to the Commissioner of Higher Education for approval through the Fast Track Process (R401-6.) and subsequent inclusion on the Information Calendar of the next Regents meeting agenda. This procedure complies with the U.S. Department of Education requirement for program approval through the state’s approval process.

3.2. Certificates Needing Approval for Financial Aid. (Refer to Fast-Track, R401.6.)

3.3. New Certificates of Completion and Diplomas. Certificates of Completion and Diplomas greater than 900 clock hours or 30 semester hours, are subject to the regional review process following.

1. The USHE Institution/UCAT Campus must submit a program request (See Template of Regional Review R401-8.2.1.) to a Regional Review Committee comprised of the relevant UCAT campus chief instructional officers and the chief academic officers from each of the USHE institutions in the region.
2. The proposed program must be approved by the USHE Board of Trustees/UCAT Campus Board of Directors. UCAT Campus proposals must be submitted to the UCAT President for approval followed by submission to the UCAT Board of Trustees for its approval.
3. The proposal will then be submitted to the Commissioner of Higher Education for approval and subsequent inclusion on the Information Calendar of the next Regents’ agenda.

R401-4. Items Requiring Board Consideration.

Institutions submitting program proposals for the Action Calendar, the Consent Calendar, and the Information Calendar shall adhere to the processes described in the flow charts found in Appendices A, B, and C. Programs inclusive of those in R401-4 will have undergone institutional review and been approved by the institutional Board of Trustees prior to submission to the Office of the Commissioner. Items presented to the Board will fall into one of the following categories. A definition follows each item.

4.1. Action Calendar. Programs placed on the Action Calendar require Board approval upon recommendation of the Academic, Career and Technical Education, and Student Success Committee (See R401-8.1 for Template for Letter of Intent). The following programs, including incubated programs in any of the following categories, require action by the Board:

4.1.1. New Associate of Arts and Associate of Science Degrees.

Programs of study primarily intended to encourage exploration of academic options, provide a strong general education component, and prepare students to initiate upper-division work in baccalaureate programs or prepare for employment. A minimum of 60 and a maximum of 63 credit hours, which include 30 to 39 credit hours of general education course work, and other requirements as established by USHE institutions, are required for completion of an associate degree. The Associate of Arts Degree may have a foreign language requirement. Based on compelling reasons, exceptions to the maximum credit hour requirement may be granted by the Board.

Sub-Unit Designation: (Pre Major Programs) The term “Pre Major” will be used by all institutions in describing the components of the Associate of Arts/Associate of Science Degrees that are designed to prepare students for upper-division work. The use of the term “Emphasis” will be discontinued as a sub-unit of an AA or AS Degree. At four-year institutions, not offering an AA or AS degree, the term “Pre Major” will also apply to preparatory, lower-division courses, required for acceptance into a Major. These courses should be the same or similar to those offered by the two-year programs. Although the descriptions of programs may vary at USHE institutions, the definition as described above should be implemented consistently.

Requirement: A “Pre Major” designation requires formal articulation agreements between the two- and four-year programs. The program outline (advising sheet) should clearly designate courses that will transfer to a four-year program and courses that are elective in nature which are those that do not have articulation agreements and are not likely to transfer. The two-year and four-year faculty should work together to designate support courses that do not articulate directly to the four-year Major but provide preparatory experience for a specific Major. These courses will count as electives.

4.1.2. New Specialized Associate - Associate of Pre-Engineering (APE Degree).

Programs of study which include extensive specialized course work intended to prepare students to initiate upper-division work in baccalaureate programs. A minimum of 68 and a maximum of 85 credit hours, which include a minimum of 28 credit hours of preparatory, specialized course work, general education requirements that are less extensive than in AA or AS Degrees, and other requirements as established by USHE institutions, are necessary for completion of the degree. Because students do not fully complete an institution's general education requirements while completing a specialized associate degree, they are expected to satisfy remaining general education requirements in

addition to upper-division baccalaureate requirements at the receiving institution.

Sub-Unit Designation: The term “Major” refers to the discipline in which the degree resides or to the content upon which the degree is focused.

Requirement: Specialty Associate Degrees require Regents’ Approval. These specialty Regent-approved Associate Degrees may be either a specific Major or articulate to specific four-year Majors, such as the APE and the Associate of Science in Business (ASB).

Generally, the latter programs are articulated from two- to four-year majors system-wide.

4.1.3. New Associate of Applied Science Degrees, and Diplomas.

Programs of study intended to prepare students for entry-level careers. A minimum of 63 and a maximum of 69 credit hours are required. Additionally, general education requirements that are less extensive than in AA or AS Degrees and others, as established by USHE institutions, are required. Based on compelling reasons, exceptions to the maximum credit hour requirement may be granted by the Board.

Sub-Unit Designation: The term “Major” refers to the discipline in which the degree resides. The Major may be made up of one or more “Emphasis” to describe the sub unit of the Associate of Applied Science.

Requirement: AAS Degree Programs may have collections of courses within the Major called “Emphasis” that would require approval by the Regents. “Emphases” will be considered essential to the academic integrity of the Regents’ approved degree program. “New Emphases” that share more than 50% of the existing disciplinary core of the approved major should be sent for notification on the Information Calendar. “Emphases” that share less than 50% of the disciplinary core will come before the Regents as an Action Item.

4.1.4. New Associate of Applied Technology (AAT) Degrees. Programs of study intended to prepare students for entry-level careers. The AAT Degree is competency-based and offered on an open-entry/open-exit basis. A mastery of a series of identified competencies, general education course work that is less extensive than in AA and AS Degrees, and other requirements as established by the Utah College of Applied Technology (UCAT),” regional boards, and program advisory committees, are necessary for completion of the degree. The average time to completion of the AAT Degree should fall within a range of 1890 to 2070 clock hours;

however, open-entry/open-exit, competency-based instructional delivery allows students to complete their course of study at their own pace. Like the AAS Degree, the AAT Degree is designed to prepare students for direct entry into the workforce; however, the AAT Degree may also transfer directly into Bachelor of Applied Technology (BAT) Degree programs.

Sub-Unit Designation: The term “Major” refers to the discipline in which the degree resides. The Major may be made up of one or more “Emphases” to describe the sub unit of the Associate of Applied Technology program.

Requirement: AAT Degree Programs may have collections of courses within the Major called “Emphasis” that would require approval by the Regents. “Emphases” will be considered essential to the academic integrity of the Regents’ approved degree program. All “Emphases” that are added to existing approved AAT Degrees must come forward as Action Items on the Regents’ agenda.

4.1.5. New Bachelor of Arts, Bachelor of Science, and Professional Bachelor Degrees. Programs of study including general education, major course work, and other requirements as established by USHE institutions and accreditation standards. Credit requirements include completion of a minimum of 120 and a maximum of 126 credit hours. However, some professional Bachelor Degrees, such as the Bachelor of Business Administration or Bachelor of Fine Arts, may have additional requirements. Other disciplines such as engineering and architecture may exceed the maximum of 126 credit hours in order to meet accreditation requirements. Based on compelling reasons, exceptions to the maximum credit hour requirement may be granted by the Board.

Sub-Unit Designation: The term “Major” refers to the discipline in which the degree resides.

Requirement: New Emphases, which have sometimes been called “Specializations” or “Concentrations,” that share more than 50% of the existing disciplinary core of the approved major should be sent for notification on the Information Calendar. Emphases that share less than 50% of the disciplinary core will come before the Regents as an Action Item. (Interdisciplinary Minors and Stand-alone Minors are addressed in R401 under 4.3.5 and 4.3.6. respectively.

4.1.5.1. New Major. A sequenced set of courses within a Bachelor's Degree program that comprises study in an academic discipline. The Major is listed on the graduate credential and signifies that the recipient possesses the knowledge and skills

expected of graduates in the discipline. (Minor courses/programs within approved degree programs will be reviewed only by institutional Boards of Trustees and submitted to the Commissioner's Office.)

4.1.6. New Master's Degrees. Graduate-level programs of study requiring a minimum of 30 and maximum of 36 credit hours of course work beyond the bachelor's degree, and other requirements as established by USHE institutions and accreditation standards. Professional master's degrees such as the Master's of Business Administration or Master's of Social Work may require additional course work or projects. Specialized professional master's degrees typically require additional course work. Based on compelling reasons, exceptions to the maximum credit hour requirement may be granted by the Board.

4.1.7. New Doctoral Degrees. Graduate-level programs in an advanced, specialized field of study requiring competence in independent research and an understanding of related subjects.

4.1.8. New K-12 School Personnel Programs. Endorsement and licensure programs for teacher education, counselors, administrators, and other school personnel. These programs adhere to an approval process which requires the following steps: review by the Office of Academic Affairs, the Chief Academic Officers, appropriate officials and faculty from USHE colleges and schools of education, and the Program Review Committee (PRC); review and approval by the Board. Following the review process, and program approval by the Board, the Utah State Office of Education will make its recommendation to the State Board of Education, which has the final approval authority over licensure.

4.2. Items for the Consent Calendar. Board Consent, which follows approval of the Academic, Career and Technical Education, and Student Success Committee, is required for significant program and administrative changes. Consent from the Regents should be sought prior to any institutional initiative to take action on program discontinuance. (See R401-8.1 for Template for program submission). The following items require consent of the Board:

4.2.1. Reinstatement of Previously Eliminated Administrative Units and Instructional Programs.

4.2.2. Discontinuation of Instructional Programs. If an institution intends to discontinue a program, institutional officials must first notify the Commissioner who will review the request and determine if more information is needed before discontinuance may proceed. After the Commissioner reviews the requests and issues are resolved, the institution should notify the Board with the discontinuance item for the Consent Calendar.

4.2.2.1. Student Completion. Students currently admitted to the program must be provided a way to complete the program in a reasonable period compatible with accreditation standards. This may require the enrollment of students at other institutions of higher education or that courses be taught for a maximum of two years after discontinuation of the program.

4.2.2.2. Duplication. Consider unnecessary duplication of programs within the System, particularly programs that may be high cost and/or low producing.

4.2.2.3. System Coordination. Consider the statewide impact of discontinuing the program, and identify opportunities for establishing the program at another USHE institution.

4.2.3. Follow-up Reports Requested by the Regents on Approved Programs. Reports requested by the Regents at the time of Board approval must be submitted in the time frame as requested. These reports should be sent to the Office of the Commissioner for review by the Academic Affairs staff. Once the report has been reviewed and found to contain the required information, it will be forwarded to the Board for the Consent Calendar. The report should include program admission criteria, enrollment data, demographic data on the enrolled students, employment information, and assessment processes. The Regents may request additional information as well.

4.2.4. Report on Out of Service Area Delivery of Approved Programs. Programs which require substantive change notification to the regional accreditation organization and/or are offered outside of the institution's designated service area.

4.2.5. Permanent Approval of Centers, Institutes, or Bureaus. Administrative entities which perform primarily research, instructional, or technology transfer functions, and are intended to provide services to students, the community, businesses, or other external audiences, or to obtain external funds.

4.2.5.1. Temporary Approval and Temporary Sources of Funding. Requests to establish centers, institutes, bureaus, or other administrative entities which perform a primarily research, instructional, or technology transfer function, and are intended to provide external services and/or obtain external funds. Funding support is from temporary, non-public resources or from temporary institutional reallocation within a limited time frame.

4.2.5.2. Modest Effort/Consistent with Roles/Affiliation/Three Year Limit. Institutions may seek temporary approval from the Commissioner for a center, institute, or bureau which is being established on an experimental or pilot basis. The Commissioner will evaluate and approve requests for temporary approval on the basis of the following criteria and conditions: The proposed change requires a modest effort in terms of staff and space needs, normally with no permanent staff or no permanent facility assignment; activities involved are consistent with established institutional mission and role assignments; the administrative entity involved has programmatic affiliation with an existing academic program or department. Temporary approval of centers, institutes, etc., may be granted for a period no longer than three years, after which an institution must request approval of the Board.

4.2.6. Certificates of Completion in which Instruction is Provided by an Outside Vendor and Requires Accreditation Review. The institution offers Certificates of Completion, credit or non-credit, for instruction provided by an organization outside the USHE.

4.2.7. Credit/Non-credit Certificates Eligible for Financial Aid. Credit/Non-credit certificates that do not fit the definition in 3.3. and are eligible for financial aid.

4.3. Items for the Information Calendar. Program Additions or Changes Requiring Notification on the Board's Information Calendar. Board notification is required for changes to programs and administrative units (see Template R401-8.4.), institutional program reviews (see Template R401-8.2, and programs under development (see Template R401-10.1). OCHE staff will determine the significance of the proposed change. If deemed not significant, the information will remain with the Commissioner's Office (see R401-5).

4.3.1. Transfer, Restructuring, or Consolidation of Existing Programs or Administrative Units.

4.3.2. Name Changes of Existing Programs.

4.3.3. Institutional Program Review Report (see R411 and Template R401-9.1).

4.3.4. Programs under Development (see Template R401-10.1).

4.3.5. Stand-alone Minors. A coherent collection of courses, related to one another, that is not part of a previously approved Major or degree program. (Submission: as they are approved or eliminated by institutional Board of Trustees.)

4.3.6. Interdisciplinary Minors. A coherent collection of courses, related to one another, from previously approved Majors or programs.

4.3.7. Emphases. New Emphases that share more than 50% of the existing disciplinary core should be sent for notification on the Information Calendar. Emphases that share less than 50% of the disciplinary core of the approved major will come before the Regents as an Action Item .

R401-4. Information to be Provided to the Office of the Commissioner.

The USHE institutions shall submit to the Commissioner's Office the following items:

4.1. An annual list of scheduled program reviews, as defined in R411 including date of review. (Submission: September)

4.2. An annual list of credit and non-credit certificates not meeting the definition as defined in R401-3.3. (Submission: December)

4.3. A list of new Minors that are part of a degree or Major program, as they are approved by institutional boards of trustees. (Submission: as they are approved)

R401-5. Procedure for Submitting New Programs or Program Changes for Board Approval.

5.1. New Programs and Program Changes as specified in the Action

Calendar, R401-4.1. The process for the approval of new programs includes the submission of a Letter of Intent (LOI) and the subsequent submission of a formal proposal to the Board of Regents. To help insure quality, institutions may wish to enlist the assistance of external consultants in developing the proposed program. Typically, career and technical education programs relate directly to the requirements of business and industry. Thus, programs submitted in this area should have the benefit of consultation from a program advisory committee regarding: (1) curriculum, including specific outcome-based competencies; (2) desired level of faculty qualifications; and (3) equipment and laboratory requirements.

5.1.1. Letter of Intent. Institutional Chief Academic Officers will submit a brief three to five page Letter of Intent (LOI) electronically for each new program proposal to initiate the Regents' program approval process. The template provided in R401- 8.1 will be used for the Letter of Intent. (Fast-Track programs refer to R401-6.)

5.1.2. Staff and Chief Academic Officers (CAO) Review. Letters of Intent will be forwarded to the Commissioner's staff and to the CAOs at all USHE institutions for review and comment. Within four weeks, the CAOs and Commissioner's staff will identify issues related to the

information provided in the Letter of Intent, including those that impact their institutions and/or programs, program quality, and other issues the CAOs believe to be pertinent. These comments will be sent electronically to the Commissioner's Office and to all USHE institutions. The proposing institutions will follow the Template for the Letter of Intent (See R401-8.).

5.1.3. Submission to Program Review Committee (PRC). Once the proposing institution address issues raised by the Commissioner's staff and the CAOs, the revised Letter of Intent and all attendant issues will be forwarded for review by the Program Review Committee (PRC).

5.1.3.1. Confidential information and Consultants. Confidential information may be submitted to the Commissioner under seal. (See Letter of Intent Template R401-8.) The PRC will review the Letter of Intent and accompanying information, raise questions, and request additional information as appropriate, including a request for a consultant to review the proposed program and surrounding issues. In this case, the proposing institution will provide to the Commissioner's staff a list of appropriate consultants. The staff will contact one of the consultants and arrange for the review. Once the consultant's report has been completed, it will be made available to the PRC, proposing institution, and the CAOs. As programs are reviewed, additional individuals, such as an institutional representative(s) appointed by the Commissioner's staff, may meet with the PRC. A member from the institution's Board of Trustees also may be included.

5.1.4. Presentation of the Abbreviated, Condensed, or Full Proposal. Following the PRC review process, the proposing institution will be directed into one of three tracks (See Appendix D.):

5.1.4.1. Abbreviated Track. The LOI alone may comprise sufficient documentation. Program proposals with little institutional or system impact may qualify for the Abbreviated Track. This determination will be based on but not limited to:

- a. the program's academic quality appears to be sufficient to meet accreditation or acceptable academic standards;
- b. the proposal requires minimal or no additional state resources (i.e. no new funding or faculty);
- c. the proposal requires no additional facilities;
- d. the program demonstrates sufficient or large student and/or employer demand;

e. the program would not be unnecessarily duplicative.

5.1.4.2. Condensed Proposal Track. Develop a proposal of fewer than ten pages resolving remaining questions or challenges from the PRC, CAOs, or Commissioner's staff.

5.1.4.3. Full Proposal Track. Prepare a full proposal. The full proposal will consist of 20 pages or fewer following Template 8.1., addressing issues raised by the CAOs and PRC, and including information that is significant and/or substantial.

a. the proposals are highly technical and/or selective associate, baccalaureate and all graduate-level programs;

b. the program would require additional state resources and/or is high cost;

c. the program would require additional facilities;

d. the program might be unnecessarily duplicative.

5.2. Council of Chief Academic Officers (CAOs). The Council of Chief Academic officers will meet, prior to the Council of Presidents' and Regents' meetings, to discuss institutional proposals regarding comments submitted by other USHE institutions, external reviews, initial evaluation from the Commissioner's Office, and comments from the PRC. This discussion will be reported to the Council of Presidents and considered by the Commissioner's staff in preparing materials and recommendations for the Board's agenda. The Commissioner's review for the Board will address not only the readiness of the institution to offer the program and the need for the program, but also the impact of the program on other USHE institutions.

5.3. Board of Regents Consideration. Program proposals that have been reviewed according to the procedures described in R401-6 are placed on the Board agenda for consideration by the Regents. The Board's Academic, Career and Technical Education, and Student Success Committee reviews proposals for new programs or program changes and recommends action to the Board. The Board then takes action on the proposed program during the meeting of the Committee of the Whole.

5.4. Votes for Approval. All new associate and bachelor degree programs must be approved by a majority vote of the Board members in attendance. All new master's and doctoral degree programs require at least a two-thirds majority of the members in attendance to be approved.

5.5. Budgetary Considerations Separate from Approval. Program approval by the Board consists only of authorization to offer a program. Budget requests necessary to fund the program shall be submitted separately through the regular budget process.

R401-6. Fast-Track Programs.

6.1. Fast-Track Program Approval Procedure. Certificates meeting the requirements in R401- 3.3., and that have been reviewed regionally, may be submitted to the Commissioner for Fast-Track approval. The certificate must have been approved by the institution's internal program development and approval process. The Commissioner may then approve the program, effective immediately. To request approval, the proposing institution will submit a Letter of Intent to the Commissioner's Academic Affairs Staff. The Commissioner will respond within 15 working days and will place the program on the Consent Calendar of the next Board meeting.

6.1.1. Two Year Review of Programs Approved through the Fast-Track Procedure. Institutions operating programs approved through the fast-track process must submit a report to the Commissioner's Office two years from the date the program is implemented outlining the continued viability of the program in terms of enrollment, student outcomes, budget and regional business and industry need (see Template R401-10.1.).

R401-7. Programs Under Development/Consideration.

7.1. Advance Information. Each institution shall submit to the Commissioner's Office of Academic Affairs an updated matrix of programs under development or consideration that may be brought to the Board for formal approval. A compilation of this information will be included on the Information Calendar of Board of Regents' agendas. These planning documents will provide Regents with a continuously updated, system-wide view of the programs that may be brought to them for approval.

7.1.1. Two Time Periods. The information is presented in matrix format and includes two time periods: The first matrix provides information for a twelve-month period beginning with the month of the current Board agenda. The second matrix provides information for a subsequent 24-month period.

7.1.2. Information Updates. The information in each matrix is to be updated whenever the status of a program changes or a new program is being considered. This provides the Board ongoing information, for a thirty-six month period, regarding the status of programs as they progress through the institutional review process. Updated matrices should be submitted to the Commissioner's Office of Academic Affairs on the

submission schedule for Board of Regents' agendas. Once a program has been approved by the Board, or is no longer under consideration at an institution, it should no longer appear in the matrix.

7.2. Matrix. In accordance with the existing program review schedule set by the Commissioner's Office, institutions will provide updated information to the Academic Affairs Office for programs under development or consideration. Changes to the matrix can be submitted electronically. The matrix will appear in the Information Calendar on the Board agenda at least three times a year.

R401-8. Template for Submitting Program Proposals.

The templates request information and provide the format to be used when submitting program proposals for review and Board action. (Please use Arial Narrow 12- point font.)

8.1. Template for Submission of Letter of Intent, Abbreviated, Condensed, and Full Proposals

8.1.1. Program Description. Present a short description of the program. (Place course descriptions of any new courses in the appendix.)

8.1.2. Mission fit. Describe how the proposed program fits within the institutional mission as defined by Policy [R-312](#).

8.1.3. Current Faculty Preparedness. Include information on current faculty preparedness to deliver a quality program. Note any plans for additions or needs. (Faculty credentials and preparedness should be placed in the appendix.)

8.1.4. Market Demand. Provide specific data on market demand for the program, including how the program will function if market demand changes. Include information regarding employment opportunities both in and out of state. If there is evidence of urgent need in the business and industry communities, provide appropriate details.

8.1.5. Student Demand. Student demand, as demonstrated in student surveys, petitions, etc. with expectations and preparation for the program to be identified.

8.1.6. Budget. Provide specific budget information for five years, including the source of funding, and specify if enrollment growth funding is to be used. If internal reallocation is to be made, state which programs will need to be adjusted in order to support the proposed program, and the anticipated amount of funding from such a reallocation. Incorporate information regarding any new funding that is immediately available to this program. Be specific and detailed. Confidential information may be sent to the Commissioner under seal.

8.1.7. Similar Programs Already Offered in the USHE. Identify similar programs already approved and functioning in USHE institutions and justify why the proposed program is needed in light of existing programs. Describe consultations with faculty and administrators who work with these existing programs, including efforts to collaborate and articulate courses, and justify why an additional program is needed. If duplication exists, or if the program is available electronically within the local service delivery area, the justification for the duplication must include specific labor market and student demand data from item 8.1.4., 5. above, or by a specific request from business and industry for an alternative delivery method.

8.1.8. Institutional priority. There should be a clearly defined relationship to a high institutional priority.

8.1.9. Exceptional program. A program may rise to a high institutional priority based on its content, population served and extraordinary demand.

8.1.10. Signature Page to Accompany Letter of Intent Abbreviated, Condensed, and Full Proposal. Letters of Intent will include the signatures of the institutional President, Chief Academic Officer and the appropriate dean and department chair.

8.2. Template for Submission of Proposals for New Programs Following the Successful Review of the Commissioner's Staff, CAOs, and PRC. This template provides the formats and information to be used when submitting program proposals for review and Board action and approval. Please use Arial Narrow 12 point font.

8.2.1. Template for submission of proposals for Regional review of new Certificates of Completion and Diplomas, and Board review of AA/AS Degrees, AAS Degrees, AAT Degrees, specialized associate degrees, Bachelor's Degrees, Master's Degrees, Doctoral Degrees, K-12 School Personnel Programs.

SECTION I: The Request

[Name of Institution] requests approval to offer [Name of Degree] effective [Semester and Year]. This program has been approved by the institutional Board of Trustees on [Date].

SECTION II: Program Description

[Complete Program Description - Present the complete, formal program description.]

[Purpose of Degree - State why are you offering this degree and the expected outcomes.]

[Institutional Readiness - Describe the impact of the new program upon existing administrative structures and identify new organizational structures that may be needed to deliver the program. Describe the impact on current budgets, faculty, staff, learning resources and instructional technology. In the appropriate sections below, give the specifics on the necessary number of faculty to adequately deliver the program, the appropriate full-time to part-time faculty ratio, and the necessary additions to Library and Information Resources. The impact on current budgets should be described in light of the cost category that the proposed program will fall in (vocational, lower division, upper division, basic graduate, or advanced graduate). A more detailed analysis will be required for proposed programs at the advanced graduate level than the lower division level.]

[Faculty - Identify the need for additional faculty required in each of the first five years of the program. State the level of preparedness of current faculty and the level of preparedness that will be needed by the fifth year. Clearly state the proportion of regular full-time, tenure track faculty to part-time and non-tenure contract faculty. Describe the faculty development processes that will support this program. See Requirements in the Institutional Readiness Section.]

[Staff - List all additional staff needed to support the program in each of the first five years; e.g., administrative, secretarial, clerical, laboratory aides/ instructors, advisors, teaching/graduate assistants. See Requirements in the Institutional Readiness Section.]

[Library and Information Resources- Describe library resources required to offer a superior program. Does the institution currently have the needed library resources? See Requirements in the Institutional Readiness Section]

[Admission Requirements - List admission requirements specific to the proposed program.]

[Student Advisement - Describe the advising process for students in the proposed program.]

[Justification for Number of Credits - Provide justification if number of credit or clock hours exceeds 63 for AA or AS, 69 for AAS, 2070 clock hours for AAT, 126 credit hours for BA or BS; and 36 beyond the baccalaureate for MS.]

[External Review and Accreditation - Indicate whether any external consultants, either in- or out-of-state, were involved in the development of the proposed program, and describe the nature of that involvement. For a career and technical education program, list the members and describe the activities of the program advisory committee. Indicate any special professional accreditation which will be sought and how that accreditation will impact the program. Project a future date for a possible accreditation review; indicate how close the institution is to achieving the requirements, and what the costs will be to achieve them.]

[Projected Enrollment - For credit programs, project both student FTE enrollments and the mean student FTE-to-faculty FTE ratio for each of the first five years of the program. For non-credit programs, project student headcount enrollments and mean student-to-faculty ratio for each of the first five years of the program. If accreditation requirements specify a specific student-to-faculty ratio, indicate the ratio(s).]

[Expansion of Existing Program - If the proposed program is an expansion or extension of an existing program, present enrollment trends by headcount and by student credit hours (if appropriate) produced in the current program for each of the past five years for each area of emphasis or concentration.]

SECTION III: Need

[Program Need - Clearly indicate why such a program should be initiated.]

[Labor Market Demand - Include local, state, and national data, and job placement information, what types of jobs have graduates obtained from similar programs. Indicate future impact on the program if the market demand changes.]

[Student Demand - Describe evidence of student interest and demand that supports potential program enrollment.]

[Similar Programs - Are similar programs offered elsewhere in the state or Intermountain Region? If yes, cite justifications for why the Regents should approve another program. How does the proposed program differ from similar program(s)? Be specific.]

[Collaboration with and Impact on Other USHE Institutions - Describe discussions with other USHE institutions that are already offering the program that have occurred regarding your institution's intent to offer the proposed program. Include any collaborative efforts that may have been proposed. Analyze the impact that the new program would have on other USHE institutions.]

[Benefits - State how the institution and the USHE benefit by offering the proposed program.]

[Consistency with Institutional Mission - Explain how the program is consistent with and appropriate to the institution's Board-approved mission, roles and goals.]

SECTION IV: Program and Student Assessment

[Program Assessment - State the goals for the program and the measures that will be used in the program assessment process to determine if goals are being met.]

[Expected Standards of Performance - List the standards and competencies that the student will have met and achieved at the time of graduation. How or why were these standards and competencies chosen? Include formative and summative assessment measures you will use to determine student learning.]

SECTION V: Finance

[Budget - For each category below, present the projected budget for an ongoing, quality program for each of the first five years:

- Salaries and Wages
- Benefits
- Current Expense
- Library
- Equipment
- Travel
- TOTAL]

[Funding Sources - Describe how the program will be funded, i.e. new state appropriation, tuition, reallocation, enrollment growth, grants etc.]

[Reallocation - If program is to be supported through internal reallocation, describe in specific terms the sources of the funds.]

[Impact on Existing Budgets - If program costs are to be absorbed within current base budgets, what other programs will be affected and to what extent? Provide detailed information. Confidential information may be sent to the Commissioner under seal.]

Appendix A: Program Curriculum.

[New Courses to be Added in the Next Five Years - List all new courses to be developed in the next five years by prefix, number, title, and credit hours. Use the following format:]

Course Number	Title	Credit Hours
---------------	-------	--------------

[All Program Courses - List all courses, including new courses, to be offered in the proposed program by prefix, number, title, credit hours, or credit equivalences. Use the following format: (please include all course descriptions in appendix.)]

Course Number	Title	Credit Hours
General Education		
	Sub-Total	

Core Courses		
	Sub-Total	
Elective Courses		
	Sub-Total	
Track/Options (if applicable)		
	Sub-Total	
	Total Number of Credits	

Appendix B

[**Program Schedule** - For each level of program completion, present, by semester, a suggested class schedule - by prefix, number, title and semester hours.]

Appendix C

[**Faculty** - List current faculty within the institution, with their qualifications, to be used in support of the program.]

8.2.2. Signature Page to Accompany Proposals Requiring Board Approval. This signature page, with all appropriate signatures included, should be sent to the Commissioner's Office and kept on file at the proposing institution.

Institution Submitting Proposal:

College, School or Division in Which Program Will Be Located:

Department(s) or Area(s) in Which Program Will Be Located:

Program Title:

Recommended Classification of Instructional Programs (CIP) Code: ____ . ____ _

Certificate, Diploma and/or Degree(s) to be Awarded:

Proposed Beginning Date:

Institutional Signatures (as appropriate):

Department Chair

Career and Technical Education Director

Chief Academic Officer

Date

Dean or Division Chair

Graduate School Dean

President

8.3. Template for Consent Calendar Items. To Include Reinstatement of Previously Eliminated Administrative Units and Instructional Programs, Out of

Service Area Delivery of Approved Programs, Certificates of Completion, Proposals for Centers/Institutes/Bureaus, Program Discontinuation, and Non-credit Certificates Eligible for Financial Aid.

SECTION I: Request

[**Request** - Briefly describe the change. Indicate the primary activities impacted, especially focusing on any instructional activities.]

SECTION II: Need

[**Need** - Indicate why such an administrative change, program, or center is justified. Reference need or demand studies if appropriate. Indicate the similarity of the proposed unit/program with similar units/programs which exist elsewhere in the state or Intermountain region.]

SECTION III: Institutional Impact

[**Institutional Impact** - Will the proposed administrative change or program affect enrollments in instructional programs of affiliated departments or programs? How will the proposed change affect existing administrative structures? If a new unit, where will it fit in the organizational structure of the institution? What changes in faculty and staff will be required? What new physical facilities or modification to existing facilities will be required? Describe the extent of the equipment commitment necessary to initiate the administrative change. If you are submitting a reinstated program, or program for off-campus delivery, respond to the previous questions as appropriate.]

SECTION IV: Finances

[**Costs**- What costs or savings are anticipated from this change? If new funds are required, describe in detail expected sources of funds. Describe any budgetary impact on other programs or units within the institution.]

8.3.1. Signature Page to Accompany Proposals Requiring Board Consent. This signature page, with all appropriate signatures included, should be sent to the Commissioner's Office and kept on file at the proposing institution.

Institution Submitting Proposal:

College, School or Division in Which Program/Administrative Unit Will Be Located:

Department(s) or Area(s) in Which Program/Administrative Unit Will Be Located:

Program/Administrative Unit Title:

Recommended Classification of Instructional Programs (CIP) Code: __ __, __ __ __ __

Certificate, Diploma and/or Degree(s) to be Awarded:

Proposed Beginning Date: _____

Institutional Signatures (as appropriate):

Department Chair	Dean or Division Chair
Career and Technical Education Director	Graduate School Dean
Chief Academic Officer	President

Date

8.4. Template for Submission to the Information Calendar of the Academic, Career and Technical Education, and Student Success Committee and Board Action.

8.4.1. Template for Information Calendar Items to Include Transfer, Restructuring or Consolidation of Existing Programs or Administrative Units, Stand-alone Minors, Interdisciplinary Minors, Emphases, and Name Changes. (Approved by the Board of Trustees and sent to the Board of Regents as an information item.)

SECTION I: The Request

(**Request** - Briefly describe the change. Include a listing of courses and credits as appropriate.)

SECTION II: Need

(**Need** - Indicate why the change is justified. Reference need or demand data if appropriate.)

SECTION III: Institutional Impact

(**Institutional Impact** - Will the proposed recommendation affect enrollments in instructional programs of affiliated departments or programs? How will the proposed

recommendations affect existing administrative structures? What (new) faculty, physical facilities or equipment will be impacted?)

SECTION IV: Finances

(Costs - What costs are anticipated? Describe any budgetary impact, including cost savings, on other programs or units within the institution.)

8.4.1.1. Signature Page to Accompany Proposals Providing Board Notification. This signature page, with all appropriate signatures included, must be attached to proposals submitted for Board notification.

Institution Submitting Proposal:

College, School or Division affected:

Department(s) or Areas(s) affected:

Change Description:

Proposed Beginning Date:

Institutional Signatures (as appropriate):

_____, Department Chair

_____, Dean or Division Chair

_____, Chief Academic Officer

_____, President

_____, Date

R401-9. Template for Submitting Institutional Program Reviews.

The following information will be contained in the Program Review Report submitted to the Commissioner's Office and will be no more than 2-5 pages in length.

9.1. Template for Submission of Program Reviews

9.1.1. Background Information. Identify the program under review and the date of the review. List each reviewer including degree and current affiliation. Provide any additional information to better understand the context of the review, i.e. date of last review, in conjunction with accreditation or national review, etc.

9.1.2. Student and Faculty Statistical Summary. List in chart form the past five years of data regarding students, graduates, faculty, student/faculty ratio and other data that are pertinent to understanding the program.

9.1.3. Program Strengths. List the program strengths as identified by the review team.

9.1.4. Areas Suggested for Improvement. List the areas where the review team indicated improvement is needed

9.1.5. Recommendations. What specific suggestions does the review team make in regards to program improvement?

9.1.6. Commendations. List any outstanding aspects of the program as identified by the review team.

9.1.7. Institutional Response to the Review Team Report. List specifically, what goals the institution intends to work on prior to the next review

R401-10. Template for Submission of Programs under Development and Consideration.

The following information will be sent to the Commissioner’s Office for inclusion on the website. It should be updated as needed.

10.1 Template for Submission of Programs under Development and Consideration

Programs Under Development/Consideration: Section I

(One Year)

Institution	Program Name	Degree Type	Current Status	Projected for Regents’ Agenda
-------------	--------------	-------------	----------------	-------------------------------

Programs Under Development/Consideration: Section II

(Year Two and Three)

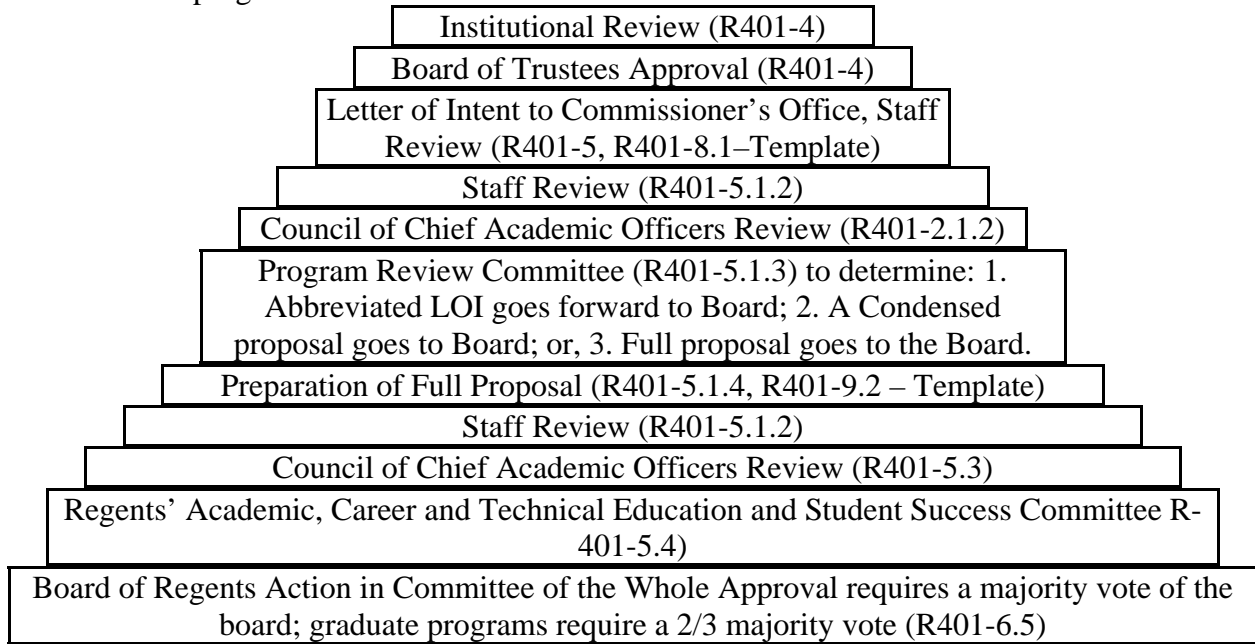
Institution	Program Name	Degree Type

(Approved November 7, 1972, amended September 25, 1973, February 21, 1984, April 27, 1990 and revised and combined with R402 October 27, 2000; amended June 1, 2001. [R402 was approved September 10, 1971, amended November 18, 1980, July 19, 1983,

March 20, 1984, September 12, 1986, August 7, 1987, October 26, 1990, April 16, 1993, January 21, 1994, May 1, 1997, May 29, 1998, and revised and combined with R401 October 27, 2000.) R401 re-written and approved November 8, 2002; amended May 30, 2003. Approved Board of Regents, May 30, 2003.

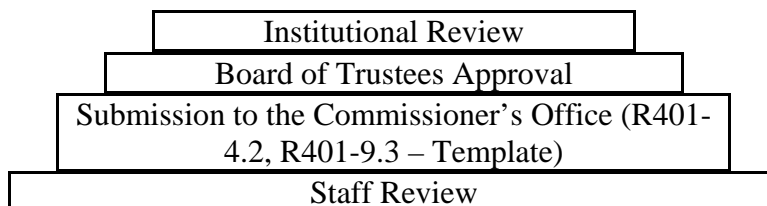
APPENDIX A: ACTION CALENDAR FLOW CHART (R401-4.1)

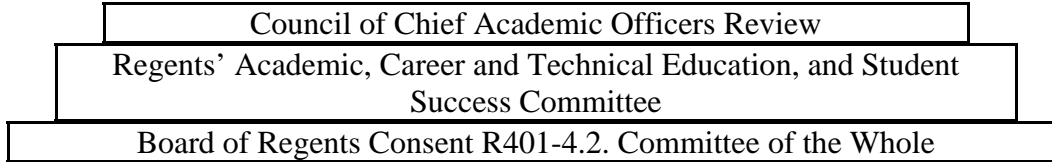
Board of Regent approval is required of all new degree programs, including new K-12 school personnel programs. Such programs will have undergone institutional review and been approved by the Board of Trustees prior to submission to the Office of the Commissioner. The approval process for Fast Track career and technical education certificate programs is described in R401-7.



APPENDIX B: CONSENT CALENDAR FLOW CHART (R401-4.2)

Board of Regent consent is required for significant program and administrative changes, including: reinstatement of previously eliminated administrative units and instructional programs, discontinuation of instructional programs*, delivery of approved programs offered outside an institution's designated service area, permanent approval of centers/institutes/bureaus, certificates of completion in which instruction is provided by an outside vendor and requires accreditation review, and non-credit certificates eligible for financial aid.

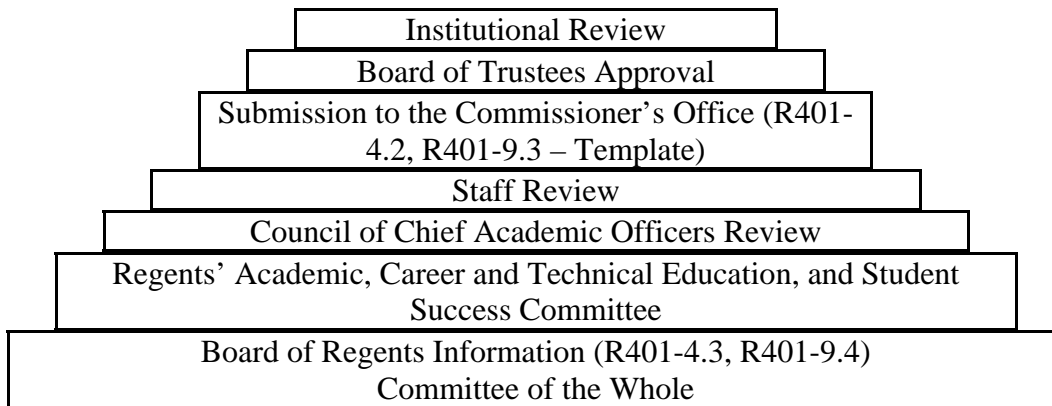




*See R401-4.2.2 for criteria to be used in guiding program review for the discontinuation of programs.

