

**U.S. Department of Education**  
Office of Inspector General



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## **ATTESTATION ENGAGEMENT GUIDE**

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### **Ensuring Continued Access to Student Loans Act of 2008 (ECASLA)**

**Loan Participation Program  
for Loans for Academic Years  
2008-2009 and 2009-2010**

**Custodian's Compliance with the  
Master Participation Agreement**

**April 26, 2010**



**UNITED STATES DEPARTMENT OF EDUCATION**  
**OFFICE OF INSPECTOR GENERAL**  
Washington, DC

April 26, 2010

Dear Colleague:

This letter transmits the U.S. Department of Education's *Attestation Engagement Guide for the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) Loan Participation Program for Loans for Academic Years 2008-2009 and 2009-2010 Custodian's Compliance with the Master Participation Agreement*. This Guide provides the requirements for examination-level attestation engagements for a Custodian that participates in the Loan Participation Program for loans made for the 2008-2009 and 2009-2010 academic years.

Under the Loan Participation Program, the Department purchases participation interests in eligible Federal Family Education Loan Program loans made under sections 428 (subsidized Stafford loans), 428B (PLUS loans), and 428H (unsubsidized Stafford loans) of the Higher Education Act, as amended (HEA). The Custodian performs certain duties as specified in the Master Participation Agreement (MPA), including holding all rights, title, and interest in the loans in which the Department has purchased a participation interest from a Sponsor. The attestation engagements are required under Section 8(b) of the MPA. An attestation engagement must be performed for each Sponsor-Custodian relationship. This Guide describes the required assertions, compliance requirements, and procedures, reporting requirements, and report submission deadlines for the attestation engagement of a Custodian's compliance with the MPA.

Any questions regarding the application of the Guide should be sent to Kevin Winicker, Assistant Director, Non-Federal Audits, by email to [Kevin.Winicker@ed.gov](mailto:Kevin.Winicker@ed.gov).

Sincerely,

/s/

Keith West

Assistant Inspector General for Audit

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## **Abbreviations and Acronyms**

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<b><u>Acronym</u></b>	<b><u>Definition</u></b>
AT	Statement on Standards for Attestation Engagements
ECASLA	Ensuring Continued Access to Student Loans Act of 2008
ED	U.S. Department of Education
ED-OIG	U.S. Department of Education, Office of Inspector General
ELT	Eligible Lender Trustee
FFELP	Federal Family Education Loan Program
GAGAS	Generally Accepted Government Auditing Standards
HEA	Higher Education Act of 1965, as amended
MPA	Master Participation Agreement

## **Section 1 – General Requirements**

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### **1.1 Purpose and Background**

This Attestation Engagement Guide (the Guide) provides the requirements for attestation engagements for a Custodian participating in the Federal Family Education Loan (FFEL) Participation Program for loans made for academic years 2008-2009 and/or 2009-2010, which are authorized under section 459A of the Higher Education Act (HEA) of 1965, as amended by the Ensuring Continued Access to Student Loans Act (ECASLA) of 2008 (Public Law 110-227).

#### **1.1(A). Ensuring Continued Access to Student Loans**

Under the ECASLA, for FFEL Program loans made under sections 428 (subsidized Stafford loans), 428B (PLUS loans), and 428H (unsubsidized Stafford loans) of the HEA, the U.S. Department of Education (ED) has the authority to purchase or enter into forward commitments to purchase FFEL Program loans. These programs are intended to encourage eligible FFEL Program lenders to provide students and parents access to Stafford and PLUS loans for the 2008-2009 and 2009-2010 academic years.

#### **1.1(B). Loan Participation Program**

The Loan Participation Program allows ED to purchase Participation Interests in eligible loans made for the 2008-2009 and/or 2009-2010 academic years that are held by an eligible lender approved as a Sponsor under a Master Participation Agreement (MPA). Each Sponsor (lender or eligible lender trustee) must file a Notice of Intent to Participate with ED and enter into a MPA with ED and a third-party Custodian acceptable to ED.

ED holds the Participation Interest until the termination of the Loan Participation Program for the respective academic year or, if earlier, the redemption of the Participation Interest by the Sponsor. The Sponsor may redeem the Participation Interest, at a price that provides ED a yield on its Participation Interest equal to the commercial paper rate plus 50 basis points. To redeem the interest, the Sponsor may use funds obtained from private sources, or it may sell the underlying loans to ED under the Loan Purchase Commitment Program for the respective academic year.

In addition to ED, the entities involved in the Loan Participation Program include:

- Sponsor – The Sponsor is an eligible FFEL Program lender or beneficial holder of eligible FFEL Program loans. The Sponsor may be a secondary market or beneficial holder under an eligible lender trustee agreement. Under the Loan Participation

Program, the Sponsor sells participation interests in loans to ED through a Custodian.

- Eligible lender trustee (ELT) - Lenders that do not meet the definition of an eligible lender under Section 435(d) of the HEA participate in the FFEL Program through an eligible lender serving as trustee. The eligible lender trustee holds legal title to the loans on behalf of the beneficial holder.
- Custodian – An eligible lender that is a national or state chartered bank that is not affiliated with the Sponsor or ELT will serve as the Custodian. Under the Loan Participation Program, the Custodian is granted the legal title to the loans for which a participation interest is sold to ED.
- Originating lender – In some instances, a Sponsor may acquire and sell participation interests in loans that were originated by another lender.

### **1.1(C). Class A and Class B Participation Interests**

There are two classes of Participation Interest. The Class A Participation Interest represents ED's interest in eligible loans, which consists of (i) a 100% beneficial ownership interest in the principal portion of such eligible loans and (ii) the right to receive the yield on the Participation Interest. The Class B Participation Interest represents the Sponsor's interest in eligible loans, which consists of (i) the right to redeem the eligible loans or sell them to ED under the Loan Purchase Commitment Program and (ii) the right to receive all collections on such eligible loans other than (1) yield received by ED and (2) principal collections on such eligible loans. The Custodian issues Class A and Class B Participation Certificates in pairs: the Class A Participation Certificate evidences Class A Participation Interests sold to ED and the Class B Participation Certificate evidences Class B Participation Interests delivered to the Sponsor.

### **1.1(D). Duties of the Custodian**

Under the Loan Participation Program the Custodian (or its designee)-

- Holds all rights, title, and interest in the loans in which ED has purchased a participation interest;
- Holds all loan documents in trust;
- On a purchase date, receives the purchase price from ED and remits it to the Sponsor;
- Provides ED with a Class A Participation Certificate and Loan Schedule and Custodial Certification, and provides the Sponsor with a Class B Participation Certificate;
- Provides ED with a Monthly Aggregate Settlement Date Report showing aggregate loan activity, Participant's Yield, and Class A Participation Interest activity for the month;

- Enters into and enforces Eligible Servicing Agreements with a Servicer;
- Holds all loan payments and proceeds in a Collection Account;
- Makes required distributions from the Collection Account to ED and/or the Sponsor;  
and
- Performs other administrative tasks specified in the MPA.

## **1.2 Engagement Objectives**

The objective of the examination-level attestation engagement is to determine if the Custodian's activities for each pair of Class A and Class B Participation Interests complied with selected terms and conditions specified in the MPA. The engagement is authorized under Section 8(b) of the MPA.

## **1.3 Engagement Scope**

An attestation engagement must be conducted for each Custodian that has executed a MPA with ED and a Sponsor and has issued Participation Interests in eligible loans. For each academic year, a separate engagement must be performed for each unique pair of Class A and Class B Participation Interests (see §1.1(C)). For example, if a Custodian serves as Custodian for three different Sponsors during the Loan Participation Program for the 2008-2009 academic year, three separate engagements must be performed (i.e., one for each Sponsor-Custodian relationship). Engagements are required for each academic year, as follows:

- The engagement for the Loan Participation Program for loans for the 2008-2009 academic year will cover the Custodian's activities for Participation Interests in Purchased Eligible Loans<sup>1</sup> for the 2008-2009 academic year issued on or after August 1, 2008, and redeemed on or before October 31, 2009.
- The engagement for the Loan Participation Program for loans for the 2009-2010 academic year will cover the Custodian's activities for Participation Interests in Purchased Eligible Loans for the 2009-2010 academic year issued on or after July 1, 2009, and redeemed on or before October 31, 2010.

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<sup>1</sup> A "Purchased Eligible Loan" is an Eligible Loan in which a Participation Interest has been purchased by ED.

#### **1.4 Engagement Report Submission Dates**

Pursuant to MPA §8(b), the engagement report must be submitted to ED on or before the dates specified in the table below.