APPENDIX C: INFORMATION CALENDAR FLOW CHART (R401-4.3)

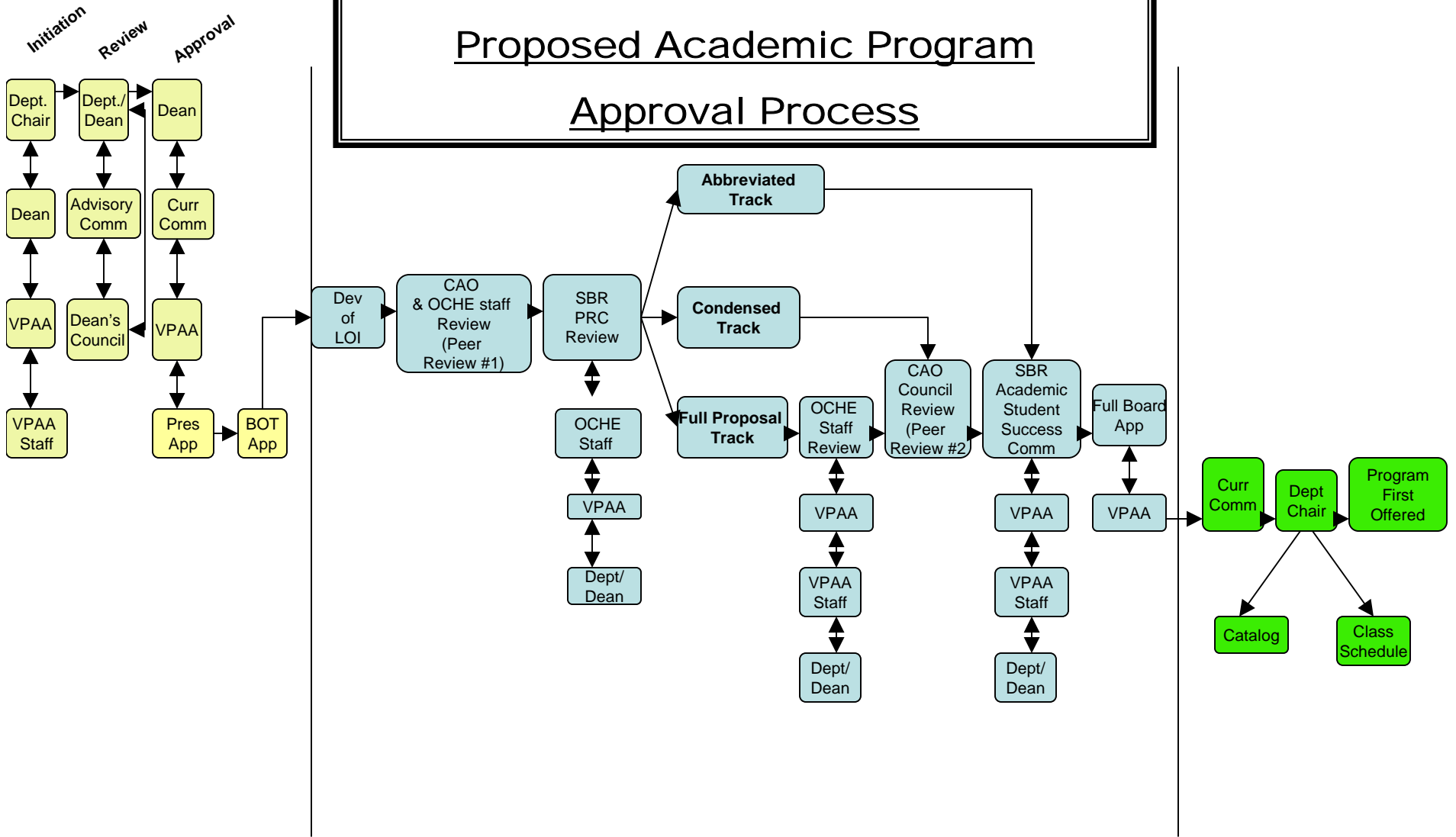
Board of Regent notification is required for changes to programs and administrative units, institutional program reviews, and programs under development. Information Calendar items may include transfer/restructuring/consolidation of existing programs or administrative units, stand-alone minors, interdisciplinary minors, and name changes.



Submitted for Board of Regents Approval March 12, 2004

Appendix D

Proposed Academic Program Approval Process



Institutional Review

OCHE and Regents Review (R401)

Implementation

MEMORANDUM

October 11, 2004

TO: State Board of Regents
FROM: Richard E. Kendell
SUBJECT: Information: UVSC Undergraduate Minor in Deaf Studies

Utah Valley State College seeks approval from the Board of Regents to offer a Stand-alone Minor in Deaf Studies, consisting of 21 credit hours of upper-division course work already offered as part of the American Sign Language emphasis in the Integrated Studies Degree program. This new minor was approved by the UVSC Board of Trustees on August 12, 2004.

The proposed Deaf Studies Minor would serve an increasing number of deaf students enrolled at UVSC, particularly those who wish to pursue an academic discipline separate from the ASL emphasis in the Integrated Studies program. No colleges or universities in Utah offer baccalaureate degree programs in either ASL or Deaf Studies, and UVSC's ASL emphasis in Integrated Studies is the most relevant available offering. Many students, however, would benefit from completing a Minor in Deaf Studies rather than an emphasis in a major. The Deaf Studies Minor would open the doors to many students who could combine it with majors specifically related to their chosen fields.

The Deaf Studies Minor would also address a state and community need for more workers who can communicate and interact with deaf employees and customers in education, business, sales, social work, medical and dental offices, hospitality, politics, and other fields.

College officials indicate that the new minor will involve no new curriculum, personnel, or facilities, and no new program costs. Growth in currently offered upper-division courses will result in more fiscally favorable student-to-teacher ratios in these specialized classes.

Commissioner's Recommendation

It is the Commissioner's recommendation that the Regents review the proposed UVSC Stand-alone Minor in Deaf Studies and raise any questions for clarification. No action is required by the Board.

Richard E. Kendell, Commissioner

REK:DAC

October 13, 2004

MEMORANDUM

TO: State Board of Regents
FROM: Richard E. Kendell
SUBJECT: Discussion: New Career Oriented Websites

Issue

On September 8, Governor Walker officially launched a new portal, **Careers.utah.gov**. The portal is the result of a partnership between the Utah System of Higher Education (USHE), the Utah State Office of Education, the Utah State Office of Rehabilitation, and Utah Division of Workforce Services (DWS).

Many Web-based USHE resources are prominently featured on this new Website including the USHE Majors Guide, the USHE Transfer Guide and UtahMentor. The portal also links to WebPages providing information on the New Century Scholarship, the Utah Education Savings Plan, residency requirements, and veteran's education benefits.

The portal features two new USHE resources: a site promoting Career and Technical Education and the Utah Major's Guide. Both these Websites are valuable tools for Utah's citizens. Equally exciting is the partnership that has development among the four state agencies involved in the development of the portal.

Careers.utah.gov

This Website is a comprehensive school-to-retirement career exploration and planning solution. The information on this Website will assist students in choosing a career and then matching the career to available education and training programs. The site also assists students who enter the workforce after graduation as they need current useful information on occupational choices that match employer needs. Laid-off workers can benefit as they may need similar labor market information on possible re-training to prepare them to re-enter the labor market. In addition the Website connects directly to job openings that are currently available

www.utahmajors.org

Using the UtahMajors Guide, students can search for programs of study available across the USHE. Information has been gathered on over 1200 certificate and degree programs, including contact information for the academic unit overseeing the program and Web-based advising sheets that provide admission requirements and required classes. The Majors Guide shows students how the degrees they are working on prepare them for various careers by linking to DWS's Economic Data Viewer, which offers real time occupation information including wages paid across the state, licensing requirements, skills needed to be successful, and current job openings.

www.utahcte.org

This Website provides information on nine broad areas of CTE programs and connects the user to information on career areas that include Agriculture, Business, Marketing, Health Science, Information Technology, and Engineering. In the "Areas of Study" on the home page, students can find information on both public and higher education CTE programs. The site connects directly to all USHE institutions and then to program descriptions that include contact information for each CTE program. This site is the result of a collaborative effort between higher education and public education.

Commissioner's Recommendation

This item is for information and discussion purposes and no action by the Regents is required.

Richard E. Kendell, Commissioner

REK/GSW

MEMORANDUM

October 12, 2004

TO: State Board of Regents

FROM: Richard E. Kendell

SUBJECT: Request for Name Change of the Academic, Career and Technical Education, and Student Success Committee of the Board of Regents – Discussion Item

Issue

The Academic, Career and Technical Education, and Student Success Committee cannot remember its own name. Even the Commissioner's staff must surreptitiously consult prior Regents' agendas in order to recall the Committee's name. Few will admit that the Commissioner is forced to inquire frequently on the actual name. And the Program Review Committee (PRC) only refers to it in vague terms.

Background

Over the years, the Regents have gone to great lengths to be inclusive of all academic and instructional programs the Committee reviewed. In the '80s the Committee's name was the 'Academic and Vocational Education Committee.' In the early to mid-'90s, the name changed to the 'Program and Planning Committee.' Then, in an effort to thwart a campaign to add additional oversight, the name changed to the 'Academic and Applied Technology Education Committee.' The campaign prevailed (note UCAT), and the name of the Committee did not change. In 2002-2003 the Regents' Task Force on Student Success worked diligently to insure the retention of students. Thus, "Student Success" cried out to be included in the already overburdened moniker which then morphed into the 'Academic, Applied Technology Education, and Student Success Committee.' Recently, in an effort to stay current with titles of the day - this time in the area of applied technology education - the Committee again changed its name: the 'Academic, Career and Technical Education, and Student Success Committee.'

Suggestion for Change

Because the length of the Committee's name almost exceeds its workload, a more suitable and memorable title should be adopted. The Commissioner's staff suggests a drastically shortened name, one that can be remembered by staff, Regents, and all of the USHE institutions: the "Instructional Program Committee." While this name may not have the pizzazz nor inclusiveness of the present name, it is short and accurately states the Committee's function.

Commissioner's Recommendation

The Commissioner recommends that the current name of the 'Academic, Career and Technical Education, and Student Success Committee' be changed to one he can remember: perhaps, the "Instructional Program Committee." Please raise questions, make comments, or pan the change. But in any case make a suggestion that may be adopted by the Committee of the Whole.

Richard E. Kendell, Commissioner

REK/PCS

October 11, 2004

MEMORANDUM

TO: State Board of Regents

FROM: Richard E. Kendell

SUBJECT: **ACTION: Substitution of Letter of Credit - State Board of Regents, Student Loan Revenue Bonds, Series 1993A**

Issue

The Letter of Credit with Lloyds TSB Bank plc for the Board's \$35,000,000 Student Loan Revenue Bonds 1993A expires on November 15, 2004 and will have to be renewed or replaced. The current Letter of Credit was negotiated in 1999 for a term of five years with a 0.225% annual cost.

Background

This credit facility is a part of the financing structure for the bonds included in Series 1993A, because of the variable rate re-marketing provisions of the bonds. Commissioner's Staff, along with representatives from UBS Financial Services, Inc., the Board's managing underwriter, solicited bids for a replacement Letter of Credit and received bids from Lloyds TSB Bank plc and from DEPFA Bank plc as follows:

Term	DEPFA Bank plc	Lloyds TSB Bank plc
2 Years	.23%	No bid
3 Years	.24%	.34%
5 Years	.26%	.35%
7 Years	.28%	No bid
10 Years	.31%	No bid
12 Years	.33%	No bid
15 Years	.36%	No bid
19 Years	.40%	No bid

State Board of Regents
October 11, 2004
Page 2

At its meeting on October 7, 2004, the Student Finance Subcommittee voted unanimously to recommend Board of Regents adoption of the attached Approving Resolution for a new Letter of Credit and Reimbursement Agreement, along with related documents, for the Board's \$35,000,000 Student Loan Revenue Bonds, Series 1993A. The proposed Letter of Credit, from DEPFA Bank plc will replace the Letter of Credit from Lloyds TSB Bank plc, which will expire on November 15, 2004.

Staff recommended selection of the DEPFA Bank plc bid for a seven year term with a 0.28% annual cost, which the Student Finance Subcommittee approved for recommendation to the Board of Regents.

The proposed Agreement is patterned after the current one. A draft, reflecting negotiations with DEPFA Bank plc, is provided as Attachment II. The Approving Resolution is presented as Attachment I.

Recommendation

It is the recommendation of the Commissioner that the Board of Regents approve the attached Approving Resolution for the Board's Student Loan Revenue Bonds, Series 1993A.

Richard E. Kendell, Commissioner

Attachments

REK/MHS/ROD

APPROVING RESOLUTION
STUDENT LOAN SERIES 1993A
LETTER OF CREDIT REPLACEMENT

Salt Lake City, Utah

October 19, 2004

The State Board of Regents of the State of Utah met in regular session at The Board of Regents offices in Salt Lake City, Utah on October 19, 2004, commencing at ____ p.m. The following members were present:

Nolan E. Karras	Chair
E. George Mantes	Vice Chair
Jerry C. Atkin	Member
Linnea S. Barney*	Member
Daryl C. Barrett	Member
Bonnie Jean Beesley	Member
Kim R. Burningham*	Member
Katharine B. Garff	Member
David J. Grant	Member
James S. Jardine	Member
Michael R. Jensen	Member
David J. Jordan	Member
Trent Kemp	Member
David L. Maher	Member
Jed H. Pitcher	Member
Sara V. Sinclair	Member
Marlon O. Snow	Member
Maria Sweeten	Member

Absent:

Member

Also Present:

Richard E. Kendell	Commissioner of Higher Education
Mark H. Spencer	Associate Commissioner of Finance and Facilities
Richard O. Davis	Assistant Commissioner for Student Loan Finance
Joyce Cottrell, CPS	Secretary

* Non-voting member from State Board of Education

After the meeting had been duly convened and called to order by the Chairman, the roll had been called with the above result, the Chairman announced that one of the purposes of the meeting was the consideration of a resolution with respect to the replacement of a letter of credit with respect to certain of the Board's student loan revenue bonds.

The following resolution was introduced in written form by Regent _____ after full discussion, pursuant to motion made by Regent _____, and seconded by Regent _____, was adopted by the following vote:

AYE:

NAY: None

The resolution is as follows:

RESOLUTION

A RESOLUTION OF THE STATE BOARD OF REGENTS OF THE STATE OF UTAH (THE "BOARD") APPROVING A LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND RELATED MATTERS.

WHEREAS, the State Board of Regents of the State of Utah (the "Board") is established and exists under and pursuant to Section 53B-1-103, Utah Code Annotated 1953, as amended; and

WHEREAS, pursuant to Chapter 13, Title 53B, Utah Code Annotated 1953, as amended (the "Act"), the Board is empowered to make or purchase student loan notes and other debt obligations reflecting loans to students under its Student Loan Program; and

WHEREAS, in order to provide funds for such purpose, the Board is duly authorized to issue and sell bonds pursuant to provisions of the Act; and

WHEREAS, the Board has previously issued its student loan revenue bonds under a General Indenture dated as of August 1, 1993 (the "General Indenture") between the Board and Wells Fargo Bank, N.A. (formerly known as First Security Bank of Utah, N.A.) (the "Trustee") and a First Supplemental Indenture dated as of August 1, 1993 (the "First Supplemental Indenture" together with the General Indenture the "Indenture") between the Board and the Trustee, including (among others) its Student Loan Revenue Bonds, Series 1993A (the "Series 1993A Bonds"); and

WHEREAS, the Board has previously provided credit enhancement for the Series 1993A Bonds by entering into a Letter of Credit and Reimbursement Agreement between the Board and the Lloyds TSB Bank, PLC ("Lloyds") and by causing Lloyds to issue its Letter of Credit (the "Lloyds Letter of Credit"); and

WHEREAS, the Lloyds Letter of Credit expires on November 15, 2004 and the Board desires to replace the Lloyds Letter of Credit by entering into a Letter of Credit and Reimbursement Agreement (the "Reimbursement Agreement"), between the Board and DEPFA Bank, plc ("DEPFA") pursuant to which DEPFA will issue its letter of credit (the "DEPFA Letter of Credit") with respect to the Series 1993A Bonds; and

WHEREAS, the Board's obligations under the Reimbursement Agreement shall be payable solely from the revenues and other moneys pledged therefor and shall not constitute nor give rise to a general obligation or liability of the Board or constitute a charge against its general credit; and

WHEREAS, there has been presented to the Board for approval at this meeting a form of the Reimbursement Agreement and other documents intended for use in remarketing the Series 1993A Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE STATE BOARD OF REGENTS OF THE STATE OF UTAH, AS FOLLOWS:

Section 1. All terms defined in the foregoing recitals hereto shall have the same meanings when used herein.

Section 2. All action heretofore taken (not inconsistent with the provisions of this resolution) by the Board and the officers of the Board directed toward the replacement of the Lloyds Letter of Credit with the DEPFA Letter of Credit and the remarketing of the Series 1993A Bonds are hereby ratified, approved and confirmed.

Section 3. The Reimbursement Agreement in substantially the form presented to this meeting, is in all respects authorized, approved and confirmed. The Chairman or Vice Chairman and Secretary of the Board are hereby authorized to execute and deliver the Reimbursement Agreement in the form and with substantially the same content as presented to this meeting for and on behalf of the Board with such alterations, changes or additions as may be authorized by Section 4 hereof.

The offering materials prepared for the remarketing of the Series 1993A Bonds are hereby authorized and approved and the Chairman or Vice Chairman of the Board are authorized to approve the final form thereof and to execute the same for and on behalf of the Board.

Section 4. The appropriate officials of the Board, including without limitation the Chairman or Vice Chairman of the Board are authorized to make any alterations, changes or additions in the Reimbursement Agreement or the offering materials prepared for the remarketing of the Series 1993A Bonds or any other document herein authorized and approved which may be necessary to correct errors or omissions therein, to remove ambiguities therefrom, to conform the same to other provisions of said instruments, to the provisions of this resolution or any resolution adopted by the Board, or the provisions of the laws of the State of Utah or the United States.

Section 5. The appropriate officials of the Board, including without limitation the Chairman, Vice Chairman, Assistant Commissioner for Student Loan Finance and Secretary of the Board, are hereby authorized and directed to execute and deliver for and on behalf of the Board any or all additional certificates, documents and other papers and to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized in this resolution and the documents authorized and approved herein.

Section 6. If any provisions of this resolution should be held invalid, the invalidity of such provisions shall not affect the validity of any of the other provisions of this resolution.

Section 7. All resolutions of the Board or parts thereof inconsistent herewith, are hereby repealed to the extent only of such inconsistency. Said repeal shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. This resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE STATE BOARD OF REGENTS OF THE STATE OF UTAH THIS 19TH DAY OF OCTOBER 2004.

STATE BOARD OF REGENTS OF THE
STATE OF UTAH

Chairman

(S E A L)

ATTEST:

Secretary

After the conduct of other business not pertinent to the above, the meeting was, on motion duly made and seconded, adjourned.

STATE BOARD OF REGENTS OF THE
STATE OF UTAH

Chairman

(S E A L)

ATTEST:

Secretary

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Joyce Cottrell, do hereby certify that I am the duly qualified and acting Secretary of the State Board of Regents of the State of Utah.

I further certify that the above and foregoing constitutes a true and correct copy of an excerpt of the minutes of a meeting of said Board held on October 19, 2004 and of a resolution adopted at said meeting, as said minutes and resolution are officially of record in my possession.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of said Board this 19th day of October, 2004.

Secretary

(S E A L)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Joyce Cottrell, the undersigned, the duly qualified and acting Secretary of the State Board of Regents of the State of Utah, do hereby certify, according to the records of said State Board of Regents in my official possession, and upon my own knowledge and belief, as follows:

(a) that in accordance with the requirements of Section 52-4-6(2), Utah Code Annotated 1953, as amended, I gave public notice of the agenda, date, time and place of the October 19, 2004 public meeting held by the Members of the State Board of Regents by causing a Notice of Public Meeting to be posted at the principal office of the State Board of Regents at State Board of Regents at 60 South 400 West, Salt Lake City, Utah, on _____, 2004, at least 24 hours prior to the convening of such meeting, the form attached hereto as Schedule 1; said Notice of Public Meeting having continuously remained so posted and available for public inspection during the regular office hours of the State Board of Regents until the convening of the meeting; and causing a copy of said Notice of Public Meeting in the form attached hereto as Schedule 1 to be provided on _____, 2004, at least 24 hours prior to the convening of such meeting, to the Deseret News and The Salt Lake Tribune, newspapers of general circulation within the geographic jurisdiction of the State Board of Regents, and to each local media correspondent, newspaper, radio station or television station which has requested notification of meetings of the State Board of Regents; and

(b) that in accordance with the requirements of Section 52-4-6(1), Utah Code Annotated 1953, as amended, public notice of the 2004 Annual Meeting Schedule of the State Board of Regents was given specifying the date, time and place of the regular meetings of the State Board of Regents scheduled to be held during the year, by causing a Notice of Annual Meeting Schedule for the State Board of Regents (in the form attached as Schedule 2) to be posted on September 12, 2003 at the principal office of the State Board of Regents in Salt Lake City, Utah; such Notice of Annual Meeting Schedule having continuously remained so posted and available for public inspection during the regular office hours of the undersigned until the date hereof; and causing a copy of such Notice of Annual Meeting Schedule to be provided on September 12, 2003, to a newspaper of general circulation within the geographic jurisdiction of Salt Lake City, Utah.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of the State Board of Regents of the State of Utah, this 19th day of October, 2004.

(S E A L)

Secretary

SCHEDULE 1

Notice of Public Meeting

SCHEDULE 2

Notice of Annual Meeting Schedule

LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

By and Between

STATE BOARD OF REGENTS OF THE STATE OF UTAH

and

DEPFA BANK PLC,
Acting Through Its New York Branch

\$35,000,000
State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

ARTICLE I
DEFINITIONS

Section 1.01.	Words and Phrases.....	1
Section 1.02.	Computation of Time Periods.....	9
Section 1.03.	Accounting Terms.....	9

ARTICLE II
LETTER OF CREDIT, FEES AND DRAWINGS

Section 2.01.	Commitment to Issue the Letter of Credit	9
Section 2.02.	Fees	9
Section 2.03.	Manner of Drawings	10
Section 2.04.	Disbursement of Drawings	10
Section 2.05.	Source of Funds	10
Section 2.06.	Reduction; Termination; Extension.....	10
Section 2.07.	Reinstatement of the Available Amount	11
Section 2.08.	Term Out Event Prior to Expiration of Letter of Credit	11
Section 2.09.	Default Interest.....	11
Section 2.10.	Costs, Expenses and Taxes	11
Section 2.11.	Termination Fee	11
Section 2.12.	Method of Payment	12

ARTICLE III
REIMBURSEMENT OF DRAWINGS ON LETTER OF CREDIT

Section 3.01.	Interest Drawings, Redemption Drawings, Acceleration Drawings, and Stated Maturity Drawings	12
Section 3.02.	Liquidity Drawings.	12
Section 3.03.	Term Out Period; Term-Out Tender Drawings	13
Section 3.04.	Bank Bonds.....	13
Section 3.05.	Declaration of Term Out Event Following Liquidity Drawing; Term Out Event Following Term-Out Tender Drawing	14
Section 3.06.	Remarketing of Bank Bonds.....	14
Section 3.07.	Obligations Absolute	14
Section 3.08.	Computation of Interest	15
Section 3.09.	Non-Business Days.....	16
Section 3.10.	Payment to the Bank; Other Payment Provisions	16
Section 3.11.	Selection of Trust Estate Assets for Reimbursement.....	16
Section 3.12.	Security for Payment Obligations of the Board.....	16
Section 3.13.	Maximum Interest Rate.....	16

ARTICLE IV
CONDITIONS OF ISSUANCE

Section 4.01.	Receipt of Documents.....	17
Section 4.02.	Facts and Circumstances.....	19

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Section 5.01.	Representations and Warranties of the Board.....	19
---------------	--	----

ARTICLE VI
AFFIRMATIVE COVENANTS OF THE BOARD

Section 6.01.	Compliance with Laws, Indenture, Etc	22
Section 6.02.	Maintenance of Existence; Conduct of Business	22
Section 6.03.	Payment of Taxes and Other Obligations	22
Section 6.04.	Insurance	22
Section 6.05.	Maintenance of Approvals, Filings and Registrations	22
Section 6.06.	Maintenance of Properties	22
Section 6.07.	Inspection Rights and Site Reviews.....	22
Section 6.08.	Reporting Requirements	23
Section 6.09.	Advertising.....	24
Section 6.10.	Performance of and Compliance with Certain Agreements	24
Section 6.11.	Bond Proceeds.....	25
Section 6.12.	Use of Moneys in the Trust Estate	25
Section 6.13.	Collection and Enforcement of Financed Eligible Loans, Administration of the Program	25
Section 6.14.	Changes to Servicing Systems and Procedures	26
Section 6.15.	Guarantee Benefits	26
Section 6.16.	[INTENTIONALLY RESERVED]	26
Section 6.17.	Keeping of Records and Books of Account; Withdrawals; Program Expenses.....	26
Section 6.18.	[INTENTIONALLY RESERVED]	27
Section 6.19.	Additional Covenants; Consents	27
Section 6.20.	Safekeeping of Financed Eligible Loans	27
Section 6.21.	Eligibility of Eligible Loans	27
Section 6.22.	Trustee and Tender Agent.....	27

ARTICLE VII
NEGATIVE COVENANTS OF THE BOARD

Section 7.01.	Terminations and Amendments	28
Section 7.02.	Changes in Servicing; Guarantors	28
Section 7.03.	Remarketing Circular	28
Section 7.04.	Permitted Liens	28
Section 7.05.	Limitation on Payment of Program Expenses and Servicing Fees	29
Section 7.06.	[INTENTIONALLY RESERVED]	29
Section 7.07.	Issue Other Bonds	29
Section 7.08.	[INTENTIONALLY RESERVED]	29
Section 7.09.	[INTENTIONALLY RESERVED]	29
Section 7.10.	Additional Collateral.....	29
Section 7.11.	Swaps	30
Section 7.12.	Action by Trustee and Tender Agent	30
Section 7.13.	Withdrawals of Excess Coverage	30
Section 7.14.	Compliance with Agreements, Etc.....	30
Section 7.15.	Sales, Mergers, Etc.....	30
Section 7.16.	Rate Period; Optional Redemption.....	30

ARTICLE VIII
REIMBURSEMENT AGREEMENT EVENTS OF DEFAULT; REMEDIES

Section 8.01.	Reimbursement Agreement Events of Default	31
Section 8.02.	Remedies	32
Section 8.03.	[INTENTIONALLY RESERVED]	33
Section 8.04.	Other Provisions	33

ARTICLE IX
PROVISIONS APPLICABLE DURING A TERM OUT PERIOD

Section 9.01.	Mandatory Tender of Bonds by Owners Following a Term Out Event	34
Section 9.02.	Mandatory Redemption of Bank Bonds During the Term Out Period; Repayment of Interest Portion of Term-Out Tender Drawing.....	34
Section 9.03.	Interest Rate on Bank Bonds During the Term Out Period	35
Section 9.04.	Other Provisions	35

ARTICLE X
MISCELLANEOUS

Section 10.01.	Amendments	36
Section 10.02.	Addresses for Notices	36
Section 10.03.	No Waiver; Remedies	37
Section 10.04.	Successors and Assigns.....	37
Section 10.05.	Indemnification.....	37
Section 10.06.	Liability of the Bank	38
Section 10.07.	Deductions	39
Section 10.08.	Increased Costs	39
Section 10.09.	Limited Recourse	41
Section 10.10.	Further Assurance	41
Section 10.11.	Severability	41
Section 10.12.	Governing Law	41
Section 10.13.	Waiver of Immunities	42
Section 10.14.	Survival and Termination of Agreement	42
Section 10.15.	Counterparts.....	42
Section 10.16.	Headings	42
Section 10.17.	Remarketing Circular	42
Section 10.18.	Waiver of Personal Liability.....	42
Section 10.19.	WAIVER OF JURY TRIAL.....	42

This LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT is dated as of October 1, 2004, and made between **STATE BOARD OF REGENTS OF THE STATE OF UTAH**, which is organized and operates under the laws of the State of Utah (the “Board”) and the **DEPFA BANK PLC**, a public limited corporation incorporated under Irish law, acting through its New York Branch (“the Bank”).

ARTICLE I

DEFINITIONS

Section 1.01. Words and Phrases. All terms defined in this Agreement shall have the meaning so given wherever used in this Agreement and wherever used in any document or agreement made or executed pursuant to this Agreement. Such meanings shall be equally applicable to both the singular and plural forms of the terms defined. The following terms shall have the following meanings:

“*Acceleration Drawing*” has the meaning ascribed to such term in Section 1(c) of the Letter of Credit.

“*Act*” means Title IV of the Higher Education Act of 1965, as amended from time to time, or any successor federal act, and all regulations and guidelines promulgated thereunder from time to time.

“*Adjusted Stated Amount*” means the Stated Amount of the Letter of Credit less the amount of any Liquidity Drawing for which the amount drawn has not been reinstated.

“*Aggregate Market Value*” means, on any date, (i) with respect to Financed Eligible Loans, the aggregate unpaid principal balance (including interest added to the principal) of such loans on such date, plus 100% of the accrued borrower interest, Special Allowance Payments and interest subsidies on the Financed Eligible Loans to such date, and (ii) with respect to Investment Securities, the value thereof on such date as determined pursuant to the Indenture.

“*Agreement*” means this Letter of Credit and Reimbursement Agreement, all attachments hereto and any supplements hereto or amendments hereof entered into in accordance with the provisions hereof.

“*Annual Default Rate*” means for any Federal Fiscal Year the greater of (i) a percentage determined by dividing (A) the aggregate principal amount of all Eligible Loans owned by the Board as of the beginning of such Federal Fiscal Year which entered Default Status during such Federal Fiscal Year by (B) the aggregate principal amount of all Eligible Loans owned by the Issuer which are in the Repayment Period at the beginning of such Federal Fiscal Year or (ii) a percentage determined by dividing (A) the aggregate principal amount of Financed Eligible Loans as of the beginning of such Federal Fiscal Year which entered Default Status during such Federal Fiscal Year by (B) the aggregate principal amount of Financed Eligible Loans which are in the Repayment Period at the beginning of such Federal Fiscal Year.

“Authorized Officer of the Board,” when used with reference to any act or document, means the Chairman of the Board, the Vice Chairman of the Board, the Commissioner of Higher Education of the Board, or the Assistant Commissioner for Student Loan Finance of the Board and, when used with reference to any act or document, also means any other person authorized by resolution of the Board to perform such act or execute such document.

“Available Amount” has the meaning ascribed to such term in Section 3 of the Letter of Credit.

“Bank” means the DEPFA BANK plc, acting through its New York Branch.

“Bank Bonds” means Bonds owned or held by the Bank or by the Trustee and Tender Agent, or its agent, for the account of the Bank and referred to in the Indenture as “Credit Provider Bonds.”

“Bank Rate” means, for each day from and including the date such Bank Bond was purchased until and including the 90th day after such date, the rate per annum equal to the Base Rate from time to time in effect plus .50%, and thereafter, for each date of determination, the rate per annum equal to the Base Rate from time to time in effect plus .85%.

“Base Rate” means, for any date, a rate per annum equal to the higher of (a) Federal Funds Rate plus .50% per annum or (b) Prime Rate.

“Board” means the State Board of Regents of the State of Utah

“Bond Year” has the meaning ascribed to such term in the First Supplemental Indenture.

“Bondholder” or *“Owner”* means, with respect to any Bond, the registered owner thereof.

“Bonds” means the State Board of Regents of the State of Utah Student Loan Revenue Bonds, Series 1993A, issued under the provisions of the First Supplemental Indenture.

“Business Day” means any day other than (i) a Saturday, Sunday, legal holiday or any other day on which banking institutions in the City of New York, New York, Salt Lake City, Utah, or any other city in which the corporate trust office of the Trustee and Tender Agent is then located are generally authorized or obligated by law or executive order to close or are closed or are rendered inoperable due to natural disaster or (ii) a day on which the New York Stock Exchange or the Bank is closed.

“Certificate of Insurance” means the certificate of federal loan insurance issued with respect to a student loan or group of student loans by the Secretary pursuant to the Act.

“Closing Date” means the date of the Letter of Credit.

“Code” means the applicable provisions of the Internal Revenue Code of 1986, as amended, and the applicable regulations, rulings and proclamations thereunder.

“*Collateral Ratio*” means the ratio of (i) the Aggregate Market Value of assets in the Trust Estate to (ii) liabilities, as computed in accordance with the Collateral Ratio Certificate.

“*Collateral Ratio Certificate*” means a certificate in the form of Appendix B hereto, duly completed in accordance with its terms and the applicable requirements of this Agreement and signed by duly authorized officers of the Board and the Trustee and Tender Agent, respectively.

“*Deductions*” has the meaning assigned to such term in Section 10.07

“*Default*” means the occurrence of any event which, with the giving of notice or the passage of time or both, would constitute a Reimbursement Agreement Event of Default.

“*Default Rate*” means a per annum rate equal to Base Rate plus 2.0%.

“*Default Status*” - with respect to an Eligible Loan, shall mean in default within the meaning of 34 CFR §682.200 (1995) or any successor regulation thereto.

“*Drawing*” means an Interest Drawing, a Redemption Drawing, an Acceleration Drawing, a Liquidity Drawing, a Term-Out Tender Drawing and/or a Stated Maturity Drawing.

“*Eligible Insurer*” means the Guarantor Agency or any other state or nonprofit private institution or organization with which the Secretary has an agreement under Section 428(b) of the Act and which is approved by the Bank hereunder in writing.

“*Eligible Loan*” means any student loan satisfying the requirements of the Higher Education Act and Section 7.6(C) of the Indenture which is eligible to be made by the Board to an eligible borrower or purchased by the Board from a qualified lender to finance post-secondary education pursuant to the Higher Education Act and the Student Loan Program.

“*Event of Default*” means an “Event of Default” under the Indenture.

“*Expiration Date*” has the meaning ascribed to such term in Section 4 of the Letter of Credit.

“*Federal Fiscal Year*” means “fiscal year” as such term is used in the Act.

“*Federal Funds Rate*” means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 11:00 a.m. Eastern (United States) time on such day on such transactions received by the Bank) from three Federal funds brokers of recognized standing selected by the Bank in its sole discretion.

“*Federal Reimbursement Contract*” means any agreement between any Eligible Insurer and the Secretary providing for the payment by the Secretary of amounts authorized to be paid pursuant to the Act, including but not limited to reimbursement of amounts paid or payable upon

defaulted Financed Eligible Loans and other student loans Guaranteed by such Eligible Insurer and payment of Interest Subsidy Payments and Special Allowance Payments to holders of qualifying student loans guaranteed by such Eligible Insurer.

“*Financed Eligible Loan*” means Eligible Loans pledged to the Bondholders and the Bank under the Indenture.

“*Financials*” means, collectively, a balance sheet of the Program and the related statements of revenues, expenses and changes in financial position or, in the case of Financials for an annual period, cash flows and fund balances (with supplemental statements reflecting each financing of the Program), together with the notes thereto, prepared in accordance with generally accepted accounting principles, consistently applied, together with (i) in the case of Financials for an annual period, an unqualified opinion thereon of an independent public accountant and (ii) in the case of Financials for an interim period, a certification from an Authorized Officer of the Board, responsible for the preparation of the Financials, to the effect that the Financials have been prepared in accordance with generally accepted accounting principles applied on a consistent basis and fairly present the financial condition of the Program as at their date and the results of its operations for the period then ended.

“*First Supplemental Indenture*” means the First Supplemental Indenture dated as of August 1, 1993 between the Board and the Trustee and Tender Agent relating to the Bonds and including any additional supplements thereto or amendments thereof entered into in accordance with the provisions hereof and thereof.

“*Funds*” means all the funds, accounts and subaccounts established by the Indenture.

“*General Indenture*” means the General Indenture between the Board and the Trustee and Tender Agent, dated as of August 1, 1993, relating to the Bonds, including any amendments thereof or supplements thereto (other than the First Supplemental Indenture and amendments or supplements relating thereto) entered into in accordance with the provisions thereof and of Section 7.01 hereof.

“*Gross Claims Receipt Rate*” means for any Federal Fiscal Year a percentage determined by dividing (A) the amount paid in claims to the Board during such Federal Fiscal Year by (B) the 13-month average of Eligible Loans in principal outstanding owned by the Board at the beginning of such Federal Fiscal Year.

“*Guarantee*” or “*Guaranteed*” means, with respect to an Eligible Loan, either (i) the insurance or guarantee by an Eligible Insurer of the percent provided under the Act with respect to such Eligible Loan of the principal of and accrued interest on such Eligible Loan and the coverage of such Eligible Loan by the Federal Reimbursement Contract, providing for reimbursement to such Eligible Insurer for losses incurred by it on defaulted Eligible Loans insured or guaranteed by such an Eligible Insurer to the extent provided in the Act as in effect on the date hereof or (ii) the insurance or guarantee by the Secretary under the Act with respect to such Eligible Loan of the percent provided under the Act of the principal of and accrued interest on such Eligible Loan.

“*Guarantee Agreements*” means the Federal Reimbursement Contracts, the Trustee and Tender Agent Guarantee Agreement, the Certificate of Insurance, and any other similar guarantee or agreement issued by any Eligible Insurer or the Secretary to the Board or the Trustee and Tender Agent.

“*Guarantor Agency*” means (i) the Utah Higher Education Assistance Authority, (ii) any successor to a Guarantor Agency described in (i) which acts under the Higher Education Act and has an agreement with the Secretary for the Secretary’s reimbursement of amounts expended by the Guarantor Agency in discharge of insurance obligations on Eligible Loans, (iii) the Secretary, or (iv) any other entity approved by the Board which guarantees student loans under the Higher Education Act or other Federal law and has entered into an agreement with the Secretary for reinsurance of its guarantees of student loans.

“*Indenture*” means collectively the General Indenture and the First Supplemental Indenture.

“*Initial Term Out Amount*” means the aggregate principal amount of Bonds Outstanding at the time of a Term Out Event.

“*Interest Drawing*” has the meaning ascribed to such term in Section 1(a) of the Letter of Credit.

“*Interest Payment Date*” has the meaning ascribed to such term in the Indenture.

“*Interest Portion*” means, with respect to a Liquidity Drawing or a Term-Out Tender Drawing, the amount paid by the Bank with respect to the portion of such Drawing, if any, corresponding to accrued and unpaid interest on the Bonds.

“*Interest Subsidy Payments*” means the interest payments on Eligible Loans payable by the Secretary pursuant to Section 428(a) of the Act or similar payments authorized by federal law or regulations.

“*Investment Securities*” has the meaning ascribed to such term in the General Indenture.

“*Letter of Credit*” means the irrevocable, transferable letter of credit to be issued by the Bank for the account of the Board in favor of the Trustee and Tender Agent, as beneficiary, substantially in the form of Appendix A attached hereto and made part hereof, as such Letter of Credit may be amended or replaced in accordance with the terms thereof.

“*Letter of Credit Commission*” has the meaning ascribed to such term in Section 2.02(a) hereof.

“*Liquidity Advance*” has the meaning ascribed to such term in Section 3.02(a) hereof.

“*Liquidity Drawing*” has the meaning ascribed to such term in Section 1(d) of the Letter of Credit.

"Materially Lower Rate of Return" means a change to the interest rates on Eligible Loans or methods of computing Special Allowance Payments which would cause the holder to obtain a rate of return (including interest and Special Allowance Payments) on an Eligible Loan disbursed pursuant to the Act after the effective date of such change to be lower by more than fifteen basis points.

"Outstanding," when used with respect to any Bond or Subordinated Bond, has the meaning ascribed to such term in the Indenture.

"Payment Documents" has the meaning ascribed to such term in Section 1 of the Letter of Credit.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof.

"Prime Rate" means the fluctuating rate per annum equal to the "Prime Rate" listed daily in the "Money Rate" section of The Wall Street Journal, or if The Wall Street Journal is not published on a particular Business Day, then, the "prime rate" published in any other national financial journal or newspaper selected by the Bank, and if more than one rate is listed in the applicable publication, the average rate shall be used. Any change in the Prime Rate shall take effect on the date specified in the announcement of such change.

"Principal Portion" means, with respect to a Liquidity Drawing or a Term-Out Tender Drawing, the amount paid by the Bank with respect to the portion of such Drawing corresponding to the principal of the Bonds.

"Program" means the Board's program for the origination and/or purchase of student loans.

"Program Expenses" has the same meaning as in the Indenture.

"Purchase Date" has the same meaning as in the Indenture.

"Purchase Demand" means a tender notice submitted by a Bondholder pursuant to Section 2.12 of the First Supplemental Indenture.

"Rate Period" means one of consecutive periods of approximately six (6) months' duration, the first of which shall commence on the first day of the Term-Out Period, and end on the first Business Day of the first to occur of the next succeeding November or May, and succeeding of which shall commence on the last day of the immediately preceding Rate Period and end on the first Business Day of the next to occur of November or May, as the case may be, provided that no Rate Period shall extend beyond the date on which the principal amount of Outstanding Bonds is payable in full.

"Rating Agency" has the same meaning as in the Indenture.

“*Redemption Date*” means a date upon which a redemption of Bonds is made pursuant to Section 2.10 of the First Supplemental Indenture.

“*Redemption Drawing*” has the meaning ascribed to such term in Section 1(b) of the Letter of Credit.

“*Regular Liquidity Drawing*” has the meaning ascribed to such term in Section 1(d) of the Letter of Credit.