<b>Loan Participation Program's Academic Year</b>	<b>Report Submission Date</b>
2008-2009	120 days after the issuance date of this Guide.
2009-2010	90 days after the outstanding balance of the Class A Participation Interest is reduced to zero.

#### **1.5 Selection of Practitioner**

Under MPA §8(b), the engagement is to be performed by a practitioner selected by the Sponsor. In addition, under MPA §22(a)(iii), the Sponsor is required to pay the cost of audits required to be delivered under the MPA by the Custodian. In commenting on a draft of this Guide, some Custodians expressed concerns in having the Sponsor select the practitioner. ED believes it would be mutually beneficial for the Custodian and Sponsor to agree upon the selection of the practitioner for the engagement.

#### **1.6 Professional Standards**

This examination-level attestation engagement must be conducted in accordance with *Government Auditing Standards* (commonly referred to as generally accepted government auditing standards [GAGAS]), July 2007, issued by the Comptroller General of the United States and the Statement on Standards for Attestation Engagements (AT) of the American Institute of Certified Public Accountants (AICPA).

GAGAS must be used in conjunction with the AICPA's AT. GAGAS ¶6.05 identifies additional GAGAS for attestation engagements that go beyond the requirements in the AICPA's AT. Practitioners must comply with these additional GAGAS standards.

Practitioners must comply with applicable provisions of the public accountancy law(s) and the rules of the jurisdiction(s) in which the practitioner is licensed and where the engagement is conducted.

#### **1.7 Fraud or Other Illegal Acts**

The practitioner must be guided by GAGAS provisions covering fraud or other illegal acts, including GAGAS ¶6.13 and ¶6.14.

A practitioner must exercise reasonable care when pursuing any indication of fraud or other illegal acts and abuse, so that potential future investigations or legal proceedings are not compromised.

If any fraud or illegal act is suspected, the practitioner must report it immediately to the ED Office of Inspector General, Investigation Services (ED-OIG/IS), by phone or fax at the numbers shown below, before further extending engagement steps and procedures:

Assistant Inspector General for Investigations  
U. S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1500  
Phone: (202) 245-6966  
Fax: (202) 245-6990

The practitioner must promptly prepare a separate written report as instructed by ED-OIG/IS, and must submit the report to the address provided above, either within 30 days after the potential fraud or illegal act was discovered or within a time frame agreed to by ED-OIG/IS and the practitioner.

### **1.8 Confidential Commercial Information**

The Freedom of Information Act (FOIA), 5 U.S.C. § 522, gives any person the right to request access to records or information. All agencies of the U.S. Government are required to disclose records upon receiving a written request for them, unless one of the exemptions to the FOIA applies. One of the FOIA exemptions applies to confidential commercial information, which, as defined by the FOIA, means trade secrets and commercial or financial information that is privileged or confidential, because disclosure could reasonably be expected to cause substantial competitive harm.

If you or your client believes that your attest documentation contains confidential commercial information, you must take appropriate steps to identify that information in your engagement documentation, to protect its confidentiality. If you are asked to submit your attest documentation to us, and we subsequently receive a request under FOIA for information that you have designated as confidential commercial information, we will make an independent determination of whether that information meets the criteria for exemption from release.

We do not inform you or your client about FOIA requests we receive. However, if we receive a FOIA request for documentation you have identified as confidential commercial information, and we conclude that it should be released under FOIA, to the extent permitted by law; we will make a good faith effort to notify you and provide you, or your client, an opportunity to provide any additional pertinent information, prior to releasing any documentation.

### **1.9 Quality Control Reviews**

The Inspector General Act of 1978, as amended, (5 U.S.C. App. §4(b)(1)(C)) authorizes ED-OIG to evaluate the quality of the attestation engagements that are to be conducted in accordance with GAGAS. As part of such evaluations, the practitioner must make all attest documentation available to us or our representatives upon request. If we determine that an engagement is substandard, we may (i) refer the issue to the State

Board of Accountancy where the engagement was performed and/or the practitioner is licensed, and the American Institute of Certified Public Accountants (AICPA), or the State Society of Certified Public Accountants, if the practitioner is a member; and/or (ii) initiate action to suspend or debar the practitioner from conducting additional audits or attestation engagements for use by the Federal government.

Also, ED program officials may require the Custodian to obtain and submit another attestation engagement to replace the substandard one.

### **1.10 References and Resources**

Guidance, electronic announcements, and criteria for ECASLA Loan Participation Purchase Program are provided on the Federal Student Aid Website at <http://federalstudentaid.ed.gov/ffelp/>.

### **1.11 Technical Assistance**

Technical questions about applying the procedures in this Guide may be directed to Kevin Winicker, Assistant Director, Non-Federal Audits, by email to [Kevin.Winicker@ed.gov](mailto:Kevin.Winicker@ed.gov).

### **1.12 Subsequent Editions of and Amendments to this Guide**

Subsequent editions of, and/or amendments to, this Guide may be issued to reflect revisions to the engagement procedures and guidance issued by ED. The practitioner shall use the most recent edition of and/or amendments to this Guide when conducting the engagement. Practitioners should visit the ED-OIG's Non-Federal Audits webpage to determine if a subsequent edition of, and/or amendments to, this Guide have been issued. The ED-OIG's Non-Federal Audits webpage is: <http://www.ed.gov/about/offices/list/oig/nonfed/sfa.html>

## **Section 2 – Planning the Engagement**

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### **2.1 Introduction**

This section sets forth matters that the practitioner shall consider when planning the engagement. These include obtaining management assertions and representations, preparing the engagement letter, reference materials, and auditing standards applicable to the attestation engagements performed under this Guide.

### **2.2 Management Assertions and Representations**

The Custodian must provide its management's assertions and representations in a letter to the practitioner. The format and content of management's assertions and representations are set forth in Attachment 4. In its letter, the Custodian's management must assert that it complied with each of the requirements discussed in detail in Section 3. In its letter, the Custodian's management must also provide all the applicable management representations described in AT §601.68.

If the Custodian uses a delegee to perform some or all of its activities, records may be maintained at the delegee. However, the Custodian remains responsible for all its assertions. All documentation related to the assertions must be made available for review by the practitioner.

### **2.3 Engagement Letter**

An engagement letter between the Custodian and the practitioner must be executed and must include the following:

- A statement that the engagement is to be performed in accordance with GAGAS, AICPA Attestation Standards, and this Guide;
- A description of the scope of the engagement (i.e., the period for which the engagement is being performed);
- A statement that both parties understand that ED will use the practitioner's report to evaluate the propriety of the Custodian's activities under the Loan Participation Program;
- A statement that the Custodian must provide the practitioner all required representations and assertions;
- A statement that the Custodian shall provide, or shall cause its delegees to provide to the practitioner access to all agreements, documents, and electronic files pertinent to the scope of the engagement;

- A provision that the practitioner is required to provide the Secretary of Education, ED-OIG, and their representatives, access to and copies of attest documentation (e.g., records, work papers, other documents), upon request; and
- A provision that the practitioner shall retain attest documentation and reports for a minimum of seven years after the date of issuance of the practitioner's report(s) to the entity, unless a pertinent law or regulation provides for a longer retention period, or the practitioner is notified in writing by ED to extend the retention period.

See Section 1.5 regarding the selection of a practitioner.

## 2.4 Reference Materials

To perform the engagement, the practitioner must be familiar with the following materials-

- MPA for the 2008-2009 Loan Participation Program (see Electronic Announcement #8, *Revised Loan Purchase Agreements*, dated July 25, 2008), if applicable;
- MPA for the 2009-2010 Loan Participation Program (see Electronic Announcement #46, *2009-2010 Loan Purchase Programs Agreements*, dated January 16, 2009), if applicable; and
- Electronic Announcements pertaining to the Loan Participation Program, available at <http://federalstudentaid.ed.gov/ffelp/>.

## 2.5 Attestation Standards

This examination-level attestation engagement must be performed in accordance with all applicable GAGAS. GAGAS specific to attestation engagements are contained in GAGAS, Chapter 6.

In addition to adherence to GAGAS, the following attestation standards must also be complied with for this engagement: the AICPA's Statement on Standards for Attestation Engagements.

This compliance engagement must be performed as an examination-level engagement in accordance with AT §101 and §601. Management's written assertions are the basis for the practitioner's testing and therefore are an integral part of the engagement.

## 2.6 Materiality

The guidance provided in AT §601.36 and §601.37, concerning a practitioner's consideration of materiality, must be followed for compliance engagements. Materiality for purposes of compliance assertions differs from materiality for financial reporting purposes. This engagement requires opinions on each management assertion. Therefore, materiality should be considered in relation to each individual management

assertion. The practitioner's considerations on materiality must be documented in the attest documentation.

## **2.7 Professional Judgment and Due Professional Care**

Practitioners must not ignore basic weaknesses in internal control, perform procedures mechanically (form over substance), or accept explanations for exceptions without acquiring adequate evidence. Practitioners must exercise due care in planning, performing, and reporting on engagements. They must also exercise a proper degree of professional judgment, including reasonable care and professional skepticism, so that there is a reasonable degree of assurance that material noncompliance will be detected. (See GAGAS ¶3.31 through ¶3.39 and AT §101.39 through §101.41.)

## **2.8 Sampling**

Many of the required procedures for the engagement, described in Section 3, provide for the use of a sample to test a Custodian's compliance. Unless the guidance for the required procedure provides otherwise, when designing a sample plan, practitioners should consider the AICPA's Statement on Auditing Standards (AU) Section 350, *Audit Sampling*.

## **2.9 Considering Internal Control over Compliance**

Relevant guidance for the consideration of internal control is provided in GAGAS ¶6.10 through ¶6.12 and AT §601.45 through §601.47. These standards state that the practitioner should obtain an understanding of relevant portions of internal control over compliance sufficient to plan the engagement and to assess control risk for compliance with the specified requirements (that is, compliance requirements specified in Section 3 of this Guide). Practitioners must document their understanding of the Custodian's internal control using flowcharts, narrative, or other means, and must also document their assessment of control risk.

Practitioners must document and report all significant deficiencies and material weaknesses in internal control. For purposes of engagements conducted and reported under this Guide—

- A "significant deficiency in internal control over compliance" is a deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.
- A "material weakness in internal control over compliance" is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis.

## **2.10 Use of a Third Party Servicer or Other Delegee**

Pursuant to MPA §18, a Custodian may delegate to another Eligible Lender (including the Sponsor) or to a Servicer certain of its obligations under the MPA. If the Custodian delegates any of its obligations to a delegee: (i) the Custodian shall exercise due care in its appointment of such delegee, (ii) if the Custodian performs any of its non-delegated obligations hereunder in reliance on such delegee's performance of delegated obligations, such reliance shall be reasonable under the circumstances, (iii) the Custodian shall take steps to reasonably ascertain whether such delegee is properly performing the delegated obligations, and (iv) if such delegee has failed to perform any of its delegated obligations, the Custodian shall either assume the delegated obligations or promptly appoint a successor delegee.

If the Custodian delegated certain of its obligations under the MPA, the practitioner may need to have access to the delegees (e.g., Servicer, Sponsor), and pertinent records maintained by them, in order to perform engagements under this Guide. In performing engagements under this Guide, practitioners shall consider such delegee's records or functions as if they were the Custodian's.

## **2.11 Audits of Delegees**

If the Custodian uses a delegee that is a Sponsor, Servicer, or Eligible Lender, the practitioner should obtain the delegee's most recent compliance audit report and any other reports regarding lender or servicer compliance. Annual compliance audits are required of lenders, pursuant to 34CFR §682.305(c), and third-party servicers, pursuant to 34 CFR §682.416(e).

If the delegee's compliance audit report or other reports contain findings of noncompliance, the practitioner should assess the effect of that noncompliance on the nature, timing or extent of substantive tests in performing engagements under this Guide, and in reporting on the engagement.

The existence (or nonexistence) of a delegee's compliance audit does not affect the scope of responsibility of the practitioner performing the compliance engagement for the Custodian under this Guide. The practitioner is responsible for rendering the reports required by this Guide based on review of all controls, procedures, items and transactions reviewed, including those operated by or impacted by services performed by the delegee on behalf of the Custodian.

## **2.12 Consideration of Prior Audits, Attestation Engagements and Reviews**

Practitioners should ask the Custodian's management to provide copies of all reports on prior audits and reviews of the Custodian, not limited to the entity's role as a Custodian, relating to its administration or servicing of any FFELP loans and matters covered in this Guide issued within the immediate two years prior to the engagement period, including: (i) audits conducted by ED-OIG, (ii) program reviews conducted by ED-Federal Student Aid (FSA), and (iii) audits and attestation engagements performed by practitioners, and the resolution of any reported findings in any such kind of reports. The practitioner

should use this information in assessing risk and determining the nature, timing, and extent of substantive tests for engagements performed under this Guide.

## **Section 3 – Management Assertions, Compliance Requirements, and Required Procedures**

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### **3.1 Introduction**

This section-

- Sets forth the specific assertions which management is required to make,
- Summarizes the compliance requirements related to each of these specific assertions, and
- Provides guidance on the approach the practitioner should employ in designing and carrying out procedures in the examination of management's written assertions.

The required procedures are not intended to supplant the practitioner's judgment about the testing necessary for the practitioner to report on the Custodian's compliance with the specified requirements. In some circumstances, the practitioner may need to supplement the required procedures with other procedures, to satisfy the engagement objectives.

Pursuant to §1.3, a separate engagement must be performed for each unique pair of Class A and Class B Participation Interests. As such, the required procedures described in this section are to be applied solely to the Custodian's activities, as they pertain to each unique Custodian-Sponsor relationship for which the engagement is being performed.

### **3.2 Eligible Servicing Agreements**

#### **3.2.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.2 of ED's Custodian Attestation Engagement Guide, concerning Eligible Servicing Agreements.

#### **3.2.2. Compliance Requirement**

Each Purchased Eligible Loan must be serviced by a Servicer (which may be the Sponsor) pursuant to the terms of an Eligible Servicing Agreement between the Custodian and Servicer. A servicing agreement is an Eligible Servicing Agreement if, among other things, the agreement:

- 1) Acknowledges or has been amended to acknowledge that ED is an intended third-party beneficiary of such agreement entitling ED to instruct the Servicer and exercise remedies with respect to the applicable Eligible Loans upon the occurrence of a Servicer Event of Default;

- 2) Provides that the Servicer will deposit all Collections into the Collection Account not later than two (2) Business Days after receipt;
- 3) Provides that upon notice of the exercise of the Put Option or other acquisition of an Eligible Loan by ED, such agreement may be terminable by ED, in its sole discretion, upon thirty (30) days' notice and the Eligible Loans deconverted and transferred to a designee of ED without the payment by ED of any deboarding, deconversion or related costs, penalties or fees to the related Servicer and that the servicing shall be transferred as instructed by ED; and
- 4) Provides that the Servicer shall deliver to the Custodian all documents and information necessary to enable the Custodian to oversee the Servicer as provided herein.

(MPA §12(a) and (c))

### **3.2.3. Required Procedures**

The following procedures are required:

- 1) Identify and obtain copies of all Eligible Servicing Agreements executed by the Custodian that are applicable to the Custodian-Sponsor relationship for which the engagement is being performed.
- 2) Inspect each Eligible Servicing Agreement to determine that it contains the following terms and conditions:
  - a) Acknowledges or has been amended to acknowledge that ED is an intended third-party beneficiary of such agreement entitling ED to instruct the Servicer and exercise remedies with respect to the applicable Eligible Loans upon the occurrence of a Servicer Event of Default;
  - b) Provides that the Servicer will deposit all Collections into the Collection Account not later than two (2) Business Days after receipt;
  - c) Provides that upon notice of the exercise of the Put Option or other acquisition of a Purchased Eligible Loan by ED, such agreement may be terminable by ED, in its sole discretion, upon thirty (30) days' notice and the Purchased Eligible Loans deconverted and transferred to a designee of ED without the payment by ED of any deboarding, deconversion or related costs, penalties or fees to the related Servicer and that the servicing shall be transferred as instructed by ED; and
  - d) Provides that the Servicer shall deliver to the Custodian all documents and information necessary to enable the Custodian to oversee the Servicer as provided herein.

### **3.3 Participation Certificates**

#### **3.3.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.3 of ED's Custodian Attestation Engagement Guide, concerning the issuance of Class A and Class B Participation Certificates.

#### **3.3.2. Compliance Requirement**

On or prior to ED's initial purchase of a Participation Interest, the Custodian shall issue a Class A Participation Certificate to ED and a Class B Participation Certificate to the Sponsor. (MPA §5(a))

Class A Participation Certificates shall be in the form of Exhibit C to the MPA and Class B Participation Certificates shall be in the form of Exhibit D to the MPA. (MPA §5(b))

#### **3.3.3. Required Procedures**

Obtain copies of all Participation Certificates issued by the Custodian. Inspect each Participation Certificate to determine that:

- 1) Each Class A Participation Certificate is in the form of Exhibit C of the MPA;
- 2) Each Class B Participation Certificate is in the form of Exhibit D of the MPA;
- 3) Each Participation Certificate was dated on or before the date on which the Custodian received payment from ED for the initial purchase of a Participation Interest; and
- 4) As prescribed in Exhibits C and D of the MPA, each Participation Certificate correctly reflects (1) the date ED signed the MPA Adoption Agreement, (2) the name of the Sponsor, (3) the name of the ELT, if applicable, and (4) the name of the Custodian.