“*Regulation D*” means Regulation D of the Board of Governors of the Federal Reserve System, as the same may be amended, supplemented or replaced from time to time.

“*Reimbursement Agreement Event of Default*” has the meaning ascribed to such term in Section 8.01 hereof.

“*Related Documents*” mean the Bonds, the Indenture, the Remarketing Agreement, and each Servicing Agreement.

“*Remarketing Agent*” means UBS Financial Services, Inc. and includes any other person designated by the Board and approved by the Bank to remarket Bonds pursuant to the Remarketing Agreement.

“*Remarketing Agreement*” means the Remarketing Agreement, dated as of August 1, 1993, between the Remarketing Agent and the Board, including any supplements thereto or amendments thereof entered into in accordance with the provisions hereof and thereof, and including any other agreement with any Remarketing Agent.

“*Remarketing Circular*” means the Supplemental Official Statement relating to the Bonds, dated _____, together with the documents incorporated therein by reference, as amended from time to time.

“*Repayment Period*” with respect to a Eligible Loan, shall have the meaning set forth in 34 CFR §682.200 (1995) or any successor regulation thereto.

“*Reporting Date*” means, with respect to each Testing Date, the date which is fifteen Business Days following the Testing Date.

“*Same Day Liquidity Drawing*” has the meaning ascribed to such term in Section 1(d) of the Letter of Credit.

“*Secretary*” means the Commissioner of Education, Department of Health, Education and Welfare, and the U.S. Secretary of Education, acting under the Act.

“*Servicer*” means, as of the date hereof, Nelnet, Inc., and any other Person designated by the Board to service Financed Eligible Loans; provided, however, that the term “*Servicer*” shall also mean the Board, to the extent that it services Financial Eligible Loans.

“*Servicing Agreement*” originally means the agreement delivered to the Bank pursuant to Section 4.01(g) hereof and includes any other servicing agreement between the Board and any Servicer covering the servicing of Financed Eligible Loans.

“*Servicing Fees*” means any fees payable by the Board to a Servicer pursuant to the provisions of a Servicing Agreement and with respect to Financed Eligible Loans.

“*Special Allowance Payments*” means the special allowance payments authorized to be made pursuant to Section 438 of the Act or similar allowances authorized from time to time by federal law or regulation.

“*State*” means the State of Utah.

“*Stated Amount*” has the meaning ascribed to such term in Section 2 of the Letter of Credit.

“*Stated Maturity*” when used with respect to any Bond, means the date specified in such Bond on which the principal of such Bond is due and payable.

“*Stated Maturity Drawing*” has the meaning ascribed to such term in Section 1(f) of the Letter of Credit.

“*Student Loan Program*” means the Board's program for the origination and purchase of Eligible Loans pursuant to the Indenture.

“*Subordinated Bonds*” means any bonds issued and Outstanding under the Indenture other than (i) the Bonds or (ii) additional bonds issued on a parity with the Bonds with the consent of the Bank.

“*Term Out Event*” means an event described in Section 2.08 and Section 3.03(a) and Section 3.05(b) hereof or the declaration of a Term Out Event made by the Bank pursuant to Section 3.05(a) or 8.02(b) hereof.

“*Term Out Period*” means the period of time following a Term Out Event.

“*Term-Out Tender Drawing*” has the meaning ascribed to such term in Section 1(e) of the Letter of Credit.

“*Testing Date*” means the Closing Date and, thereafter, the last day of each June and December of each year as of which days the Collateral Ratio shall be computed based on information provided by the Board, the Trustee and Tender Agent and each Servicer. If a Testing Date is not a Business Day, all computations of Aggregate Market Value requiring bid and/or ask prices shall be as of the immediately previous Business Day.

“*Trust Estate*” shall have the same meaning as in the Indenture.

“*Trustee and Tender Agent*” means Wells Fargo Bank, N.A. and any successor trustee and tender agent under the Indenture.

“Trustee Guarantee Agreement” means all applicable guarantee agreements between the Trustee and Tender Agent and the Guarantor Agency, and any similar guarantee issued by any Eligible Insurer or the Secretary to the Trustee and Tender Agent, including any amendment thereof entered into in accordance with the provisions thereof and hereof.

Whenever a term is defined herein as having the same meaning as in the Indenture, such reference shall be to the definition of such term in the Indenture as in effect on the date hereof.

Section 1.02. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.”

Section 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles as in effect from time to time and as consistently applied, including, without limitation, applicable statements and interpretations issued by the Governmental Accounting Standards Board and bulletins, opinions, interpretations and statements issued by the American Institute of Certified Public Accountants and its Committees.

ARTICLE II

LETTER OF CREDIT, FEES AND DRAWINGS

Section 2.01. Commitment to Issue the Letter of Credit. Subject to the terms and conditions of this Agreement, the Bank agrees to issue and deliver the Letter of Credit on the Closing Date, for the account of the Board, in favor of the Trustee and Tender Agent, in the Stated Amount and expiring on the Expiration Date.

Section 2.02. Fees. The Board agrees to pay, or cause to be paid, to the Bank:

(a) a letter of credit commission (the “Letter of Credit Commission”) calculated, unless otherwise agreed to in writing by the Bank, from the Closing Date until the Expiration Date at the rate of .28% per annum on the amount of the Adjusted Stated Amount; provided, however, that during any period of time when the rating assigned to the senior long-term debt obligations of the Board (without regard to third-party credit enhancement) is below “AAA” by S&P, “AAA” by Fitch or “Aaa” by Moody’s, the Letter of Credit Commission shall be calculated at the per annum percentage of the Adjusted Stated Amount set forth opposite the rating then assigned to such obligations:

S&P	Fitch	Moody’s	Facility Fee
AA+	AA+	Aa1	.33%
AA	AA	Aa2	.38%
AA-	AA-	Aa3	.43%
A	A	A2	.48%
A-	A-	A3	.53%
BBB+	BBB+	Baa1	.58%
BBB	BBB	Baa2	.63%

BBB- BBB- Baa3 .68%

In the event that the rating assigned to the Board's senior long-term debt obligations (without regard to third-party credit enhancement) is withdrawn, suspended or falls below the lowest level specified above by Moody's, Fitch or S&P, the Letter of Credit Commission shall be calculated at .78% of the Adjusted Stated Amount, calculated as provided herein. The lowest rating assigned to the Board's senior long-term debt obligations (without regard to third-party credit enhancement) by Moody's, Fitch or S&P shall be used to determine the rate at which the Letter of Credit Commission is calculated. The Letter of Credit Commission is payable quarterly in arrears on the first Business Day of each February, May, August and November (each a "Letter of Credit Commission Payment Date"), and

(b) on the date of any transfer of the Letter of Credit to any successor Trustee and Tender Agent under the Indenture, a transfer fee in the amount of \$2,500 plus the reasonable fees and expenses of counsel to the Bank, and

(c) upon each amendment of this Agreement or the Letter of Credit in accordance with its terms, and upon each amendment of any of the Related Documents requiring the consent, approval or any other action on the part of the Bank, an amendment fee of \$2,500 plus the reasonable fees and expenses of counsel to the Bank, and

(d) on the date of any Drawing, a draw fee in the amount of \$250.

Section 2.03. Manner of Drawings. The parties hereto agree that the procedure for making Drawings shall be as set forth in Section 1 of the Letter of Credit. The Bank may rely upon any original certificate or facsimile which it, in good faith, believes to have been dispatched by the Trustee and Tender Agent.

Section 2.04. Disbursement of Drawings. The Board hereby directs the Bank to make payments under the Letter of Credit in immediately available funds to the account of the Trustee and Tender Agent specified in the Letter of Credit. In accordance with said provision, the Trustee and Tender Agent may change such disbursement instructions (from time to time) by notice in writing to the Bank, and the same shall become effective upon actual receipt of such notice by the Bank.

Section 2.05. Source of Funds. All payments made by the Bank pursuant to the Letter of Credit shall be made from funds of the Bank, and in no event shall any such payment be made with funds obtained from the Board.

Section 2.06. Reduction; Termination; Extension

(a) The parties hereto agree that the Stated Amount shall be permanently reduced without penalty or premium as set forth in Section 2 of the Letter of Credit. No such reduction shall have the effect of terminating, reducing or altering in any respect the terms of the Letter of Credit with respect to any Bonds which are Outstanding at the time of such reduction.

(b) The parties hereto agree that the Board and the Trustee and Tender Agent may deliver to the Bank a Notice of Termination in the form of Exhibit J to the Letter of Credit if (i) no Rating Agency is then rating the short-term unsecured obligations of the Bank Prime 1 or the equivalent; (ii) the Bank has given the Board notice of Deductions pursuant to Section 10.07 or of increased costs pursuant to Section 10.08.

(c) The parties hereto agree that the Letter of Credit will terminate as set forth in Section 4 of the Letter of Credit.

(d) The Expiration Date may be extended as set forth in Section 4 of the Letter of Credit.

Section 2.07. Reinstatement of the Available Amount. The parties hereto agree that the Available Amount shall be reinstated following an Interest Drawing or a Liquidity Drawing as set forth in Section 3 of the Letter of Credit.

Section 2.08. Term Out Event Prior to Expiration of Letter of Credit. A Term Out Event shall be deemed to occur on the date which is five (5) Business Days before _____, 2011 if, as of such date, the Letter of Credit has not been extended by the Bank to a date later than _____, 2011 or replaced.

Section 2.09. Default Interest. The Board agrees to pay to the Bank, upon demand, interest on any and all amounts owed by the Board under this Agreement from the earlier of (a) the date such amounts are due and payable but not paid until payment thereof in full and (b) a date on which a Default occurs, at a fluctuating interest rate per annum (computed on the basis of a year of 360 days and the actual number of days elapsed) equal to the Default Rate.

Section 2.10. Costs, Expenses and Taxes. The Board agrees to pay on demand all costs and expenses in connection with the preparation, execution, delivery and administration of this Agreement, the Related Documents and any other documents which may be delivered in connection with this Agreement and the Related Documents, including, without limitation, the fees and out-of-pocket expenses of counsel for the Bank with respect thereto (including the fee of Kutak Rock LLP, New York Counsel to the Bank, in the amount of \$35,000 plus disbursements) and with respect to advising the Bank as to its rights and responsibilities under this Agreement and the Related Documents and all costs and expenses, if any, in connection with the enforcement of this Agreement, the Related Documents and such other documents which may be delivered in connection with this Agreement. In addition, the Board shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement, the Related Documents and such other documents and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

Section 2.11. Termination Fee. If the Letter of Credit is terminated prior to the first anniversary of the Closing Date, the Board shall pay to the Bank, upon such termination, a termination fee equal to 0.28% percent of the Stated Amount as of the Closing Date, less the aggregate amount of Letter of Credit Commission theretofore paid.

Section 2.12. Method of Payment. Except as may be otherwise provided herein, interest on amounts owed hereunder or with respect to Bank Bonds shall be computed on the basis of a year of 365 or 366 days, as applicable, and the actual number of days elapsed. All payments by or on behalf of the Board to the Bank hereunder shall be fully earned when due and nonrefundable when paid and made in lawful currency of the United States of America and in immediately available funds. Amounts payable to the Bank hereunder shall be transferred to the Bank's account at ABA #021-000-089, Credit to Account No. 3620-9957, Reference Utah Regents 2004 (or to such other account of the Bank as the Bank may specify by written notice to the Board or the Trustee and Tender Agent) not later than 4:00 p.m. New York, New York time, on the date payment is due. Any payment received by the Bank after 4:00 p.m., New York, New York time, shall be deemed to have been received by the Bank on the next Business Day.

ARTICLE III

REIMBURSEMENT OF DRAWINGS ON LETTER OF CREDIT

Section 3.01. Interest Drawings, Redemption Drawings, Acceleration Drawings, and Stated Maturity Drawings. The Board will forthwith reimburse the Bank in the manner set forth in Sections 3.10 and 3.11 hereof for the full amount of any Interest Drawing, Redemption Drawing, Acceleration Drawing or Stated Maturity Drawing, on the date the Bank pays such Drawing. If the Board does not make such reimbursement on such date, the reimbursement obligation of the Board shall bear interest at the Default Rate, payable on demand.

Section 3.02. Liquidity Drawings.

(a) If the Bank is not reimbursed on the date it pays a Liquidity Drawing, the Liquidity Drawing shall constitute an advance ("Liquidity Advance") to the Board which shall be used to purchase Bonds as set forth in Section 3.04 hereof.

(b) Each Liquidity Advance shall bear interest at the Bank Rate. Accrued interest on the Liquidity Advance (after crediting any interest payment on the Bank Bonds as set forth in Section 3.04(b)) shall be paid on the first Business Day of each month and on the Liquidity Drawing Repayment Date (as hereinafter in paragraph (c) defined).

(c) The Board will forthwith reimburse the Bank for a Liquidity Drawing on the earliest to occur of the following (a "Liquidity Drawing Repayment Date"):

(i) the date of the remarketing of Bank Bonds purchased with such Liquidity Drawing,

(ii) the date such Bank Bonds become due and payable, whether at Stated Maturity or upon acceleration, redemption or otherwise,

(iii) subject to Section 3.03, the date which is 91 days from the date of such Liquidity Drawing,

(iv) the date on which the Letter of Credit is replaced by a substitute letter of credit,

(v) the Expiration Date, or

(vi) in the case of the Interest Portion of the Liquidity Drawing, the next succeeding Interest Payment Date.

Section 3.03. Term Out Period; Term-Out Tender Drawings.

(a) If, on the 91st day following a Liquidity Drawing, no Reimbursement Agreement Event of Default or Default shall have occurred and all representations and warranties set forth in Article V (except Section 5.01(e)) are true, then notwithstanding Section 3.02(c)(iii), the Board will reimburse the Bank for such Liquidity Drawing in the manner set forth in Sections 9.02 and 9.03 hereof, and such event shall constitute a Term Out Event.

(b) The Board will reimburse the Bank for Term-Out Tender Drawings in the manner set forth in Sections 9.02 and 9.03 hereof.

Section 3.04. Bank Bonds.

(a) The Board and the Bank agree that, pursuant to the Indenture, the Bank shall become the Owner of any Bonds purchased with the proceeds of a draw on the Letter of Credit and such Bonds shall be registered in the name of the Bank or its designee and made available for delivery to the Bank at the principal office of the Trustee and Tender Agent and, prior to such delivery, shall be held in trust by the Trustee and Tender Agent for the benefit of the Bank. The Board agrees to comply, and to use its best efforts to cause the Trustee and Tender Agent to comply, with these provisions and those in the Indenture regarding Bank Bonds. If the Bonds are in book entry only form with The Depository Trust Company (“DTC”), Bank Bonds shall be held by the Trustee and Tender Agent in its participant account with DTC for the benefit of the Bank. The Trustee and Tender Agent shall mark its records to indicate that such Bank Bonds are so held for the benefit of the Bank. The Trustee and Tender Agent shall not (i) pledge, hypothecate, transfer or release possession of any Bank Bonds held by the Trustee and Tender Agent for the benefit of the Bank to any person or in any manner not in accordance with this Agreement and the Indenture except at the written direction of the Bank, (ii) enter into any other agreement regarding possession of the Bank Bonds without the prior written consent of the Bank or (iii) release Bank Bonds unless the Trustee and Tender Agent has received notice from the Bank that the Bank has been paid amounts owed with respect to the Bank Bonds and the Stated Amount has been reinstated as provided in paragraph 3(c) of the Letter of Credit. The Board and the Bank hereby agree that the Bank Bonds shall be held as additional security for the payment and performance of the Board's obligations hereunder and the Board hereby assigns to the Bank any and all of its right, title and interest in the Bank Bonds and the proceeds thereof as security for its obligations hereunder.

(b) Following any Liquidity Drawing, the Bank shall cause to be released to or upon the order of the Board, a principal amount of Bank Bonds equal to that portion of the Principal Portion which has been reimbursed, provided that prior to or concurrently with any such release the Bank shall have been reimbursed for the related Interest Portion of such Liquidity Drawing, plus interest accrued on the Principal and Interest Portions, and the Bank shall have been reimbursed for all Interest Drawings, Acceleration and Redemption Drawings under the Letter of Credit, together with accrued interest thereon, if any, and the Liquidity Advance related thereto shall be deemed to have been reduced *pro tanto*, with the Bank crediting any payment on the Bank Bonds received by it, first to the payment of interest on the Liquidity Advance related thereto, then to the payment of interest on any such interest which is overdue and then to the payment of principal thereof, except that after the occurrence of a Reimbursement Agreement Event of Default the Bank may apply any payment of interest to any obligations of the Board hereunder as the Bank elects.

(c) No Bank Bond shall be entitled to the benefits of the Letter of Credit.

(d) Except as otherwise expressly provided herein, during such time as the Bank is the owner of any Bond, it shall have all the rights granted to a Bondholder under the Indenture and such additional rights as may be granted to the Bank hereunder.

(e) All or a portion of the Bank Bonds may be purchased from the Bank on any Business Day at a purchase price equal to the principal amount thereof plus the interest accrued thereon (including without limitation interest on overdue interest) upon prior telephonic notice (confirmed by facsimile) from the Board or its agent to the Bank not later 3:00 p.m., Eastern (United States) time, on the Business Day immediately preceding the proposed date of purchase.

Section 3.05. Declaration of Term Out Event Following Liquidity Drawing; Term Out Event Following Term-Out Tender Drawing.

(a) If the Bank is not paid in accordance with the provisions of Section 3.02(b) and (c) with respect to the entire Liquidity Drawing, the Bank may by notice to the Board and the Trustee and Tender Agent, and if directed to do so by the Board shall by notice to the Trustee and Tender Agent, at any time declare a Term Out Event with respect to all Outstanding Bonds.

(b) A Term-Out Tender Drawing shall automatically constitute a Term Out Event.

Section 3.06. Remarketing of Bank Bonds. Subject to Sections 8.04(b) and 9.04(b) hereof, the Bank hereby authorizes the remarketing of the Bank Bonds in accordance with the terms of the Indenture and the Remarketing Agreement.

Section 3.07. Obligations Absolute. To the fullest extent permitted by law, and subject to Section 10.09 hereof, the payment obligations of the Board under this Agreement shall be absolute, unconditional and irrevocable, and shall not be subject to any right of set-off or

counterclaim, and shall be paid and performed strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following circumstances:

(a) any lack of validity or enforceability of the Letter of Credit, this Agreement or any of the Related Documents;

(b) any amendment or waiver of, or any consent to departure from, the Letter of Credit or any of the Related Documents;

(c) the existence of any claim, set-off, defense or other right which the Board may have at any time against the Trustee and Tender Agent or any other beneficiary, or any transferee, of the Letter of Credit (or any other Person for which the Trustee and Tender Agent any such beneficiary or any such transferee may be acting), the Bank, or any other Person, whether in connection with this Agreement, the transactions contemplated herein or in the Letter of Credit or any of the Related Documents, or any unrelated transaction;

(d) any statement or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue, insufficient or inaccurate in any respect;

(e) payment by the Bank to the Trustee and Tender Agent or its agent under the Letter of Credit against presentation of a draft or certificate (by any means made) which does not comply with the terms of the Letter of Credit, including any failure of any draft or certificate to bear any reference or adequate reference to the Letter of Credit, except if such payment results from the Bank's gross negligence or willful misconduct (it being understood and agreed by the parties hereto that in making such payment the Bank's exclusive reliance on the documents presented to the Bank as to any and all matters set forth therein, whether or not any statement or any document presented pursuant to the Letter of Credit proves to be forged, fraudulent, or invalid in any respect or any statement therein proves to be untrue or inaccurate in any respect whatsoever shall not be deemed gross negligence or willful misconduct of the Bank);

(f) the use which may be made of the Letter of Credit or any act or omission of the Trustee and Tender Agent or any other Person other than the Bank in connection therewith;

(g) any dispute between or among the Board, the Trustee and Tender Agent or any Bondholder; or

(h) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, except if, as a result of the Bank's gross negligence or willful misconduct, payment by the Bank under the Letter of Credit is made to any Person other than the beneficiary of the Letter of Credit or its agent.

Section 3.08. Computation of Interest. Interest shall accrue during each period during which interest is computed from the first day thereof to the last day thereof.

Section 3.09. Non-Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of any interest, fees and other amounts payable hereunder.

Section 3.10. Payment to the Bank; Other Payment Provisions. All payments to be made by the Board under this Agreement shall be made to the Bank. Except as otherwise specifically provided herein, any amount payable by the Board to the Bank under this Agreement shall bear interest from its due date until paid in full at the Default Rate. All payments to be made by the Board under this Agreement shall be made without counterclaim, setoff, condition or qualification.

Section 3.11. Selection of Trust Estate Assets for Reimbursement. Should the Board be unable to make any reimbursement due to the Bank on account of any Drawing under the Letter of Credit due to an insufficiency of current funds in the Trust Estate, the Board may, with the prior written consent of the Bank, satisfy its reimbursement obligation to the Bank in the following order of priority: first, by transfer of cash and Investment Securities held in the Trust Estate; and second, by transferring to the Bank Financed Eligible Loans (valued as may be agreed to by the Board and the Bank) which fairly represent the mix of maturities, interest rates, Special Allowance Payments, unpaid principal amounts, types of institution attended, delinquency characteristics and status (interim, grace or repayment) of Financed Eligible Loans held under the Indenture as a whole as of such date, as determined by the Board and the Bank.

Section 3.12. Security for Payment Obligations of the Board. As security for the reimbursement obligations of the Board under this Agreement, the Board has, pursuant to the Indenture, pledged and granted for the benefit of the Bank and other parties as provided in the General Indenture a lien on and security interest in its right, title and interest in and to the Trust Estate.

Section 3.13. Maximum Interest Rate.

(a) Anything in this Agreement or the Indenture to the contrary notwithstanding, the interest rate applicable on any day on any amount owing hereunder or under the Bank Bonds shall in no event exceed the Highest Lawful Rate (as hereinafter in paragraph (c) defined).

(b) On any Capped Day (as hereinafter in paragraph (c) defined), the rate of interest on any amount owing hereunder or under the Bank Bonds will be limited to the Highest Lawful Rate (as hereinafter in paragraph (c) defined). On any day which is not a Capped Day and on which there is an accrued Net Lost Amount (as hereinafter in paragraph (c) defined), the rate of interest on the amount owing hereunder or under the Bank Bonds will be increased to the Highest Lawful Rate, but only to the extent necessary to cause the Net Lost Amount to be reduced to zero. The parties hereto do not intend to adopt any change in applicable law which is to be effective after the date of this Agreement which would not otherwise have applied to the determination of the Highest Lawful Rate.

(c) For purposes of this Section 3.13, the following terms shall have the following meanings:

“*Capped Day*” means, during any period in which an amount is owed hereunder, any day on which the rate of interest determined in accordance with this Agreement would have exceeded the Highest Lawful Rate.

“*Highest Lawful Rate*” means, on any day, the maximum rate of interest which the Bank may charge to the Board under applicable law.

“*Lost Amount*” means, for any Capped Day, the excess of (i) the dollar amount of interest which would have accrued on the amount owing hereunder or under the Bank Bonds on such day pursuant to this Agreement but for this Section and applicable law over (ii) the dollar amount of interest which actually accrued thereon on such day in accordance with this Section and applicable law.

“*Net Lost Amount*” means, on any day, the excess of (i) the aggregate of all Lost Amounts which would have accrued to, but excluding, such day over (ii) the aggregate of all Recouped Amounts which have accrued to, but excluding, such day.

“*Recouped Amount*” means, for any day which is not a Capped Day and on which there is a Net Lost Amount, the excess of (i) the dollar amount of interest which actually accrued on the amount owing hereunder or under the Bank Bonds on such day in accordance with this Section and applicable law over (ii) the dollar amount of interest which would have accrued on the amount owing hereunder or under the Bank Bonds on such day pursuant to this Agreement but for this Section.

ARTICLE IV

CONDITIONS OF ISSUANCE

The obligation of the Bank to issue the Letter of Credit on the Closing Date is subject to the following conditions precedent:

Section 4.01. Receipt of Documents. The Bank shall receive each of the following documents on or before the Closing Date, in form and substance satisfactory to the Bank and its counsel:

(a) Copies, certified by an Authorized Officer of the Board, as of the Closing Date, of (i) the resolution of the Board approving the form of this Agreement (including the appendices thereto) and authorizing the execution and delivery thereof by the Board and (ii) the resolution of the Board approving the form, terms and provisions of the Bonds and authorizing the execution and delivery by the Board of the Related Documents (other than the Servicing Agreement).

(b) Originals, or copies certified by an Authorized Officer of the Board as true to the original, of all governmental and regulatory approvals (if any) necessary for the

Board with respect to this Agreement and the Related Documents and the transactions contemplated hereunder.

(c) A certificate of an Authorized Officer of the Board dated the Closing Date certifying the names and true signatures of the officers of the Board authorized to sign this Agreement and the other documents to be delivered by it hereunder.

(d) An opinion of Ballard Spahr Andrews & Ingersoll, LLP addressed to the Trustee and Tender Agent and the Bank to the effect that the replacement of the original letter of credit issued at the time of the original issuance of the Bonds with the Letter of Credit is authorized or permitted by the Indenture and will not, in and of itself, adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(e) An opinion of the Attorney General of the State of Utah, to the effect that this Agreement has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Board and covering such other matters as the Bank may reasonably request, which opinion shall be dated the Closing Date and addressed to the Bank.

(f) True and complete copies of each of the Related Documents, certified as true and complete by an Authorized Officer of the Board.

(g) A certified copy of the Servicing Agreement.

(h) A copy of the Remarketing Circular together with a certification of the Board to the effect that the Remarketing Circular as of its date and as of the Closing Date does not contain any untrue or incorrect statement of a material fact or omit to state any fact necessary to make the statements contained therein, under the circumstances in which they were made, not misleading in any material respect.

(i) A certificate of an Authorized Officer of the Board, dated the Closing Date, stating:

(i) that on the Closing Date the Board is in compliance with all the terms and provisions set forth herein on its part to be observed or performed and the representations and warranties of the Board contained in Section 5.01 of this Agreement are correct on and as of the Closing Date as though made on and as of such date; and

(ii) that on the Closing Date no Reimbursement Agreement Event of Default has occurred and is continuing, or would result from the issuance of the Letter of Credit or the execution, delivery and performance of this Agreement, and no event has occurred and is continuing which would constitute such a Reimbursement Agreement Event of Default but for the requirement that notice be given or time elapse or both.

(j) Written evidence that the Bonds continue to receive the highest rating by at least one of the Rating Agencies.

(k) The Financials referred to in Section 5.01(j) hereof.

(l) Such other approvals, opinions and documents as the Bank may reasonably request.

Section 4.02. Facts and Circumstances. On the Closing Date, each of the following statements shall be true:

(a) The Board is in compliance with all the terms and provisions set forth herein on its part to be observed or performed and the representations and warranties of the Board contained in Section 5.01 of this Agreement are correct on and as of the Closing Date as though made on and as of such date.

(b) No event has occurred and is continuing, or would result from the issuance of the Letter of Credit, which constitutes a Reimbursement Agreement Event of Default or would constitute a Reimbursement Agreement Event of Default but for the requirement that notice be given or time elapse or both.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Section 5.01. Representations and Warranties of the Board. The Board makes the following representations and warranties to the Bank (in addition to matters disclosed in the Remarketing Circular) which representations and warranties shall be deemed to be continuing representations and warranties so long as the Bank shall be obligated to issue the Letter of Credit, the Letter of Credit remains outstanding or the Board shall have any obligation to pay any amount to the Bank hereunder:

(a) The Board is organized and operating under the laws of the State. In entering into this Agreement and each of the Related Documents, the Board has complied with all of the provisions of the laws of the State, and has full power and authority to consummate all transactions, execute all documents, and issue all instruments contemplated by this Agreement or any of the Related Documents. The Board has full power and authority to own its properties and assets and to conduct its business.

(b) The execution and delivery of this Agreement and each of the Related Documents by the Board and the performance of and compliance with the terms of this Agreement and each of the Related Documents by the Board have been duly authorized by all necessary action, do not and will not violate or conflict with (i) any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect having applicability to the Board, or (ii) any contractual restriction binding on or affecting the Board or any of its property, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (except as provided in the Indenture) upon or with respect to any of its property.

(c) No authorization or approval or other action by and no notice to or filing or registration with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Board of this Agreement or any Related Document except for approvals which have been obtained and are in full force and effect.

(d) This Agreement is, and each of the Related Documents when executed and delivered by the Board will be, legal, valid and binding obligations of the Board, enforceable against the Board in accordance with their respective terms, subject to the effect of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

(e) As of the date hereof and as of the Closing Date, there is no action, suit, investigation or proceeding pending or, to the best knowledge of the Board, threatened against the Board before any court, arbitrator or administrative or governmental body which might result in any material, adverse change in the operations of the Board or which might materially and adversely affect the ability of the Board to comply with its obligations hereunder or under the Related Documents or in connection with the transactions contemplated hereby or thereby.

(f) Except for information therein under the headings [PLEASE PROVIDE] and information regarding book-entry only and the Depository Trust Company, as to which no representation is made, the Remarketing Circular is, and any supplement or amendment thereof shall be, accurate in all material respects for the purposes for which its use is, was, or shall be authorized; and the Remarketing Circular does not, and any such supplement or amendment shall not, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in the light of the circumstances under which they are or were made, not misleading. The Financials furnished by the Board to the Bank do not contain any untrue statement of a material fact. To the best of the Board's knowledge, all documents delivered (or to be delivered) to the Bank pursuant hereto are (or shall be) true and accurate copies of the described documents. To the best of the Board's knowledge, all information supplied by the Board to the Bank in connection with the negotiation of this Agreement was true and accurate in all material respects as of the date of delivery. All information to be furnished by the Board will to the best of the Board's knowledge be true and accurate in all material respects at the time of delivery.

(g) The Trustee and Tender Agent has, or will have, a perfected security interest in the Trust Estate, free and clear of any other lien, security interest, option, charge or encumbrance.

(h) The pledge and assignment of the Trust Estate pursuant to the Indenture create or will create a valid and perfected security interest therein to the Trustee and Tender Agent, for the benefit of the Bank, without preference, priority or distinction on account of the actual time of issuance of the Letter of Credit or of the authentication, delivery and maturity of the Bonds, subject only to the interest of the Trustee and Tender Agent for the benefit of the holders of the Bonds, securing the obligations of the Board

under this Agreement. Other than the financing statements or like instruments to be filed by or on behalf of the Trustee and Tender Agent pursuant to this Agreement and the Indenture, no other financing statements or like instruments have been filed in any jurisdiction with respect to the Board's rights in the Financed Eligible Loans or the Trust Estate. The Trustee and Tender Agent, on behalf of the Bondholders and the Bank, shall have all of the rights of a secured party with respect to the Trust Estate.

(i) The Board is in full compliance with all of the terms and conditions of this Agreement and of each of the Related Documents and no Reimbursement Agreement Event of Default has occurred and is continuing, and no event has occurred and is continuing which, with the giving of notice or the lapse of time or both, would constitute such a Reimbursement Agreement Event of Default or an event of default (however defined) under any of the Related Documents.

(j) The audited Financials for the fiscal year ended [June 30, 2004], examined and reported on by the Utah State Auditor, as heretofore delivered to the Bank, correctly and fairly present the financial condition of the Program as of said date, and the results of the operations of the Program for such period, in accordance with generally accepted accounting principles consistently applied (except as stated in the notes thereto), and there has been no material adverse change in the condition, financial or otherwise, of the Program since [June 30, 2004] from that set forth in said Financials as of, and for the period ended on, such date. The Board possesses no knowledge of any material contingent liabilities or other material contracts or commitments not disclosed in said financial statements.

(k) The Board has not knowingly taken or omitted to take any action which would result in any Financed Eligible Loan's failing to qualify as an Eligible Loan.

(l) The Board is not subject to the benefits of sovereign immunity in connection with any contract claim which may be asserted by the Bank with respect to the matters which are the subject of this Agreement.

(m) The obligations of the Board under this Agreement and the Bank Bonds are not subject to any law, rule or regulation of the State prescribing a maximum rate of interest.

(n) The Board is not an "investment company" or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

ARTICLE VI

AFFIRMATIVE COVENANTS OF THE BOARD

Unless otherwise approved by the Bank in writing, so long as the Bank shall be obligated to issue the Letter of Credit, the Letter of Credit remains outstanding or the Board shall have any obligation to pay any amount to the Bank hereunder, or this Agreement remains in effect, the

Board will with respect to activities relating to the Trust Estate or any of the matters referenced in the Indenture or this Agreement:

Section 6.01. Compliance with Laws, Indenture, Etc. Comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, the non-compliance with which would, singly or in the aggregate, materially and adversely affect its ability to perform its obligations under this Agreement or any Related Document and comply with all terms and conditions set forth in the Indenture with the same force and effect as if set forth at length in this Agreement.

Section 6.02. Maintenance of Existence; Conduct of Business. Preserve and maintain its existence and all rights, privileges and franchises necessary or desirable in the normal conduct of its business; conduct its business in an orderly, efficient and regular manner without voluntary interruption; and be qualified to do business in each jurisdiction where its ownership of property or the conduct of its operations require such qualification.

Section 6.03. Payment of Taxes and Other Obligations. Pay all taxes, assessments, and governmental charges or levies imposed upon or related to the Trust Estate, or upon any properties belonging to it, and all other monetary obligations, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon the Trust Estate, provided that it shall not be required to pay any such tax, assessment, charge, levy, claim or monetary obligation which is being contested in good faith and by appropriate proceedings which shall operate to stay the enforcement thereof.

Section 6.04. Insurance. Maintain or cause to be maintained insurance with respect to its property against such casualties and contingencies and of such types and in such amounts as is customary in the case of institutions of the same type and size, but in any event covering such casualties and contingencies, of such types as are presently covered and in such amounts as required by the Indenture.

Section 6.05. Maintenance of Approvals, Filings and Registrations. At all times maintain in effect, renew and comply with all the terms and conditions of all consents, licenses, approvals and authorizations as may be necessary or appropriate under any applicable law or regulation for the execution, delivery and performance of this Agreement and the Related Documents, and to make such agreements legal, valid, binding and enforceable.

Section 6.06. Maintenance of Properties. Maintain, at its own expense, its property and every part thereof in good repair and operating condition to enable it to perform its obligations hereunder and under the Related Documents.

Section 6.07. Inspection Rights and Site Reviews. At any reasonable time and from time to time upon reasonable notice to the Board, permit the Bank and its agents to examine and make copies of, and abstracts from, the records and books of account of the Board relating to the transactions contemplated herein or in any of the Related Documents, and to discuss the affairs, finances and accounts of the Board with any of its members or officers and to discuss the status of the Board's Program and the Financed Eligible Loans with any Guarantor Agency; and allow the Bank, at its discretion upon reasonable notice to the Board, to undertake periodic site reviews

of the Board's servicing and operating arrangements for the servicing of Financed Eligible Loans.

Section 6.08. Reporting Requirements. Furnish the following to the Bank:

(a) on or before each Reporting Date, a Collateral Ratio Certificate for the preceding Testing Date;

(b) (i) as soon as possible and in no event more than 120 days after the end of each fiscal year of the Board, Financials as of the end of and for such year; and

(ii) as soon as possible and in no event more than 120 days after the end of every other fiscal year of the Board commencing with the fiscal year ended June 30, 2004, or annually if requested by the Bank, a report of a compliance review of the Board's arrangement for the servicing of student loans prepared by the state auditor or a nationally recognized accounting firm. The scope of this review should include all of the major functional areas of loan servicing and should be sufficient to ascertain whether student loans are being serviced in accordance with the appropriate federal (including the requirements of the Secretary), state and Guarantor Agency requirements. The report should detail the extent of any material deficiencies identified during the review.

(c) as soon as possible and in no event more than 90 days after the end of each quarterly accounting period of each fiscal year of the Board, Financials as at the end of and for such period;

(d) as soon as approved by the Board, the annual budget of the Program for each fiscal year;

(e) within 45 days after the close of each Federal Fiscal Year, the Gross Claims Receipt Rate and the Annual Default Rate (calculated for both Financed Eligible Loans and all Eligible Loans owned by the Board) for such Federal Fiscal Year and a certificate of the Board specifying in reasonable detail the manner in which such Gross Claims Receipt Rate and Annual Default Rate was calculated;

(f) within 30 calendar days after the end of each calendar quarter, a report showing the processing, claims and delinquency status of Financed Eligible Loans included in the Trust Estate;

(g) as soon as available, a copy of the annual financial statements of each Servicer and Guarantor Agency, certified by the state auditor or a firm of independent certified public accountants;

(h) on the Bank's request, a copy of any other regular periodic report relating to the Board's activity under the Program and the Trust Estate which has been submitted to any governmental agency or authority;

(i) as soon as possible, and in any event within five days after the occurrence of each Reimbursement Agreement Event of Default or each event which, with the giving of notice or lapse of time or both, would constitute a Reimbursement Agreement Event of Default, a statement of an Authorized Officer of the Board setting forth details of such Reimbursement Agreement Event of Default or event and any of the representations, warranties and covenants of the Board contained in this Agreement has ceased to be true, and the action which the Board proposes to take with respect thereto;

(j) within thirty (30) days after enactment, written notice of any material amendment to the Act or any other law of the United States of which it is aware (and as soon as practicable, written notice of any such pending amendment to the Act or any other law which has been introduced to Congress and which, if enacted as pending as of the date of such notice, would apply to any Eligible Loans disbursed before its date of enactment) that changes the interest rates or methods of computing Special Allowance Payments on loans disbursed pursuant to the Act and determine whether any loans disbursed pursuant to the Act after the effective date of such amendment would have a Materially Lower Rate of Return; provided, however, that no action taken with respect to H.B. _____ shall require any notice pursuant to this Section 6.08(j);

(k) as soon as possible, notice of any audit examination received by the Board that has been prepared with respect to the Board's activities under the Program, other than for other credit providers, together with the Board's response thereto (if any), which information the Bank will treat as confidential;

(l) as soon as possible, and in any event within ten days after execution thereof, copies of any executed amendment of or supplement or modification to any of the Related Documents other than the execution of a supplement to the Indenture which makes provision for the issuance of bonds which are subordinated in right of payment and in all other respects to the Bonds; and

(m) promptly after the commencement thereof, notice of any action, suit or proceeding before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign affecting the Board and which might have results which would have a material adverse effect upon either the financial condition of the Board or on the Board's ability to perform its obligations under this Agreement or the Related Documents.

Section 6.09. Advertising. With the prior written consent of the Board, permit the Bank to use the name of the Board in any advertising the Bank may wish to publish concerning the Bank's issuance of the Letter of Credit or other aspects of the transactions contemplated by this Agreement or the Indenture.

Section 6.10. Performance of and Compliance with Certain Agreements. Perform and comply with the terms, covenants and conditions of this Agreement and each of the Related Documents and not waive any material rights thereunder; require the Trustee and Tender Agent and each Servicer to perform and comply with, and promptly and diligently pursue any and all legal actions as may be necessary, or as the Bank may reasonably request, with respect to any

obligation of the Trustee and Tender Agent or each Servicer relating to any material term or condition of the Indenture or the Related Documents to which the Trustee and Tender Agent or each Servicer is a party; and take all reasonable action necessary, or as the Bank may reasonably request, for the enforcement of all material terms and conditions of each of the other Related Documents.

Section 6.11. Bond Proceeds. Continue to use the proceeds of the Bonds only for the purposes set forth in the Indenture.

Section 6.12. Use of Moneys in the Trust Estate. Originate or acquire with moneys in the Trust Estate only (i) Investment Securities and (ii) Eligible Loans which, to the best of its knowledge, have been serviced since the day of origination in accordance with all applicable requirements of the Guarantor Agency, the Secretary and the Act, except that the Board may acquire Eligible Loans that were not originated and serviced in accordance with such requirements if the deficiency has been fully cured in accordance with the requirements of the Guarantor Agency and the Secretary. The Board will enforce all rights of repurchase under any student loan purchase agreements relating to Financed Eligible Loans unless in the Board's reasonable judgment the costs of recovery will exceed the expected recovery.

Section 6.13. Collection and Enforcement of Financed Eligible Loans, Administration of the Program. Diligently cause to be collected all principal and interest payments on all the Financed Eligible Loans and other sums to which the Board is entitled pursuant to any student loan purchase agreement and all Special Allowance Payments, insurance payments, Interest Subsidy Payments, and Guarantee and other payments which relate to such Financed Eligible Loans. Diligently cause to be defended, enforced, preserved and protected the rights and privileges of the Board and of the Bank under or with respect to each Financed Eligible Loan and each agreement in connection therewith. Diligently enforce all terms and conditions of all Financed Eligible Loans, without releasing, waiving or amending any such term or condition; provided, however, that the Board may:

- (a) grant any forbearance on any Financed Eligible Loan on such terms as are permitted by the Act and other applicable law;
- (b) forgive the principal of, and interest on, all or any portion of any Financed Eligible Loan if necessary to prevent interest on any Bonds or any other bonds issued under the Indenture from being includable in gross income of the owners thereof for federal income tax purposes as provided in the Indenture; and
- (c) forgive the remaining indebtedness on any Financed Eligible Loan having an unpaid principal balance if, in the reasonable judgment of the Board, the cost of collection of the remaining indebtedness on such Financed Eligible Loan would exceed such remaining indebtedness.