### **3.4 Participation Purchase Requests, Loan Schedules and Custodial Certifications, and Exception Reports**

#### **3.4.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.4 of ED's Custodian Attestation Engagement Guide, concerning the issuance of Participation Purchase Requests, Loan Schedules and Custodial Certifications, and Exception Reports.

#### **3.4.2. Compliance Requirement**

A Participation Purchase Request shall be submitted to ED for each purchase of a Participation Interest. (MPA §1)

For each purchase of a Class A Participation Interest, the Custodian, or its designee, shall prepare and deliver to ED a Loan Schedule and Custodial Certificate<sup>2</sup> (i.e., Weekly Loan Schedule) that reflects all Purchased Eligible Loans transferred to the Custodian by the Sponsor as of the purchase date. (MPA §5(d) and §9(b)(iv))

In Electronic Announcement #62, ED provided instructions on the above requirements. With each request for funding, the Sponsor must submit an executed Participation Purchase Request, which is Exhibit B to the MPA. Each Participation Purchase Request must be accompanied by a Weekly Loan Schedule. In addition, each Participation Purchase Request must be signed by the Sponsor, an ELT (if applicable), and the Custodian. Upon receipt by ED of the Participation Purchase Request, ED will send an acknowledgement of receipt via email to the Custodian. (Electronic Announcement #62, *Loan Purchase Participation Program - Revised Loan Schedule and Eligibility Edits Announcement*, dated May 14, 2009, and updated September 2, 2009, *Revised Funding Request Submission Instructions*, updated September 25, 2008)

### **3.4.3. Required Procedures**

The following procedures are required:

- 1) From the universe of all purchases of a Class A Participation Interest by ED, (i) select the initial purchase of a Participation Interest and (ii) using a random number generator, randomly select 25% of the remaining purchases of a Participation Interest. However, the total number of purchases selected at (i) and (ii)-
  - a) Must include at least 5 or the total number of purchases, whichever is less; and
  - b) Need not exceed 10 purchases.
- 2) For each selected purchase determine that (i) a Participation Purchase Request in the form of Exhibit B of the MPA was prepared and signed by the Sponsor, the ELT (if applicable), and Custodian, and (ii) the Participation Purchase Request was submitted to ED and such submission is evidenced by an email from ED to the Custodian acknowledging the submission.
- 3) For each selected purchase determine that the Custodian, or its designee, prepared and delivered to ED a Weekly Loan Schedule.

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<sup>2</sup> The "Loan Schedule and Custodian Certificate" is called the "Weekly Loan Schedule" and does not include a separate Custodial Certificate. A detailed description of the Weekly Loan Schedule and Month-End Loan Schedule is provided in Electronic Announcement #62, dated May 14, 2009, and updated September 2, 2009. (Available at <http://federalstudentaid.ed.gov/ffelp/>.)

### **3.5 Loans and Loan Documents Held in Trust**

#### **3.5.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.5 of ED's Custodian Attestation Engagement Guide, concerning holding the Loans and Loan Documents in trust.

#### **3.5.2. Compliance Requirement**

The Custodian shall hold all Purchased Eligible Loans in trust for the holders of the Participation Interests until the Class A Participation Interest is redeemed in full. The related Loan Documents shall also be held in trust by the Custodian or its designee. In addition, neither the Custodian, nor its designee, shall release any Loan Documents relating to the Purchased Eligible Loans to any person, except (1) to the Sponsor upon receipt of the related redemption payment by the Custodian, (2) to ED upon the Sponsor's election to sell the loans to ED under the Loan Purchase Commitment Program, (3) in connection with servicing-related functions, and (4) as otherwise may be permitted by ED. (MPA §4(b))

The Custodian shall ensure that each Servicer shall be responsible for segregating and marking each Eligible Loan as owned by the Custodian. (MPA §12(d))

The Custodian shall exercise due care in its appointment of a delegee and shall take those steps that are reasonable under the circumstances to ascertain whether such delegee is properly performing the delegated obligations. (MPA §18)

#### **3.5.3. Required Procedures**

The following procedures are required:

- 1) Inspect each Eligible Servicing Agreement (obtained at §3.2.3), or other applicable agreement, instructions, or communications between the Custodian and its delegee, to determine that the Custodian instructed the Servicer, or other designee, to (a) title the loans in the name of the Custodian and (b) hold the loan documents in trust and not release them except (i) to the Sponsor upon receipt of the related redemption payment by the Custodian, (ii) to ED upon the Sponsor's election to sell the loans to ED under the Loan Purchase Commitment Program, (iii) in connection with servicing related-functions, and (iv) as otherwise may be permitted by ED.
- 2) Obtain the Month-End Loan Schedule<sup>3</sup> for all months where there was Participation Interest activity.
- 3) Using a random number generator, randomly select a total of 25 loans from the population of loans listed on all Weekly Loan Schedules associated with the purchases selected at §3.4.3. For each loan selected:

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<sup>3</sup> See immediately preceding footnote.

- a) In order to perform the procedures at 3(b), inspect the Weekly and Month-End Loan Schedules to determine (i) the date a Class A Participation Interest in the loan was purchased by ED and (ii) the date the loan was removed from the Participation Interest through a redemption or sale of the loan to ED.
- b) Obtain from the Custodian or its delegee the loan's ownership history in either the National Student Loan Data System (NSLDS) or the applicable loan servicing system. Inspect the loan's ownership history to determine that that loan was titled in the name of the Custodian during the period in which ED held a Participation Interest in the loan.

### **3.6 Collection Account and Permitted Investments**

#### **3.6.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.6 of ED's Custodian Attestation Engagement Guide, concerning the establishment of a Collection Account and investment in Permitted Investments.

#### **3.6.2. Compliance Requirement**

The Sponsor shall cause a Collection Account to be established at the Custodian for the purpose of holding all payments and other proceeds of any kind received on or with respect to the Purchased Eligible Loans. Amounts on deposit in the Collections Account may be invested in only Permitted Investments. (MPA §11(a))

Permitted Investments include (a) U.S. Treasury securities with a maturity of up to 60 days; (b) repurchase agreements that are fully collateralized by U.S. Treasury securities with a term of not more than 30 days and entered into with a broker-dealer subsidiary of any depository institution organized under the laws of the U.S. or any State thereof that has outstanding unsecured commercial paper or other short-term unsecured debt obligations that are rated A-1 or better by S&P and P-1 by Moody's (or a comparable rating); and (c) units of money market funds that are exclusively comprised of U.S. Treasury securities with a weighted average term of not more than 60 days that are rated not lower than AAA by S&P and AAA by Moody's (or a comparable rating). Custodians shall not invest in any other investment vehicles. (2008-2009 Loan Participation Purchase Program FAQ,<sup>4</sup> Q&A 11)

#### **3.6.3. Required Procedures**

The following procedures are required:

- 1) Identify the Collection Account established at the Custodian by the Sponsor.

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<sup>4</sup> The 2008-2009 Loan Participation Purchase Program FAQ is available at:  
<http://federalstudentaid.ed.gov/ffelp/lppp.html>

- 2) For each month selected at §3.7.3, review information (e.g., records of investment transactions, repurchase agreements, annual or semi-annual reports for money market funds) on the investments in the Collection Account to determine that the amount on deposit in each Collection Account is invested in only Permitted Investments.

### **3.7 Monthly Aggregate Settlement Date Reports**

#### **3.7.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.7 of ED's Custodian Attestation Engagement Guide, concerning the submission of Monthly Aggregate Settlement Date Reports to ED.

#### **3.7.2. Compliance Requirement**

On a monthly basis, the Custodian shall provide ED a Monthly Aggregate Settlement Date Report<sup>5</sup> with respect to each loan subject to a Class A Participation Interest. The Monthly Aggregate Settlement Date Report shall include all loan activity for the prior calendar month including loan disbursements, and an aggregation of the Participant's Yield and principal paid to ED with respect to the Class A Participation Interest. (MPA §8(b)(1))

The Monthly Aggregate Settlement Date Report is as of the last calendar day of the month and is due to ED seven business days after the end of the month. (Electronic Announcement #17, *Monthly Aggregate Settlement Date Report Submission Procedures*, dated August 8, 2008, and updated September 25, 2008)

#### **3.7.3. Required Procedures**

The following procedures are required:

- 1) Identify all months during which a Class A Participation Interest was outstanding (i.e., from the month in which ED first purchased a Class A Participation Interest through the month in which the balance of the Class A Participation Interest is reduced to zero).
- 2) From the universe of months in which a Class A Participation Interest was outstanding, (a) select the month in which ED first purchased a Class A Participation Interest, (b) select the month in which the balance of the Class A Participation interest is reduced to zero, and (c) using a random number generator, randomly select two other months from the universe, exclusive of those selected at (a) and (b).