Each Financed Eligible Loan shall be administered and serviced in a competent, diligent and orderly fashion and in accordance with all requirements of the Act, the Secretary, the Guarantor Agency and the Guarantee Agreements covering such loan. The Board shall administer, operate and maintain the Program in such manner as to ensure that the Program and

the Financed Eligible Loans will benefit, to the optimum extent, from the Guarantee Agreements and the federal program of Interest Subsidy Payments, Special Allowance Payments and reinsurance pursuant to the Act, or from any other federal statute providing for such federal program, and each Financed Eligible Loan is or will be in all material respects in compliance with all applicable requirements of the Guarantor Agency and the Secretary and is or will be represented by one or more promissory notes or other written agreements which adequately document such Financed Eligible Loan and which are legal, valid and binding obligations of the respective obligor, enforceable against such obligor in accordance with their respective terms, subject to no defense (except the defense of infancy).

Anything in this Section to the contrary notwithstanding, no Financed Eligible Loan will cease to be an Eligible Loan merely because the Board, in its discretion, charges interest to the related eligible borrower at a rate less than the statutory maximum interest rate so long as the Board delivers a Rating Confirmation (as defined in the General Indenture) to the Trustee and Tender Agent.

Section 6.14. Changes to Servicing Systems and Procedures. Take all specific action necessary with respect to the servicing system and operations employed for any Financed Eligible Loan so as to enable the Board and any of its agents to comply with the servicing, reporting and operating requirements of the Eligible Insurer thereof and the Secretary.

Section 6.15. Guarantee Benefits. Cause the Servicer to assign, no later than the last day on which a claim may be filed under applicable law and regulations, Financed Eligible Loans for payment of Guarantee benefits. The Board will comply with all statutes, rules and regulations of the United States and applicable state law which apply to the Program or to any Financed Eligible Loan.

Section 6.16. [INTENTIONALLY RESERVED]

Section 6.17. Keeping of Records and Books of Account; Withdrawals; Program Expenses.

(a) Keep or cause to be kept adequate records and books of account, in which complete entries shall be made in accordance with accounting principles, consistently applied (except for changes concurred in by the Board's independent auditors or permitted under the definition of Financials), reflecting all financial transactions of the Trust Estate.

(b) Keep or cause to be kept (i) the certificates delivered to the Trustee and Tender Agent pursuant to Section 5.17 of the General Indenture requesting the release of Excess Coverage to the Board and (ii) the supporting calculations, all of which shall be subject to review by the Bank in accordance with Section 6.07 hereof.

(c) Keep or cause to be kept (i) the orders delivered to the Trustee and Tender Agent pursuant to Section 3.3 of the First Supplemental Indenture and Sections 5.4 and 5.13 of the General Indenture requesting the payment of Program Expenses and (ii) the supporting calculations, all of which shall be subject to review by the Bank in accordance with Section 6.07 hereof.

Section 6.18. [INTENTIONALLY RESERVED].

Section 6.19. Additional Covenants; Consents. Comply with and be bound by the provisions of the Indenture, which provisions are herein incorporated by reference and made part of this Agreement as if fully set forth herein, including, without limiting the foregoing, the covenants set forth in the Indenture, and the various provisions of the Indenture which require notice to or the consent of the Bank.

Section 6.20. Safekeeping of Financed Eligible Loans. Take all specific actions necessary with respect to the safekeeping of the Financed Eligible Loans, including, without limitation, the various provisions of the Indenture regarding the same. The Financed Eligible Loans shall be held by the Trustee and Tender Agent or the Servicer for the benefit of the Bank, the Bondholders and those, if any, entitled to payments under Interest Rate Exchange Agreements (as defined in the General Indenture).

Section 6.21. Eligibility of Eligible Loans. All loans included in the Trust Estate which are included in the totals of Eligible Loans listed on each Collateral Ratio Certificate submitted to the Bank will be duly insured by the Secretary or Eligible Insurer and will be entitled to the benefits of such insurance, special allowance payments and interest subsidies available to loans of such character under or pursuant to the Act or any applicable State legislation. The Board will not knowingly take or omit to take any action which would, under the Act or any applicable State legislation or any regulations promulgated thereunder or rules or decisions of the Secretary or Eligible Insurer or any instrumentality or official thereof, jeopardize such insurance or other benefits. Each Eligible Loan will be maintained and serviced by each Servicer in compliance with all applicable requirements of the Secretary and the Eligible Insurer, and will be the legal, valid and binding obligation of the obligor, enforceable against such obligor in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally. The rights of the Board to recourse against any originating lender, to borrower payments, to any and all benefits of insurance and to any special allowances and/or supplemental payments available in respect of Eligible Loans included in the Trust Estate may be transferred to the Bank pursuant to applicable legislation, regulations, rulings, decisions or agreements, and the Board shall give the necessary notice to the originating lender, Eligible Insurers or other authorities and take such other actions as may be necessary to transfer and perfect or otherwise preserve the Bank's rights under this Agreement to such recourse, borrower payments, insurance benefits, special allowances and/or supplemental payments if a transfer occurs in accordance with the provisions of this Agreement and the Indenture.

Section 6.22. Trustee and Tender Agent. The Board agrees, promptly following a request from the Bank, to take all steps necessary to remove and replace the Trustee and Tender Agent; any such request from the Bank shall be based on a determination (accompanied by supporting documentation or explanation) that the Trustee and Tender Agent is not performing (or cannot be expected to perform) the obligations required of it in a manner consistent with industry standards for corporate trustees. The Board shall at all times cause the roles of trustee and tender agent under the Indenture to be filled by the same banking institution.

ARTICLE VII

NEGATIVE COVENANTS OF THE BOARD

So long as the Bank shall be obligated to issue the Letter of Credit, the Letter of Credit remains outstanding or the Board shall have any obligation to pay any amount to the Bank hereunder, or this Agreement remains in effect, the Board will not, without the prior written consent of the Bank:

Section 7.01. Terminations and Amendments. Terminate or amend, or enter into or consent to any modifications of, or waive any material requirements of, any Related Document (including without limitation removing, replacing or adding a new Trustee and Tender Agent or Remarketing Agent).

Section 7.02. Changes in Servicing; Guarantors .

(a) Make any material changes in its arrangements for servicing Financed Eligible Loans, including but not limited to terminating any Servicing Agreement or appointing a replacement or additional Servicer. Furthermore, the Board shall not fail to terminate any Servicing Agreement and transfer the servicing of Financed Eligible Loans to another servicer upon the occurrence of a material failure of the Servicer to perform its obligations under its Servicing Agreement and upon the Bank's written direction to do so. Any new Servicer shall agree to service the Financed Eligible Loans on terms and conditions (including fees) substantially similar to those of the original Servicing Agreement, except as otherwise agreed by the Bank. Each new Servicer must demonstrate to the reasonable satisfaction of the Bank that it can comply with reporting requirements of a Servicer stated herein.

(b) Consent to any plan by any Servicer to change or modify materially its data processing system used to service the Financed Eligible Loans (if the Board has the right to consent), other than changes which are not reasonably expected materially to alter the ability of the Board to provide the Bank with the reports and information required under this Agreement. The Board shall not approve, if the Board has the right to approve, any material system change or new system for servicing the Financed Eligible Loans without allowing the Bank to review the effect of such material system change or new system for servicing the Financed Eligible Loans.

(c) Make any material changes with respect to the Guarantor Agency and the Guarantee Agreements, including without limitation terminating in Guarantee Agreement or appointing a replacement or additional Guarantor Agency.

Section 7.03. Remarketing Circular. Refer to the Bank in the Remarketing Circular or in any other offering document with respect to the Bonds or make any changes in reference to the Bank in any revision of the Remarketing Circular without the Bank's prior written consent thereto, which consent shall not be unreasonably withheld.

Section 7.04. Permitted Liens. Create, incur or suffer to be incurred or to exist, any lien on any of the Trust Estate, whether now owned or hereafter acquired, or acquire any

property or assets that are part of the Trust Estate subject to any lien, charge, encumbrance or tide retention device, except:

(a) liens for property taxes and assessments or governmental charges or levies against the Board and not overdue or, if overdue, being contested in good faith and by appropriate proceedings;

(b) liens on or resulting from judgments or awards in respect of which the Board shall, at any time, in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review has been secured;

(c) carriers', mechanics', materialmen's, warehousemen's or like liens securing obligations arising in the ordinary course of business and not overdue or, if overdue, being contested in good faith by appropriate proceedings;

(d) liens incidental to the conduct of the business of the Board or the ownership of any of its properties and assets incurred in the ordinary course of business and not in connection with the borrowing of money;

(e) liens arising out of pledges or deposits under workmen's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation: and

(f) liens granted under the Indenture (including any lien granted in favor of Subordinated Bonds).

Section 7.05. Limitation on Payment of Program Expenses and Servicing Fees. Pay Program Expenses or Servicing Fees from assets of the Trust Estate except in accordance with the applicable provisions of the Indenture, including without limitation Sections 5.4 and 5.13 of the General Indenture and Section 3.3 of the First Supplemental Indenture; provided that, before the Board shall increase Program Expenses with a Rating Confirmation pursuant to Section 3.3 of the First Supplemental Indenture, the Board shall submit such cash flows to the Bank as it may reasonably request.

Section 7.06. [INTENTIONALLY RESERVED].

Section 7.07. Issue Other Bonds. Issue, on a parity with the Bonds, any bond or other obligation under the Indenture or secured by any of the Trust Estate after the Closing Date.

Section 7.08. [INTENTIONALLY RESERVED].

Section 7.09. [INTENTIONALLY RESERVED].

Section 7.10. Additional Collateral. Grant any additional collateral to the Bondholders or to the Trustee and Tender Agent as security for the Bonds unless such additional collateral is also granted to the Trustee and Tender Agent as security for the Bank, subject only to the rights

of the Bondholders and those, if any, entitled to payments under Interest Rate Exchange Agreements (as defined in the General Indenture).

Section 7.11. Swaps. Enter into any Interest Rate Exchange Agreement (as defined in the Indenture).

Section 7.12. Action by Trustee and Tender Agent. Take any action, or cause or allow the Trustee and the Tender Agent to take any action under the Indenture inconsistent with the rights of the Bank under this Agreement including, without limitation, its obligations to make payments to the Bank hereunder.

Section 7.13. Withdrawals of Excess Coverage. Withdraw Excess Coverage (as defined in the General Indenture) except in accordance with Section 5.17 of the General Indenture,

Section 7.14. Compliance with Agreements, Etc. Suffer or permit any Reimbursement Agreement Event of Default to occur under this Agreement or an Event of Default to occur under the Indenture, but will faithfully observe and perform all the covenants, conditions and requirements hereof and thereof. The Board will not remove or appoint a replacement for the Trustee and Tender Agent or, the Remarketing Agent without the prior written consent of the Bank (which consent shall not be unreasonably withheld).

Section 7.15. Sales, Mergers, Etc. Merge or consolidate with, or acquire or be acquired by, any other entity; or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired).

Section 7.16. Rate Period; Optional Redemption

(a) Allow the Bonds to have a Rate Period (i) in excess of the Intermediate Term Period (as that term is defined in the First Supplemental Indenture) or (ii) that ends after _____, 2011, or convert the interest rate mode applicable to some or all of the Bonds to a fixed rate, or convert the interest rate mode applicable to some or all of the Bonds to another interest rate mode, other than a fixed rate, without providing to the Bank, at least 15 days prior to the date notice of such proposed conversion is given to Bondholders, cash flows and other information concerning the proposed conversion and remarketing reasonably acceptable to the Bank; such information and cash flows shall reasonably demonstrate or confirm that (x) there will be a successful remarketing based upon current market conditions and, inter alia, cash flows which will support marketable bonds, and (y) such proposed conversion shall not have an adverse effect on the Trust Estate or the Board's ability to pay any amount due or to become due to the Bank hereunder.

(b) Allow optional redemption of any of the Bonds pursuant to Section 2.10(A)(2) of the First Supplemental Indenture without the Bank's prior consent, which shall be given upon satisfaction that the Board has or will have funds necessary to reimburse the Redemption Drawing on the Letter of Credit.

ARTICLE VIII

REIMBURSEMENT AGREEMENT EVENTS OF DEFAULT; REMEDIES

Section 8.01. Reimbursement Agreement Events of Default. The following shall be events of default hereunder (each a “Reimbursement Agreement Event of Default”):

(a) the Board shall fail to pay any amount payable under Articles Two, Three, Nine, or Ten hereof when due;

(b) any representation or warranty made, or deemed to be made, by the Board herein or by the Board in connection with this Agreement shall prove to have been incorrect in any material respect:

(c) the Board shall fail to perform or observe (i) Sections 6.02, 6.11, 6.12, 6.15, 6.21, 7.01, 7.02, 7.03, 7.04, 7.05, 7.07, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15 or 7.16, or (ii) any other term, covenant or agreement contained in this Agreement on its part to be performed or observed and, with respect to (ii) only, such failure shall continue for thirty (30) calendar days following notice of the failure;

(d) the Board shall fail to provide the Collateral Ratio Certificate, executed by the Board and the Trustee and Tender Agent, to the Bank by the Reporting Date, as required by Section 6.08(a) hereof;

(e) the Board shall fail to perform or observe any material term, covenant or agreement contained in any Related Document or Guarantee Agreement on its part to be performed or observed and such failure (unless waived) shall continue after the applicable grace period, if any, specified in such Related Document;

(f) the Board shall be adjudicated a bankrupt or insolvent, shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Board seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property: or any of the foregoing shall be instituted against the Board and not dismissed within sixty days, or shall result in the entry of an order granting the relief so sought; or the Board shall take any action to authorize any of the actions set forth above in this subsection (f);

(g) any material provision of this Agreement or any of the Related Documents shall at any time for any reason cease to be valid and binding on the Board, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the Board, or a proceeding shall be commenced by any governmental agency or authority having jurisdiction over the Board seeking to establish the invalidity or unenforceability

thereof, or the Board shall deny that it has any or further liability or obligation under this Agreement:

(h) any “Event of Default” under and as defined in the Indenture shall have occurred and be continuing;

(i) any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied in respect of an obligation (alleged or otherwise) of the Program in excess of \$250,000 against any of the property of the Program and such judgment, writ, or similar process shall not be released, vacated, stayed or fully bonded within 60 days after its issue or levy;

(j) any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied by or on behalf of a creditor of the Board in respect of the Trust Estate or any portion thereof in an amount equal to at least \$100,000 and such judgment, writ, or similar process shall not be released, vacated, stayed or fully-bonded within 30 days after its issue or levy;

(k) any Eligible Insurer of Financed Eligible Loans shall be adjudicated a bankrupt or insolvent, shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against the Eligible Insurer to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property; or the Eligible Insurer shall take any corporate action to authorize, shall fail to controvert or shall acquiesce in writing to, any of the actions set forth above in this subsection (k) unless Financed Eligible Loans guaranteed by such Eligible Insurer are determined by the Bank to be then Guaranteed by the federal government or a Guarantor Agency; or

(l) the Bonds or any other bonds issued under the Indenture shall at any time for any reason (other than payment) cease to be valid and binding upon the Board or shall be declared to be null and void, or the validity thereof or of this Agreement shall be contested by the Board or any governmental agency or authority having jurisdiction over the Board.

Section 8.02. Remedies. If a Reimbursement Agreement Event of Default shall have occurred and be continuing, the Bank may at the same time or different times take one or more of the following actions :

(a) give notice to the Board and the Trustee and Tender Agent pursuant to Section 2.10(B)(2) of the First Supplemental Indenture requesting the Trustee and Tender Agent to redeem all the Outstanding Bonds;

(b) direct the Trustee and Tender Agent to exercise its rights under the Indenture, including the making of a Redemption Drawing;

(c) by notice to the Board and the Trustee and Tender Agent, declare the obligations of the Board hereunder to be immediately due and payable, and the same shall thereupon become immediately due and payable (provided that, the obligations of the Board hereunder shall be and become automatically and immediately due and payable without such notice upon the occurrence of a Reimbursement Agreement Event of Default described in Section 8.01(f) above), without demand, presentment, protest or further notice of any kind, all of which are hereby expressly waived by the Board;

(d) cure any Default, Reimbursement Agreement Event of Default or event of nonperformance under this Reimbursement Agreement or any default, event of default or event of nonperformance under any of the Related Documents (in which event the Board shall reimburse the Bank therefor upon demand);

(e) exercise its banker's lien, or right of set-off;

(f) proceed to protect its right by suit in equity, action at law or other appropriate proceedings, whether for specific performance of any covenant or agreement of the Board herein contained or in and of the exercise of any power or remedy granted to the Bank under any of the Related Documents;

(g) exercise any other rights or remedies available under any Related Document, any other agreement or at law or in equity;

(h) by notice to the Board and the Trustee and Tender Agent, declare a Term Out Event; and/or

(i) give the notice provided for in Section 3(c) of the Letter of Credit.

If the Reimbursement Agreement Event of Default is the failure by the Borrower to reimburse the Bank on a timely basis for an Interest Drawing the Bank may, no later than the seventh day following such drawing, deliver to the Trustee and Tender Agent notice that the Letter of Credit will not be reinstated as provided in Section 3(b) of the Letter of Credit.

The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to the Board, the Trustee and Tender Agent, the Bondholders or otherwise, (i) to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder, or (ii) to cause the Trustee and Tender Agent or any other party to exercise or to refrain from exercising any right or remedy available to it under any of the Related Documents.

Section 8.03. [INTENTIONALLY RESERVED].

Section 8.04. Other Provisions. Notwithstanding any other provision herein or in the Indenture, at any time when a Reimbursement Agreement Event of Default shall have occurred and be continuing, the following shall not occur:

(a) recycling of moneys to the Acquisition Fund or to any other fund or account used to purchase Eligible Loans pursuant to the Indenture;

(b) remarketing of the Bonds pursuant to the Remarketing Agreement or otherwise unless immediately thereafter no Outstanding Bonds will be Bank Bonds;

(c) withdrawal of Excess Coverage (as defined in the General Indenture) pursuant to Section 5.17 of the General Indenture; or

(d) transfer or substitution of Financed Eligible Loans except to pay the Purchase Price of Bank Bonds or as otherwise consented to in writing by the Bank.

ARTICLE IX

PROVISIONS APPLICABLE DURING A TERM OUT PERIOD

The provisions set forth in this Article Nine shall apply during a Term Out Period unless otherwise approved by the Bank in writing, so long as the Letter of Credit remains outstanding or the Board shall have any obligation to pay any amount to the Bank hereunder, or this Agreement remains in effect.

Section 9.01. Mandatory Tender of Bonds by Owners Following a Term Out Event.

Following the occurrence of a Term Out Event, the Bonds will be purchased from the Owners pursuant to the mandatory tender provisions in Section 2.13(B)(iii) of the First Supplemental Indenture and accordingly thereafter will be Bank Bonds pursuant to Section 3.04 hereof.

Section 9.02. Mandatory Redemption of Bank Bonds During the Term Out Period; Repayment of Interest Portion of Term-Out Tender Drawing.

(a) During a Term Out Period, Bank Bonds will be redeemed pursuant to the redemption provisions in Section 2.10(D) of the First Supplemental Indenture on the following dates and in the following amounts:

(i) On the November 1 immediately following the Term Out Event, an amount equal to the following percentage of the Initial Term Out Amount, rounded up to the nearest integral of \$100,000:

Month in which Term Out Event Occurred	Percentage
November	25%
December	23
January	21
February	19
March	17
April	15
May	13
June	10
July	8
August	6
September	4
October	2

(ii) on the second and third November 1 following the Term Out Event, an amount equal to 25% of the Initial Term Out Amount, rounded up to the nearest integral of \$100,000;

(iii) on the fourth November 1 following the Term Out Event, an amount equal to the principal amount of the Outstanding Bonds; and

(iv) on each November 1, from the amount then available in the Restricted Yield Fund.

(b) Failure to make payments to the Bank in accordance with clauses (i)-(iv) of paragraph (a) of this Section shall constitute a Reimbursement Agreement Event of Default pursuant to clause (a) of Section 8.01; provided that failure to make payments to the Bank in accordance with clauses (i)-(iii) of paragraph (a) of this Section shall not constitute a Reimbursement Agreement Event of Default if the payments specified in clauses (i)-(iii) are made taking into account the payments made pursuant to clause (iv) of paragraph (a) of this Section.

(c) The Interest Portion of each Liquidity Drawing and Term-Out Tender Drawing, together with interest thereon at the same rate as provided in Section 9.03 hereof, will be paid on the Interest Payment Date next succeeding the Term Out Event.

(d) Notwithstanding anything herein to the contrary, each Bank Bond shall be redeemed upon the earliest to occur of (i) the date of the remarketing of such Bank Bonds, (ii) the date such Bank Bonds become due and payable, whether at Stated Maturity or upon acceleration, redemption or otherwise, (iii) the date on which the Letter of Credit is replaced by a substitute letter of credit, and (iv) the fourth anniversary of the date such Bank Bond became a Bank Bond.

Section 9.03. Interest Rate on Bank Bonds During the Term Out Period. Subject to Section 2.09, during a Term Out Period, the Bank Bonds, and the Interest Portion of each Liquidity Drawing and Term-Out Tender Drawing, will bear interest during each Rate Period at a rate per annum equal to the Bank Rate. Such interest shall be payable in arrears on the first Business Day of each month and on the day the principal amount of all Bonds is paid in full, and will be calculated based on a year of 360 days, and actual number of days elapsed.

Section 9.04. Other Provisions. During a Term Out Period, notwithstanding any other provision herein or in the Indenture, the following shall not occur:

(a) recycling of moneys to the Acquisition Fund or to any other fund or account used to purchase Eligible Loans pursuant to the Indenture;

(b) remarketing of the Bonds pursuant to the Remarketing Agreement or otherwise unless immediately thereafter no Outstanding Bonds will be Bank Bonds;

(c) withdrawal of Excess Coverage (as defined in the General Indenture) pursuant to Section 5.17 of the General Indenture; or

(d) transfer or substitution of Financed Eligible Loans except to pay the Purchase Price of Bank Bonds or as otherwise consented to in writing by the Bank.

ARTICLE X

MISCELLANEOUS

Section 10.01. Amendments. No amendment or waiver of any provision of this Agreement or consent to any departure by the parties hereto shall in any event be effective unless the same shall be in writing and signed by each party' and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 10.02. Addresses for Notices. All notices and other communications provided for hereunder shall be in writing. Unless otherwise specified in this Agreement or any attachments hereto, all such notices and other communications to the Board shall be mailed or delivered to it, addressed to it at:

State Board of Regents of the State of Utah
Board of Regents Building, The Gateway
60 South 400 West
Salt Lake City, Utah 84101-1284
Attention: Assistant Commissioner for Student Loan Finance
Telephone (801) 321-7285
Facsimile (801) 321-7299

and to the Bank shall be mailed or delivered to it, addressed to it at:

DEPFA BANK plc
623 Fifth Avenue
22nd Floor
New York, NY 10022
Attention: Carolyn Steinberg
Telephone (917) 286-2031
Facsimile (917) 286-2050

and to the Trustee and Tender Agent shall be mailed or delivered to it, addressed to it at:

J.P. Morgan Trust Company, National
Association
201 Main Street, Suite 300
Fort Worth, TX 76102
Attention: Mr. Jeff Salavarrria
Telephone: (817) 878-7505
Facsimile: (817) 884-4560

or as to each party at such other address as shall be designated by such party in a written notice to the other party. All such notices and other communications shall, when mailed certified

or registered mail, be effective three days after the date of deposit in the mails, addressed as aforesaid.

Section 10.03. No Waiver; Remedies. No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 10.04. Successors and Assigns. This Agreement shall be binding upon the Board, its successors and assigns and inure to the benefit of and be enforceable by the Bank and its successors and assigns; provided, that neither the Board nor the Bank may assign all or any part of this Agreement without the prior written consent of the other party.

Section 10.05. Indemnification. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, to the maximum extent permitted by law and solely from sources pledged under the Indenture, the Board hereby agrees at all times to protect, indemnify and save harmless the Bank, its officers, directors, employees and agents (each, an “Indemnified Party”) from and against any and all claims, actions, investigations, suits and other legal proceedings, and from and against any and all losses, claims, demands, liabilities, damages, costs, charges, counsel fees and other expenses that the Bank may, at any time, sustain or incur by reason of or in consequence of or arising out of the transactions contemplated by this Agreement or the Related Documents, including, without limitation, (i) the issuing, offering, sale, remarketing or resale of the Bonds (including, without limitation, by reason of any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in the Remarketing Circular or any other offering circular or document used in connection therewith, or in any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statement, in the light of the circumstances under which they are or were made, not misleading or the failure to deliver the Remarketing Circular or any other offering circular or document to any offeree or purchaser of Bonds but excluding any information included in the Remarketing Circular or such other offering circular relating to the Bank and provided by the Bank in writing for inclusion therein), (ii) the execution, delivery and performance of this Agreement, (iii) the execution, delivery and performance of, or payment or failure to pay under, the Letter of Credit, and (iv) the use of the proceeds of the sale of the Bonds or any proceeds of the Letter of Credit; provided, however, that the Board shall not be required to indemnify any Indemnified Party for any claims, damages, losses, liabilities, costs, charges, counsel fees or other expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of the Bank, as applicable. The Bank shall not, in any way, be liable for any failure by the Bank to advance funds under the Letter of Credit as a result of any act of a governmental authority or any other cause beyond the control of the Bank, or any failure by the Trustee and Tender Agent to apply amounts drawn under the Letter of Credit to pay the Purchase Price of Bonds tendered for purchase under the Indenture. The obligations of the Board under this Section shall survive the payment of the Bonds and the termination of this Agreement. This indemnity agreement will be in addition to any liability which the Board may otherwise have, provided that this indemnity is limited by the fact that the Board is a “governmental entity” as defined in the Utah Governmental Immunity Act and the Board does not waive any claims, protections or defenses otherwise

available to it based upon the Constitution or laws of the State of Utah or of the United States of America.

Nothing in this Section 10.05 is intended to limit the Board's obligations contained in Articles Two or Three. Without prejudice to the survival of any other obligation of the Board hereunder, the indemnities and obligations of the Board contained in this Section 10.05 shall survive the payment in full of amounts payable pursuant to Articles Two or Three and the termination of the Letter of Credit.

Section 10.06. Liability of the Bank. The Bank shall not be responsible for and to the fullest extent permitted by law (but solely from the sources pledged under the Indenture), the Board assumes (as between the Bank and the Board) all risks of the acts or omissions of the Trustee and Tender Agent or any other agent of the Trustee and Tender Agent or any transferee of the Letter of Credit with respect to its use of the Letter of Credit. Neither the Bank nor any of its officers or directors shall be liable or responsible in any respect for:

(a) any error, omission, interruption or delay by any party other than the Bank in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with the Letter of Credit; or

(b) the use which may be made of the Letter of Credit or any acts or omissions of the Trustee and Tender Agent, or any other agent of the Trustee and Tender Agent or any transferee in connection therewith; or

(c) the validity, sufficiency or genuineness of documents other than the Letter of Credit, or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; or

(d) payment made by the Bank to the Trustee and Tender Agent in accordance with the provisions of the Letter of Credit against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or

(e) any action, inaction or omission taken by the Bank in good faith in connection with the Letter of Credit.

Any such action, inaction or omission taken by the Bank in good faith shall be effective against, and binding upon, the Board. Notwithstanding the foregoing, the Board shall have a claim against the Bank, and the Bank shall be liable to the Board, to the extent of any direct, as opposed to consequential, damages suffered by the Board which the Board proves were caused by the Bank's willful misconduct or gross negligence in (i) determining whether any document presented under the Letter of Credit complies with the terms of the Letter of Credit (it being understood that in making such determination the Bank's exclusive reliance on the documents presented to the Bank as to any and all matters set forth therein, whether or not any statement therein proves to be untrue or inaccurate in any respect whatsoever, shall not be deemed willful misconduct or gross negligence of the Bank), or (ii) making payment under the Letter of Credit to any Person other than the beneficiary of the Letter of Credit or its agent, or (iii) failing to make payments under the Letter of Credit. In furtherance and not in limitation of the foregoing,

the Bank may, in good faith, accept any document that appears on its face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary. The Bank is hereby expressly authorized and directed to honor any demand for payment which is made under the Letter of Credit without regard to, and without any duty on its part to inquire into, the existence of any disputes or controversies between the Board, the Trustee and Tender Agent or any other Person or the respective rights, duties or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true and correct. The Board is a “governmental entity” as defined in the Utah Governmental Immunity Act and subject to the provisions thereof, with respect to the matters covered in the preceding sentences of this Section 10.06, the Board does not waive any protections or defenses otherwise available to it based upon the Constitution or laws of the State of Utah or of the United States of America.

Section 10.07. Deductions. All payments by the Board to the Bank under this Agreement are to be made free and clear of any and all taxes (other than any tax measured by or based upon the overall net income or other measure of income including, without limitation, alternative minimum tax, of the Bank), duties, imposts, fees, withholdings or deductions (the “Deductions”) of any nature now or hereafter imposed. If any Deduction is, by law, required to be made from any payment hereunder, then the Board shall (i) make such Deduction, (ii) pay the amount of such Deduction to the relevant taxing authority and (iii) pay to the Bank such additional amount as will result in receipt by the Bank of a net amount equal to the amount the Bank would have received hereunder had no such Deduction been required. In such event the Board shall, as soon as possible (and in any event within 45 days of the date of such Deduction), deliver to the Bank receipts issued by the relevant taxing authority evidencing the amount of such Deduction and its payment.

Section 10.08. Increased Costs.

(a) If any change in any applicable law, regulation, guideline or directive (including, without limitation, Regulation D) or any new law, treaty, regulation, guideline or directive or any interpretation of any of the foregoing by any governmental authority charged with the administration or interpretation thereof or any central bank or other fiscal monetary or other authority having jurisdiction over the Bank or the transactions contemplated by this Agreement (whether or not having the force of law) shall:

(i) subject the Bank, or any amount paid or to be paid to the Bank under this Agreement, to any tax, charge, fee, deduction or withholding of any kind with respect to the Letter of Credit or this Agreement, or any amount paid or to be paid by the Bank as the issuer of the Letter of Credit (other than any tax measured by or based upon the overall net income or other measure of income including, without limitation, alternative minimum tax, of the Bank);

(ii) impose, modify or deem applicable any reserve, premium, special deposit, capital or similar requirement against any assets held by, deposits with or for the account of, or loans, letters of credit or commitments by, the Bank, in connection with payments by the Bank hereunder or under the Letter of Credit or in making or maintaining the Letter of Credit or this Agreement;

(iii) change the basis of taxation of payments due to the Bank under this Agreement (other than by a change in taxation of the overall net income or other measure of income including, without limitation, alternative minimum tax, of the Bank); or

(iv) impose upon the Bank any other condition with respect to this Agreement or the Letter of Credit;

and the result of any of the foregoing is to increase the cost to the Bank of making any payment or maintaining the Letter of Credit hereunder, to increase the cost to the Bank of making or maintaining this Agreement, to reduce the amount of any payment (whether of principal, interest or otherwise) receivable by the Bank or to require the Bank to make any payment on or calculated by reference to the gross amount of any sum received by it, in each case by an amount which the Bank in its sole judgment deems material, then:

(A) the Bank shall promptly notify the Board in writing of the happening of such event;

(B) the Bank shall promptly deliver to the Board a certificate stating the change which has occurred or the reserve requirements or other conditions which have been imposed on the Bank or the request, direction or requirement with which it has complied, together with the date thereof, the amount of such increased cost, reduction or payment and the way in which such amount has been calculated; and

(C) the Board shall pay to the Bank such amount or amounts as will compensate the Bank for such additional cost, reduction or payment within 30 days after the Board's receipt of the certificate required by subparagraph (B) above, if such cost is immediately incurred or payable by the Bank, or on each regularly scheduled Interest Payment Date and at maturity of the Bonds (whether by acceleration or otherwise), if such cost is incurred or payable by the Bank on a periodic basis. The certificate of the Bank, signed by an officer of the Bank, as to the additional amounts payable pursuant to this Section shall be conclusive evidence thereof absent manifest error. In the event any such additional costs paid by the Bank are subsequently recovered by the Bank from the governmental agency or authority imposing such costs, the Bank shall reimburse the Board for such recovered costs, but without interest (except for interest otherwise recovered by the Bank), to the extent the Board has paid such costs to the Bank; provided, however, that the Bank shall have no obligation or duty to contest or challenge the imposition of, or institute any action or proceeding to recover, any such additional costs.

(b) In addition to the foregoing, if after the date of this Agreement the Bank shall have determined that the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency

charged with the interpretation or administration thereof, or compliance by the Bank with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of the Bank to a level below that which the Bank could have achieved but for such adoption, change or compliance (taking into consideration the policies of the Bank with respect to capital adequacy) by an amount deemed by the Bank to be material, or affects or would affect the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank by an amount deemed by the Bank to be material, as a consequence of its obligations under this Agreement or under the Letter of Credit, then from time to time the Board shall be obligated to pay or cause to be paid to the Bank such additional amount or amounts as will compensate the Bank for such reduction or capital increase with respect to any period for which such reduction or capital increase was incurred upon demand by the Bank, together with interest on such amount for each day from such date of demand until payment in full at the Base Rate. A certificate setting forth in reasonable detail such reduction in the rate of return on capital, or such capital increase, of the Bank as a result of any event mentioned in this paragraph shall be submitted by the Bank to the Board and such certificate shall, in the absence of fraud or manifest error, be conclusive as to the amount thereof. If such costs are to be incurred on a continuing basis by the Bank and the Bank shall so notify the Board in writing as to the amount thereof, such costs shall be paid by the Board to the Bank monthly in arrears. The provisions of this Section 10.08 shall survive the termination of the Letter of Credit and this Agreement.

Section 10.09. Limited Recourse. The Bank agrees that its source of reimbursement, and recourse for all amounts due to it under this Agreement shall be limited solely to the Trust Estate. The Bank acknowledges that neither the State nor any political subdivision thereof, other than the Board to the limited extent described in the previous sentence, is liable for the payment of amounts due to the Bank hereunder.

Section 10.10. Further Assurance. The Board agrees to execute and deliver to the Bank all such documents and instruments and do all such other acts and things as may be necessary or required by the Bank to enable the Bank to exercise and enforce its rights under this Agreement, the Indenture and the Guarantee Agreements to which the Board is a party and to realize thereon, and record and file and re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the Bank to validate, preserve and protect the position of the Bank under this Agreement, the Indenture and the Guarantee Agreements to which the Board is a party.

Section 10.11. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 10.12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State New York, provided that the corporate power and legal

capacity of the Board shall be governed by and construed in accordance with the laws of the State.

Section 10.13. Waiver of Immunities. The Board and the Bank each hereby irrevocably agree that no immunity (to the extent that it may at anytime exist, whether on the grounds of sovereignty or otherwise) from any action or proceeding, or from attachment (whether in aid of execution, before judgment or otherwise) of its assets (subject in the case of the Board to Section 10.09 hereof) or from execution of judgment, shall be claimed by it or on its behalf, any such immunity being hereby irrevocably waived. The Board and the Bank each irrevocably agree that it and its assets (subject in the case of the Board to Section 10.09 hereof) are, and shall be, subject to such legal action or proceeding, attachment or execution in respect of its obligations under this Agreement;

Section 10.14. Survival and Termination of Agreement. All covenants, representations and warranties made herein and in the certificates and other documents delivered pursuant hereto shall survive (i) the issuance of the Letter of Credit, and (ii) the making of any investigation, and shall continue in full force and effect to the later of the Expiration Date or the end of the Term Out Period or so long as any amount payable to the Bank in connection with this Agreement is unpaid (including the Letter of Credit Commission accrued to the effective date of termination) or the Bank has any liability under the Letter of Credit, at which time this Agreement shall terminate, it being expressly understood that the obligations of the Board under Section 10.05 hereof shall survive any termination of this Agreement.

Section 10.15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument, and shall become effective when copies hereof which, when taken together, bear the signatures of each of the parties hereto shall be delivered to the Board and the Bank.

Section 10.16. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.17. Remarketing Circular. The Bank agrees to cooperate in providing information about itself for any offering document relating to the Bonds or any other bonds issued under the Indenture.

Section 10.18. Waiver of Personal Liability. No member, officer, agent or employee of the Board or of the Bank shall be individually or personally liable for any payment hereunder or be subject to any personal liability or accountability by reason of the execution hereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

Section 10.19. WAIVER OF JURY TRIAL. THE BOARD HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY FOR ANY TRIAL RESULTING EITHER DIRECTLY OR INDIRECTLY OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE RELATED DOCUMENTS.

THE BOARD FURTHER AGREES THAT, IN THE EVENT OF LITIGATION, IT WILL NOT PERSONALLY OR THROUGH ITS AGENTS OR ATTORNEYS SEEK TO REPUDIATE THE VALIDITY OF THIS SECTION 10.20, AND IT ACKNOWLEDGES THAT IT FREELY AND VOLUNTARILY ENTERED INTO THIS AGREEMENT TO WAIVE TRIAL BY JURY IN ORDER TO INDUCE THE BANK TO ISSUE THE LETTER OF CREDIT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

STATE BOARD OF REGENTS OF THE
STATE OF UTAH

By: _____
Name _____
Title _____

DEPFA BANK PLC

By _____
Herbert F. Jacobs
General Manager

By _____
Carolyn Steinberg
Associate Director

APPENDIX A

DEPFA BANK PLC

IRREVOCABLE TRANSFERABLE LETTER OF CREDIT NO. LC04-016

October 29, 2004
U.S. \$37,462,465.75

Wells Fargo Bank National Association,
as Trustee and Tender Agent
79 S. Main Street
Salt Lake City, UT 84111

Attention: Corporate Trust Department Ladies and Gentlemen:

\$35,000,000
State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

At the request and for the account of State Board of Regents of the State of Utah (the "Issuer") pursuant to the Letter of Credit and Reimbursement Agreement, dated as of October 1, 2004 between the Issuer and the DEPFA BANK plc, acting through its New York Branch (the "Bank") as amended or supplemented from time to time pursuant to its terms, (the "Reimbursement Agreement"), the Bank hereby establishes this Irrevocable Letter of Credit (the "Letter of Credit") in your favor as Trustee and Tender Agent under the General Indenture, dated as of August 1, 1993, as amended by the First Supplemental Indenture dated as of August 1, 1993, as further amended and supplemented (the "Indenture"), by and between the Issuer and you, as Trustee, for the holders of the Issuer's above-referenced bonds (the "Bonds") in accordance with the following terms and conditions.

This Letter of Credit shall be subject to the following terms and conditions:

SECTION 1. Drawings. The Bank agrees to honor and pay the amount of each Drawing presented in strict compliance with all of the terms of this Letter of Credit.

Drawings under this Letter of Credit may be made only by presentment of a certificate in one of the following forms (each a "Payment Document" and collectively "Payment Documents") to the Bank:

(a) in the form attached hereto as Exhibit A, to pay accrued interest on the Bonds on each regularly scheduled Interest Payment Date (as defined in the Indenture) (an "Interest Drawing"); or

(b) in the form attached hereto as Exhibit B, to pay the principal of and, in the event the Redemption Date (as defined in the Indenture) does not coincide with a

regularly scheduled Interest Payment Date, accrued interest on the Bonds being redeemed (a “Redemption Drawing”); or

(c) in the form attached hereto as Exhibit C, to pay the principal of and, in the event the date of acceleration does not coincide with a regularly scheduled Interest Payment Date, accrued interest on the Bonds which have been accelerated (an “Acceleration Drawing”); or

(d) in the form attached hereto as Exhibit D (a “Regular Liquidity Drawing”) or Exhibit E (a “Same Day Liquidity Drawing” and, together with a Regular Liquidity Drawing, a “Liquidity Drawing”), in each case to pay on the Purchase Date (as defined in the Indenture) principal of and accrued interest on Bonds in the event a Purchase Demand (as defined in the Indenture) shall have been delivered to the Tender Agent (as defined in the Indenture) and, if applicable, the Remarketing Agent (as defined in the Indenture) shall not have remarketed all Or part of the Bonds; or

(e) in the form attached hereto as Exhibit F, to pay the principal of and, in the event the date of tender does not coincide with a regularly scheduled Interest Payment Date, accrued interest on the Bonds tendered following a Term Out Event (as defined in the Indenture) (a “Term-Out Tender Drawing”); or

(f) in the form attached hereto as Exhibit G, to pay the principal of and, in the event the Stated Maturity (as defined in the Indenture) thereof does not coincide with a regularly scheduled Interest Payment Date, accrued interest on any Bonds on the Stated Maturity of such Bonds (a “Stated Maturity Drawing”).

Each Payment Document shall state that it is given by your duly authorized officer and shall be dated the date the Payment Document is presented hereunder. No Drawing may be made under this Letter of Credit for Bank Bonds (as defined in the Reimbursement Agreement) or any Bond registered in the name of, or held for the account or benefit of, the Issuer, or any Bond bearing interest at a Fixed Rate (as defined in the Indenture) or an Intermediary Term Rate (as defined in the Indenture) (each, an “Excluded Bond”). No Drawing may be made in excess of the Available Amount (as hereinafter in Section 3 defined).

All Payment Documents shall be presented in person, by mail, by an express delivery service or by telecopy during our business hours on a Business Day prior to the expiration hereof at the office of DEPFA BANK plc, New York Agency, 623 Fifth Avenue, 22nd Floor, New York, New York 10022, Attention: Operations Manager (telephone - (917) 286-2000, facsimile - (917) 286-2050), or at such other address as the Bank may notify you in writing from time to time. As used herein, “Business Day” means the day other than (i) a Saturday or Sunday or (ii) a day on which the New York Stock Exchange or our office where demands for payment under this Letter of Credit are required to be made are closed. Each Drawing must be concurrently confirmed by telephone at telephone number (917) 286-2032, Attn: Operations Manager (or such other telephone number as the Bank may require by advance written notice to the Trustee and Tender Agent from time to time), provided that the failure to give such telephonic notice shall not affect the efficacy of any Drawing otherwise made in accordance herewith. Each Payment Document shall be marked: Attention: Letter of Credit Department (or such other

person as the Bank may require by advance written notice to the Trustee and Tender Agent from time to time).

All Drawings which may be made under this Letter of Credit may only be made by you, as the beneficiary of this Letter of Credit.

All Drawings under the Letter of Credit shall be subject to the Bank's receipt of the Payment Documents. Presentment of the Payment Documents shall be made on or before 3:00 p.m. New York (United States) time on the Business Day preceding the date payment is requested, except that presentment of Payment Documents for Same Day Liquidity Drawings shall be made at or before 12:00 Noon, New York (United States) time on the date payment is requested. If the Payment Document is timely and properly presented, payment shall be made to you of the amount specified, in immediately available funds, by 12:00 Noon, New York (United States) time, on the later of (i) the Business Day next succeeding the Business Day on which the related Payment Document was properly presented and (ii) the Business Day for which payment is requested, except that payment of Same Day Liquidity Drawings shall be made to the Tender Agent by 3:00 p.m. New York (United States) time on the later of (i) the Business Day on which the related Payment Document was properly presented, and (ii) the Business Day for which payment is requested. If such demand for payment is received by us on a day which is not a Business Day or after 3:00 p.m. (or 12:00 Noon for Same Day Liquidity Drawings) on a Business Day, such demand shall be deemed to have been received on the next Business Day.

Unless otherwise agreed or otherwise indicated in the certificate making a Letter of Credit demand for payment, payment under this Letter of Credit shall be made in immediately available funds to: [PLEASE PROVIDE]. All payments to be made hereunder shall be made from the funds of the Bank and, in no event, from funds obtained from the Board.

SECTION 2. Stated Amount. The maximum aggregate amount available under this Letter of Credit shall be \$37,462,465.75, which amount as from time to time reduced as provided in this Section 2 is hereinafter referred to as the "Stated Amount." The initial Stated Amount is equal to the principal amount of Bonds outstanding on the date hereof plus interest thereon calculated at twelve percent per annum for a period of 214 days based on a year of 365 days and the actual number of days elapsed.

Upon the honoring by the Bank of a Redemption Drawing or upon the receipt by the Bank of a Reduction Certificate in the form of Exhibit H hereto, the Bank will automatically and permanently reduce the Stated Amount of the Letter of Credit by the amount specified in the certificate effecting such Redemption Drawing or specified in such Reduction Certificate. Such reduction shall be effective as of the next Business Day following the date of delivery of either such certificate to the Bank and honoring of the Redemption Drawing. Upon such a reduction, we may require you to return this Letter of Credit and to accept in substitution hereof a substitute Letter of Credit for a Stated Amount reflecting such reduction, but otherwise identical in form and substance to this Letter of Credit.

SECTION 3. Available Amount; Reinstatement.

(a) The “Available Amount” of this Letter of Credit from time to time shall be the Stated Amount (i) less the aggregate amount of all Drawings made hereunder to the extent that such Drawings do not result in a reduction of the Stated Amount in accordance with Section 2 hereof (ii) plus the aggregate amount of all reinstatements as hereinafter in this Section 3 provided.

(b) The amount of any Interest Drawing hereunder, less the amount of the reduction in the Stated Amount of this Letter of Credit attributable to interest as specified in a certificate effectuating a Redemption Drawing or a Reduction Certificate, shall be automatically reinstated, without further notice to any Person, effective on the last Business Day occurring on or before the seventh calendar day following the date the Bank honors such Drawing, unless the Trustee and Tender Agent has received notice from the Bank by original document or facsimile prior to such Business Day that the amount of such Interest Drawing will not be reinstated because the Bank has not been reimbursed in full for such Interest Drawing or a Reimbursement Agreement Event of Default (as defined in the Reimbursement Agreement) has occurred and is continuing.

(c) The Bank shall reinstate all or a portion of the amount of a Liquidity Drawing by delivering by facsimile to the Trustee and Tender Agent and the Remarketing Agent a notice of reinstatement in the form attached hereto as Exhibit I immediately following release of Bank Bonds as described in Section 3.04(b) of the Reimbursement Agreement in an amount equal to the principal amount of Bank Bonds so released plus the interest portion of the related Liquidity Drawing for which the Bank shall have been reimbursed; provided that the Bank shall have no obligation to so make a reinstatement following a Liquidity Drawing if the Bank shall have advised the Trustee and Tender Agent by original document or facsimile that a Reimbursement Agreement Event of Default has occurred and is continuing and that as a consequence thereof reinstatement will not be made. Upon your receipt of any such notice of reinstatement, the amount available under this Letter of Credit with respect to principal of and interest on the Bonds shall be reinstated in the respective amounts set forth in such notice.

SECTION 4. Termination; Expiration Date. This Letter of Credit shall automatically terminate on the “Expiration Date,” which shall be the date and time on which the earliest of the following shall occur:

(a) the Bank’s close of business on _____, 2011; provided, that if the Bank provides you with a written notice in the form of Exhibit L hereto that this Letter of Credit shall be extended, the term of this Letter of Credit shall be extended to the date provided in such notice;

(b) the Bank’s close of business on the next Business Day following the day the Bank receives from you a Notice of Termination in the form of Exhibit J or a Reduction Certificate in the form of Exhibit H hereto which reduces the Stated Amount to zero; or

(c) the date and time on which the Bank honors an Acceleration Drawing, a Term-Out Tender Drawing or a Redemption Drawing or a Stated Maturity Drawing which reduces the Stated Amount to zero hereunder;

provided that if a circumstance contemplated by Rule 3.14 of 1SP98 (as hereinafter in Section 6 defined) has occurred which has prevented you from presenting a Drawing under this Letter of Credit for such purpose, or prevented the Bank from honoring a Drawing under this Letter of Credit for such purpose, on or before the "Expiration Date" determined as above provided (without giving effect to this proviso), then the Expiration Date shall occur on the earlier of the Bank's close of business on the date the Drawing is honored or the 15th day after the resumption of the Bank's business.

Upon termination, this Letter of Credit must be promptly delivered to the Bank for cancellation.

SECTION 5. Transfer. This Letter of Credit is transferable in whole only to your successor as Trustee and Tender Agent under the Indenture. Any such transfer (including any successive transfer) shall be effective upon receipt by the Bank of a signed copy of the Transfer Certificate in the form of Exhibit K hereto (which shall be conclusive evidence of such transfer) and, in such case, the transferee instead of the transferor shall, without the necessity of further action, be entitled to all the benefits of and rights under this Letter of Credit in the transferor's place; provided that, in such case, any certificates of the Trustee and Tender Agent to be provided hereunder shall be signed by an individual who states therein that he or she is a duly authorized officer or agent of the transferee.

SECTION 6. Miscellaneous. Communications with respect to this Letter of Credit shall be addressed to the Bank as follows:

DEPFA BANK plc
New York Branch
623 Fifth Avenue, 22nd Floor
New York, NY 10022
Attention: Carolyn Steinberg

(or to such other address and person as the Bank may require from time to time) and specifically referring to the number of this Letter of Credit.

A demand for payment under this Letter of Credit shall be presented directly to us and shall not be negotiated to or by any third party.

To the extent not inconsistent with the express terms hereof, this Letter of Credit shall be subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"). As to matters not governed by ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York.

This Letter of Credit, including Exhibits A through L, sets forth in full the terms of the Bank's undertaking, and such undertaking shall not in any way be modified or amended by reference to any other document whatsoever.

DEPFA BANK PLC, Acting Through Its New
York Branch

By _____
Herbert F. Jacobs
General Manager

By _____
Carolyn Steinberg
Associate Director

EXHIBIT A

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

INTEREST DRAWING CERTIFICATE

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000

State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

The undersigned individual, a duly authorized officer of Wells Fargo Bank, National Association (the "Trustee and Tender Agent"), hereby certifies as follows with respect to (i) that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), issued by the DEPFA BANK plc, acting through its New York Branch in favor of the undersigned; (ii) those certain Bonds (as defined in the Letter of Credit); and (iii) the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

1. The undersigned is the Trustee and Tender Agent under the Indenture.
2. The undersigned is entitled to make this Drawing in the amount of \$_____ under the Letter of Credit and under the Indenture with respect to the payment of interest due on all Bonds outstanding on the regularly scheduled Interest Payment Date occurring on _____ (the "Payment Date"), other than interest on Bank Bonds.
3. The amount of the Drawing is equal to the amount required to be drawn by the Trustee and Tender Agent pursuant to the Indenture and is payable on the Payment Date.
4. The amount of the Drawing made by this Certificate was computed in compliance with the terms and conditions of the Indenture and Letter of Credit and, when added to the amount of any other Drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount of the Letter of Credit as presently in effect.
5. The Payment Date is not after the Expiration Date.
6. No payment is being requested with respect to any Excluded Bond.

IN WITNESS WHEREOF, this Certificate has been executed this ____ day of _____,
_____.

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT B

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

REDEMPTION DRAWING CERTIFICATE

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000

State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

The undersigned individual, a duly authorized officer of Wells Fargo Bank, National Association (the "Trustee and Tender Agent"), hereby certifies on behalf of the Trustee and Tender Agent as follows with respect to (i) that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), issued by the DEPFA BANK plc in favor of the Trustee and Tender Agent; (ii) those certain Bonds (as defined in the Letter of Credit); and (iii) the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

- I. The undersigned is the Trustee and Tender Agent under the Indenture.
2. The undersigned is entitled to make this Drawing under the Letter of Credit and the Indenture. This Drawing is payable on _____ (the "Redemption Date").
3. The amount of this Drawing is \$_____, which is equal to:
 - (i) the principal of Bonds to be redeemed by the Board pursuant to Section 2.10(A), (B), or (C) of the First Supplemental Indenture on the Redemption Date other than Bank Bonds, said principal amount being the sum of \$_____ plus
 - (ii) if the Redemption Date does not coincide with an Interest Payment Date, interest on such Bonds accrued and unpaid to the Redemption Date, said interest being the sum of \$_____.

The amount of the Drawing made by this Certificate was computed in compliance with the terms and conditions of the Indenture and, when added to the amount of any other Drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount.

4. Upon payment of the amount drawn hereunder, the Bank is hereby directed permanently to reduce the Stated Amount by \$_____, of which:

(i) the amount specified in paragraph 3(i) is attributable to principal of the Bonds redeemed, and

(ii) if paragraph 3(ii) hereof is applicable, \$_____ is attributable to interest on the Bonds redeemed computed as provided in the Indenture.

5. Upon payment of the amount drawn hereunder, the Stated Amount shall be \$_____.

6. The Redemption Date is not after the Expiration Date.

7. No payment is being requested with respect to any Excluded Bond.

IN WITNESS WHEREOF, this Certificate has been executed this ____day of _____, _____.

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT C

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

ACCELERATION DRAWING CERTIFICATE

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000

State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

The undersigned individual, a duly authorized officer of Wells Fargo Bank, National Association (the "Trustee and Tender Agent"), hereby certifies on behalf of the Trustee and Tender Agent as follows with respect to (i) that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), issued by the DEPFA BANK plc in favor of the Trustee and Tender Agent; (ii) those certain Bonds (as defined in the Letter of Credit); and (iii) the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

1. The undersigned is the Trustee and Tender Agent under the Indenture.

2. An Event of Default has occurred under Section 10.1 of the General Indenture, and the Trustee and Tender Agent has declared the principal of and accrued interest on all Bonds then outstanding immediately due and payable pursuant to Section 10.2(A)(5) of the General Indenture. The Trustee and Tender Agent is entitled to make this Drawing under the Letter of Credit and the Indenture, including without limitation Section 5.5 of the General Indenture. This Drawing is payable on _____ (the "Acceleration Date").

3. The amount of this Drawing is \$_____, which is equal to:

(i) the principal of Bonds outstanding on the Acceleration Date other than Bank Bonds, said principal amount being the sum of \$_____, plus

(ii) if the Acceleration Date does not coincide with an Interest Payment Date, interest on such Bonds accrued and unpaid to the Acceleration Date, said interest being the sum of \$_____.

The amount of the Drawing made by this Certificate was computed in compliance with the terms and conditions of the Indenture and, when added to the amount of any other Drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount.

4. The Acceleration Date is not after the Expiration Date.
5. Upon payment of the amount drawn hereunder, the Letter of Credit shall be terminated in accordance with the provisions thereof.
6. No payment is being requested with respect to any Excluded Bond.

IN WITNESS WHEREOF, this Certificate has been executed this ____ day of _____,
_____.

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT D

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

REGULAR LIQUIDITY DRAWING CERTIFICATE

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000

State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

The undersigned individual, a duly authorized officer of Wells Fargo Bank, National Association (the "Trustee and Tender Agent"), hereby certifies on behalf thereof as follows with respect to (i) that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), issued by the DEPFA BANK plc in favor of the Trustee and Tender Agent; (ii) those certain Bonds (as defined in the Letter of Credit); and (iii) the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

1. The undersigned is the Trustee and Tender Agent under the Indenture.
2. The undersigned is entitled to make this Drawing under the Letter of Credit and the Indenture, including without limitation Section 2.15(D) of the First Supplemental Indenture, with respect to the payment of the purchase price of Bonds for which a Purchase Demand has been delivered and for which sufficient moneys to effect a purchase are not otherwise available. The Drawing is payable on _____, which is the Purchase Date.
3. The amount of this Drawing is equal to the Purchase Price (as defined in the Indenture), being the amount of \$ _____, which is:
 - (i) \$_____ in respect of the principal of Bonds to be purchased plus
 - (ii) if the Purchase Date does not coincide with an Interest Payment Date, interest on such Bonds accrued and unpaid to the Purchase Date, said interest being the sum of \$_____.

The amount of the Drawing made by this Certificate was computed in compliance with the terms and conditions of the Indenture and, when added to the amount of any other Drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount.

4. Upon payment of the amount drawn hereunder, the undersigned will note on its records that Bonds in the amount specified in 3(i) above are Bank Bonds and will direct Depository Trust Company to note on its records that Bonds in said amount are to be credited to the account of the Direct Participant (as defined in the Indenture) designated by the Bank.

5. The Purchase Date is not after the Expiration Date.

6. No payment is being requested with respect to any Excluded Bond.

IN WITNESS WHEREOF, this Certificate has been executed this ____ day of _____,
_____.

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT E
DEPFA BANK PLC
LETTER OF CREDIT NO. LC04-016
SAME DAY LIQUIDITY DRAWING CERTIFICATE

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000
State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

The undersigned individual, a duly authorized officer of Wells Fargo Bank, National Association (the "Trustee and Tender Agent"), hereby certifies on behalf thereof as follows with respect to (i) that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), issued by the DEPFA BANK plc in favor of the Trustee and Tender Agent; (ii) those certain Bonds (as defined in the Letter of Credit); and (iii) the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

1. The undersigned is the Trustee and Tender Agent under the Indenture.
2. The undersigned is entitled to make this Drawing under the Letter of Credit and the Indenture, including without limitation Section 2.17(C) of the First Supplemental Indenture, with respect to the payment of the purchase price of Bonds for which a Purchase Demand has been delivered and for which sufficient moneys to effect a purchase are not otherwise available. The Drawing is payable on this date, which is the Purchase Date.
3. The amount of this Drawing is equal to the Purchase Price (as defined in the Indenture), being the amount of \$_____, which is:
 - (i) \$_____ in respect of the principal of Bonds to be purchased, and
 - (ii) if the Purchase Date does not coincide with an Interest Payment Date, interest on such Bonds accrued and unpaid to the Purchase Date, said interest being the sum of \$_____.

The amount of the Drawing made by this Certificate was computed in compliance with the terms and conditions of the Indenture and, when added to the amount of any other Drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount.

4. Upon payment of the amount drawn hereunder, the undersigned will note on its records that Bonds in the amount specified in 3(i) above are Bank Bonds and will direct Depository Trust Company to note on its records that Bonds in said amount are to be credited to the account of the Direct Participant (as defined in the Indenture) designated by the Bank.

5. The Purchase Date is not after the Expiration Date.

6. No amount is being requested with respect to any Excluded Bond.

Dated: _____

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT F

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

TERM-OUT TENDER DRAWING CERTIFICATE

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000

State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

The undersigned individual, a duly authorized officer of Wells Fargo Bank, National Association (the "Trustee and Tender Agent"), hereby certifies on behalf of the Trustee and Tender Agent as follows with respect to (i) that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), issued by the DEPFA BANK plc in favor of the Trustee and Tender Agent; (ii) those certain Bonds (as defined in the Letter of Credit); and (iii) the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

1. The undersigned is the Trustee and Tender Agent under the Indenture.
2. The undersigned is entitled to make this Drawing under the Letter of Credit and the Indenture, including without limitation Section 2.15(D) of the First Supplemental Indenture. This Drawing is payable on _____ (the "Term-Out Tender Date").
3. The amount of this Drawing is \$_____, which is equal to:
 - (i) the principal of Bonds to be tendered to the Board pursuant to Section 2.13(B)(iii) of the First Supplemental Indenture on the Term-Out Tender Date (as defined in the Indenture) other than Bank Bonds, said principal amount being the sum of \$_____ plus
 - (ii) if the Term-Out Tender Date does not coincide with an Interest Payment Date, interest on such Bonds accrued and unpaid to the Term-Out Tender Date, said interest being the sum of \$_____.

The amount of the Drawing made by this Certificate was computed in compliance with the terms and conditions of the Indenture and, when added to the amount of any other Drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount.

4. The Term-Out Tender Date is not after the Expiration Date.
5. Upon payment of the amount drawn hereunder, the Letter of Credit shall be terminated in accordance with the provisions thereof.
6. No amount is being requested with respect to any Excluded Bond.

IN WITNESS WHEREOF, this Certificate has been executed this ____ day of _____,
_____.

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT G

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

STATED MATURITY DRAWING CERTIFICATE

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000

State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

The undersigned individual, a duly authorized officer of Wells Fargo Bank, National Association (the "Trustee and Tender Agent and Tender Agent"), hereby certifies on behalf of the Trustee and Tender Agent and Tender Agent as follows with respect to (i) that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), issued by the DEPFA BANK plc in favor of the Trustee and Tender Agent and Tender Agent; (ii) those certain Bonds (as defined in the Letter of Credit); and (iii) the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

1. The undersigned is the Trustee and Tender Agent and Tender Agent under the Indenture.
2. The undersigned is entitled to make this Drawing under the Letter of Credit and the Indenture. This Drawing is payable on _____ (the "Stated Maturity Date").
3. The amount of this Drawing is \$_____, which is equal to:
 - (i) the principal of Bonds outstanding on the Stated Maturity Date other than Bank Bonds, said principal amount being the sum of \$_____, plus
 - (ii) if the Stated Maturity Date does not coincide with an Interest Payment Date, interest on such Bonds accrued and unpaid to the Stated Maturity Date, said interest being the sum of \$_____.

The amount of the Drawing made by this Certificate was computed in compliance with the terms and conditions of the Indenture and, when added to the amount of any other Drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount.

4. The Stated Maturity Date is not after the Expiration Date.

5. Upon payment of the amount drawn hereunder, the Bank is hereby directed to permanently reduce the Stated Amount by \$_____, of which:

(i) the amount specified in paragraph 3(i) is attributable to principal of the Bonds maturing on the Stated Maturity Date; and

(ii) \$_____ is attributable to interest on the Bonds maturing on the Stated Maturity Date.

6. Upon payment of the amount drawn hereunder, the Stated Amount shall be \$_____.

7. No amount is being requested with respect to any Excluded Bond.

IN WITNESS WHEREOF, this Certificate has been executed this ____ day of _____, _____.

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT H

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

REDUCTION CERTIFICATE

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000

State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

The undersigned individual, a duly authorized officer of Wells Fargo Bank, National Association (the "Trustee and Tender Agent"), hereby certifies on behalf of the Trustee and Tender Agent as follows with respect to (i) that certain Letter of

Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), issued by the DEPFA BANK plc in favor of the Trustee and Tender Agent; (ii) those certain Bonds (as defined in the Letter of Credit); and (iii) the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

1. The undersigned is the Trustee and Tender Agent under the Indenture.
2. The undersigned is entitled to submit this certificate by the Letter of Credit and the Indenture.
3. Upon receipt by the Bank of this Certificate, the Bank is hereby directed permanently to reduce the Stated Amount by \$ _____, of which:
 - (i) \$ _____ is attributable to principal of the Bonds and
 - (ii) \$ _____ is attributable to interest on the Bonds computed at twelve percent per annum for a period of 214 days based on a year of 365 days and the actual number of days elapsed.
4. After such reduction, the Stated Amount shall be \$ _____.
5. The reason this Reduction Certificate is being submitted is [describe reason for reduction].

IN WITNESS WHEREOF, this Reduction Certificate has been executed this ____ day of _____, _____.

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT I

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

NOTICE OF REINSTATEMENT

Wells Fargo Bank, National Association
79 S. Main Street
Salt Lake City, UT 84111

Attention: Corporate Trust Department

\$35,000,000
State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

Ladies and Gentlemen:

Reference is hereby made to that certain Letter of Credit No. LO04-016 dated October 29, 2004 (the "Letter of Credit"), which has been established for the account of the State Board of Regents of the State of Utah in favor of Wells Fargo Bank, National Association, as Trustee and Tender Agent under the Indenture (as defined in the Letter of Credit). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

This constitutes our notice to you that the Available Amount of the Letter of Credit has been reinstated by the amount of \$_____, which represents:

(i) the principal amount of Bonds which have been resold by the undersigned in accordance with the provisions of Sections 3.04 and 3.06 of the Letter of Credit and Reimbursement Agreement, being the sum of \$_____, plus

(ii) the Interest Portion of the Liquidity Drawing (as defined in the Reimbursement Agreement) for which the Bank has been reimbursed in accordance with the Reimbursement Agreement.

The Available Amount of the Letter of Credit, as of the date of this notice and after giving effect to the reinstatement referred to herein, is \$_____.

IN WITNESS WHEREOF, the undersigned, on behalf of the Bank, have executed and delivered this Notice of Reinstatement as of the ____ day of _____, ____.

Very truly yours,

DEPFA BANK PLC, acting through its New York Branch

By _____
Name _____
Title _____

By _____
Name _____
Title _____

EXHIBIT J

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

NOTICE OF TERMINATION

(Date of Notice)

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000
State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

Ladies and Gentlemen:

Reference is hereby made to that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), which has been established for the account of the State Board of Regents of the State of Utah in favor of Wells Fargo Bank, National Association, as Trustee and Tender Agent under the Indenture. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings herein as defined in the Letter of Credit.

Each of the undersigned hereby certify and confirm that [describe reason for termination], and accordingly the Letter of Credit shall be terminated in accordance with the provisions of Section of the [General Indenture or First Supplemental Indenture].

STATE BOARD OF REGENTS OF THE
STATE OF UTAH

By _____
Name _____
Title _____

Wells Fargo Bank, National Association, as
Trustee and Tender Agent

By _____
Name _____
Title _____

EXHIBIT K
DEPFA BANK PLC
LETTER OF CREDIT NO. LC04-016
TRANSFER CERTIFICATE

(Date of Certificate)

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022

Attention: Letter of Credit Department

\$35,000,000
State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

Ladies and Gentlemen:

Reference is hereby made to that certain Letter of Credit No. LC04-016 dated October 29, 2004 (the "Letter of Credit"), which has been established for the account of the State Board of Regents of the State of Utah in favor of Wells Fargo Bank, National Association, as Trustee and Tender Agent under the Indenture (as defined in the Letter of Credit).

The undersigned [Name of Transferor] has transferred and assigned (and hereby confirms to you said transfer and assignment) all of its rights in and under the Letter of Credit to [Name of Transferee] and confirms that [Name of Transferor] no longer has any rights under or interest in the Letter of Credit.

Transferor and Transferee have indicated on the face of the Letter of Credit that it has been transferred and assigned to Transferee.

Transferee hereby certifies that it is a duly authorized Transferee under the terms of the Letter of Credit and is accordingly entitled, upon presentation of the documents called for therein, to receive payment thereunder.

By

[Name of Transferor]

Name and Title of Authorized Officer of
Transferor]

By

[Name of Transferee]

[Name and Title of Authorized Officer of
Transferee]

By

EXHIBIT L

DEPFA BANK PLC

LETTER OF CREDIT NO. LC04-016

NOTICE OF EXTENSION

Wells Fargo Bank, National Association, as Trustee and Tender Agent
79 S. Main Street
Salt Lake City, UT 84111

Attention: Corporate Trust Trustee and Tender Agent Administration

\$35,000,000

State Board of Regents of the State of Utah
Student Loan Revenue Bonds
Series 1993A

Dear Sir/Madam:

The undersigned, the duly authorized officers of DEPFA BANK plc, acting through its New York Branch (the "Bank"), hereby advise you, with reference to the above-referenced Irrevocable Letter of Credit (the "Letter of Credit"; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in your favor, that:

- (1) At the request and for the account of the Issuer, we hereby extend the date referenced in paragraph 4(a) of the Letter of Credit (as such date may have been extended previously from time to time) to _____.
- (2) Except as specifically provided in paragraph (1) above, all of the terms and conditions of the Letter of Credit remain unchanged and in full force and effect.
- (3) This Notice of Extension is an integral part of the Letter of Credit.

IN WITNESS WHEREOF, the undersigned, on behalf of the Bank, have executed and delivered this Notice of Extension as of the _____ day of _____, ____.

DEPFA BANK plc, acting through its New York Branch

By _____
Name _____
Title _____

By _____
Name _____
Title _____

APPENDIX B

COLLATERAL RATIO CERTIFICATE

State Board of Regents of the State of Utah
Student Loan Revenue Bonds Series 1993A

Collateral Ratio Certificate as of _____
(Testing Date)

Delivered pursuant to the Letter of Credit and Reimbursement Agreement (“Agreement”) dated as of October 1, 2004 between the State Board of Regents of the State of Utah (the “Authority”) and DEPFA BANK plc. Capitalized terms used herein have the meanings set forth in the Agreement.

I. ASSETS

1. Aggregate Market Value of Financed Eligible Loans which are no more than 270 days delinquent (unless a claim has been filed by the 270th day and has not been denied, rejected or returned, in which case, the loan may be included until such time as the loan is no more than 330 days delinquent). (Based on written reports of the Servicer, which reports are available to the Bank upon request):

Aggregate Principal Balance \$ _____

PLUS

A. Accrued borrower interest on such Eligible Loans. \$ _____

B. Accrued Special Allowance Payments on such Eligible Loans. \$ _____

C. Accrued interest subsidy payments on such Eligible Loans. \$ _____

2. Aggregate Market Value of cash and Investment Securities in the following funds and accounts held by the Trustee and Tender Agent.

A. Acquisition Fund \$ _____

B. Revenue Fund \$ _____

C. Restricted Yield Fund \$ _____

D. Debt Service Reserve Fund \$ _____

E. Credit Proceeds Fund \$ _____

3. Payments on account of Financed Eligible Loans received and not credited to accounts held by Trustee and Tender Agent.
\$ _____
4. Less: All Rebate Amounts (other than for the payment of which Amounts have already been withdrawn from the funds and accounts listed under I.2 above) as defined in the Indenture. (\$ _____)
5. TOTAL ASSETS \$ _____

II. LIABILITIES

1. Aggregate principal amount of Outstanding Series 1993A Bonds. \$ _____
2. Accrued and unpaid interest on Outstanding Series 1993A Bonds. \$ _____
3. Accrued and unpaid Program Expenses, other than for the payment of which amounts have already been withdrawn from the funds and accounts listed under I.2 above. \$ _____
4. Amounts owed to the Bank under the Agreement. \$ _____
5. TOTAL LIABILITIES \$ _____

III. COLLATERAL RATIO

1. Asset Coverage Ratio:

A. $\frac{\text{Total Assets (I.5)}}{\text{Total Liabilities (II.5)}} = \$ \frac{\text{_____}}{\$ \text{_____}} = \frac{\text{_____}}{\text{_____}}$ (2 decimals)

B. Collateral Ratio on the immediately preceding Testing Date: = \$ _____ = \$ _____ (2 decimals)

2. Collateral Ratio Requirement _____%
3. The quotient on line III. 1.A. mathematically exceeds _____%.

IV. OTHER INFORMATION

1. Average Borrower Indebtedness of all Financed Eligible Loans. \$ _____
2. Principal Balance of all Financed Eligible Loans. \$ _____

IN WITNESS WHEREOF, the Authority, as to all items in I.1., I.3-5, II.3-5, III. 1-2 and IV., has caused this Certificate to be signed by its duly authorized officer.

STATE BOARD OF REGENTS OF THE
STATE OF UTAH -

By: _____

Name: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, as to all items in I.2., II. 1-2, and III.3., the Trustee and Tender Agent has caused this Certificate to be signed by its duly authorized officer.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee and Tender Agent

By: _____

Name: _____

Title: _____

Date: _____

October 12, 2004

MEMORANDUM

TO: State Board of Regents

FROM: Richard E. Kendell

SUBJECT: Authorizing Resolution for the Execution and Delivery of a First Amendment to Huntsman Cancer Institute Sublease Agreement

Background

The State Building Ownership Authority (BOA) periodically refunds bonds to achieve debt service savings. The BOA recently refunded bonds issued in 1996 for the construction of the Huntsman Cancer Institute in order to reduce debt service costs.

Issue

In 1996 the State of Utah, through the Building Ownership Authority (BOA), issued lease revenue bonds (Series 1996B) for the construction of the Huntsman Cancer Institute(HCI). The BOA subleased the building to the University of Utah, establishing a lease rate sufficient to cover debt service. The refunding issue (Series 2004B) reduces the lease amount needed to cover debt service by approximately \$40,000 per year over the next nine years. The attached resolution establishes the new lease rate to allow for savings to remain with the Institute.

Debt service is funded by HCI revenue. No state tax funds nor student fees are used for this purpose.

Recommendation

The Commissioner recommends that the Regents review and approve the attached lease amendment.

Richard E. Kendell, Commissioner

RK/KW

October 12, 2004

MEMORANDUM

TO: State Board of Regents
FROM: Richard E. Kendell
SUBJECT: Fall 2004-05 Enrollment Report

Issue

The attached report summarizes the 2004-05 Summer and Fall 3rd week enrollment figures for all institutions except UCAT. UCAT's open-entry, open-exit, competency-based education precludes them from reporting at Fall 3rd Week. Excluding UCAT, total budget-related and self-supporting student FTE for Fall 2004 at 3rd week was 100,067. The 100,067 FTE represents system growth of 817 FTE -- a 0.82% overall increase in FTE when compared with the same period last year. The system headcount for Fall Semester at 3rd week was 144,873 students -- a 2.80% increase over last year.

Background

Summer and Fall 3rd week enrollments are arrayed in the attached report and tables. Enrollments have been reported in compliance with Board policy. Budget-related and self-supporting figures for both Summer and Fall 3rd Week Semesters are included.

Recommendation

This item is for information only. No action is required.

Richard E. Kendell, Commissioner

REK/MHS/BRF

**UTAH SYSTEM OF HIGHER EDUCATION
2004-05 Fall Semester 3rd Week Enrollment Report**

Methodology

After the end of Summer Semester and after the fifteenth day of Fall Semester, USHE institutions (excluding UCAT) send data files to the Commissioner's Office containing headcount and FTE enrollment data. From these data, OCHE staff members prepare reports summarizing institutional and system-wide enrollments for the two semesters. This report complies with Board policy requiring institutions to report budget-related and self-supporting enrollments according to a prescribed set of enrollment definitions. The report also complies with other system-wide enrollment definitions and standards.

Summary Information

Budget-related FTE enrollments for Fall 2004 Semester compared to Fall 2003 Semester are summarized below. Self-supporting enrollments for the same period are also summarized below. Self-supporting courses include correspondence courses, certain contract courses, conferences, workshops, out-of-state courses, external instruction courses, certain concurrent enrollment courses, and remedial courses at UofU, USU, WSU and SUU. No state operating funding is requested for these courses.

Fall 2003 Compared to Fall 2004

Institution	Budget-Related FTE Enrollment			Self-Supporting FTE Enrollment			Total FTE		
	Fall 2003	Fall 2004	% Change	Fall 2003	Fall 2004	% Change	Fall 2003	Fall 2004	% Change
UU	23,234	23,605	1.60%	193	362	87.56%	23,427	23,967	2.31%
USU	16,317	16,122	-1.20%	917	1,091	18.97%	17,234	17,213	-0.12%
WSU	12,519	12,062	-3.65%	1,194	1,275	6.78%	13,713	13,337	-2.74%
SUU	4,788	4,981	4.03%	134	254	89.55%	4,922	5,235	6.36%
Snow	2,573	2,683	4.28%	308	301	-2.27%	2,881	2,984	3.58%
DSC	4,298	4,253	-1.05%	127	265	108.66%	4,425	4,518	2.10%
CEU	1,769	1,795	1.47%	133	75	-43.61%	1,902	1,870	-1.68%
UVSC	14,865	14,585	-1.88%	1,447	1,754	21.22%	16,312	16,339	0.17%
SLCC	14,213	14,320	0.75%	221	284	28.51%	14,434	14,604	1.18%
Total	94,576	94,406	-0.18%	4,674	5,661	21.12%	99,250	100,067	0.82%

The following table summarizes the increases in headcount enrollments.

**Total Enrollment
Headcount
Fall 2003 Compared to Fall 2004**

Institution	Fall 2003	Fall 2004	% Change
UU	29,878	30,415	1.80%
USU	23,474	23,908	1.85%
WSU	19,167	18,875	-1.52%
SUU	6,048	6,672	10.32%
Snow	4,036	4,108	1.78%
DSC	7,682	8,564	11.48%
CEU	2,692	2,471	-8.21%
UVSC	23,803	24,149	1.45%
SLCC	24,152	25,711	6.45%
Total	140,932	144,873	2.80%

MEMORANDUM

October 12, 2004

TO: State Board of Regents
FROM: Richard E. Kendell
SUBJECT: UHEAA Board of Directors' Report on UESP

Issue

This memorandum presents the results of the UESP audit by the Utah State Auditor and the UHEAA internal auditor, and provides a brief summary of "lessons learned" as a result of these audits.

Discussion

On September 24, 2004, State Auditor Auston G. Johnson released Report No. 05-608f regarding allegations of fraud in the Utah Educational Savings Plan Trust (UESP). On the same day, UHEAA management authorized public release of the report of the internal audit of UESP conducted by Mr. Paul Packard. We commend Mr. Packard for his thorough report, and acknowledge the work of the UHEAA Audit Committee, chaired by Mr. Walt Gnemi, during the process of the audit.

State Auditor Johnson indicates that "we agree with the findings and recommendations included in the UHEAA Internal Audit report, *Allegations of Questionable Transactions – Utah Educational Savings Plan Trust (UESP)*, dated August 16, 2004. We recommend that UHEAA take appropriate actions to correct the control weaknesses that allowed these problems to occur."

Mr. Johnson also states, "We commend UHEAA and its employees for having established a healthy control environment where suspicious activities are reported in a timely and appropriate manner."

UHEAA management appreciates the recommendations from Mr. Packard and Mr. Johnson. Within two weeks of the first report of these allegations, steps were taken to correct weaknesses in separation of duties in authorization, recordkeeping, and disbursements. These corrective actions are summarized in Attachment 1. A new systems program which controls these functions is currently in final testing.

State Board of Regents
October 12, 2004

In addition, we are very pleased that Ms. Lynne Ward has agreed to join the Office of the Commissioner and UHEAA as director of UESP and special assistant to the Commissioner. Ms. Ward's extensive experience in auditing, state finance, and with the Office of the Governor, will be a tremendous asset to the program.

The state audit report is included as Attachment 2. The internal audit report is included as Attachment 3. A recent *UESP Participant Newsletter* is Attachment 4.

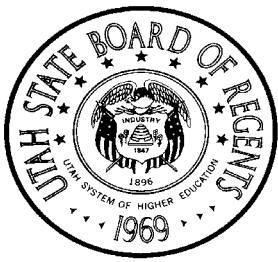
Recommendation

This report is for information only.

Sincerely,

Richard E. Kendell, Commissioner

REK/MHS
Attachments



PRESS RELEASE

Utah System of Higher Education

FOR IMMEDIATE RELEASE
September 24, 2004

Contact: David Buhler 801-321-7162

Reaction to State Auditor's Report on Utah Education Savings Program

Statement by Dr. Mark Spencer, Interim Executive Director of the Utah Higher Education Assistance Authority

I am pleased that the State Auditor corroborates the work of our own internal auditor which discovered the misappropriation of funds by the former Director of UESP. Thanks to UESP employees who came forward when they noticed some irregularities, we were able to take quick action to address this unfortunate situation. As we announced on July 7, none of the money deposited by individual investors was misappropriated—no investors were harmed. Although the diversion involved administrative funds, this is a very serious matter and we acted decisively to correct the situation beginning with the immediate termination of the person responsible. As our own internal audit pointed out, internal controls needed to be strengthened and we acted immediately to do so in July when this was first discovered. Specifically, in July management took the following actions:

1. Separation of Authorization and Recordkeeping.
 - a. Employees responsible for opening new UESP accounts are prohibited from entering, modifying or deleting participant transactions.
 - b. Quarter end processing must be performed by both the Financial Officer—UESP Administration and the Associate Executive Director for Accounting, approved by both individuals and submitted to the Deputy Executive Director for Finance for approval.
 - c. All transaction entry requiring the use of the delete function shall be submitted in writing, describing in sufficient detail the purpose of the adjustment, to the Deputy Executive Director for Finance for his approval before entry. Documentation must be submitted to accounting when the transaction is complete.
2. Recordkeeping—Employees with administrative access are prohibited from creating new accounts, posting participant investments, entering adjustments (other than administrative level adjustments) or creating disbursement vouchers.
3. Separation of duties—Any two of the following tasks will not be performed by any one employee of UESP:
 - a. Creation of a new UESP account
 - b. Adjustments to an existing UESP account
 - c. Entering and posting an investment to a UESP account
 - d. Creating a disbursement request for a UESP account
 - e. Quarter end processing

Computer software upgrades are underway and will be implemented in December that will further strengthen the new controls already in place. We appreciate the cooperation of the State Auditor and his office in addressing this situation.

The Utah Educational Savings Plan was established by the Legislature in 1996 as a way to encourage college savings. It has consistently been ranked as one of the top such plans in the nation. Currently there are more than 48,000 accounts, with total balances of more than \$790 million. The program is overseen by the State Board of Regents and the UHEAA Board of Directors. ###

The Utah System of Higher Education includes the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State College of Utah, College of Eastern Utah, Utah Valley State College, Salt Lake Community College, Utah College of Applied Technology.



Auston G. Johnson, CPA
UTAH STATE AUDITOR

STATE OF UTAH
Office of the State Auditor

UTAH STATE CAPITOL COMPLEX
EAST OFFICE BUILDING, SUITE E310
P.O. BOX 142310
SALT LAKE CITY, UTAH 84114-2310
(801) 538-1025
FAX (801) 538-1383

DEPUTY STATE AUDITOR:
Joe Christensen, CPA

AUDIT DIRECTORS:
H. Dean Eborn, CPA
Deborah A. Empey, CPA
Stan Godfrey, CPA
Jon T. Johnson, CPA

Report No. 05-608f

September 24, 2004

To the Board of Directors and Audit Committee
Utah Higher Education Assistance Authority
and
Richard E. Kendell, Commissioner of Higher Education

On July 2, 2004, the Utah Higher Education Assistance Authority (UHEAA) contacted the Utah State Auditor's Office concerning allegations of fraud in the Utah Educational Savings Plan Trust (UESP) and requested assistance in evaluating the allegations and in helping to identify issues for further consideration.

The allegations came from several UESP employees who had noted, and reported to UHEAA management on June 15, 2004, questionable transactions made by the Deputy Executive Director for College Savings (UESP Director). At the direction of UHEAA management, the UHEAA Internal Auditor began an investigation of these allegations on the same day. The Internal Auditor's work identified violations of conflict of interest laws which resulted in the termination of the UESP Director on July 6, 2004. The Internal Auditor's final report titled, "Allegations of Questionable Transactions – Utah Educational Savings Plan Trust (UESP)," dated August 16, 2004, addressed three findings including: violations of conflict of interest laws, misappropriated funds totaling \$85,500 and attempted misappropriation of funds totaling an additional \$203,400, and internal control weaknesses related to the UESP computer system.

The Utah State Auditor's Office has assisted in evaluating the allegations by performing the following:

1. Reviewing the documentation of, and in some cases reperforming, the work performed by the internal auditor.
2. Issuing subpoenas for and reviewing banking records related to the allegations.
3. Reviewing UESP system transactions for the period of July 1, 2002 through June 30, 2004 for potential improper disbursements related to the allegations.
4. Reviewing UESP disbursements for the period October 1, 1999 through July 31, 2004 for potential improper disbursements related to the allegations.

5. Performing a registered principal search through the Utah Department of Commerce to identify additional business names to which improper disbursements may have been made.