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<sup>5</sup> A detailed description of the Monthly Settlement Date Report is provided in Electronic Announcement #17, *Monthly Aggregate Settlement Date Report Submission Procedures*, dated August 8, 2008, and updated September 25, 2008. (Available at <http://federalstudentaid.ed.gov/ffelp/>.)

However, if the universe of months consists of four or fewer months, all months shall be selected.

- 3) Obtain from the Custodian (a) the Monthly Aggregate Settlement Date Reports and (b) the statements for the Collection Account that correspond to each Monthly Aggregate Settlement Date Report. The reports and statements shall cover the entire period during which the Class A Participation Interest was outstanding.<sup>6</sup> Note: The Monthly Aggregate Settlement Date Reports and Collection Account statements will be used in subsequent procedures.
- 4) For each selected month, determine that the Custodian, or its delegee, had submitted to ED, within seven business days after the end of the month, a Monthly Aggregate Settlement Date Report covering the activities for the selected month.

### **3.8 Remittance of Purchase Price and Security Release Certificate**

#### **3.8.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.8 of ED's Custodian Attestation Engagement Guide, concerning the remittance to the Sponsor and/or Secured Party (when applicable) of the purchase price of the Class A Participation Interest and the delivery to ED of the executed Security Release Certificate (when applicable).

#### **3.8.2. Compliance Requirement**

On each purchase date, ED shall purchase the related Class A Participation Interest from the Sponsor by remitting to the Custodian, who shall in turn, simultaneously remit<sup>7</sup> to the Sponsor a purchase price equal to the principal balance of the related Eligible Loans. All payments are to be made by electronic funds transfer. (MPA §4(c))

The Monthly Aggregate Settlement Date Report's Line 27 *New Disbursements* is the funding received under the Participation Certificate for new disbursements during the monthly reporting period. (Electronic Announcement #17, *Monthly Aggregate Settlement Date Report Submission Procedures*, dated August 8, 2008, and updated September 25, 2008)

If any of the loans are subject to any security interest, pledge, or hypothecation for the benefit of any Secured Party, the Sponsor shall deliver to ED a fully executed Security Release Certificate with respect to the loans. (MPA §9(b))

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<sup>6</sup> That is, from the date ED first purchased the Class A Participation Interest through the date the Class A Participation Interest is reduced to zero.

<sup>7</sup> Depending on the agreement between the Sponsor and Custodian, the simultaneous remittance of funds from the Custodian to the Sponsor could occur on either the same day that the Custodian receives the funds from ED or the next business day. (ED Webinar *Loan Participation Program Operations*, dated August 1, 2008.)

The Security Release Certificate,<sup>8</sup> with sections I and II executed by the Secured Party with a preexisting financial interest in the loans, and the Sponsor, respectively, must be submitted to the Custodian by the Sponsor, just prior to when each Participation Purchase Request is submitted to ED. Upon the receipt of funds from ED, the Custodian will forward payment to the Secured Party. When the Custodian receives acknowledgement from the Secured Party that the monies have been received, then the Custodian will execute section III of the Security Release Certificate and forward it to ED. (Electronic Announcement #62, *Loan Purchase Participation Program - Revised Loan Schedule and Eligibility Edits Announcement*, dated May 14, 2009, and updated September 2, 2009, *Revised Funding Request Submission Instructions*, updated September 25, 2008)

### **3.8.3. Required Procedures**

The following procedures are required:

- 1) For each month selected at §3.7.3, determine (a) that the amount reported at the Monthly Aggregate Settlement Date Report's Line 27 *New Disbursements* represents the sum of the purchase price(s) of Class A Participation Interests purchased during the month, and (b) each purchase price is evidenced by a Form of Participation Purchase Request (MPA, Exhibit B) signed by the Sponsor, Custodian, and ELT (if applicable).
- 2) For each month selected at §3.7.3, determine that a deposit, by electronic funds transfer, for each purchase price of a Class A Participation Interest purchased during the month is reflected on the Custodian's Collection Account statement.
- 3) For each Class A Participation Interest purchased during each month selected at §3.7.3 where the loans were subject to a preexisting security interest, obtain from the Custodian a copy of the Security Release Certificate signed by the Secured Party, the Sponsor, and the Custodian. (Note: A Security Release Certificate is not executed if the loans were not subject to a security interest, pledge, or hypothecation for the benefit of a Secured Party.)
- 4) For each Class A Participation Interest purchased during each month selected at §3.7.3, determine that the Custodian's Collection Account statement shows that the Custodian simultaneously remitted to the Sponsor and/or Secured Party (if applicable), by electronic funds transfer, an amount equal to the purchase price of the Class A Participation Interest.
- 5) For each Class A Participation Interest purchased during each month selected at §3.7.3 where the loans were subject to a preexisting security interest, determine that the Custodian's Collection Account statement shows that the Custodian simultaneously remitted to the Secured Party, by electronic funds transfer, the amount specified in section I of the Security Release Certificate.

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<sup>8</sup> A copy of the Security Release Certificate (Exhibit G) is attached to Electronic Announcement #62.

### **3.9 Collection Activities**

#### **3.9.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.9 of ED's Custodian Attestation Engagement Guide, concerning the holding of all Collections on the Purchased Eligible Loans in the Collection Account.

#### **3.9.2. Compliance Requirement**

A Collection Account shall be established at the Custodian for the purpose of holding all payments and other proceeds of any kind received on or with respect to the Purchased Eligible Loans and any funds received by reason of a borrower cancellation of a Purchased Eligible Loan or a return of loan funds from the school attended by the borrower. (MPA §11(a))

The Custodian shall provide ED a Monthly Aggregate Settlement Date Report with respect to each loan subject to a Class A Participation Interest, which shall include all loan activity for the prior month and an aggregation of the Participant's Yield and principal paid to ED with respect to each Class A Participation Interest. (MPA §8(b))

The Monthly Aggregate Settlement Date Report, Section IV, is comprised of Lines 13 through 22 of the report, and specifies the Collection Activity reporting as follows:

Line 13 *799 Payments* – The total amount of cash received since the last month from ED on Form 799 (i.e., LaRS) for the Purchased Eligible Loans.

Line 14 *Reimbursement by Schools* – The amount of reimbursement payments received from the schools for cancellations and school refunds during the monthly reporting period.

Line 15 *Reimbursement by Guarantors* – The amount of reimbursement payments received from Guaranty Agencies during the monthly reporting period.

Line 16 *Loan Proceeds / Redemptions* – The amount of proceeds from loan sales to third parties and redemptions by the Sponsor during the monthly reporting period.

Line 17 *Loan Put to ED* – The amount of proceeds from ED for loans that are put to ED during the monthly reporting period.

Line 18 *Borrower Principal Payments* – The total principal payments collected from the borrower or third parties on the loans during the monthly reporting period.

Line 19 *Borrower Interest Payments* – The total interest payments collected from the borrower or third parties on the loans during the monthly reporting period.

Line 20 *Other Cash / Fees Collected* – The amount of cash transactions affecting the loans made by the Servicer (e.g., collection fees, attorney fees, late fees) during the monthly reporting period.

Line 21 *Investment Income* – The amount of income received on investment in Permitted Investments of funds in the Collection Account.

Line 22 *Cash Available for Distribution* – The sum of amounts listed for Lines 13 through 21.

(Electronic Announcement #17, *Monthly Aggregate Settlement Date Report Submission Procedures*, dated August 8, 2008, and updated September 25, 2008)

### **3.9.3. Required Procedures**

The following procedures are required:

- 1) For each month selected at §3.7.3, obtain the Month-End Loan Schedule. Note: The Month-End Loan Schedules will be used in subsequent procedures.
- 2) For each month selected at §3.7.3, determine that the amounts reported in the Monthly Aggregate Settlement Date Report's Section IV *Collection Activity* are supported as follows:
  - a) Line 13 – *799 Payments* – This amount should be supported by (i) deposit amounts and transaction details from the Custodian's Collection Account statement, (ii) communication from the Servicer describing each deposit, and (iii) a LaRS submission prepared by the Servicer.
  - b) Line 14 – *Reimbursement by Schools* – This amount should be supported by (i) deposit amounts and transaction details from the Custodian's Collection Account statement and communication from the Servicer describing the deposit(s), and (ii) the total of Line 32 *Reduction Amount School* for all loans contained on the Month-End Loan Schedule.
  - c) Line 15 – *Reimbursement by Guarantors* – This amount should be supported by (i) deposit amounts and transaction details from the Custodian's Collection Account statement and communication from the Servicer describing the deposit(s), and (ii) the total of Line 34 *Guaranty Agency Claims* for all loans contained on the Month-End Loan Schedule.
  - d) Line 16 – *Loan Proceeds / Redemptions* – This amount should be supported by (i) deposit amounts and transaction details from the Custodian's Collection Account statement and communication from the Servicer describing the deposit(s), and (ii) the total of Line 37 *Loan Proceeds* for all loans contained on the Month-End Loan Schedule.
  - e) Line 17 - *Loan Put to ED* – This amount should be supported by (i) deposit amounts and transaction details from the Custodian's Collection Account statement and communication from the Servicer describing the deposit(s), (ii) a completed Bill of Sale and Bill of Sale Attachment and Final Loan Schedule Summary of Loan Sold<sup>9</sup> for each transaction, and (iii) the total of Line 38 *Loan Put to Department* for all loans contained on the Month-End Loan Schedule.