Based on the procedures that we performed as listed above, we agree with the findings and recommendations included in the UHEAA Internal Audit report, "Allegations of Questionable Transactions – Utah Educational Savings Plan Trust (UESP)," dated August 16, 2004. We recommend that UHEAA take appropriate actions to correct the control weaknesses that allowed these problems to occur.

We commend UHEAA and its employees for having established a healthy control environment where suspicious activities are reported and addressed in a timely and appropriate manner.

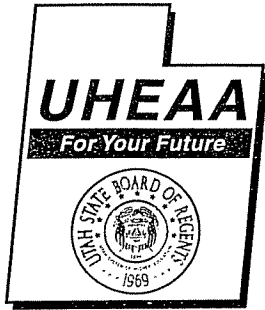
Any questions concerning this letter should be directed to Jon Johnson, Audit Director, at 538-1359.

Sincerely,



Auston G. Johnson, CPA
Utah State Auditor

cc: Nolan Karras, Chairman, Utah State Board of Regents
Richard Davis, Assistant Commissioner for Student Loans
Mark Spencer, Acting Executive Director of UHEAA
Dave Schwanke, Associate Executive Director for Accounting and Finance
Paul Packard, UHEAA Internal Auditor



Utah Higher Education Assistance Authority

Utah Student Loan Guarantee Program (LGP)
Utah State Board of Regents Loan Purchase Program (LPP)
Utah Centennial Opportunity Program For Education (UCOPE)
Utah Educational Savings Plan Trust (UESP)

August 16, 2004

Dr. Mark H. Spencer
Acting Executive Director
Utah Higher Education Assistance Authority
60 South 400 West
Salt Lake City, Utah 84101-1284

Dear Acting Director Spencer:

I have completed a review of **allegations of questionable transactions** pertaining to the **Utah Educational Savings Plan Trust (UESP)**.

On June 15, 2004, several UESP employees came forward with allegations concerning questionable transactions made by the Director of UESP. My review of the allegations began that same day. The purpose of the review was to determine whether the allegations had merit and to identify issues for further consideration and action by the UESP trust. Those issues and my comments along with responses from UESP are included in the attached schedule.

I appreciate the courtesy and cooperation I received from the UESP operations and accounting staff during this review. I will conduct a compliance review on this report in approximately six months.

Sincerely,

Paul I. Packard, CPA
Manager of Internal Audit

Utah Higher Education Assistance Authority
Review of: Allegations of Questionable Transactions - UESP - August 2004
Issues, Comments and Responses

ITEM #1: CONFLICT OF INTEREST LAWS HAVE BEEN VIOLATED

Issue: During the audit, it was determined that the Deputy Executive Director for College Savings (UESP Director) (who is an attorney and CPA) had been performing legal and tax work for clients outside of his UESP duties. On May 22, 2002, the UESP Director set up 25 UESP accounts in his own name for a client for whom he was trustee. In a letter to his client, dated June 17, 2002, the UESP Director indicated the accounts were set up in this manner because he did not have the required signatures or forms filled out from the client and her children. That is a violation of UESP procedures.

In the letter to his client, dated June 17, 2002, the UESP Director indicated:

“You previously asked me to send you a bill. I have been thinking since our meeting on Saturday that there is a way to compensate me without having you pay any additional money. There are some potential state tax benefits associated with opening some of the accounts for your grandchildren (those who are under age 19). You will be unable to use the tax deduction because you already have a retirement exemption/deduction. If you will allow me to keep my name on the accounts of the grandchildren until January (I had to set them up initially in my name because I didn’t have the required signatures or forms filled out from you and your children), I will be able to take the state tax deduction. That will be sufficient to offset my billing (and do your next year’s tax return without cost).”

“The accounts are set up with each of your 19 grandchildren as beneficiaries of \$2,000 accounts and your children as the substitute (subsequent owners). I will transfer the ownership into your name in January (or to your children if something were to happen to you).”

“I will transfer the ownership of the \$31,000 accounts for your children ... to you immediately since there are no tax benefits associated with those accounts. You will receive statements in July for those six accounts.”

In a July 1, 2004 meeting with UHEAA management, the UESP Director admitted he received a tax benefit from the 19 accounts identified above. If the UESP Director received a tax benefit as admitted, he would have received a tax

Utah Higher Education Assistance Authority
Review of: Allegations of Questionable Transactions - UESP - August 2004
Issues, Comments and Responses

deduction of up to \$26,790 (19 accounts @ \$1,410 each) for funds which belonged to his client. This appears to be a violation of the Utah State Tax Code.

In addition to establishing and performing transactions in the 25 UESP accounts for his client, the UESP Director also established and performed transactions in 15 other UESP accounts in which he had an ownership or trustee interest.

By transacting these accounts without disclosure to supervisors or fellow employees, the UESP Director violated both state law (Utah Public Officers' and Employees' Act, 67-16-8) and Utah State Board of Regents policy (R925) concerning "Conflicts of Interest."

Comment: On July 6, 2004, UHEAA management took action to terminate the UESP Director's employment for "Conflict of Interest" violations (please see Exhibit A). In addition, notice should be sent to the Utah State Tax Commission (and, if applicable, the Internal Revenue Service) concerning the apparent tax code violation.

UESP

Response: As noted in your report, UHEAA Management has taken action to terminate the UESP Director's employment for "Conflict of Interest" violations as required by Utah Code 67-16-14. In addition, UHEAA Management met with representatives from the Utah State Auditors office and the Salt Lake County District Attorney's office on August 11, 2004 to review the facts of the investigation and identified a number of potential violations of state statutes. UHEAA Management will work with the Salt Lake County District Attorney's office during the prosecution and will consider referring information to the Utah State Tax Commission and the Internal Revenue Service for possible action.

ITEM #2: FUNDS HAVE BEEN MISAPPROPRIATED

Issue: Beginning on October 5, 2002, the UESP Director started a complex series of transactions involving 49 accounts (including the 40 accounts mentioned in Item #1) which resulted in funds amounting to \$505,976 being placed in 16 of the 49 accounts without authorization.

Between October 5, 2002 and July 1, 2004, the UESP Director, without disclosure to supervisors or fellow employees, transferred funds in and out of all 49 accounts

Utah Higher Education Assistance Authority
Review of: Allegations of Questionable Transactions - UESP - August 2004
Issues, Comments and Responses

and added unjustified market adjustments to 16 of the 49 accounts. There was no basis, no approval, nor authority for the UESP Director to have transferred the overstated market adjustments amounting to \$505,976 into the 16 accounts.

Of the \$505,976 unauthorized funds, \$420,476 still resides in the 16 accounts identified above. The remaining \$85,500 was paid-out from 6 of the 16 accounts to the UESP Director as follows:

- a. \$62,500 was paid-out from 3 of the 16 accounts which were set up by the UESP Director as client trust accounts (with himself as trustee) via three checks:

- 1) \$42,500 (dated December 12, 2002);
- 2) \$10,000 (dated May 27, 2004);
- 3) \$10,000 (dated May 27, 2004).

The \$62,500 paid-out did not belong to the client accounts nor to the UESP Director and are considered to be stolen funds.

- b. \$23,000 was paid-out from 3 other accounts (of the 16) which were set up by the UESP Director with himself as the owner via five checks:

- 1) \$6,000 (dated November 25, 2003);
- 2) \$6,000 (dated January 6, 2004);
- 3) \$5,000 (dated January 29, 2004);
- 4) \$3,000 (dated April 8, 2004);
- 5) \$3,000 (dated May 13, 2004).

The \$23,000 paid-out did not belong to the UESP Director and are considered to be stolen funds.

Unaware of the on-going investigation, the UESP Director submitted a check request for \$203,400 (on June 29, 2004) from the same accounts which the two \$10,000 checks had been disbursed. At the July 1, 2004 meeting with UHEAA management, the UESP Director would not answer questions related to that check request, then after the meeting, he provided a letter to UESP to stop the check request.

Utah Higher Education Assistance Authority
Review of: Allegations of Questionable Transactions - UESP - August 2004
Issues, Comments and Responses

At an 8:30 a.m., July 6, 2004 meeting with UHEAA management, the UESP Director confessed to misappropriation and theft of funds.

On July 6, 2004, UESP received a check for \$20,000 from the UESP Director in an apparent attempt to pay back a portion of the stolen funds. The bank returned the check for insufficient funds. On August 2, 2004, UESP received a cashier's check for \$20,000 with instructions to deposit the funds into two accounts from which the former UESP Director had received stolen funds.

Comment: The actions of the UESP Director described above compound the "Conflict of Interest" violations described in Item #1. In addition to terminating the UESP Director's employment, UHEAA management has notified the Utah State Auditor's Office and Attorney General's Office for further investigation and appropriate action regarding the misappropriation of funds. The State Auditor's Office has notified the Salt Lake County District Attorney's Office of possible violations of criminal law.

After the State Auditor's Office has concluded its' review, prompt action should be taken to analyze the 49 accounts and to make the appropriate adjustments.

UESP

Response: Upon conclusion of the Utah State Auditor's review and receipt of their report, UHEAA Management will take prompt action to examine the 49 identified accounts and make adjustments as appropriate.

**ITEM #3: INTERNAL CONTROLS RELATED TO COMPUTER SYSTEM ACCESS
NEED TO BE STRENGTHENED**

Issue: The Director of UESP was able to perpetrate this fraud because he was trusted with an "Administrative Level" of access on the UESP computer system which allowed access to nearly every operational (but not accounting) function on the system. UESP is in the process of implementing a stronger computer system which will have the capability to restrict access to specific operational and accounting functions by employee. The new system is currently being prepared for a final test at the quarter ending September 30, 2004 and will be fully implemented at the quarter ending December 31, 2004.

Utah Higher Education Assistance Authority
Review of: Allegations of Questionable Transactions - UESP - August 2004
Issues, Comments and Responses

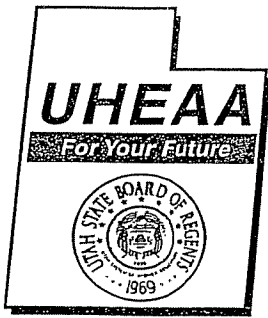
Comment: Prompt action should be taken to ensure that the internal controls surrounding the new UESP computer system (with particular attention paid to system access) are strengthened to safeguard against fraud and abuse.

UESP

Response: UHEAA Management will take action to review the access levels to the new UESP computer system to provide for separation of duties, which will not allow a single employee the ability to authorize transactions, provide record keeping functions and have control over Trust assets. Management will consult with internal audit staff as these controls are implemented.

Exhibit A

(July 6, 2004 Letter from Mark H. Spencer to Dale C. Hatch)



Utah Higher Education Assistance Authority

Utah Student Loan Guarantee Program (LGP)
Utah State Board of Regents Loan Purchase Program (LPP)
Utah Centennial Opportunity Program For Education (UCOPE)
Utah Educational Savings Plan Trust (UESP)

July 6, 2004

Dr. Dale C. Hatch

Dear Dale,

Subject: Notification of Decision to Terminate Employment

The purpose of this letter is to notify you that after careful consideration and further investigation of the information discussed with you on July 1, 2004, we have decided to terminate your employment due to unacceptable personal conduct.

On July 1, 2004, you were suspended with pay pending an investigation into your personal conduct regarding several issues that raised serious conflict of interest and breach of trust concerns. We outlined some of those issues to you in our discussion of that date. You did not provide a satisfactory response to those issues.

After investigating these issues, we have confirmed the following:

The Utah Public Officers' and Employees' Ethics Act provides at 67-16-8 regarding participation in transaction involving business as to which public officer or employee has interest:

“(1) No public officer or public employee shall participate in his official capacity or receive compensation in respect to any transaction between the state or any of its agencies and any business entity as to which such public officer or public employee is also an officer, director, or employee or owns a substantial interest, unless disclosure has been made as provided under Section 67-16-7.

State Board of Regents policy R925, Conflicts of Interest provides:

“**4.2. Prohibited Conflicts** - The following are prohibited conflicts of interest:

4.2.1. A Commissioner's Office officer or employee is forbidden to participate in his/her official capacity with respect to any transaction between the Commissioner's Office and a business entity in which the officer or employee has a substantial interest.”

Dr. Dale C. Hatch
July 6, 2004
Page 2

In violation of both state law and Board of Regents policy you have undertaken, over several years, to act directly, and without disclosure to either you superior officers or fellow employees, on UESP accounts in which you have an ownership interest. You have opened such accounts, transferred funds in and out, added market adjustments to, and authorized withdrawals from, in most cases without supporting documentation.

Utah Code 67-16-14 provides: "If any transaction is entered into in violation of Section 67-16-6, 67-16-7, or 67-16-8, the state, political subdivision, or agency involved:

- (1) shall dismiss the public officer or public employee who knowingly and intentionally violates this chapter from employment or office as provided by law; and
- (2) may rescind or void any contract or subcontract entered into in respect to such transaction without returning any part of the consideration that the state, political subdivision, or agency has received.

Because the foregoing circumstances raise serious conflict of interest and breach of trust issues and constitute violations of State Board of Regents policies, specifically unacceptable personal conduct we have determined that your employment will be terminated effective July 7, 2004.

You have the right to appeal this action in accordance with the provisions of Board of Regents Policy and Procedure R951, Employment Grievances. Please contact Harden Eyring at 321-7106 within five (5) business days of receipt of this action for advice on procedural guidelines for filing a Staff Employment Grievance. A copy of R951 is enclosed.

You are advised to contact the University of Utah Benefits Office at 581-7447 regarding your right to continuation of healthcare benefits under COBRA.

Please contact Jenna Snyder at 321-7124 to arrange a time when your personal property can be delivered to you.

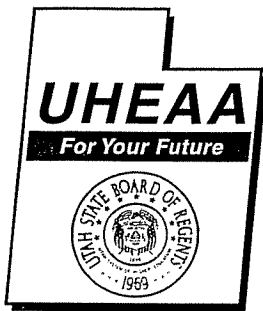
Sincerely,

Mark H. Spencer
Acting Executive Director

Enclosure

cc: Richard E. Kendell
Harden Eyring
Jenna Snyder
Personnel File

UESP Response



Utah Higher Education Assistance Authority

Utah Student Loan Guarantee Program (LGP)
Utah State Board of Regents Loan Purchase Program (LPP)
Utah Centennial Opportunity Program For Education (UCOPE)
Utah Educational Savings Plan Trust (UESP)

August 16, 2004

Mr. Paul I. Packard
Manager of Internal Audit
Utah Higher Education Assistance Authority
Board of Regents Building, the Gateway
60 South 400 West
Salt Lake City, Utah 84101

Dear Paul:

This letter is provided to you in response to your review conducted of the allegations of questionable transactions pertaining to the Utah Educational Savings Plan Trust (UESP), and the related report of issues dated August 6, 2004.

Response to Item #1: Conflict of Interest Laws Have Been Violated

As noted in your report, UHEAA Management has taken action to terminate the UESP Director's employment for "Conflict of Interest" violations as required by Utah Code 67-16-14. In addition, UHEAA Management met with representatives from the Utah State Auditors office and the Salt Lake County District Attorney's office on August 11, 2004 to review the facts of the investigation and identified a number of potential violations of state statutes. UHEAA Management will work with the Salt Lake County District Attorney's office during the prosecution and will consider referring information to the Utah State Tax Commission and the Internal Revenue Service for possible action.

Response to Item #2: Funds Have Been Misappropriated

Upon conclusion of the Utah State Auditor's review and receipt of their report, UHEAA Management will take prompt action to examine the 49 identified accounts and make adjustments as appropriate.

Response to Item #3: Internal Controls Related to Computer System Access Need to Be Strengthened

UHEAA Management will take action to review the access levels to the new UESP computer system to provide for separation of duties, which will not allow a single employee the ability to authorize transactions, provide recordkeeping functions and have control over Trust assets. Management will consult with internal audit staff as these controls are implemented.

If you have any questions, or need additional information, please feel free to contact me at 321-7285 or David Schwanke at 321-7286.

Sincerely,

Richard O. Davis
Deputy Executive Director
For Finance and Administration

October 12, 2004

MEMORANDUM

TO: State Board of Regents
FROM: Richard E. Kendell
SUBJECT: Letter to State Building Board Regarding the Q&P Process

Background

During the September meeting of the State Board of Regents several questions arose regarding the Q&P process. In response to direction from the Regents, staff prepared the attached memo for the Building Board.

Issue

The Q&P is an analytical tool designed to assist the Board of Regents in setting capital development priorities. During the September meeting there seemed to be some concern among Regents, Building Board members and state legislators that the process fails to consider qualitative aspects of projects. Over the years efforts to add qualitative calculations proved unsuccessful as staff and institutional representatives struggled to find not only useful measures, but consistent means to apply those measures. Such efforts, though laudable, miss the point of the Q&P – the goal of the Q&P is twofold: first, it encourages institutions to examine space needs on campus and bring forward projects designed to meet the most compelling need for each school. Second, it provides a consistent and useful means to compare projects across the system and across years.

This is not to say that quantitative calculations should provide the only input for setting priorities. In presenting the Q&P scores last month staff referred the Regents to Policy R741, quoting, in part: “The nine steps (of the Q&P process) however do not replace Regental deliberations which take into account other factors which are not quantifiable but nevertheless important...”

There is no magic to the Q&P – the procedure set by the Regents is outlined in policy R741 and is available to all institutions, agencies and analysts. The attached memo answering questions raised last month went to the Building Board prior to their hearings on October 6. Staff will be available to address further Regent questions.

Recommendation

Information only - no action necessary.

Richard E. Kendell, Commissioner

RK/KW

October 1, 2004

MEMORANDUM

TO: Larry Jardine, Chairman
Utah State Building Board

FROM: Richard E. Kendell, Commissioner
Utah System of Higher Education

SUBJECT: Board of Regents Prioritization Process

Chairman Jardine,

In anticipation of the Building Board's hearings of statewide priorities, I want to share with you the process by which the Board of Regents establishes capital development priorities. During the September joint meeting of your board and the Board of Regents, questions arose regarding the Q&P process and the setting of priorities. At that time, we promised to provide you with more detailed answers to your questions. I hope you will find this useful as a basis for a brief discussion during your October 6 meeting or for a more full discussion at a future meeting.

Attached to this memo is a brief outline of Regent Policy 741 – the Qualification and Prioritization (Q&P) Process. The Q&P is not designed to provide absolute project rankings. It is designed to focus on what the Utah System of Higher Education values – building appropriate space, meeting rehabilitation and growth needs on campus, honoring donations, and addressing life safety. We believe this is a logical process that provides a valuable tool to Regents in setting development priorities. Perhaps most importantly, the Q&P provides a consistent measure that can be compared across years and is based on a formula available to every institution.

Thank you for your continued support of the Utah System of Higher Education. We value your friendship and the working relationship that we have with the Board and DFCM.

Attachment

c: Keith Stepan

**Utah System of Higher Education
 Summary of Qualification and Prioritization (Q&P) Process**

Regent Policy 741 outlines the purpose of the Qualification and Prioritization process:

To provide a quantified assessment of capital facilities requirements in the System. There are nine steps which constitute the Capital Facilities Qualification and Prioritization Procedure with steps one through eight relating to the qualification of projects. The final step, step nine, involves setting priorities among projects from the nine institutions in the system. The nine steps, however, do not replace Regental deliberations which take into account other factors which are not quantifiable but nevertheless important, such as the current funding climate, political considerations, and acceptability of certain kinds of projects.

Policy R741 outlines the nine steps taken to develop a "Q&P" Score:

1. *Assemble an inventory by room type* – Each institution reports a complete inventory of campus facilities based on type of space (see attachment one for a listing of each space type).
2. *Determine amount of space in the "pipeline"* – In addition to the inventory from step one, institutions must add in space that is funded but not yet operational (space to be demolished or renovated is removed in this step as well).
3. *Evaluate space factors and standards* – Space factors established in policy (described in attachment one) are evaluated to set a baseline for need. These standards often continue unchanged from year to year. This year, OCHE staff will be evaluating the standards for office space and P.E. space.
4. *Projected enrollments* – standard models create five year projections of student growth for each institution
5. *Calculate required assignable square feet* – a space needs standards are combined with enrollment projections to determine future space needs by type of space.
6. *Determine "gap" in space needs* – compare current space inventory to the projected need to determine if there is a deficit or surplus of each type of space.
7. *Gather information on proposed developments* – schools submit development requests to OCHE and DFCM.
8. *Compare proposed developments with need* – Each project is evaluated to ensure that it meets the unique space needs of the institution.
9. *Establish Priorities* –
 - a. Each project is scored on how well it "fills the gap." This score is weighted against the total size of the project.
 - i. For example, a 20,000 square foot project that fills only 1,000 square feet from the inventory gap will not score as well as a 100,000 square foot project that fills a 90,000 square foot gap. At the same time, "filling the gap" is weighted for size of school –a small school may have a 10,000 square foot gap that constitutes 80 percent of the space type found on campus.
 - ii. Since the "Q" score relies on percentages, relative scores are not comparable. Therefore, "Q" points are normalized by policy – the highest scoring project gets 50 points, second highest gets 48, and ranking continues in two-point increments.
 - b. Other points are added for life safety, donations and institutional priority to reach a final ranking that is forwarded to the Regents.

Utah System of Higher Education
 Summary of Q&P Process
 Page 5

What space is used in calculating the Q&P?

The Q&P focuses on instructional space funded with taxpayer support. Other activities that are self funded (residential halls, bookstores, research parks, etc) are not eligible for state tax support and therefore are not part of the Q&P process.

What is the Q&P space allocation for the USHE?

There are 9.4 million "assignable" square feet spread across the nine USHE institutions. The table below shows a breakout of the twelve types of space used in calculating the Q&P.

**Utah System of Higher Education
 Capital Facilities Qualification and Prioritization Process 2005-06
 Existing Institutional Inventories plus Pipeline in Progress**

	U of U	USU	WSU	SUU	Snow	DSC	CEU	UVSC	SLCC	USHE TOTAL
100 - Classroom	261,782	170,112	188,682	59,340	32,471	51,900	45,334	122,641	197,884	1,130,146
200 - Teaching Labs	393,703	270,690	246,050	107,722	95,141	124,509	77,981	322,362	429,428	2,067,586
250 - Research Labs	441,021	345,686	10,166	0	99	0	0	0	0	796,972
300 - Office	813,470	451,753	265,635	93,800	53,309	68,353	46,892	223,076	197,557	2,213,845
400 - Study	450,833	210,377	96,859	58,288	20,651	25,862	22,706	44,108	59,562	989,246
520 - P.E. Special Use	45,154	20,319	84,063	16,066	59,742	70,819	12,217	65,941	154,683	529,004
500 - Other Special Use	27,313	84,921	12,066	9,162	16,052	371	9,327	10,296	16,668	186,176
600 - General Use	93,885	215,279	108,016	17,819	37,041	54,365	12,486	21,485	74,919	635,295
700 - Support	200,590	1,628	68,549	35,476	31,917	23,843	29,961	75,596	121,059	588,619
800 - Health Care	439	0	3,112	0	0	0	0	27	3,819	7,397
900 - Residential	0	0	0	0	148	0	0	0	0	148
000 - Unclassified	152,263	2,771	1,977	20,063	324	10,744	2,431	15,646	10,200	216,419
Subtotal - Net Assignable	2,880,454	1,773,536	1,085,175	417,736	346,895	430,766	259,335	901,178	1,265,779	9,360,854
Non-Assignable/Structural	0	0	0	0	0	1,127	0	1,434	49,520	52,081
Total	2,880,454	1,773,536	1,085,175	417,736	346,895	431,893	259,335	902,612	1,315,299	9,412,935

What are the space standards and how were they set?

Space standards vary by institutional type: research university (U of U and USU), metropolitan/regional university (WSU and SUU), and Community Colleges (Snow, CEU, DSC, SLCC, and UVSC). The standards for type of space are provided as Attachment 1. Space standards emerged from a collaborative effort that included Regent Staff, institutions, consultants and capitol hill staff.

Are there standards that should be changed?

Two standards appear to need adjustment: office space and physical education space. The current standards show a surplus of office space and a shortage of P.E. space. Informal surveys of campus provosts and planners indicate that these are probably inaccurate – office space is at a premium and P.E. space is near or at the level it should be. Prior to running the Q&P in 2005, Regent staff will coordinate an effort to develop more accurate standards.

Why is life safety weighted by category and by size of project?

A working group of Regent staff, institutional representatives and DFCM worked together to come up with a metric for evaluating life safety scoring. Although there is no truly objective measure to convert into points, historical decisions inform current point assignment to ensure consistent scoring across projects and years. The system gives extra weight to "seismic" dangers since a seismic event impacts an entire structure whereas an electrical fire likely will be isolated by sprinklers and fire doors.

Once life safety points are applied to a project, they are discounted to the part of the new project that the issue applies to. For example, the assessment of the Geary Theatre at the College of Easter Utah awarded 18.8 life safety points. In the final scoring, CEU received only seven points since the existing issue impacted only thirty-five percent of the proposed 54,000 square foot project. If the Q&P applied no weighting factor to life safety points based on the proportion of the space to be renovated, then, in this instance, CEU could propose a 200,000 square foot project, and

Utah System of Higher Education
 Summary of Q&P Process
 Page 6

receive the highest Q&P score with 18.8 life safety points, even though only 23,000 square feet of existing space has life safety problems.

Why isn't there a relationship between the final "Q score" and the assigned "Q points"?

The final Q score is impacted by available square footage (or lack thereof) and number of students on campus.

There are 3 calculations that determine the Q score for each of six different types of space:

- the square footage in the project for that type of space compared to the institution's need gap for that type of space;
- the relative need for that type of space at the institution (gap divided by inventory) – in other words a 10,000 sf gap at CEU is a "bigger" gap than a 10,000 sf gap at UU; and
- the proportion of the project that is in that category of space.

After these 3 calculations are done for each of the six categories, the totals are added up for the final Q score. Given the disparate missions and types of schools within the system, there is no way to "normalize" the relationship across all nine schools. Therefore, Regent policy assigned points in two point increments beginning at 50 and descending through the last project. This levels the playing field for all schools.

Why are facilities taken out of the inventory in calculating a Q score?

As noted above, the Q score is driven by square footage and student counts. An existing building, regardless of condition, offers some space in classrooms, study, labs, etc. If the building is to be replaced removing it from the inventory prevents the double counting of space. Consider the table below where School A and School B each have space needs of 20,000 square feet. If the Q&P counted the "existing space" to be demolished, the formula would actually show an increase of 30,000 square feet. School A would be penalized in the formula for exceeding their space standard even though the project added exactly the amount of space needed.

	Space Need	Existing Space	Demolished Space	Space after Development
School A	20,000	10,000	(10,000)	20,000
School B	20,000	-	-	20,000

Could a school's #2 priority score higher than their top priority?

Yes. This goes back to the qualitative decision making that must go into the process. A school may realize that one building would score higher but would not advance it due to other priorities (mission centrality), life safety (the building passed over may better address gap scores), or even cost.

Attachment 1: USHE Space Standards

**Utah System of Higher Education
 Capital Facilities Qualification and Prioritization Process 2005-06**

Steps 3 - Space Factors and Standards

Standards Key

100s. Classroom Standards (from R741.4.3.1.1)

	Research	Metro/ Regional	Community College
(A) Room Usage Rate [RUR]	33.75	33.75	33.75
(B) Station Occupancy Rate [SOR]	0.667	0.667	0.667
(C) Assignable Square Feet [ASF] per Station	18.00	18.75	19.50
(D) WSCH per Student Full Time Equivalents [FTEs]	12.5	13.0	13.5

200s. Teaching Laboratory Standards (from R741.4.3.2.2)

	Research	Metro/ Regional	Community College
(A) Room Usage Rate [RUR]	22.50	22.50	22.50
(B) Station Occupancy Rate [SOR]	0.800	0.800	0.800
(C) Assignable Square Feet [ASF] per Station	65.00	65.00	65.00
(D) WSCH per Student Full Time Equivalents [FTEs]	4.5	5.0	6.0

	U of U	USU/WSU	SUU	Community College
(E) Vocational Education Adjustment	1.10	1.25	1.35	1.50

250s. Research Laboratory Standards (from R741.4.3.3.1)

	Research	Metro/ Regional	Community College
Standards in Policy			
(A) Arts, Letters, Humanities, Behavioral Sciences, Business, Law, Communications	0.0	0.0	0.0
(B) Architecture, Social Work, Education, Special Education	50.0	5.0	0.0
(C) Agriculture, Natural Sciences	500.0	50.0	0.0
(D) Allied Health	500.0	50.0	0.0
(E) Nursing, Health, Math, Geography, Anthropology	300.0	30.0	0.0
(F) Engineering, Natural Science, Pharmacy	1,000.0	100.0	0.0
(G) Psychology, Computer Science	500.0	50.0	0.0
(H) Trades, Technology	0.0	0.0	0.0
(I) DCE, Extension, Other	0.0	0.0	0.0

	Research	Metro/ Regional	Community College
Standards Adopted for Cost Study Discipline Clusters			
(A) Business, Education, Humanities, Social Sciences, Physical Education	20.0	2.0	0.0
(B) Fine and Performing Arts	0.0	0.0	0.0
(C) Agriculture and Natural Science	500.0	50.0	0.0
(D) Allied Health Professions	500.0	50.0	0.0
(E) Engineering and Architecture	1,000.0	100.0	0.0
(F) Trades and Technology	0.0	0.0	0.0

Utah System of Higher Education
 Summary of Q&P Process
 Page 8

300s. Office and Conference Facilities (from R741.4.3.4.1)

	Research	Metro/ Regional	Community College
(A) ASF per FTE Staff - Required Space	130.0	130.0	130.0
(B) ASF per FTE Staff - Service/Conference Space	40.0	40.0	40.0

400s. Study Facilities (from R741.4.3.5)

	Research	Metro/ Regional	Community College
1. Holdings			
(A) Minimum Holdings	85,000	85,000	28,000
(B) Volumes per FTE Faculty	100.0	100.0	50.0
(C) Volumes per FTE Student	15.0	15.0	5.0
(D) Volumes per Master's Field - no doctorate	6,000.0	6,000.0	0.0
(E) Volumes per Master's Field - w/ doctorate	3,000.0	3,000.0	0.0
(F) Volumes per Doctorate Field	25,000.0	25,000.0	0.0
(G) Volumes per Undergrad. Major/Minor Field	350.0	350.0	0.0
(H) Volumes per 6th year specialist degree field	6,000.0	6,000.0	0.0
(I) Volumes per Subject Field of Study	0.0	0.0	165.0
2. Study Space			
(A) ASF per Station	26.0	26.0	26.0
(B) Percent of FTE students with stations	20.0%	20.0%	20.0%
(C) Percent of FTE faculty with stations	12.5%	12.5%	12.5%
3. Holdings Storage Space			
(A) ASF per volume for 0 to 150,000 volumes	0.10	0.10	0.10
(B) ASF per volume for 150,000 to 300,000 volumes	0.09	0.09	0.09
(C) ASF per volume for 300,000 to 600,000 volumes	0.08	0.08	0.08
(D) ASF per volume over 600,000 volumes	0.07	0.07	0.07

520s. Physical Education Space (from R741.4.3.6)

	Research	Metro/ Regional	Community College
(A) Minimum ASF	35,000	35,000	35,000
(B) FTE Student minimum threshold	1,000	1,000	1,000
(C) ASF per FTE student above threshold	6.0	6.0	6.0

500s. Special Use Facilities - Excludes 520s--Physical Education Space (from R741.4.3.7)

	Research	Metro/ Regional	Community College
No current Standard			

600s. General Use Facilities (from R741.4.3.7)

	Research	Metro/ Regional	Community College
No current Standard			

700s. Support Facilities (from R741.4.3.7)

	Research	Metro/ Regional	Community College
No current Standard			

October 12, 2004

TO: State Board of Regents
FROM: Richard E. Kendell
SUBJECT: General Consent Calendar

It is the recommendation of the Commissioner that the Regents approve the following items on the General Consent Calendar:

- A. Minutes – Minutes of the Regular Board of Regents Meetings held September 9-10, 2004 at Weber State University in Ogden, Utah.
- B. Grant Proposals - Approval to submit the following proposals:
 1. University of Utah – National Institutes of Health; “Muscular Dystrophy Cooperative Research Center;” \$7,585,755. Kevin Flanigan, Principal Investigator.
 2. University of Utah – US Department of the Interior; “Assistance for the University of Utah’s Museum of Natural History;” \$2,963,000. Sarah George, Principal Investigator.
 3. University of Utah – Public Health Service; “Micro-Electric Impedance Spectroscopy of Hair Cells;” \$2,554,950. Richard D. Rabbitt, Principal Investigator.
 4. University of Utah – National Science Foundation; “CRI: A Hierarchical Data Storage System for Large Data Simulation, Comparison, and Visualization;” \$1,636,774. Christopher Johnson, Principal Investigator.
 5. University of Utah – National Science Foundation; “Infrastructure for Ubiquitous Computing Research and Education;” \$1,178,827. Alan L. Davis, Principal Investigator.
 6. University of Utah – Public Health Service; “Prevention of Hemodialysis Vascular Access Stenosis;” \$5,532,833. Alfred K. Cheung, Principal Investigator.
 7. University of Utah – Public Health Service; “Data Display to Detect-Diagnose-Treat Critical Events;” \$4,540,649. Dwayne R. Westenskow, Principal Investigator.
 8. University of Utah – Public Health Service; “Data Coordinating Center for Collaborative Pediatric Critical Care Research Network;” \$4,499,241. J. Michael Dean, Principal Investigator.

9. University of Utah – Public Health Service; “Intermountain Pediatric Critical Care Research Network;” \$2,280,175. Susan L. Bratton, Principal Investigator.
10. University of Utah – Public Health Service; “University of Utah Core Vision Research Grant;” \$2,197,463. Robert E. Marc, Principal Investigator.
11. University of Utah – Public Health Service; “Utah WRHR Career Development Centers;” \$1,999,992. Eli Y. Adashi, Principal Investigator.
12. University of Utah – US Department of Defense/Army/Unique Missions Division; “Biological Surety Program, Dugway Proving Ground, Utah, and the Proponency Office for Preventative Medicine;” \$1,945,020. Devon C. Hale, Principal Investigator.
13. University of Utah – Public Health Service; “Apoptosis and Skin Cancer;” \$1,681,875. Douglas Grossman, Principal Investigator.
14. University of Utah – Public Health Service; “NMR of HIV Reverse Transcriptase Primers;” \$1,831,625. Darrell R. Davis, Principal Investigator.
15. University of Utah – Public Health Service; “Methods and Non-invasive PK Study to Improve Iontophoresis;” \$1,545,000. S. Kevin Li, Principal Investigator.
16. University of Utah – US Department of Energy/Germantown, MD; “Biological Neutron Scattering: A Collaboration with the Oak Ridge Structural Biology Center;” \$1,063,019. Jill Trehwella, Principal Investigator.
17. University of Utah – State of Utah/Department of Human Services (Prime HHS); “Title IV-E;” \$1,308,249. Norma J. Harris, Principal Investigator.
18. University of Utah – National Science Foundation; “CRI: Development of an Ease of Use, Interoperable and Comprehensive Integrated Environment (IDE) for General Computing and Supercomputing Applications;” \$1,850,456. Patrick Hu, Principal Investigator.
19. Utah Valley State College – Institute of Museum and Library Services; “Contract for Distance Education Course;” \$992,000. Jerry Christopherson, Principal Investigator.

C. Grants Awarded

1. University of Utah – National Science Foundation; “NRT: Collaborative Research: A Unified Experimental Environment for Diverse Network Technologies;” \$1,202,144. Frank J. Lepreau, Principal Investigator.
2. University of Utah – Health and Human Services/National Institutes of Health/National Center for Research Resources; “Bioelectric Field Modeling, Simulation and Visualization;” \$1,149,054. Christopher Johnson, Principal Investigator.

3. University of Utah – Health and Human Services/National Institutes of Health/National Institute for Neurological Disorders and Stroke; “Signal Transduction and Processing in Chemoreceptors;” \$1,178,594. Salvatore J. Fidone, Principal Investigator.
 4. University of Utah – Health and Human Services/National Institutes of Health/National Institute of Aging; Genetic Epidemiology of Aging in Utah Pedigrees; \$1,176,288. Steven C. Hunt, Principal Investigator.
 5. University of Utah – Health and Human Services/National Institutes of Health/National Institute for Neurological Disorders and Stroke; “Identification and Characterization of Novel Therapeutics for the Treatment and Prevention of Epilepsy;” \$1,603,737. H. Steve White, Principal Investigator.
 6. University of Utah – US Department of the Interior/National Park Service; “Assistance for the University of Utah Museum of Natural History;” \$2,963,000. Sarah B. George, Principal Investigator.
 7. University of Utah – Health and Human Services/National Institutes of Health/National Institute of Aging; “The Utah Study of Fertility, Longevity and Aging;” \$1,183,304. Ken R. Smith, Principal Investigator.
- D. Executive Session(s) — Approval to hold an executive session or sessions prior to or in connection with the meetings of the State Board of Regents to be held December 9, 2004, at the Board of Regents’ Offices in Salt Lake City, Utah, to consider property transactions, personnel issues, litigation, and such other matters permitted by the Utah Open and Public Meetings Act.

Richard E. Kendell, Commissioner

RK:jc
Attachment

MINUTES OF MEETINGS
 UTAH STATE BOARD OF REGENTS
 WEBER STATE UNIVERSITY, OGDEN, UTAH
 September 9-10, 2004

Roll Call	1, 6
COMMITTEE OF THE WHOLE	
Swearing-In of New Regents	3
USHE Capital Development Projects	4
Q&P Priority Rankings	5
USHE "Other Funds" Capital Development Projects	4
JOINT MEETING WITH THE STATE BUILDING BOARD	9
COMMITTEE OF THE WHOLE	
Reports of Board Committees	
<u>Academic, Applied Technology, and Student Success Committee</u>	
Program Review Committee Recommendation to Lift Program Moratorium	12
Consent Calendar	12
Measuring Utah Higher Education, 2004	12
<u>Finance, Facilities and Accountability Committee</u>	
Proposed Revisions to Policy R565, <i>Audit Committees</i> (action postponed)	13
Proposed Revisions to Policy R854, <i>Regents Professorships</i> , and R853, <i>Transition and Retirement Provisions for Chief Executive Officers</i>	14
Weber State University – Campus Master Plan	14
Salt Lake Community College – Lease of Space to the Museum of Utah Art And History (action postponed)	14
Consent Calendar	14
UHEAA Board of Directors Report	14
USHE 2005-2006 Budget Priorities	14
Report of the Chair	15
Report of the Commissioner	15
Additions to the Commissioner's Staff	

Day of Remembrance
Governor's Forums

General Consent Calendar 16

USHE Budget Priorities 19

Adjournment 20

MINUTES OF MEETING
UTAH STATE BOARD OF REGENTS
WEBER STATE UNIVERSITY, OGDEN, UTAH

September 9, 2004

Regents Present

Nolan E. Karras, Chair
E. George Mantes, Vice Chair
Linnea S. Barney
Daryl C. Barrett
Bonnie Jean Beesley
Katharine B. Garff
David J. Grant
James S. Jardine
Michael R. Jensen
Trent Kemp
Sara V. Sinclair
Marlon O. Snow
Maria Sweeten

Regents Excused

Jerry C. Atkin
Kim R. Burningham
David J. Jordan
David L. Maher
Jed H. Pitcher

Office of the Commissioner

Richard E. Kendell, Commissioner
David L. Buhler, Associate Commissioner for Public Affairs
Don A. Carpenter, Executive Assistant
Joyce Cottrell, Executive Secretary
Brian Foisy, Assistant Commissioner for Financial Services
Phyllis C. Safman, Assistant Commissioner for Academic Affairs
Mark H. Spencer, Associate Commissioner for Finance and Facilities
Lucille T. Stoddard, Interim Associate Commissioner for Academic Affairs
Kevin Walthers, Assistant Commissioner for Finance and Facilities
Gary S. Wixom, Assistant Commissioner for Applied Technology Education and Special Projects

INSTITUTIONAL REPRESENTATIVES

University of Utah

Michael K. Young, President
David W. Pershing, Senior Vice President for Academic Affairs
Paul T. Brinkman, Associate Vice President for Budget and Planning
Arnold B. Combe, Vice President for Administrative Services
Nancy S. Lyon, Assistant Vice President for Governmental Affairs
Michael Perez, Associate Vice President for Facilities
Gary Rasmussen, Associate Librarian, Marriott Library
Laura Snow, Special Assistant to the President

Utah State University

Kermit L. Hall, President
Stan Albrecht, Provost

Lee H. Burke, Assistant to the President for Government Relations
Ronald S. Godfrey, Vice President for Business and Finance
Darrell Hart, Assistant Vice President for Facilities
Sydney Peterson, Assistant Provost
Shane Thomas, University Media Production
Kevin Womack, Associate Vice President for Business and Finance

Weber State University

F. Ann Millner, President
Kevin P. Hansen, Assistant Vice President for Facilities Management
E. Jeffery Livingston, Interim Provost
Brad Mortensen, Assistant Vice President for Support and Auxiliary Services
Marsha Richter, Assistant to the President
Norm Tarbox, Vice President for Administrative Services

Southern Utah University

Steven D. Bennion, President
Abe Harraf, Provost

Snow College

Michael T. Benson, President
Rick Wheeler, Vice President for Advancement
Bradley A. Winn, Provost

Dixie State College

Robert C. Huddleston, President
Lee Caldwell, Vice President for Academic Affairs
Stanley J. Plewe, Vice President for College Services

College of Eastern Utah

Ryan L. Thomas, President
Michael King, Vice President for Academic Affairs

Utah Valley State College

William A. Sederburg, President
Brad Cook, Vice President for Academic Affairs
Linda Makin, Director of Budgets
Cameron Martin, Assistant to the President
Jim Michaelis, Associate Vice President for Facilities Planning
Val Peterson, Vice President for Administration and External Affairs
J. Karl Worthington, Associate Academic Vice President
Happi Peterson, Student

Salt Lake Community College

Judd D. Morgan, Interim President

David Richardson, Vice President of Academic Services
Rand A. Johnson, Assistant to the President
Julie Curtis, Assistant Vice President of Academic Services
Don Porter, Vice President of Business Services

Utah College of Applied Technology
Gregory G. Fitch, President

Representatives of the Press
Shinika A. Sykes, *Salt Lake Tribune*
Stephen Speckman, *Deseret Morning News*

Others
Steve Allred, Office of the Legislative Fiscal Analyst
Representative DeMar "Bud" Bowman
Representative David Clark
Representative Stephen D. Clark
Senator Beverly Evans
Representative Brent Goodfellow
Debbie Headden, Office of the Legislative Fiscal Analyst
Representative Fred Hunsaker
Ken Nye, Department of Facilities Construction and Management
Keith Stepan, Director, Department of Facilities Construction and Management\

COMMITTEE OF THE WHOLE

Following a luncheon meeting with the Weber State University Board of Trustees and Board Committee meetings, Vice Chair George Mantes called the meeting to order at 2:45 p.m. He told President Millner the Board was delighted to be on the beautiful Weber campus and asked her to thank her staff for their hospitality. He welcomed members of the State Building Board and legislators who were attending the meeting. He invited the legislators to join the Regents and Presidents at the table.

Swearing-In of New Regents. Vice Chair Mantes administered the oath of office to new Regents Katharine B. Garff and Trent Kemp. He advised them that the role of the Regents in developing a higher education system is very critical to the State of Utah and invited them to join the Board in providing a high level of excellence to the State.

Associate Commissioner Mark Spencer called the Regents' attention to Tab L, which listed each institution's top priority State-funded building project, and asked the Presidents to briefly describe their requests. Details were provided in Attachment 2, which will be attached to the permanent record on file in the Commissioner's Office.

University of Utah – Marriott Library Facility Adaptation and ASRS Addition
Utah State University – College of Agriculture Replacement/Classroom Building
Weber State University – Replacement of Buildings 1 and 2/Classroom Building
Southern Utah University – Teacher Education Building
Snow College – Snow College/Sanpete County Library/Classroom Building
Dixie State College – Health Sciences Building
College of Eastern Utah – Fine Arts Complex
Utah Valley State College – Digital Learning Center
Salt Lake Community College – Millcreek Center

USHE "Other Funds" Capital Development Projects

Associate Commissioner Spencer referred to Tab M, non-State capital projects, and pointed out that although these are non-State funded requests, they do require Regent approval because of the possible future need for O&M funds by the State. Those projects include:

University of Utah
College of Humanities Expansion Building, Phase 1
College of Social Work Addition
Student Recreation Center
University Hospital Expansion, West Wing

Weber State University
Shepherd Union Building Renovation

Chair Karras expressed concern about the impact on students of projects funded by student fees on top of large increases in tuition. President Young said he was trying to raise private donations for the proposed Student Recreation Center. The students see the long-range benefits and are generally willing to help raise funds for the proposed facility. Questions were asked about student support for such a large increase in fees. Vice President Pershing said it was clear that the students were willing to pay a significant increase in fees for a quality facility. President Young said another factor was the fact that the University of Utah is a commuter campus, with 25 percent (or less) of its students actually living on campus. The proposed facility is viewed as a major gathering place for non-academic uses – a facility that would bring students to a central part of campus and change the nature of the University. It is not viewed as a revenue source but as an educational tool.

President Millner said WSU students had passed a referendum for the Shepherd Union Building to be renovated in three phases. The students wanted their building to be enhanced to meet their needs, and the referendum passed by a very respectable margin.

Regent Kemp thanked the Presidents for taking the students into consideration. Student fees and tuition should include the needs and wants of the students.

Chair Karras moved approval of the non-State funded capital projects, with the proviso that the Weber State University and University of Utah Presidents discuss with the students the Regents' discussion, making sure that the students are comfortable with these increases. The motion was seconded and a vote was taken. The motion carried with six votes in favor and four votes in opposition.

Commissioner Kendell noted that these projects would add \$127 million to the State's assets without State money. This is a significant addition of resources without taxpayer funding.

Associate Commissioner Spencer introduced Kevin Walthers, who had joined the Commissioner's staff last week as Assistant Commissioner for Finance and Facilities. Most recently, Kevin was the Legislative Fiscal Analyst for capital projects. Dr. Spencer referred to the Supplements to Tab L and Tab N, which were in the Regents' folders and which were also distributed to the legislators in attendance. The Supplement to Tab L gave the Qualification and Prioritization (Q&P) results for 2005-2006 projects; the Supplement to Tab N gave a history of State-funded facilities since 1987.

Regent Beesley moved approval of the Q&P priority list for presentation to the State Building Board the following day. The motion was seconded by Regent Jardine and carried unanimously. The ranking follows:

1. University of Utah – Marriott Library Facility Adaptation and ASRS Addition
2. Utah Valley State College – Digital Learning Center
3. Dixie State College – Health Sciences Building
4. Utah State University – College of Agriculture Replacement/Classroom Building
5. Weber State University – Classroom Building/Buildings 1 & 2 Replacement
6. Salt Lake Community College – Millcreek Center
7. College of Eastern Utah – Fine Arts Complex
8. Snow College/Sanpete County Library/Classroom Building
9. Southern Utah University – Teacher Education Building

Regent Graff moved that the meeting be recessed until the following day. The motion was seconded and carried.

September 10, 2004

Regents Present

Nolan E. Karras, Chair
E. George Mantes, Vice Chair
Linnea S. Barney
Daryl C. Barrett
Bonnie Jean Beesley
Katharine B. Garff
David J. Grant
James S. Jardine
Michael R. Jensen
Trent Kemp
Jed H. Pitcher
Marlon O. Snow
Maria Sweeten

Regents Excused

Jerry C. Atkin
Kim R. Burningham
David J. Jordan
David L. Maher
Sara V. Sinclair

Office of the Commissioner

Richard E. Kendall, Commissioner
David L. Buhler, Associate Commissioner for Public Affairs
Don A. Carpenter, Executive Assistant
Joyce Cottrell, Executive Secretary
Brian Foisy, Assistant Commissioner for Financial Services
Phyllis C. Safman, Assistant Commissioner for Academic Affairs
Mark H. Spencer, Associate Commissioner for Finance and Facilities
Lucille T. Stoddard, Interim Associate Commissioner for Academic Affairs
Kevin Walthers, Assistant Commissioner for Finance and Facilities
Gary S. Wixom, Assistant Commissioner for Applied Technology Education and Special Projects

INSTITUTIONAL REPRESENTATIVES

University of Utah

Michael K. Young, President
David W. Pershing, Senior Vice President for Academic Affairs
Paul T. Brinkman, Associate Vice President for Budget and Planning
Arnold B. Combe, Vice President for Administrative Services
Nancy S. Lyon, Assistant Vice President for Governmental Affairs
Michael Perez, Associate Vice President for Facilities
Laura Snow, Special Assistant to the President

Utah State University

Kermit L. Hall, President
Lee H. Burke, Assistant to the President for Government Relations
Ronald S. Godfrey, Vice President for Business and Finance

Darrell Hart, Assistant Vice President for Facilities
Kevin Womack, Associate Vice President for Business and Finance

Weber State University

F. Ann Millner, President
Kevin P. Hansen, Assistant Vice President for Facilities Management
E. Jeffery Livingston, Interim Provost
Linda Makin, Director of Budgets
Brad Mortensen, Assistant Vice President for Support and Auxiliary Services
Marsha Richter, Assistant to the President
Norm Tarbox, Vice President for Administrative Services

Southern Utah University

Steven D. Bennion, President
Abe Harraf, Provost

Snow College

Bradley A. Winn, Provost

Dixie State College

Robert C. Huddleston, President

College of Eastern Utah

Ryan L. Thomas, President

Utah Valley State College

William A. Sederburg, President
Brad Cook, Vice President for Academic Affairs
Cameron Martin, Assistant to the President
Jim Michaelis, Associate Vice President for Facilities Planning
Val Peterson, Vice President for Administration and External Affairs
Happi Peterson, Student

Salt Lake Community College

Judd D. Morgan, Interim President
David Richardson, Vice President of Academic Services
Rand A. Johnson, Assistant to the President
Julie Curtis, Assistant Vice President of Academic Services
Don Porter, Vice President of Business Services

Members of the State Building Board

Larry Jardine, Chair
Kerry Casaday, Vice Chair
Steve Bankhead

Richard Ellis
Cyndi W. Gilbert
Katherina Holzhauser
Darren Mansell
Manuel T. Torres

Key Staff

Camille Anthony, Executive Director, Department of Administrative Services
Steven Allred, Office of the Legislative Fiscal Analyst
Randa Bezzant, Policy Analyst, Governor's Office of Planning and Budget

Division of Facilities Construction and Management Staff

Keith Stepan, Director
Kenneth Nye, Deputy Director
Kent Beers, Program Director
Blake Court, Program Director
Shannon Lofgreen, Administrative Assistant

Legislative Capital Facilities and Administrative Services Appropriations Committee

Senator Beverly Evans, Co-chair
Representative Stephen D. Clark, Co-chair
Representative Ralph Becker
Representative DeMar "Bud" Bowman
Representative David Clark
Representative Brent H. Goodfellow
Representative Fred R. Hunsaker

Representatives of the Press

Tanna Barry, *Ogden Standard Examiner*
Shinika A. Sykes, *Salt Lake Tribune*
Stephen Speckman, *Deseret Morning News*

Others

Steve Allred, Office of the Legislative Fiscal Analyst
Debbie Headden, Office of the Legislative Fiscal Analyst
Kim Hood, Governor's Office of Planning and Budget
Eric Johnson, Utah Public Employees Association
Ken Nye, Department of Facilities Construction and Management
Keith Stepan, Director, Department of Facilities Construction and Management

JOINT MEETING WITH STATE BUILDING BOARD

Chair Karras welcomed the group at 8:00 a.m. and thanked members of the State Building Board, DFCM staff, and the Legislative Capital Facilities Appropriations Subcommittee for joining the Regents. The

purpose of the meeting was to share with the Building Board the Regents' priorities for capital development projects. Chair Karras asked everyone around the table to introduce themselves.

Associate Commissioner Spencer explained the background of the Q&P process. He explained to the Building Board and legislators the material in the Supplement to Tab N. In the past, it was not uncommon for as many as six projects to be funded by the State Legislature. More recently, however, only two or three projects receive State funding each year. Dr. Spencer also explained the information in the Supplement to Tab L regarding "Q" points and space points. Chair Karras suggested that the standard for office space be reconsidered because the formula showed that all institutions had surplus office space.

Chair Karras asked Associate Commissioner Spencer if it were possible for an institution to have a project which would rank higher because of the Q&P formula than the institutional prioritization. If an institution had other projects of a greater need than another institution's top priority project, he asked that the Regents be given that information.

Director Stepan said last year the State agencies were asked to submit only one project per institution. The Building Board submits a five-year plan to the Legislature which includes additional priorities for the institutions. Regent Grant suggested that additional factors be considered in the priority process. If every institution gets 25 priority points automatically, qualitative factors beyond institutional priority should be considered.

Mr. Bankhead raised some questions concerning the Q&P process. (1) Other funding points: Some institutions are in a position to raise money more easily than others. (2) Process by which seismic considerations receive more points than fire safety or electrical issues. (3) How can there be such a large gap between the Q&P gap (Supplement to Tab N, page 10 of 10) and the Q&P points awarded? Dr. Spencer explained that it was based on need; demolishing a building creates the need which is satisfied by replacing or renovating the building. Brad Mortensen explained that when a building is demolished, the points are backed out; when a new facility is constructed, the points are added back into the formula. Regents' policy R741 is very specific about the calculation of points and the Q&P process.

Mr. Stepan explained that electrical and mechanical systems go through constant review and are usually addressed with capital improvement funding. Seismic needs are embedded in the system, and those needs are not addressed regularly.

Chair Karras asked Regent Pitcher to have the Finance Committee evaluate this discussion of the Q&P process. Life safety issues are important, and perhaps the weighting should be reconsidered. He asked if any of the Regents wanted to reconsider their vote of the previous day as a result of this discussion. After the Regents had indicated they were satisfied with the earlier vote, Chair Karras suggested that the current prioritization list stand and that the process of computing the formula be considered for change in the future. Regent Jensen pointed out that if CEU's project had received the full 18 points for life safety, it would completely change the Q&P priority order. He asked that the Building Board consider this in their discussion.

Chair Jardine said the State Building Board appreciated the opportunity for a discussion with the Regents regarding the capital development process. The Building Board wants to do a better job of quantifying

and qualifying the process. The result will produce a much better way to evaluate and prioritize the building projects of the State.

Mr. Nye distributed the Building Board's Capital Development Request Evaluation Guide. He said the Building Board had retained flexibility in the process. Six strategic objectives were identified. Evaluation criteria weight the projects; each objective has a weight (1-3). Scoring points (0-5) define points on the range.

The objectives are: (1) Address life safety and other deficiencies in existing assets through renewal and replacement. (2) Address essential program growth requirements. (3) Cost-effective solutions. (4) Improve program effectiveness and/or capacity. (5) Provide facilities necessary to support critical programs and initiatives. (6) Take advantage of alternative funding opportunities for needed facilities.

Regent Grant asked if it was more important that the institutions seek endowments for O&M or for actual construction costs of a facility. Mr. Stepan said most donors want to fund the buildings which may bear their names and do not want to consider O&M endowments. He said legislators would like the institutions to get private funding of O&M costs and suggested that incentives be considered for donations to reduce the cost of a project.

Mr. Nye explained that each institution is asked to submit a request with a scoring of their top project. DFCM suggests scores to the Building Board, and they, in turn, consider the information and arrive at a final score. The State Building Board will determine rankings of capital projects on October 21.

Regent Beesley suggested that the Regents' Q&P process be integrated with the Building Board's process. Perhaps this could be considered by the Finance Committee. Chair Jardine said as a result of these joint discussions, the Building Board's process has been refined, as has the Regents' Q&P process. Regent Grant asked if it was more beneficial for the legislators to consider the projects from multiple perspectives, or would they prefer one list? Senator Evans replied that one list would have a greater impact. Director Stepan agreed that, politically, the credibility of both agencies would improve by a combined list. The Building Board is looking at all projects across the State; however, it would be helpful if the Regents and the State Building Board worked together to determine a common list of higher education facilities for presentation to the Legislature.

Mr. Nye said there was a good chance that the Building Board's process will be further refined because this is a new process. Next year the Board will have the knowledge of what worked this year and what needs to be adjusted for future years. Director Stepan explained that the Building Board takes the Regents' list and DFCM scoring, and each member scores the projects individually. They may depart from the recommended scores and determine their own priorities.

Commissioner Kendell said this had been a valuable discussion. The Regents will look at the Q&P process and determine the validity of the assumptions supporting each criteria. He expressed his appreciation for the partnership between higher education, the State Building Board, and the DFCM staff. The State is a critical partner in higher education. Other partnerships are also important – with the federal government, donors, students, etc. Most facilities have come about because of a partnership of some kind. Our Presidents are constantly looking for partnering opportunities. There is a great value to the State when institutions can get part or all of a building funded without State tax money.

The Commissioner acknowledged that it is very difficult for the institutions to take care of some of their ongoing O&M needs. It is hard to ask a private donor for O&M funding. Partnerships with private donors and the students are important, but we still look to the State for O&M funding. Last year O&M funding was taken off the table for the first time. It is critical that the State fund the lights and heat and maintenance of State facilities.

Senator Evans said the process is better than it was a few years ago. The Legislature recognizes how critical the partnerships are. It is important to get the improvement money restored from .9 percent back to 1.1 percent dedicated to small capital projects. She promised to try to get an increase in the capital improvement funding in the next Legislative Session.

Chair Karras asked the legislators if they had any comments. Many of the legislators expressed their appreciation for the opportunity to understand the institutions' needs and to get the Regents' perspective. They agreed that the Q&P process was not perfect, but it is better than the alternatives. Representative Clark said he hoped the Legislature would use wisdom and not just politics in determining which projects should be funded.

Chair Jardine said the Building Board is charged to come up with a prioritization list, but they also provide a five-year plan because they need to see the total need. They continually talk about the importance of taking care of the buildings we already have. He said he was very pleased that the 1.1 percent for capital improvements is in statute and expressed his hope that funding would increase to that level again.

Ms. Camille Anthony, Director of Administrative Services, expressed her appreciation to Director Stepan and commended the work of the DFCM staff.

Chair Karras thanked the members of the State Building Board, legislators, DFCM staff and others for their attendance at this meeting. The meeting adjourned at 10:00 a.m.

COMMITTEE OF THE WHOLE

The Regents resumed their meeting in the Committee of the Whole at 10:20 a.m. Vice Chair Mantes chaired the meeting. He thanked the Regents and Presidents for their attention and said this had been an intense set of meetings.

Reports of Board Committees

Academic, Applied Technology, and Student Success Committee

Program Review Committee Recommendation to Lift Program Moratorium (Tab A). Chair Jardine said the Program Review Committee (PRC) had recommended to the Academic Committee and the Board as a whole that the moratorium be lifted. It was originally implemented because of a tight budget environment and a sense that the process of program approval was not disciplined. There was a strong argument that the moratorium was symbolic to the State leaders. Exceptions were developed over time, which were adopted by the Board, to demonstrate critical reasons a specific program should move forward despite the moratorium. As a result, the institutions began to customize their proposals to meet the criteria for exceptions. Ultimately

the moratorium exceptions were incorporated into policy R401. The committee agreed that policy R401 would be sufficient; the policy still maintains the rigor of the process with the word "moratorium" removed. The PRC's proposal was to lift the moratorium, to retain the Program Review Committee in its current role, and to receive recommendations from the Chief Academic Officers (CAOs) for additional refinements to policy R401. The committee approved the Commissioner's recommendation.

Regent Grant asked if the CAOs had been given a deadline for their comments. Associate Commissioner Stoddard said the CAOs had discussed R401 the previous day; she hopes to bring a revised policy to the Board in October. President Sederburg said the Presidents had strong feelings about the continuation of the Program Review Committee. Chair Jardine said any comments on the role of the PRC or policy R401 should be given to Dr. Stoddard by early October. He asked that the October meeting include comments from the institutions. Chair Karras cautioned that the Regents were not sending the message that they would accept all programs from the institutions.

Chair Jardine moved that the Regents lift the moratorium on new programs as of September 15, 2004, and that they adopt the recommendations of the Regents' Program Review Committee to (1) lift the current moratorium and use policy R401 as the mechanism for reviewing new program requests for USHE institutions, (2) retain the PRC with its current role, and (3) receive recommendations from the Chief Academic Officers, under the direction of the Associate Commissioner for Academic Affairs, concerning additional refinements to policy R401. The motion was seconded by Regent Beesley and carried.

Academic Committee's Consent Calendar (Tab B). Chair Jardine reported that, at the request of University of Utah officials, discussion had been postponed on the University's request for approval of a Eunice Kennedy Shriver National Center for Community of Caring within the Department of Special Education. Temporary approval has been granted by the Commissioner in accordance with the terms of policy R401.

Measuring Utah Higher Education, 2004 (Tab C). Chair Jardine invited Dr. Don Carpenter to give a brief summary of the report. Dr. Carpenter said the report had been compiled by a group of individuals from the institutions and the System office. He credited Brad Mortensen for preparing the graphs. The report used System data and national sources to show access and preparation, quality issues, and efficiency in finance in Utah. Regent Jardine asked the Commissioner's staff to look at State need-based financial aid and bring back materials to help others understand the financial aid need relative to increasing tuition. He asked, Is this a State funding issue? A tuition issue? A System issue?

Chair Karras pointed out that if you remove UCAT from the data, tuition is now at roughly 42 percent of the total cost of education. This shift is even more dramatic than the Regents had previously realized. He asked Chair Jardine if the committee had set a goal for the students' fair share. Where do we want to be? He noted that we have indicators to measure productivity, such as class size. However, this does not measure quality. What about the ratio of staff per student, or faculty per student? What are the administrative costs per hour of instruction or per student? He commended Dr. Carpenter for the excellent report. Dr. Carpenter said this was the first time this particular report had been developed, and there is still room for improvement.

Chair Jardine said the committee had not discussed "where we want to be." However, on graph D, Policy Issues, quality was demonstrated in the areas of K-12 articulation and remedial education. The report

in Graph C is a System picture; the Regents would like to see the information by institution and how it is used by the institutions.

Regent Jensen said a good measure of quality, as measured against the WICHE states and other benchmarks, is the awarding of degrees. Commissioner Kendell said his staff would incorporate available data from WICHE, the American Council on Education, NCHEMS, and other sources. The current project looked at existing databases, both in the System and nationally, without beginning an extensive new search project. Dr. Carpenter noted that Pat Callan's National Report Card is due to be released at the end of September.

Chair Jardine suggested Presidents be asked what measures are the most important to them, and that future reports include those measures. Dr. Carpenter said exit interviews with students and employers would also be very helpful. Some institutions have this data, but we do not have a way to compile that data on a System basis. Vice Chair Mantes commended Dr. Carpenter for the report and said it was an excellent start.

Policy Issues for Regents' Consideration (Tab D). Chair Jardine said the Commissioner's cover memo to Tab D contained various issues which Dr. Kendell thought the Board should consider in the next year. The committee was in general agreement and asked Commissioner Kendell to bring a set of recommendations or actions for each issue to the Regents for consideration. Commissioner Kendell said he would include some suggestions on a future Board agenda. Some things can be done immediately, some will take time, and some will require partnerships with others. President Sederburg suggested that workforce development and K-16 interaction be added to the list.

Vice Chair Mantes thanked Chair Jardine for his report.

Finance, Facilities and Accountability Committee

Because Chair Pitcher had been absent the previous day, Chair Karras reported on committee actions.

Revisions to Policy R565, *Audit Committees* (Tab E). Chair Pitcher reported that action had been postponed on this item because of Trustee concerns.

Revisions of Policies R854, *Regents Professorships*, and R853, *Transition and Retirement Provisions for Chief Executive Officers* (Tab F). Chair Karras said the intent is to put non-tenured former CEOs on the same level as tenured professors when they want to return to the classroom after leaving the Presidency or Commissioner position. The proposed revisions to Policy R854 would grandfather the Presidents and Commissioner currently in the System. The committee recommended and **Chair Karras moved adoption of the proposed revisions. The motion was seconded by Regent Grant and carried unanimously.**

Weber State University – Campus Master Plan (Tab G). Chair Karras said the University's updated master plan would change the interior of the campus. The committee was shown a plan which would be completed in stages. Part of this effort would involve replacement of Classrooms 1 and 2, as discussed the previous day. In addition, 220 parking stalls are needed at the Davis Campus for evening students. **Chair Karras moved approval of Weber State University's Campus Master Plan. The motion was seconded by Regent Grant and carried.**

Salt Lake Community College – Lease of Space to the Museum of Utah Art and History (UMAH) (Tab H). Chair Karras reported that action on this item was delayed at the request of College officials.

Finance Committee’s Consent Calendar (Tab I). Chair Karras reported that in addition to the Capital Facilities Delegation Reports of the University of Utah and Utah State University, UCAT requested exceptions to their approved tuition rate. By statute, the Board of Regents must approve UCAT tuition. The Commissioner’s cover memo outlined the reasons for approval of these exceptions. **On motion by Chair Karras and second by Regent Jensen, the following items were approved on the Finance Committee’s Consent Calendar:**

1. University of Utah and Utah State University – Capital Facilities Delegation Reports
2. Utah College of Applied Technology – Approved Tuition Rate Exceptions
 - A. Mountainland ATC – Learning Lab
 - B. Ogden-Weber ATC – Apprenticeship Math Course
 - C. Southeast ATC – CDL Trucking and Heavy Equipment Program

UHEAA Board of Directors Report (Tab J). Chair Karras reported that former Regent Jack Goddard had retired as chair of the Student Finance Subcommittee. Brent Hoggan, also a former Regent, has agreed to chair the subcommittee. Chair Pitcher said a report would be presented to the Regents in October on lessons learned from the recent UESP experience.

USHE – 2005-2006 Budget Priorities (Tab K). Chair Karras reported a very good discussion in committee about the best way to approach the Legislature with regard to higher education budget priorities. The historic approach has been to request funding for growth. A new idea was discussed, which was to approach the Legislature for utilities and salaries, with “growth funding” and second-tier tuition to be used by the institutions for their own priorities. Chair Karras noted this is not the only solution, but it is another way to approach higher education’s budget request. A four-percent salary increase would require approximately \$120 million. Last year a one-percent increase cost \$26 million, including FICA. Factoring in health benefits, the total this year would increase to approximately \$28 million for each percentage of increase.

Chair Karras noted that a problem has been that the State does not have enough growth money to fund salaries. The issue is how to convince the Legislature that the need is critical. This issue will be discussed in greater detail in the October Board meeting. Chair Karras said the issue should be driven by the Presidents. The lack of funding for O&M last year hurt some institutions a great deal. We are becoming further and further behind in the competitive edge on faculty and staff salaries. He noted that Commissioner Kendell will present the higher education budget request to the Governor three days after the October 19 Board of Regents meeting.

Commissioner Kendell said he thought this approach was on the right track. State funding will continue to be limited. The Presidents brought this to a sharp focus at the last Council of Presidents meeting. What is the greatest claim we can make for the State? What can we ask students to fund? The discussion at the Regents’ and Presidents’ Retreat in August illustrated the inevitable trade-offs. Critical to the future quality and viability of higher education is the need to maintain autonomy by the institutions for second-tier tuition. Would a tuition increase be better or worse than a general increase in other taxes, such as property taxes?

Commissioner Kendell said higher education needs a five-year plan but a one-year strategy. We need to strike a balance with the Legislature. An institution's inability to pay for their light bill, for example, affects every aspect of the institution.

Report of the Chair

Chair Karras advised the Public Affairs Committee be prepared to take long-term projections to the Legislature and to the general public. This message should be heard by local Chambers of Commerce, Rotary Clubs, etc. Trustees should also be involved in this plan. Without immediate relief in sight, we need to be proactive and help Utahns understand the consequences of lack of State funding. Partnerships with public education should be further pursued.

Chair Karras reviewed changes to committee assignments. He said he had asked Regent Beesley to serve on the State Board of Education and Regent Pitcher to serve on the UCAT Board of Directors. No changes have been made to the Resource and Review Teams. Vice Chair Mantes has been given the responsibility for refining and coordinating this process, once changes are adopted.

Report of the Commissioner

Additions to the Commissioner's Staff. Commissioner Kendell officially welcomed Kevin Walthers to the Commissioner's staff. Kevin has a wonderful background and experience in the capital facilities area. Brian Foisy is also a new member of the Finance and Facilities staff to help Associate Commissioner Spencer in the areas of budget and finance.

Day of Remembrance. Commissioner Kendell said Governor Walker had asked that flags on all State buildings be lowered to half-mast from sunrise to sundown on September 11.

Commissioner Kendell reviewed the notable accomplishments of USHE institutions, found in the Regents' folders.

Governor's Forums. Dr. Kendell noted that higher education and the Governor's Office would be hosting two forums. Participation is somewhat limited, so these will be round-table discussions rather than open forums. Participants will include the Department of Workforce Services and the business community, as well as higher education and public education. The first Governor's Forum will be held on September 27; the topic will be Higher Education's Role in Utah's Workforce Development. The second Forum will be on October 18; the topic will be Higher Education's Role in Utah's Economic Growth. Both Forums will be held at SLCC's Main Street Learning Center, 115 South Main Street. Commissioner Kendell urged the Regents and Presidents to participate, if their schedules permitted.

General Consent Calendar

On motion by Regent Pitcher and second by Regent Sweeten, the following items were approved on the Board's General Consent Calendar (Tab O):

- A. Minutes – Minutes of the Regular Board of Regents Meetings held August 12-13, 2004 at the Board Offices and the University Park Marriott Hotel in Salt Lake City, Utah
- B. Grant Proposals - Approval to submit the following proposals:
 1. University of Utah – National Science Foundation; "IGERT: Microfluidic Systems Addressing Biological Complexity;" \$3,198,970. Timothy A. Ameal, Principal Investigator.
 2. University of Utah – National Science Foundation; "IGERT: Non-Destructive Evaluation of Aging Systems;" \$3,181,814. Cynthia Furse, Principal Investigator.
 3. University of Utah – Public Health Service; "Development of a Fully Integrated, Biocompatible Micropower Chronic Neural Recording Array;" \$2,816,993. Florian Solzbacher, Principal Investigator.
 4. University of Utah – Public Health Service; "Hybrid Hydrogels Self-Assembled from Graft Copolymers;" \$1,681,875. Jindrich R. Kopecek, Principal Investigator.
 5. University of Utah – Public Health Service; "Lipoprotein Subclass Heterogeneity and CAD Risk;" \$3,305,722. Paul N. Hopkins, Principal Investigator.
 6. University of Utah – Public Health Service; "Training in Cardiovascular Research;" \$2,396,365. Ivor J. Benjamin, Principal Investigator.
 7. University of Utah – Public Health Service; "Transitional Research in the Clinical Neurosciences;" \$2,239,961. Thomas N. Parks, Principal Investigator.
 8. University of Utah – Public Health Service; "Mechanism and Regulation of Iron Export by Ferroportin;" \$2,199,070. Jerry Kaplan, Principal Investigator.
 9. University of Utah – Public Health Service; "APC and B-Catenin Mutations in Colorectal Cancer;" \$2,133,170. Wade S. Samowitz, Principal Investigator.
 10. University of Utah – Public Health Service; "Molecular Mechanisms of Steroid-Triggered Programmed Cell Death;" \$2,081,287. Carl S. Thummel, Principal Investigator.
 11. University of Utah – Public Health Service; "Navajo Bone Health Study;" \$1,931,155. Maureen Murtaugh, Principal Investigator.
 12. University of Utah – Public Health Service; "Netrins Regulate Angiogenesis;" \$1,868,750. Dean Y. Li, Principal Investigator.
 13. University of Utah – Public Health Service; "Mechanisms of the Diabetic Myocardial Vulnerability;" \$1,868,750. Sheldon E. Litwin, Principal Investigator.

14. University of Utah – Public Health Service; “Genetic Models of Cardiovascular, Renal and Pulmonary Diseases;” \$1,654,682. Mario R. Capecchi, Principal Investigator.
15. University of Utah – Department of Defense/US Army/Medical Research Mater Com; “Osseous Manifestations of Neurofibromatosis Type 1: Clinical Outcomes and Molecular Analyses;” \$1,511,936. David H. Viskochil, Principal Investigator.
16. University of Utah – Public Health Service; “Cellular and Molecular Responses in Lung Diseases;” \$1,263,900. Guy A. Zimmerman, Principal Investigator.
17. University of Utah – Public Health Service; “Utah Pediatric Fellow Research Training Program;” \$1,182,251. Edward B. Clark, Principal Investigator.
18. University of Utah – Public Health Service, Prime Flow through University of California/Davis; “Zinc Deprivation Alters Chromatin Structure;” \$1,121,250. Robert H. Lane, Principal Investigator.
19. University of Utah – Public Health Service; “High-Res Multishot DTI by Real-Time Navigation;” \$1,014,748. Eun-Kee Jeong, Principal Investigator.
20. University of Utah – Public Health Service, Prime Flow through Brigham and Women’s Hospital; “Vascular Dysfunction in IDDM: Genes, Inflammation, RAAS;” \$1,006,944. Donald A. McClain, Principal Investigator.
21. University of Utah – Public Health Service; “Genetic Testing for Breast-Ovarian Cancer in Puerto Rico;” \$3,204,105. Anita Y. Kinney, Principal Investigator.
22. University of Utah – Public Health Service; “Anti-cancer Agents from Unique Natural Products Sources;” \$5,693,762. Chris M. Ireland, Principal Investigator.
23. University of Utah – Public Health Service; “Training Grant in Substance Abuse and Addiction Research;” \$1,323,510. Douglas E. Rollins, Principal Investigator.
24. University of Utah – Public Health Service; “Non-invasive Imaging of Drug Delivery in Cancer Treatment;” \$1,196,000. Zheng-Rong Lu, Principal Investigator.
25. University of Utah – Public Health Service; “VPS4 and the MVB Sorting Pathway;” \$1,868,750. Markus Babst, Principal Investigator.
26. University of Utah – Public Health Service; “Genetic Architecture of the Mammalian (Canid) Skeleton;” \$1,868,750. Karl G. Lark, Principal Investigator.
27. University of Utah – Public Health Service; “Adolescent Self-Development in Storytelling: Normative and Delinquent Development;” \$1,681,875. Monisha Pasupathi, Principal Investigator.

28. University of Utah – Public Health Service; “Cooperative DNA Alterations in Breast Cancer;” \$1,532,375. Philip S. Bernard, Principal Investigator.
 29. University of Utah – Public Health Service; “Regulation of RASGRPs by Diacylglycerol Kinases;” \$1,495,000. Matthew K. Topham, Principal Investigator.
 30. University of Utah – Public Health Service, Prime Flow through University of Oklahoma; “Arotinoid and Stilbenoid Mechanism in Mitochondria (Program 3);” \$1,129,537. Ruey-Min Lee, Principal Investigator.
 31. Utah State University – National Institutes of Health; “Mechanistic Studies of Fe(II)-Dependent Methionyl Aminopeptidases;” \$1,411,339. Richard C. Holz, Principal Investigator.
 32. Utah State University – DHHS; “Family Support 360 Project;” \$1,250,000. Judith Holt, Principal Investigator.
 33. Utah State University – National Institute of Standards and Technology; “Design and Manufacture of a Cryogenic Fourier Transform Infrared Spectrometer for the NIST BXR II Radiometer;” \$2,206,715. Alan Thurgood, Principal Investigator.
 34. Utah Valley State College – FAR and NASA; “The Physical Properties of the Youngest Binary Stars;” \$536,659. Curtis Pendleton, Principal Investigator.
- C. Grants Awarded
University of Utah – Public Health Service/National Institute of Child Health Huma; “Utah Autism Program;” \$1,077,076. William M. McMahon, Principal Investigator.
- D. Executive Session(s) — Approval to hold an executive session or sessions prior to or in connection with the meetings of the State Board of Regents to be held October 19, 2004, at the Board of Regents’ Offices in Salt Lake City, Utah, to consider property transactions, personnel issues, litigation, and such other matters permitted by the Utah Open and Public Meetings Act.

Budget Priorities

Commissioner Kendell said he would be meeting with the Presidents prior to the October Board of Regents meeting to get a better idea of the Presidents’ concerns and suggestions for budget strategies. Regent Grant said the legislators who attended the Board meeting the previous day had indicated they would like to be able to give higher education more money. They suggested that higher education use public education’s approach of establishing compelling needs that have political consequences if not met. The students should also be involved in approaching the Legislature. Regent Kemp said the student body presidents meet regularly, and this is a topic of discussion at every meeting.

Regent Pitcher referred to the attachment to Tab K and questioned the 10 percent estimated increase in benefits. He said he thought the figure was too low, especially if it included dental benefits. He suggested

that the estimate be increased by three or four percent. Commissioner Kendell noted that our institutions are losing faculty, our greatest natural resource. Salaries and benefits must be our #1 priority again next year.

Regent Jardine commented on the greater interaction between higher education and the Legislature. He noted that this had been a topic of conversation for the 17 years he had served as a Trustee or Regent. The Legislators are in sympathy, and they will respond when their constituents care about these issues as much as the Regents care about them.

Regent Kemp said the Utah Council of Student Body Presidents hires a lobbyist; the current lobbyist is a full-time student. The UCSP is looking into the possibility of using student fees to hire a full-time lobbyist. Various ideas are being discussed.

Commissioner Kendell noted that Utah's educational appropriations per FTE had decreased by 16 percent. Tuition is up, but it is still 20 percent below the national average. Trent Kemp asked how much longer the students could be expected to pay more and more tuition. He urged the Regents to be sure that the students who cannot afford to pay for tuition at a university can still get a quality education at a community college. Students who want a higher education need to be able to be admitted to our institutions.

Dr. Carpenter commended Commissioner Kendell for his approach and the Regents and Presidents for letting data drive the discussion.

Adjournment

Vice Chair Mantes thanked everyone for their participation and for their work in advancing the cause of higher education in Utah. He thanked President Millner and her staff for hosting the meeting.

The meeting adjourned at 11:45 a.m.

Joyce Cottrell CPS, Executive Secretary

Date Approved

October 12, 2004

MEMORANDUM

TO: State Board of Regents
FROM: Richard E. Kendell
SUBJECT: Proposed 2005-06 Budget Request

Issue

A major topic of discussion for the October 19 meeting will be Regent consideration of and action on the USHE 2005-06 operating budget request. Given the continued uncertainty of the state's fiscal climate and limited availability of new funds, the 2005-06 request will focus clearly on the system's highest priorities, including compensation, infrastructure, state strategic priorities, and access. Because final numbers are presently being assembled and verified, it is necessary to hand-carry the Commissioner's recommendation to the Regent meeting.

Richard E. Kendell, Commissioner

REK/MHS/BRF

October 12, 2004

MEMORANDUM

To: State Board of Regents

From: Commissioner Richard E. Kendell

SUBJECT: RESOLUTION IN SUPPORT OF CONSTITUTIONAL AMENDMENT 2

Utah voters are being asked to approve an amendment to the State Constitution that is important to Utah's Higher Education institutions, particularly, our research universities. Amendment 2 was sponsored in the 2004 Legislative Session by Rep. Greg Curtis, and had the strong support of the Utah System of Higher Education. This amendment removes any legal question from the practice of state institutions of higher education receiving an equity ownership interest in return for intellectual property developed at their institution.

Approval of this amendment is critical to the continued success of our research institutions, and could result in economic benefits for the state of Utah through the commercialization of research and may also benefit institutions through the value received from equity ownerships. Attached is a proposed resolution in support of Amendment 2, as well as information on the amendment from the *Utah Voter Information Pamphlet*.

Commissioner's Recommendation

The Commissioner recommends that the Board of Regents adopt a resolution encouraging voter approval of Constitutional Amendment 2.

Richard E. Kendell, Commissioner

RK:db
Attachments

RESOLUTION IN SUPPORT OF CONSTITUTIONAL AMENDMENT 2

WHEREAS, the Utah Legislature approved a proposed amendment to the State Constitution, H.J. R. 12, sponsored by Rep. Greg Curtis, in the 2004 Legislative Session, by a vote of 68-2 in the House and 23-0 in the Senate, and,

WHEREAS, this amendment appears on the ballot for voter approval during the General Election on November 2 as Constitutional Amendment Number 2, and,

WHEREAS, this amendment clarifies the Utah Constitution to remove any question from the practice of state institutions of higher education receiving an equity ownership interest in return for intellectual property developed at such institutions, and,

WHEREAS, in the past year alone the State's two research universities have attracted a combined investment of \$500 million in research grants and contracts, providing significant economic benefits to Utah's economy including the creation of new companies and jobs, and,

WHEREAS, the research and development capacity of Utah's universities and colleges benefits the economy of the State through direct jobs created from research grants and contracts and the potential for creating technology that then spurs additional economic activity including the formation of new business enterprises, and,

WHEREAS, Utah's success in fostering technology transfer will have an increasingly significant impact on the economic well-being of the State of Utah and its people, and,

WHEREAS, other states against which Utah and its research universities compete for both research funding and business development have provisions granting research universities the opportunity to have an equity ownership, and

WHEREAS, failure to approve Constitutional Amendment 2 would likely have a serious negative consequences on the ability of research universities to commercialize intellectual property,

NOW, THEREFORE, BE IT RESOLVED by the State Board of Regents that it recognizes and appreciates the importance of research and development and technology transfer to the economic well-being of Utah, and,

BE IT FURTHER RESOLVED that the State Board of Regents endorses approval of Constitutional Amendment 2, and urges all Utah voters to so vote at the upcoming Election on November 2.

Nolan E. Karras, Chair
Utah State Board of Regents

Richard E. Kendell, Commissioner
Utah System of Higher Education

CONSTITUTIONAL AMENDMENT NUMBER

Resolution-Exception to Subscribing to Stock Prohibition

2

Shall the Utah Constitution be amended to authorize the state or a public institution of higher education to acquire an ownership interest in a private business in exchange for rights to intellectual property developed by the state or public institution of higher education?

IMPARTIAL ANALYSIS

Constitutional Amendment Number 2 amends the Utah Constitution to create a narrow exception to a provision prohibiting the state or a local government from purchasing newly issued stock from a private corporation. The Amendment authorizes the state or a public institution of higher education to acquire an ownership interest in a private business in exchange for the sale, license, or other transfer to the private business of intellectual property developed by the state or public institution of higher education.

is in exchange for rights to intellectual property, such as a patent or copyright, that was developed by the state or the public institution of higher education.

Effective date

If approved by voters, Constitutional Amendment Number 2 takes effect January 1, 2005.