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<sup>9</sup> For the 2008-2009 academic year, the form of the Bill of Sale and Bill of Sale Attachment and Final Loan Schedule Summary of Loan Sold are exhibited in Exhibit B of the MPA found in Electronic Announcement #26, *MLSA Bill of Sale Submission Instructions*, dated September 9, 2008. For the 2009-

- f) Line 18 – *Borrower Principal Payments* – This amount should be supported by (i) deposit amounts and transaction details from the Custodian's Collection Account statement and communication from the Servicer describing the deposit(s), and (ii) the total of Line 39 *Borrower Principal Collection* for all loans contained on the Month-End Loan Schedule.
  - g) Line 19 - *Borrower Interest Payments* – This amount should be supported by (i) deposit amounts and transaction details from the Custodian's Collection Account statement and communication from the Servicer describing the deposit(s), and (ii) the total of Line 40 *Borrower Interest Collection* for all loans contained on the Month-End Loan Schedule.
  - h) Line 20 – *Other Cash / Fees Collected* – This amount should be supported by (i) deposit amounts and transaction details from the Custodian's Collection Account statement and communication from the Servicer describing the deposit(s), and (ii) the total of Line 41 *Other Cash* for all loans contained on the Month-End Loan Schedule.
  - i) Line 21 – *Investment Income* – This amount should be supported by amounts and transaction details from the Custodian's Collection Account statement.
- 3) For each month selected at §3.7.3, determine that the Monthly Aggregate Settlement Date Report's Line 22 *Cash Available for Distribution* equals the sum of the amounts for Lines 13 through 21 reported in Section IV *Collection Activity*.
- 4) For each month selected at §3.7.3, determine that the total of the Monthly Aggregate Settlement Date Report's Lines 14, 15, 18, 19, and 20 equals the total deposits made to the Collection Account by the Servicer. Note: In performing this procedure, the practitioner should consider any deposits that were in transit at the end of a month.

### **3.10 Distributions from Collection Account**

#### **3.10.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.10 of ED's Custodian Attestation Engagement Guide, concerning the distribution of funds from the Collection Account.

#### **3.10.2. Compliance Requirement**

On a monthly basis and following the Termination Date, the Custodian shall distribute all funds then on deposit in the Collection Account in the following order of priority:

- 1) To ED to pay the aggregate outstanding Participant's Yield then due and owing to ED.

- 2) To ED to reduce the aggregate outstanding principal balance of Class A Participation Interest held by ED.
- 3) To the Sponsor, any remaining amounts.

All distributions shall be made by electronic funds transfer in funds that are available on the next business day. (MPA §11(b), (d), and (e))

The Custodian shall distribute funds from the Collection Account within seven business days after the end of the month. (Electronic Announcement #17, *Monthly Aggregate Settlement Date Report Submission Procedures*, dated August 8, 2008, and updated September 25, 2008)

### **3.10.3. Required Procedures**

The following procedures are required:

- 1) For each month selected at §3.7.3, determine that the amounts reported on the Monthly Aggregate Settlement Date Report for Line 23 *Cash available to pay Participation Yield*, Line 24 *Outstanding Balance of Class A Participation Interests*,<sup>10</sup> and Line 25 *Remaining Amounts to Sponsor* are reflected as being paid within seven business days after the end of the month on the Custodian's statement for the Collection Account for the month following each month selected.
- 2) For the month in which the balance of the Class A Participation interest is reduced to zero or the immediately following month, determine that the Collection Account's ending balance for cash and investments reported on the Custodian's statement for the Collection Account is zero.
- 3) For each month selected at §3.7.3, determine that the Custodian made no distributions from the Collection Account other than (i) distributions to ED, (ii) distributions to the Sponsor and/or a Secured Party of the purchase price of a Class A Participation Interest (see §3.8.3, steps 4 and 5), or (iii) distributions to the Sponsor reported on Line 25 *Remaining Amounts to Sponsor* of a Monthly Aggregate Settlement Date Report.

## **3.11 Calculation of Participant's Yield**

### **3.11.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.11 of ED's Custodian Attestation Engagement Guide, concerning the calculation of the Participant's Yield.

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<sup>10</sup> Amounts reported for Line 23 *Cash available to pay Participation Yield* and Line 24 *Outstanding Balance of Class A Participation Interests* will be reflected on the statements for the Collection Account in multiple transactions (i.e., transactions associated with the Monthly Settlement Date Report and transactions associated with mid-month redemptions of Participation Interests). Amounts paid to ED for a Sponsor's mid-month redemptions of Participation Interests will include amounts applied to the Participation Yield and the Balance of Class A Participation Interests.

### **3.11.2. Compliance Requirement**

The Custodian shall provide ED a Monthly Aggregate Settlement Date Report with respect to each loan subject to a Class A Participation Interest, which shall include all loan activity for the prior month and an aggregation of the Participant's Yield and principal paid to ED with respect to each Class A Participation Interest. (MPA §8(b))

The Monthly Aggregate Settlement Date Report, Section III, is comprised of Lines 5 through 12 of the report, and specifies the Class A Participation Certificate reporting as follows:

- Line 5 *Average Daily Class A Certificate Principal Balance* - The average daily Class A Certificate Principal Balance for the monthly reporting period.
- Line 6 *Actual Days in Period* - The number of calendar days in the monthly reporting period.
- Line 7 *Commercial Paper Rate + 0.50%* - The average of the bond equivalent rates of the quotes of the 3-month commercial paper rates in effect for each of the days in the quarter plus 50 basis points. The rate for each quarter is posted by ED in periodic Electronic Announcements at: [www.federalstudentaid.ed.gov/ffelp](http://www.federalstudentaid.ed.gov/ffelp).
- Line 8 *Opening Participation Yield Balance* - The beginning balance of the Participation Yield, which should equate to the ending balance reported on the previous month's report (Line 12 on previous month's report).
- Line 9 *Plus: New monthly Participation Yield* - The calculation of the Participation Yield for this month's report. This is calculated as (A) the daily average of the Class A Certificate Principal Balance multiplied by the Commercial Paper Rate + 0.50% multiplied by (B) Actual Days in the Period divided by 360.
- Line 10 *Subtotal: Available Yield* - This is the total Participation Yield, due and payable to the Department, prior to cash distributions for this month. It is calculated as Line 8 plus Line 9.
- Line 11 *Minus: Cash available to pay Participation Yield* - This is the cash available to pay the Participation Yield as calculated in Line 23 *Cash Available for Distribution*.
- Line 12 *Ending Participation Yield Balance* - This is a total Participation Yield due after cash distributions for this month. It is calculated as Line 10 minus Line 11.

(Electronic Announcement #17, *Monthly Aggregate Settlement Date Report Submission Procedures*, dated August 8, 2008, and updated September 25, 2008)

### **3.11.3. Required Procedures**

The following procedures are required:

- 1) For each month selected at §3.7.3, determine that amounts reported in the Monthly Aggregate Settlement Date Report's Section III-

- a) For Line 5 *Average Daily Class A Certificate Principal Balance* and Line 7 *Commercial Paper Rate + 0.50%* are adequately supported to source documents; and
  - b) For Line 8 *Opening Participation Yield Balance* agree to information contained in Monthly Aggregate Settlement Date Report for the month preceding the selected month and for Line 11 *Minus: Cash available to pay Participation Yield* agree to information contained in Monthly Aggregate Settlement Date Report for the selected month.
- 2) For each month selected at §3.7.3, determine that the Participation Yield, calculated in the Monthly Aggregate Settlement Date Report's Lines 8 through 12, was properly calculated in accordance with the instructions contained in Electronic Announcement #17 (see the above Compliance Requirement) and agrees to the actual amounts paid to ED per the Custodian's statement for the Collection Account for the month immediately following each selected month.