Fiscal impact

Constitutional Amendment Number 2 has no fiscal impact on state or local government.

Background

The original 1896 Utah Constitution contained a provision that prohibited state and local governments from subscribing to the stock of any private corporation. Subscribing to stock means to buy or to agree to buy stock of a corporation that is newly issuing stock. The purposes of the provision prohibiting government from subscribing to stock generally include preventing government from using public resources to benefit a single private company and preventing government from risking its resources on a startup company.

In recent years, at least one of the state's public universities has developed new technologies and has at times sold to private companies the right to put those technologies to commercial use. In exchange for those technology rights, the university has received an ownership interest in those companies. A Utah Supreme Court case dealing with a related issue has raised a question whether that practice is consistent with the Utah Constitution prohibition against subscribing to stock.

Constitutional Amendment Number 2

Constitutional Amendment Number 2 resolves that issue by making a narrow exception to the general prohibition against state and local governments buying newly issued stock of a private corporation. Under the Amendment, the state or a public institution of higher education may acquire an ownership interest in a private business if the acquisition

YES
 NO

Senate: 23-0-6
House: 68-2-5

ARGUMENTS

Argument For:

Vote YES on Constitutional Amendment Number 2. It will protect the ability of the state's universities to capitalize on new technologies they produce and allow them to continue to provide a significant economic benefit for the universities and the state.

Much of today's technologies come from university research. In fact, universities are the leading source of new patents. Currently the state's two public research universities generate more than \$500 million in research activity and produce many new inventions each year. University research led to the development of such successful businesses as Myriad Genetics and HyClone Industries. Businesses that result from university research provide a significant economic benefit to the state.

Those businesses can also provide a direct financial benefit to the universities. Research universities that generate new technology routinely sell the rights to that new technology to private companies which then turn that technology into marketable products. Sometimes a university receives stock in the business that purchases the new technology. If the business is successful, the university benefits as the value of the stock increases.

The state's research universities have for many years been engaged in the practice of receiving stock in exchange for new technology developed by the university. This practice has produced a significant benefit to the universities and the state. However, some have questioned the constitutionality of this practice under an obscure, century-old provision intended to prevent the state from using tax dollars to invest in speculative ventures such as railroads. Constitutional Amendment Number 2 makes clear that the established and beneficial practice of research universities receiving a company's stock in exchange for new technology developed by the university is consistent with the Utah Constitution.

Passage of Constitutional Amendment Number 2 will send a strong signal to businesses interested in either staying or locating in Utah that the state has an environment that encourages economic development through the transfer and commercialization of new technologies developed in the state's universities. Most other states that compete with Utah in the area of economic development long ago expressly permitted their institutions of higher education to hold an equity interest in the companies they start. This Amendment must be passed to ensure the continued efforts to realize fully the capital gains associated with successful research. By passing this Amendment, Utah will significantly enhance its competitive edge in economic development.

Constitutional Amendment Number 2 was passed overwhelming in the Utah House of Representatives by a vote of 68 to 2 and in the Utah Senate by a vote of 23 to 0. That legislative backing is complemented by similar support from the Utah Constitutional Revision Commission, the state's two

research universities (the University of Utah and Utah State University), the Utah State System of Higher Education, the Economic Development Corporation of Utah, and the Salt Lake City Chamber of Commerce.

For the sake of Utah's economic future, vote YES on Constitutional Amendment Number 2.

REPRESENTATIVE GREG J. CURTIS

Argument Against:
(No statement submitted.)

Rebuttal To Argument for
(No statement submitted.)

Rebuttal To Argument Against
(No statement submitted.)

COMPLETE TEXT CONSTITUTIONAL AMENDMENT NUMBER 2

This joint resolution proposes to amend the Utah Constitution to modify a provision relating to a prohibition against subscribing to stock.

Utah Constitution Sections Affected:

AMENDS:

ARTICLE VI, SECTION 29

ARTICLE X, SECTION 5

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Utah Constitution Article VI, Section 29, to read:

Article VI, Section 29. [Lending public credit and subscribing to stock or bonds forbidden -- Exception.]

~~[The Legislature may not authorize the]~~

~~(1) Neither the State, nor any county, city, town, school district, or other political subdivision of the State may lend its credit or, except as provided in Subsection (2), subscribe to stock or bonds in aid of any railroad, telegraph or other private individual or corporate enterprise or undertaking, except as provided in Article X, Section 5.~~

(2) Except as otherwise provided by statute, the State or a public institution of post-secondary education may acquire an equity interest in a private business entity as consideration for the sale, license, or other transfer to the private business entity of intellectual property developed in whole or in part by the State or the public institution of post-secondary education, and may hold or dispose of the equity interest.

Section 2. It is proposed to amend Utah Constitution Article X, Section 5, to read:

Article X, Section 5. [State School Fund and Uniform School Fund -- Establishment and use -- Debt guaranty.]

- (1) There is established a permanent State School Fund which shall consist of revenue from the following sources:
- (a) proceeds from the sales of all lands granted by the United States to this state for the support of the public elementary and secondary schools;
 - (b) 5% of the net proceeds from the sales of United States public lands lying within this state;
 - (c) all revenues derived from nonrenewable resources on state lands, other than sovereign lands and lands granted for other specific purposes;
 - (d) all revenues derived from the use of school trust lands;
 - (e) revenues appropriated by the Legislature; and
 - (f) other revenues and assets received by the fund under any other provision of law or by bequest or donation.
- (2) (a) The State School Fund principal shall be safely invested and held by the state in perpetuity.
- (b) Only the interest and dividends received from investment

of the State School Fund may be expended for the support of the public education system as defined in Article X, Section 2 of this constitution.

(c) The Legislature may make appropriations from school trust land revenues to provide funding necessary for the proper administration and management of those lands consistent with the state's fiduciary responsibilities towards the beneficiaries of the school land trust. Unexpended balances remaining from the appropriation at the end of each fiscal year shall be deposited in the State School Fund.

(d) The State School Fund shall be guaranteed by the state against loss or diversion.

(3) There is established a Uniform School Fund which shall consist of revenue from the following sources:

- (a) interest and dividends from the State School Fund;
- (b) revenues appropriated by the Legislature; and
- (c) other revenues received by the fund under any other provision of law or by donation.

(4) The Uniform School Fund shall be maintained and used for the support of the state's public education system as defined in Article X, Section 2 of this constitution and apportioned as the Legislature shall provide.

(5) (a) ~~[The]~~ Notwithstanding Article VI, Section 29, the State may guarantee the debt of school districts created in accordance with Article XIV, Section 3, and may guarantee debt incurred to refund the school district debt. Any debt guaranty, the school district debt guaranteed thereby, or any borrowing of the state undertaken to facilitate the payment of the state's obligation under any debt guaranty shall not be included as a debt of the state for purposes of the 1.5% limitation of Article XIV, Section 1.

(b) The Legislature may provide that reimbursement to the state shall be obtained from monies which otherwise would be used for the support of the educational programs of the school district which incurred the debt with respect to which a payment under the state's guaranty was made.

Section 3. Submittal to voters.

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 4. Effective date.

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2005.

October 12, 2004

MEMORANDUM

To: State Board of Regents
From: Commissioner Richard E. Kendell
Subject: DISCUSSION OF INITIATIVE 1

Citizen's Initiative 1 authorizes up to \$150 million in General Obligation bonds to be repaid through an increase in the state sales tax by 1/20 cent (.05%) as follows:

- \$120 million for "Conservation Projects" including the preservation of watersheds, rivers, lakes, streams, wetlands, uplands, critical wildlife and endangered species habitats, ecological areas, agricultural lands, sites of historical/cultural significance, natural lands and open space.
 - \$57 million will be allocated on a competitive basis by the Quality Growth Commission
 - \$20 million to the Division of Wildlife Resources
 - \$10.5 million to the Division of State Parks
 - \$16.25 million to the Department of Environmental Quality
 - \$16.25 million to the Department of Agriculture and Food

- \$30 million for "Community Projects."
 - \$25 million allocated by the Quality Growth Commission to communities for either a "conservation project" or a "quality of life or infrastructure" project at a county, city, or town level such as recreation facilities, trails, parks, picnic or camp grounds, fairgrounds, government buildings, water treatment facilities, or the development of land use and community and economic development plans.
 - \$5 million to the State Museum of Natural History for structures, exhibit space, interpretive displays, collections, either for the Museum or for other nonprofit organizations that collect, care for, and exhibit natural or cultural history collections.

- Requires that if a government entity acquires private land using bond proceeds, the Initiative requires the government entity to make payments in lieu of property taxes to the local taxing entities.

Although the funding of these projects does not directly compete with Higher Education funding, since they create a new revenue source through an increase in the State Sales Tax, it would require using state bonding authority and sales tax capacity. Last week Governor Walker issued a statement raising a number of concerns (attached). Also attached is the information on Initiative 1 from the *Utah Voter Information Pamphlet*.

Commissioner's Recommendation

The Commissioner recommends that Regents consider the enclosed information, discuss the issue, and determine whether or not to take a formal position regarding the initiative.

Richard E. Kendell, Commissioner

RK:db
Attachments

NEWS RELEASE

Oct. 7, 2004

Contacts: Amanda Covington, (801) 538-1503

Governor Cites Concerns with Initiative 1 and Encourages Utahns to Understand Its Full Implications

Today, Gov. Olene S. Walker raised concerns regarding the Utah Clean Water, Quality Growth and Open Space Initiative (Initiative 1) which will appear on the ballot Nov. 2.

“I have been a long-time advocate of open space, conservation, trails, and clean air and water,” said Walker. “The dream behind Initiative 1 is right, but the implications are wrong. I feel I have an obligation to speak out.”

The governor cited several reasons the initiative should not pass and encouraged legislators and proponents of the initiative to continue working on it in the next legislative session.

“The initiative touts open space and other admirable concepts, but do citizens realize that \$30 million of the \$150 million will be used for such things as convention centers, fair grounds and local government buildings?” Walker questioned. “This initiative commits the state to assume local government funding issues when it already has such pressing needs like education, transportation and prison growth.”

Walker is also concerned the initiative adds to the debt of the state which in the long-term could jeopardize Utah’s triple A bond rating.

“While we all want clean air and open space for future generations, this initiative comes with the price of saddling our children with \$150 million in debt,” Walker said.

With extensive knowledge of the state budgeting process, the governor warned that budgeting by initiative sets a precedent. “This process has not served states like California and Oregon well. It is prudent to determine the budget by looking at all needs and issues facing Utah, rather than addressing them in a piecemeal fashion.”

The initiative also requires the state to pay property taxes to local government.

“I question the wisdom of the state paying property tax on local government facilities,” the governor stated.

Walker urged Utahns to understand the proposal completely before voting. Voters can find more information on Initiative 1, including an impartial analysis and pro and con arguments, in the Utah Voter Information Pamphlet. The pamphlet is available online at www.elections.utah.gov. It will also be distributed in all general circulation newspapers beginning Oct. 11. Utahns who do not subscribe to a newspaper will receive the pamphlet in the weekly mailed advertisements.

CITIZEN'S STATE INITIATIVE NUMBER

Utah Clean Water, Quality Growth and Open Space Initiative

Shall a law be enacted to:

(1) authorize the state to borrow up to \$150 million by issuing bonds to be repaid within 13 years from a statewide sales tax increase of 1/20th of one cent and, only if necessary, from general state sales tax revenues; and

(2) use bond proceeds for projects that, among other things:

(a) preserve or enhance lakes, rivers, and streams, wildlife habitat, farms and ranches, trails, historical sites, parks, open space, and water and air quality; facilitate growth management; and build park, wildlife, or trail facilities; and

(b) build local community facilities and improve natural history and cultural museums?

IMPARTIAL ANALYSIS

Citizen's State Initiative Number 1 authorizes the state to issue bonds to borrow up to \$150 million to fund conservation projects and community projects, as defined in the Initiative and as explained below. The Initiative provides for payment of those bonds by a 1/20th of one cent increase in the statewide sales and use tax.

Bond proceeds must be spent on conservation projects

The Initiative requires that about \$120 million of the bond proceeds be used for conservation projects to be undertaken by the state, by a county, city, town, or special district, or by a nonprofit conservation organization. A conservation project, as defined in the Initiative, is a project to preserve, protect, enhance, or obtain the benefits of the natural resources of the state, and may include a project to:

- acquire interests in land, or enhance or restore land, in order to preserve, enhance, or restore: lakes, rivers, and streams; watersheds; wildlife habitat; farms, ranches, and other agricultural lands; trails; historical and cultural sites; parks; and open space;
- enhance water and air quality; provide incentives to meet water and air quality standards; take an inventory of wildlife species; assist in eradicating or controlling invasive species; assist with wildlands fire management; implement programs for the transfer of development rights; and facilitate sound growth management and land use planning at the state, regional, or local level; and
- build, improve, or repair government-operated parks, natural history and visitor interpretive centers, wildlife management and enhancement structures, greenways, and trails.

The Quality Growth Commission, which consists of two state government persons, six elected local officials, and five persons from the private sector, must allocate the \$120 million as follows:

- about \$57 million to entities that complete a competitive application process

and provide 25% in matching funds;

- about \$20 million to the Division of Wildlife Resources;
- about \$10.5 million to the Division of State Parks;
- about \$16.25 million to the Department of Environmental Quality; and
- about \$16.25 million to the Department of Agriculture and Food.

Some bond proceeds may be spent on community projects

The balance of the bond proceeds, approximately \$30 million, may be used for community projects. A community project is defined as:

- (1) a project that qualifies as a "conservation project;"
- (2) a "quality of life and infrastructure" project at the county, city, or town level that is intended to enhance a local community, such as recreation facilities, trails, community parks, picnic and camp grounds, fairgrounds, convention centers, improvements to local government buildings, water treatment facilities, or the development of land use and community and economic development plans; or
- (3) expenditures for structures, exhibit space, interpretive displays, collections and other facilities for the State Museum of Natural History and for nonprofit organizations that collect, care for, and exhibit natural or cultural history collections.

Of the approximately \$30 million, the Initiative requires that the Quality Growth Commission allocate about \$25 million to community projects submitted by the governor's office through a competitive application process developed in consultation with local government officials from throughout the state. The Initiative requires that the Quality Growth Commission allocate the remaining amount, approximately \$5 million, to community projects submitted by the Director of the State Museum of Natural History.

FOR
 AGAINST

Bond issuance requirements

The Initiative authorizes the state to borrow up to \$150 million by issuing bonds, and requires that the bonds be issued within four years after the Initiative's effective date. The Initiative requires that all bonds be repaid no later than 13 years after they are issued. In order for the bonds to be issued, the legislature may need to pass further implementing legislation.

Repayment of bonds from sales and use taxes

The Initiative provides that the debt created by the bonds will be repaid by revenue from a statewide sales and use tax increase of 1/20th of one cent. If revenue from that sales and use tax increase is not sufficient to repay the bonds, the Initiative requires that revenue from the general statewide sales and use tax be used to make up the shortfall.

Fiscal impact

The Legislative Fiscal Analyst estimates that total principal and interest payments on the bonds will be about \$192 million, with annual payments of about \$14.8 million. These estimates are based on the assumption that the bonds are all issued in January 2005, that the bonds will be repaid in 13 years, and that the interest rate at the time of issuance is 3.83%. Based on fiscal year 2005 revenue estimates, the 1/20th of one cent statewide sales and use tax increase would generate about \$15.8 million in revenue during the first year that the tax is in place.

The state will need to pay about \$950,000 in costs associated with issuance of the bonds, either from bond proceeds, which would reduce the amount of money available for conservation projects and community projects, or from money appropriated by the legislature.

Related provisions

The Initiative prohibits government entities from using bond proceeds to acquire property by eminent domain.

If a government entity acquires private land using bond proceeds, the Initiative requires that the government entity make payments to offset some or all of the property taxes that would have been paid if the land had remained in private ownership. Depending on how this requirement is implemented, there may be some question as to whether it is consistent with the Utah constitutional provision exempting government-owned property from property tax.

The Initiative also contains other provisions relating to, among other things, the manner of issuing the bonds and the administration of bond proceeds.

Effective date

If approved by voters, the Initiative takes effect five days after issuance of the governor's proclamation certifying voter approval of the Initiative.

ARGUMENTS

Argument For:

PROTECT WHAT MAKES UTAH SPECIAL - VOTE YES ON INITIATIVE 1

Utah offers all of us a unique quality of life—a home where we treasure our clean drinking water, parks, open spaces, and the stunning beauty of the recreational lands we all use. A YES vote on Initiative 1 will maintain this special quality of life for our children, by protecting Utah's drinking water, air quality, wildlife habitat, rivers and streams, family farms and ranches, and cultural and historic landmarks.

WHY INITIATIVE 1 IS NEEDED

By 2020, Utah's population is projected to grow by one million people. The consequences of not preparing for this growth will be serious: threatened water sources and polluted air, congestion on our roads and in our parks, and the permanent loss of our quality of life. We will risk losing jobs, business to other states and money from tourism—all of which are bolstered by Utah's clean air, clean water and unique natural beauty. And the longer we wait, the more expensive it will be to protect Utah's natural assets as property prices escalate.

HOW INITIATIVE 1 WILL HELP

Initiative 1 will fund essential land and water conservation projects throughout the state; maintaining Utah's quality of life by:

- Protecting and improving drinking water quality
- Preserving working family farms and ranches
- Protecting lakes, rivers, stream and watersheds
- Preserving fish and wildlife habitat
- Maintaining and improving state and local parks
- Providing incentives to improve air quality
- Conserving historical and cultural landmarks

Initiative 1 is a balanced proposal that respects Utah's customs and private property rights. All projects will be completed on a willing seller/willing buyer basis - and all lands will remain on the tax rolls or will be subject to payments made in place of taxes. Local government and members of the public will be involved in setting priorities for Initiative 1, so the needs of Utah's communities will be met.

INITIATIVE 1 REQUIRES FISCAL ACCOUNTABILITY

Initiative 1 will cost the average Utah family about \$14 per year—a small price to pay for protecting Utah's quality of life—and these costs will be in effect for no more than 13 years from the date the bonds are issued. Funds from Initiative 1 will be matched by federal and/or private dollars, ensuring that each dollar we spend will create more funding to protect land and water in Utah. And all funding will be subject to independent audits by the State.

VOTE YES ON INITIATIVE 1

Civic and business leaders, The Desert News, The Salt Lake Tribune, The Nature Conservancy, Sportsmen for Fish and Wildlife, Utah farmers and ranchers - and tens of thousands of Utahns statewide support this measure. Help us protect what

makes Utah special. Vote YES on Initiative 1.

FORMER SENATOR JAKE GARN

NORMA MATHESON, FORMER FIRST LADY

MAYOR LEWIS BILLINGS

SENATOR GREG BELL

JOHN GARFF, PRESIDENT, KEN GARFF AUTOMOTIVE GROUP

AILEEN CLYDE, FORMER REGENT, UNIVERSITY OF UTAH

DON PEAY, PRESIDENT, SPORTSMEN FOR FISH AND WILDLIFE

CHARLIE BLACK, DAVIS COUNTY FARMER

Argument Against:

Utahns have eight key reasons to reject this initiative.

Open space is not more important than education.

This initiative dictates that revenue be set aside BEFORE limited dollars are budgeted for our struggling education system, health care for the poor, and transportation system. Open space is a worthy goal - but should compete for prioritization with other desperate needs in the budget process.

Local decisions should be made locally.

Open space funding should be determined and paid for by local taxpayers, not a statewide tax increase. Open space in Bountiful should not be funded by taxpayers in Panguitch, Salt Lake or Vernal. Cities and counties are spending millions to preserve open space, including Park City (\$20 million) and West Jordan (\$4.2 million). Approximately 370 acres were recently preserved between Riverton and Draper with no new taxes.

Rural areas don't need more open space.

Economic growth in most rural areas is practically non-existent, meaning that open space is not threatened by sprawl. In addition, only 22% of Utah is privately owned. In Garfield County, 97% of the land is owned by the government. Rural Utahns need MORE private land, not less, to jump-start their economic engines.

New taxes are a bad idea.

ANY increase is significant. Our state and local tax & fee burden is already the third highest in the nation, a consequence of numerous "small" tax increases over the years. High taxes have a significant negative impact on economic growth and capital investment.

Initiatives are a poor way to shape tax policy.

Dedicating general revenues for specific purposes is universally recognized as poor tax policy. Utah can't afford to start setting budgets through initiative like California. To maintain fiscal discipline and flexibility, government spending priorities need to compete against each other for funding. Dedicated revenue streams force elected officials to ignore critical funding needs in other areas - or raise your taxes.

ARGUMENTS

No tax is temporary.

Some say this is a "temporary" tax. Don't believe it. History has taught us that temporary taxes become permanent. We live in a democratic republic - not a pure democracy. We elect representatives to study the issues and make informed budget decisions for the state. If they are not responsive to our needs, we select new representatives. Initiative proponents want to circumvent the legislative budget process, claiming their priorities deserve preferential treatment.

We live in a democratic republic - not a pure democracy. We elect representatives to study the issues and make informed budget decisions for the state. If they are not responsive to our needs, we select new representatives. Initiative proponents want to circumvent the legislative budget process, claiming their priorities deserve preferential treatment.

It's open season on taxpayers. Passage of this tax increase will signal to well-funded out-of-state spending groups that hunting season is open - on Utah's taxpayers. Utah has no restrictions on initiative campaign finance, and special interest groups will effectively manipulate the system to force tax increases that will harm Utah's economic growth.

Vote no on this initiative. Open lands preservation is an important goal but shouldn't damage the very people it seeks to reward.

SENATE PRESIDENT AL MANSELL
HOUSE SPEAKER MARTY STEPHENS
SENATOR TOM HATCH
REPRESENTATIVE STEPHEN URQUHART
MAYOR MONT EVANS
UTAH FARM BUREAU
UTAH TAXPAYERS ASSOCIATION

Rebuttal to Argument Against:

Don't be fooled. Here are the facts on Initiative 1:

Initiative 1 will protect Utah's quality of life for future generations. Initiative 1 has a new, self-funding mechanism and will not take one dime from education, transportation or any other state budget needs. But Initiative 1 will protect our public health by ensuring clean water and clean air.

All Utahns will benefit from Initiative 1. Initiative 1 provides new funding for communities to ensure clean air and water, support family farms and ranches, and enjoy healthy wildlife populations. A statewide measure ensures all Utah communities have an equal opportunity to fund projects of their choice.

Initiative 1 works only with willing buyers and willing sellers to keep land in private hands. Any land protected under Initiative 1 will remain on the tax rolls.

Initiative 1 protects Utah taxpayers. All funds from Initiative 1 will be subject to independent audits, overseen by the citizens on the Utah Quality Growth Commission, and open for public review. And by law, the small sales tax that funds Initiative 1 MUST end as soon as the bonds are paid off.

We cannot afford to wait. Our rivers, lakes and streams are already being contaminated. Each day, congestion increases, more pollution keeps our children indoors, and more natural places are lost. For years, the Legislature has ignored these concerns. Initiative 1 is a chance for Utahns to make a small investment now to safeguard our future.

Dan Jorgensen, Sevier County Rancher
Dave Livermore, The Nature Conservancy
Douglas Thompson, Mayor of Logan

Rebuttal to Argument For:

First of all, the majority of farmers and ranchers DO NOT support this statewide tax increase. The Utah Farm Bureau's 22,000 member families have debated this issue extensively and prefer to support local funding for open space.

Second, voters should not assume that little is being done to preserve our quality of life. Over the past ten years we have spent well over a BILLION dollars to

- Improve water quality,
- Preserve family farms and ranches,
- Protect watersheds,
- Preserve fish and wildlife habitat,
- Maintain and improve state and local parks,
- Improve air quality,
- Conserve historic and cultural landmarks,
- Protect endangered species,
- Guard against dangerous wastes, and
- Protect Open Space.

Third, this initiative leaves too many unanswered questions:

How are young farmers going to afford land when they have to compete with \$150 million of our tax dollars?

Why aren't proponents advertising that Initiative 1 will allow \$30 million to be used for convention centers and other local government buildings?

Why does the "Open Space" initiative REQUIRE a minimum of \$5 million to be spent on museums?

The devil is in the details. What other surprises are hidden in the legal text?

This is a feel-good measure, but it won't feel good when bad policy comes back to bite us. If you agree environmental quality is important, elect responsive leaders and tell them how you feel - but vote NO on this misdirected tax proposal.

For more information visit www.utahtaxpayers.org.

THE UTAH TAXPAYERS ASSOCIATION, ET.AL.

Chapter 14. The Utah Clean Water, Quality Growth And Open Space Initiative

PART 1: GENERAL PROVISIONS

63B-14-101. Definitions.

- (1) "Bonds" means the bonds issued pursuant to Section 63B-14-202.
- (2) "Community Projects" means any of the purposes for which proceeds of the Bonds deposited into the Project Fund may be used as described in Section 63B-14-206.
- (3) "Conservation Projects" means any of the purposes for which proceeds of the Bonds deposited into the Project Fund may be used as described in Section 63B-14-204.
- (4) "Government Entities" means the State and any cities, counties, towns and special districts within the state of Utah.
- (5) "Natural and Cultural History Museums" means institutions that are (a) non-profit organizations designated under Section 501(c)(3) of the Internal Revenue Code; and (b) collect, care for, and exhibit collections of natural or cultural history.
- (6) "Project Fund" means one or more funds to be established by resolution of the State Bonding Commission or by direction of the Quality Growth Commission into which the proceeds of the Bonds shall be deposited and used to finance Conservation and Community Projects.
- (7) "Quality Growth Commission" means the Quality Growth Commission established in Section 11-38-201.
- (8) "Sinking Fund" means the Utah Clean Water, Quality Growth And Open Space Initiative Sinking Fund established under Section 63B-14-211.
- (9) "State Museum of Natural History" means the state natural history museum established by Section 53B-17-601(1).

PART 2: SALES AND USE TAX REVENUE BONDS

63B-14-201. Purpose; Statewide Public Purpose.

It is the purpose of this Chapter to: (i) authorize the State Bonding Commission to issue sales and use tax revenue bonds for the purpose of financing Conservation Projects and Community Projects which are of Statewide concern and constitute a Statewide public purpose; and (ii) by doing so, provide for clean water, clean air, wildlife habitat, parks, agricultural land preservation, quality growth, open space and the protection and enhancement of the natural resources of the State now and for future generations.

63B-14-202. State Bonding Commission authorized to issue sales and use tax revenue bonds.

In order to finance Conservation and Community Projects, the State Bonding Commission shall issue and sell sales and use tax revenue bonds of the State, pledging all of the state sales and use tax revenues of the State for the payment of the principal of and interest on the Bonds. The Bonds will not be payable from or secured by the ad valorem taxing power of the State or otherwise be general obligations of the State, but shall be payable solely from the state sales and use tax revenues of the State.

63B-14-203. Maximum Amount — Use of Proceeds — Deposits — Investment — Disposition of investment

income and unexpended proceeds.

- (1) The total amount of Bonds to be issued under this Chapter may not exceed \$150,000,000.
- (2) The Bonds to be issued under this Section shall be issued, in one or more series, within four years from the effective date of this Chapter.
- (3) Of the \$150,000,000 authorized hereby, approximately \$120,000,000 of Bond proceeds shall be allocated to Conservation Projects and approximately \$30,000,000 of Bond proceeds shall be allocated to Community Projects. Net Bond proceeds shall be used by non-profit organizations designated under Section 501(c)(3) of the Internal Revenue Code and Government Entities to accomplish the purposes of this Chapter. It is hereby found and determined that the use of the Bond proceeds for the purposes described herein is for the State's benefit and in furtherance of essential State purposes.
- (4) Proceeds from the issuance and sale of the Bonds shall be deposited in the Project Fund to be administered by the Governor's Office of Planning and Budget on behalf of the Quality Growth Commission.
- (5) The State Bonding Commission by resolution may provide for the deposit of these monies with and the administration, disposition, or investment of these monies by a bond trustee.
- (6) After completion of the purposes and payment of the costs authorized in this Chapter, any unexpended Bond proceeds shall be deposited into the Sinking Fund unless otherwise provided by resolution of the State Bonding Commission.
- (7) The State Bonding Commission, in consultation with the Quality Growth Commission, may from time to time, according to Conservation Project and Community Project needs, issue one or more series of bonds for any of the purposes described herein, subject to the maximum parameters established under Sections 63B-14-205 and 63B-14-207 below, and it shall not be a requirement hereunder that each series of Bonds include projects from each category. Notwithstanding this Subsection (7), upon the issuance of all of the Bonds to be issued under this Chapter, the Bond proceeds allocated shall reflect the approximate amounts required hereby to be allocated to each category of project within the Conservation and Community Projects.

63B-14-204. Conservation Projects.

Conservation Projects shall be those projects undertaken by a Government Entity or a non-profit conservation organization designated under Section 501(c)(3) of the Internal Revenue Code, which preserve, protect or enhance the natural resources of this state or obtain the benefits thereof as follows:

- (1) the acquisition of fee title to, perpetual conservation easements on, or other interests in public or private land for the purpose of preserving watersheds, rivers, lakes and streams, wetlands, uplands, critical wildlife habitat, endangered species habitat, ecological areas, agricultural lands and soils, farms and ranches, sites of cultural and historic significance, motorized and non-motorized

trail rights of way, greenways, public access, state and local parklands, and predominantly undeveloped natural lands and open space;

(2) the enhancement, restoration, or both, of public or private land for the purpose of preserving, enhancing or restoring watersheds, rivers, lakes and streams, wetlands, uplands, critical wildlife habitat, endangered species habitat, ecological areas, agricultural lands and soils, farms and ranches, sites of cultural and historic significance, motorized and non-motorized trail rights of way, greenways, public access, state and local parklands, and predominantly undeveloped natural lands and open space;

(3) conservation projects and programs which (i) enhance or improve air quality, (ii) provide incentives to meet federal and state air and water quality standards, (iii) assist agricultural producers to comply with federal and state air and water quality standards, (iv) assist with surface water, stormwater and groundwater management and monitoring to improve water quality, (v) inventory wildlife species, (vi) assist to eradicate or control invasive species, (vii) assist with wildlands fire management, (viii) implement transfer of development right programs and banks, or (ix) facilitate sound growth management and land use planning at the state, regional or local level;

(4) the construction, repair and improvement of (i) park facilities owned or operated by Government Entities, (ii) natural history and visitor interpretive centers, (iii) wildlife management and enhancement structures, (iv) greenways, or (v) motorized and non-motorized trails.

63B-14-205. Bond proceeds allocation to Conservation Projects.

Of the approximately \$120,000,000 in Bond proceeds intended to be allocated to Conservation Projects:

(1) approximately \$57,000,000 shall be allocated to Conservation Projects selected by the Quality Growth Commission on the basis of a competitive application and proposal process. The Quality Growth Commission will use the following criteria in evaluating projects: (i) the quality of the resource being protected, (ii) the threat to that resource, (iii) the amount to which funds will be matched or leveraged, and (iv) the capacity of the agency or organization to manage the property for the purposes proposed;

(2) approximately \$20,000,000 shall be allocated by the Quality Growth Commission to Conservation Projects submitted by the Director of the Division of Wildlife Resources;

(3) approximately \$10,500,000 shall be allocated by the Quality Growth Commission to Conservation Projects submitted by the Director of the Division of State Parks;

(4) approximately \$16,250,000 shall be allocated by the Quality Growth Commission to Conservation Projects submitted by the Director of the Department of Environmental Quality; and

(5) approximately \$16,250,000 shall be allocated by the Quality Growth Commission to Conservation Projects

submitted by the Director of the Department of Agriculture and Food.

63B-14-206. Community Projects.

Community Projects shall be:

(1) projects which qualify as Conservation Projects as designated in Section 63B-14-204 above; or
(2) additional quality of life and infrastructure projects at the county, city and town level consistent with the purposes of the Quality Growth Act, Title 11, Chapter 38 and intended to enhance local communities such as: athletic and recreational fields and facilities, equestrian centers, aquatic centers, city, town and county parks, trails, picnic and camp grounds, fairgrounds, convention centers, capital improvements to city, town or county buildings, water treatment facilities, and development of land use and community and economic development plans. Community Projects described in this subparagraph (2) do not include golf courses, construction of reservoirs or major pipelines, or the grading or repair of roads; or
(3) State Museum of Natural History and Natural and Cultural History Museums capital expenditures, including structures, exhibit space, interpretive displays, archives, collections and related fixtures and equipment.

63B-14-207. Bond proceeds allocation to Community Projects.

Of the approximately \$30,000,000 in Bond proceeds intended to be allocated to Community Projects:

(1) approximately \$25,000,000 shall be allocated by the Quality Growth Commission to Community Projects submitted by the Director of the Governor's Office of Planning and Budget. Such submissions will be the result of a competitive application and proposal process developed by the Director of the Governor's Office of Planning and Budget, in consultation with each of the following associations of government (or their successors): (i) Bear River Association of Governments, (ii) Wasatch Front Regional Council, (iii) Mountainland Association of Governments, (iv) Uintah Basin Association of Governments, (v) Southeast Association of Governments, (vi) Six County Association of Governments, and (vii) Five County Association of Governments.

(2) approximately \$5,000,000 shall be allocated by the Quality Growth Commission to Community Projects submitted by the Director of the State Museum of Natural History.

63B-14-208. Restrictions on the uses of Bond proceeds.

(1) The proceeds of the Bonds may only be used for transactions involving willing sellers and willing buyers and may not be used in condemnation proceedings.

(2) Any acquisitions of fee simple interests in land made by a Government Entity utilizing Bond proceeds shall be subject to payments in lieu of taxes. Such payments shall not exceed the rate of taxation for comparable property classifications.

(3) Any acquisitions of fee simple interests in land made by non-profit conservation organizations designated under Section 501(c)(3) of the Internal Revenue Code utilizing Bond proceeds shall be subject to property taxation so

long as the rate of taxation does not exceed rates for comparable property classifications.

(4) Conservation Projects selected by the Quality Growth Commission on the basis of a competitive application and proposal process as described in Section 63B-14-205 (1) shall require a 25% match comprised of dollars from private sources, government entities or the federal government or in-kind contributions from these same sources of commensurate value.

63B-14-209. Manner of issuance --Amounts, interest and maturity.

(1) Bonds issued under this Chapter may be authorized, sold and issued in a manner determined by the State Bonding Commission by resolution, including, but not limited to, the manner of execution of the Bonds (including facsimile signature), redemption price and other provisions. (2) Bonds may be issued in one or more series, shall bear dates, interest rates, including a variable rate or rates, and maturity dates as the State Bonding Commission determines by resolution; but in no event shall the Bonds mature later than 13 years after the date or dates of issuance thereof.

(3) The State Bonding Commission may, by resolution or otherwise, make covenants restricting the issuance of additional indebtedness, bonds or notes of the State secured by a pledge of sales and use tax revenues of the State.

63B-14-210. Levy of Sales Tax: Pledge of state sales and use tax revenue.

(1) Each year after the issuance of the Bonds and until all outstanding Bonds, or any Bonds issued to refund such Bonds, are retired, there is levied a state-wide sales and use tax of .05% in addition to the sales and use taxes authorized and levied by the State under Title 59, Chapter 12, Sales and Use Tax Act.

(2) The sales and use tax provided for in Subsection (1) shall be levied, administered and collected as provided in Title 59, Chapter 12, Sales and Use Tax Act, and the revenues collected from such sales and use tax shall be applied as provided in this Chapter.

(3) The Bonds shall be secured by an irrevocable first charge and lien, but not necessarily an exclusive first charge and lien, on the state sales and use tax revenues collected by the State. It is intended that the payment of the principal of, interest on and redemption premiums, if any, due on outstanding bonds be made first from the state sales and use taxes specified in Subsection (1), and, to the extent necessary, that any shortfall in such payment be made from all other state sales and use tax revenues of the State.

(4) The State pledges to and agrees with the holders of any bonds issued by the State Bonding Commission to which the proceeds of the sales and use tax revenues of the State are devoted or pledged, that the State will not alter, impair, or limit the sales and use tax revenues of the State in a manner that reduces the amount of sales and use tax revenues to be collected by the State, which sales and use tax revenues are pledged or

devoted as security for the bonds, until the bonds, notes or other securities secured by such sales and use tax revenues, together with applicable interest, are fully paid and discharged.

(a) Nothing in this Subsection (4) precludes alteration, impairment or limitation of sales and use tax revenues of the State or elimination of certain transactions from being subject to the imposition of sales and use taxes, so long as the adjusted historical sales and use tax revenues are in excess of the amount required by the resolution of the State Bonding Commission, authorizing the Bonds, for the issuance of additional parity debt. For purposes of this Subsection, "adjusted historical sales tax revenues" shall be calculated as the total sales and use tax revenues of the State collected for the immediately preceding fiscal year, less the state sales and use tax revenues resulting from the transactions proposed for elimination or after applying the proposed state sales and use tax rate reduction, as applicable.

(b) The State and the State Bonding Commission may include the pledge of state sales and use tax revenues set forth in this Section in any offering material used by the State in connection with the marketing of the Bonds.

(5) At such time as all Bonds issued pursuant to this Chapter have been retired and the debt service obligation related thereto has been satisfied or otherwise discharged, the sales and use tax levied under Subsection (1) shall terminate.

63B-14-211. Creation of a Sinking Fund — Maintenance of bond accounts.

(1) There is hereby created a sinking fund to be administered by the State Treasurer entitled the "Utah Clean Water, Quality Growth And Open Space Initiative Sinking Fund."

(2) All sales and use tax revenues resulting from the imposition of the sales and use tax provided in Section 63B-14-205(1) shall be deposited in the Sinking Fund.

To the extent necessary to pay debt service on the Bonds, all other state sales and use tax revenues of the State shall also be deposited in the Sinking Fund. Amounts on deposit in the Sinking Fund shall be used to pay the debt service on the Bonds and to redeem the Bonds prior to maturity, and otherwise shall be used as provided by resolution of the State Bonding Commission.

(3) The State Treasurer and the State Bonding Commission may create separate accounts within the Sinking Fund for each series of Bonds issued.

(4) The State Treasurer or a trustee shall, unless otherwise provided by resolution of the State Bonding Commission, administer and maintain one or more bond funds as established and determined by resolution of the State Bonding Commission.

63B-14-212. Payment of principal of and interest on and redemption premiums of the Bonds.

(1) The Division of Finance shall draw warrants on the State Treasury before any interest, principal, or redemption

premiums become due on the Bonds.

(2) After receipt of the warrants, the State Treasurer shall:

(a) promptly pay the warrants from monies within the Sinking Fund; and

(b) immediately transmit the amount paid to the paying agent for the Bonds.

63B-14-213. Investment of Sinking Fund money -- Investment of Bond proceeds.

(1) The State Treasurer may invest any monies in the Sinking Fund in accordance with the resolution of the State Bonding Commission and in accordance with Title 51, Chapter 7, State Money Management Act, until such monies in the Sinking Fund are needed to pay debt service on the Bonds.

(2) The Quality Growth Commission may deposit the net proceeds of the Bonds with the State Treasurer or with a trustee, who may invest the same in accordance with Title 51, Chapter 7, State Money Management Act, until such monies are needed to pay the costs of the Projects.

(3) Unless otherwise provided in the resolution of the State Bonding Commission authorizing the Bonds, the State Treasurer, or as applicable, the trustee, shall retain and deposit

(a) in the Sinking Fund, all income from the investment of Sinking Fund monies and use such income for payment of the debt service on the Bonds; and

(b) in the Project Fund, all income from the investment of Bond proceeds.

63B-14-214. Refunding of Bonds.

(1) The State Bonding Commission may provide for the refunding of any of the Bonds issued under this Chapter in accordance with Title 11, Chapter 27, Utah Refunding Bond Act.

(2) For purposes of Title 11, Chapter 27, Utah Refunding Bond Act, the State is considered the public body and the State Bonding Commission its governing body.

63B-14-215. Tax exemption.

The Bonds issued under this Chapter, any interest paid on the Bonds, and any income from the Bonds are not taxable in this State for any purpose, except for the corporate franchise tax.

63B-14-216. Legal investment status.

Bonds issued under this Chapter are legal investments for all state trust funds, insurance companies, banks and trust companies, and may be used as collateral to secure legal obligations.

63B-14-217. Publication of resolution or notice -- Limitation on actions to contest legality.

(1) The State Bonding Commission may publish any resolution it adopts under this Chapter once in a newspaper having general circulation in Utah; or in lieu of publishing the entire resolution, publish a notice of bonds to be issued, titled as such, containing the information required in Subsection 11-14-21(3).

(2) Any interested person, for 30 days after the date of publication, may contest:

(i) the legality of the resolution;

(ii) any of the Bonds authorized under it; or

(iii) any of the provisions made for the security and repayment of the Bonds.

(3) After 30 days, a person may not contest the legality of the resolution, any of the Bonds authorized under it, or any of the provisions made for the security and repayment of the Bonds for any cause.

63B-14-218. Chapter to control in conflict -- Authority.

To the extent that this Chapter shall be in conflict with any other law or laws, the provisions of this Chapter shall be controlling and this Chapter shall constitute all authority necessary for the matters authorized hereby.

63B-14-219. Effective Date.

This Chapter shall be effective five days after the date of the Official Proclamation of the vote by the Governor, as provided in Section 20A-7-212(2).

63B-14-220. Report to the Legislature.

The Governor shall report the State Bonding Commission's proceedings in the Governor's budget to each annual general session of the Legislature for as long as Bonds issued under this Chapter remain outstanding.