### **3.12 Calculation of Class A Participation Balance**

#### **3.12.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.12 of ED's Custodian Attestation Engagement Guide, concerning the calculation of the Class A Participation Balance.

#### **3.12.2. Compliance Requirement**

The Custodian shall provide ED a Monthly Aggregate Settlement Date Report with respect to each loan subject to a Class A Participation Interest, which shall include all loan activity for the prior month and an aggregation of the Participant's Yield and principal paid to ED with respect to each Class A Participation Interest. (MPA §8(b))

The outstanding principal balance of the Class A Participation Interests is equal to the aggregate Purchase Price paid with respect to the related Purchased Eligible Loans (including the Purchase Price for any Subsequent Disbursement), reduced by the amount of any Redemption Payments or other payments allocable to principal that have been received by the Custodian and remitted to ED with respect to any such Loans and applied to the outstanding principal balance of such Class A Participation Interest through the end of the most recent calendar month. Upon the purchase by ED of additional Class A Participation Interests in Purchased Eligible Loans, the aggregate outstanding principal balance of the Class A Participation Interests is increased by the Purchase Price with respect to each such additional Purchased Eligible Loan, and any Subsequent Disbursements. (MPA §5(g))

The Monthly Aggregate Settlement Date Report, Section VI, comprised of Lines 26 through 30 of the report, specifies the Class A Participation Rollforward reporting as follows:

Line 26 *Opening Principal Balance of Class A Participation Certificate* - The opening balance of the Class A Participation Certificate for the monthly reporting period. It should equate to the ending balance from the previous month's report (Line 30).

Line 27 *Plus: New Disbursements* - The funding received under the Participation Certificate for new distributions during the monthly reporting period.

Line 28 *Subtotal: Principal Balance of Class A Participation Certificate* - Sum of Lines 26 and 27.

Line 29 *Minus: Cash Distributed to Class A Participation Interests* - The cash distributed for the Class A Participation Interests (Line 24).

Line 30 *Equals: Ending Principal Balance of Class A Participation Certificate* - The Ending Principal Balance of Class A Participation Interests for the monthly reporting period.

(Electronic Announcement #17, *Monthly Aggregate Settlement Date Report Submission Procedures*, dated August 8, 2008, and updated September 25, 2008)

### **3.12.3. Required Procedures**

For each month selected at §3.7.3, determine that:

- 1) The amount reported in the Monthly Aggregate Settlement Date Report's Section VI-
  - a) Line 28 *Subtotal: Principal Balance of Class A Participation Certificate* is the sum of Line 26 *Opening Balance of Class A Participation Certificate* and Line 27 *Plus: New Disbursements*;
  - b) Line 29 *Minus: Cash Distributed to Class A Participation Interests* equals Line 24 *Outstanding Balance of Class A Participation Interest*;
  - c) Line 30 *Equals: Ending Principal Balance of Class A Participation Certificate* is the remainder of Line 28 minus Line 29; and
  - d) Line 26 *Opening Principal Balance of Class A Participation Certificate* is Line 30 *Equals: Ending Principal Balance of Class A Participation Certificate* contained in Monthly Aggregate Settlement Date Report for the month immediately preceding the selected month. Note: Line 26 *Opening Principal Balance of Class A Participation Certificate* should be zero for the month in which ED first purchases a Class A Participation Interest from the Sponsor.
- 2) The amounts reported in the Monthly Aggregate Settlement Date Report's Line 27 *New Disbursements* and Line 29 *Cash Distributed to Class A Participation Interests* agree to transaction amounts contained in the Custodian's statement for the Collection Account.

### **3.13 Termination of Participation Interest**

#### **3.13.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.13 of ED's Custodian Attestation Engagement Guide, concerning the Termination of the Participation Interest.

#### **3.13.2. Compliance Requirement**

On the Termination Date, all Eligible Loans then subject to Participation Interests, and the related servicing rights attributable to such Eligible Loans, for which the Sponsor has not made the Redemption Payment or exercised the Put Option shall become the property of ED without any further payment or other action by ED and the Participation Interests and the rights of ED and the Sponsor under the MPA shall be automatically terminated. (MPA §15(e))

The Month-End Loan Schedule's Field 36 *Date Loan Removed From PC* is the date the loan balance was redeemed from the Participation Certificate (PC) through a loan sale or exercise of a put option, if applicable. The date must be formatted YYYYMMDD. (Electronic Announcement #62, *Loan Purchase Participation Program - Revised Loan Schedule and Eligibility Edits Announcement*, dated May 14, 2009, and updated September 2, 2009, *Loan Schedule and Custodial Certification Data File Fields – Definitions and Submission Procedures*, dated May 8, 2009)

#### **3.13.3. Required Procedures**

The following procedures are required:

- 1) Inspect the Month-End Loan Schedule for the month in which the balance of the Class A Participation interest is reduced to zero (see §3.7.3) to identify all loan records with no date in Field 36 *Date Loan Removed From PC*.
- 2) For each loan associated with a record identified at step 1, use database or audit software to determine if an amount is reported in Field 37 *Loan Proceeds* (for redemptions) or Field 38 *Loan Put to Department* (for sales) for the loan on the Month-End Loan Schedule to ascertain if the loan was redeemed or sold to ED.
- 3) If the analytical procedures at step 2 indicate that the loan was neither redeemed nor sold to ED, obtain a written explanation from the Custodian as to why the loan did not become the property of ED, through a redemption or sale, on the Termination Date pursuant to MPA §15(e). Such written explanation shall be submitted as an appendix to the engagement report.

### **3.14 Balances of Purchased Eligible Loans and Participation Interest**

#### **3.14.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.14 of ED's Custodian Attestation Engagement Guide, concerning Balances of Purchased Eligible Loans and Participation Interest.

#### **3.14.2. Compliance Requirement**

In no event shall the Custodian permit any Purchased Eligible Loans to be released from a Class A Participation Interest if, after giving effect to such release, the outstanding Principal Balance of the Purchased Eligible Loans that remain subject to the Class A Participation Interests is less than the aggregate outstanding principal balance of the Class A Participation Interests and Participant's Yield then due and owing to the Department. (MPA §15(f))

#### **3.14.3. Required Procedures**

For each month selected at §3.7.3, determine that the sum of the Monthly Aggregate Settlement Date Report's Line 30 *Ending Principal Balance of Class A Participation Certificate* and Line 12 *Ending Principal Yield Balance* is less than the total *Outstanding Principal Balance* (Field 28) reported on the applicable Month-End Loan Schedule or Month-End Loan Schedules if there are multiple Servicers for a Sponsor.

### **3.15 Servicer Deposits to the Collection Account**

#### **3.15.1. Required Management Assertion**

[The Custodian] complied with the compliance requirements, described in §3.15 of ED's Custodian Attestation Engagement Guide, concerning Servicer Deposits to the Collection Account.

#### **3.15.2. Compliance Requirement**

An Eligible Servicing Agreement shall provide that the Servicer will deposit all Collections into the Collection Account not later than two (2) business days after receipt. (MPA §12(c)(v))

The Custodian shall ensure that each Servicer shall be responsible for remitting to the Custodian all payments received on the Eligible Loans. (MPA §12(d))

The Custodian shall cause the Servicer to specify whether Collections received by it and deposited into the Collection Account represent principal or interest. (MPA §13)

#### **3.15.3. Required Procedures**

The following procedures are required:

- 1) For each month selected at §3.7.3, determine that deposits from the Servicer are specified as principal, interest, or other (e.g., loan proceeds, fees) on the Custodian's statement for the Collection Account. If the Custodian's statement for the Collection Account does not specify the nature (e.g., loan proceeds, fees) of the deposit(s), determine if the Servicer communicated, in writing, to the Custodian the nature of the deposit(s).
- 2) For each month selected at §3.7.3, inspect the transaction descriptions on the Custodian's statement for the Collection Account or written communication from the Servicer to the Custodian specifying the nature of the deposits to determine if deposits from the Servicer are made no later than two (2) business days after the date of receipt reported by the Servicer.

## Section 4 – Reporting

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### 4.1 Engagement Report Package Requirements

The report package for engagements must include:

- Examination-Level Report On Compliance with Specified Requirements (Attachment 1);
- Participation Interest Characteristics (Attachment 2);
- Schedule of Findings;
- Summary Schedule on the Resolution of Prior Engagement Findings (for subsequent engagements only);
- Custodian and Practitioner Information Sheet (Attachment 3);
- Management Representations and Management Assertions (Attachment 4);
- Any separate report on illegal acts submitted under the procedures in §1.5;
- Any appendices in response to procedures at §3.13.3, as applicable; and
- Any management letters issued to the lender concerning this engagement.

**Note:** The report packages submitted to ED should not contain any personally identifiable information. Personally identifiable information includes, but is not limited to, names of borrowers, SSNs, and borrowers' addresses.

### 4.2 Schedule of Findings

The Schedule of Findings identifies all of the practitioner's findings of noncompliance, significant deficiencies, and material weaknesses. For each finding, the practitioner must identify the condition, criteria, probable cause, and effect. The practitioner must also make a recommendation for corrective action to the Custodian. If corrective action is not necessary, the practitioner must provide the reason.

Each finding in the schedule must be numbered so that the findings may be referenced easily during audit resolution and follow-up. The first two digits of the finding number are the final two digits of the academic year being audited, and a hyphen is used to separate these two digits from a number indicating the sequence of the finding. For example, the reference numbers for the third, fourth, and fifth findings for an engagement of the 2009-2010 academic year would be 10-3, 10-4, and 10-5.

Descriptions of findings must also include the following information:

- For each finding that is monetary in nature, the finding description must include information about the number of transactions affected and the monetary value for each finding.
- The universe and sample size of the transactions tested. If the sample was expanded to evaluate the projected error rate statistically, the report must also include information about the sampling methodology, confidence level, precision, expected rate of occurrence, and estimated disallowance to the population, including the point estimate and lower and upper limits.

If there are no findings, the schedule includes only the practitioner's statement that no instances of noncompliance with the requirements specified in Section 3 of the Custodian Attestation Engagement Guide were detected during the engagement. A Schedule of Findings must be submitted with every compliance engagement report package, even if there are no findings. If a schedule is not submitted, or if a schedule is not prepared in accordance with guidance in this section, ED may reject the compliance engagement report package.

#### **4.3 Practitioner's Comments on the Resolution of Prior Engagement Findings**

For subsequent engagements<sup>11</sup> performed under this Guide, a Summary Schedule on the Resolution of Prior Engagement Findings must be included as part of every compliance engagement report package.

Obtain a Summary Schedule on the Resolution of Prior Engagement Findings from the Custodian. The schedule must identify all prior findings, the status of their resolution, and the actions necessary for the Custodian to resolve those unresolved findings. The Custodian must refer to the finding using the number that was assigned in the prior engagement report. The Custodian should also note if (i) all prior findings have been resolved, or (ii) there were no prior findings in the immediate prior engagement report.

The practitioner must follow-up on prior engagement findings and perform procedures to assess the reasonableness of the Summary Schedule on the Resolution of Prior Engagement Findings prepared by the Custodian. The practitioner must report a current-year finding if the practitioner concludes that the schedule materially misrepresents the status of any prior finding.

#### **4.4 Reporting Package Submission**

The reporting package must be transmitted by the submission deadlines described in §1.3. The Custodian must submit the reporting package electronically, in a PDF format, to [Aupaudits@ed.gov](mailto:Aupaudits@ed.gov) with "Custodian Audit" in the subject line. Questions about the

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<sup>11</sup> For Custodians participating in both the 2008-2009 and 2009-2010 Loan Participation Programs, the initial engagement covers the 2008-2009 Loan Participation Program and the subsequent engagement covers the 2009-2010 Loan Participation Program.

reporting package submission process may be directed to Patricia Trubia, Acting Director, Financial Partner Eligibility & Oversight, by email to [Patricia.Trubia@ed.gov](mailto:Patricia.Trubia@ed.gov).

#### **4.5 Corrective Action Plan**

In Electronic Announcement #84, dated April 19, 2010, ED announced that Custodians will be required to submit a corrective action plan in response to the finding(s) identified through the attestation engagement and reported in the Schedule of Findings. Custodians will be required to include the corrective action plan along with the report package, described in §4.1, for the engagement. (The Electronic Announcement is available at: <http://federalstudentaid.ed.gov/ffelp/>)

## **Attachments**

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### **Attachment 1 - Illustrative Examination-Level Report on Compliance with Specified Requirements**

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#### **Independent Accountant's Report**

We have examined management's assertions that [the Custodian] complied with the specified compliance requirements regarding Eligible Servicing Agreements; Participation Certificates; Participation Purchase Requests, Loan Schedules and Custodial Certifications, and Exception Reports; Loans and Loan Documents Held In Trust; Collection Account and Permitted Investments; Monthly Aggregate Settlement Date Reports; Remittance of Purchase Price; Collection Activities; Distributions from the Collection Account; Calculation of Participant's Yield; Calculation of Class A Participation Balance; Termination of Participation Interest; Balances of Purchased Eligible Loans and Participation Interest; and Enforcement of Servicing Agreements listed in Section 3 of the Custodian Attestation Engagement Guide, *ECASLA Loan Participation Program for Loans for Academic Years 2008-2009 and 2009-2010 Custodian's Compliance with Master Participation Agreement*, during the Loan Participation Program for loans for the academic year [specify]. [Custodian's] management is responsible for [the Custodian's] compliance with those requirements. Our responsibility is to express an opinion on the assertions based on our examination.

Our examination was conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants; standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the requirements contained in the Custodian Attestation Engagement Guide, *ECASLA Loan Participation Program for Loans for Academic Years 2008-2009 and 2009-2010 Custodian's Compliance with Master Participation Agreement*, issued by the U.S. Department of Education, Office of Inspector General; and accordingly, included examining, on a test basis, evidence supporting management's assertions and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, management's assertions referred to above are fairly stated, in all material respects, based on the requirements of the Custodian Attestation Engagement Guide, *ECASLA Loan Participation Program for Loans for Academic Years 2008-2009 and 2009-2010 Custodian's Compliance with Master Participation Agreement*. Our examination does not provide a legal determination on [the Custodian's] compliance with the specified requirements. [Note: If material noncompliance is found, the report must be appropriately modified.]

In accordance with *Government Auditing Standards*, we are required to report significant deficiencies in internal control, identifying those considered to be material weaknesses, violations of provisions of contracts or grant agreements, and abuse that could have a material effect on the [Custodian's] compliance with the specified requirements regarding Eligible Servicing Agreements; Participation Certificates; Participation Purchase Requests, Loan Schedules and Custodial Certifications, and Exception Reports; Loans and Loan Documents

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Loan Participation Program for Loans for Academic Years 2008-2009 and 2009-2010  
Custodian's Compliance with the Master Participation Agreement

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Held In Trust; Collection Account and Permitted Investments; Monthly Aggregate Settlement Date Reports; Remittance of Purchase Price; Collection Activities; Distributions from the Collection Account; Calculation of Participant's Yield; Calculation of Class A Participation Balance; Termination of Participation Interest; Balances of Purchased Eligible Loans and Participation Interest; and Enforcement of Servicing Agreements listed in Section 3 of the Custodian Attestation Engagement Guide, *ECASLA Loan Participation Program for Loans for Academic Years 2008-2009 and 2009-2010 Custodian's Compliance with Master Participation Agreement* and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether management's assertions referred to above are fairly stated, in all material respects, and not for the purpose of expressing an opinion on internal control over the compliance requirements referred to above or on other compliance and other matters; accordingly, we express no such opinions. Our examination [did/did not] disclose certain findings that are required to be reported under *Government Auditing Standards* and those findings, along with the views of management, are described in the attached Schedule of Findings.

This report is intended solely for the information and use of the U.S. Department of Education and the management of [the Custodian] and is not intended to be and should not be used by anyone other than these specified parties.

[CPA Firm Signature]

[Date]

## Attachment 2 – Participation Interest Characteristics

The practitioner shall complete the Participation Interest Characteristics form to be included with each engagement report package.

<b><u>Participation Interest Characteristics</u></b>				
<b>Section I: Custodian and Sponsor Information</b>				
Instructions – Enter the Custodian, Sponsor, LIDs, Servicer(s), and Academic Year of the Loan Participation Program for which the engagement is being performed.				
Custodian Name:		Sponsor Name:		
Custodian LID:		Sponsor LID:		
Servicer(s):		Academic Year: <sup>1</sup>		
<b>Section II: Participation Interest Balances and Collections</b>				
Instructions – For the months selected at §3.7.3, enter information from the Monthly Aggregate Settlement Date Reports for the opening and ending balances of the Class A Participation Certificate and monthly collections amounts (i.e., Cash Available for Distribution).				
Months Selected at §3.7.3	Initial Month	First Random Selection	Second Random Selection	Final Month
Month Ended				
Opening Principal Balance of Class A Participation Certificate <sup>2(a)</sup>				
Ending Principal Balance of Class A Participation Certificate <sup>2(b)</sup>				
Cash Available for Distribution <sup>2(c)</sup>				
<p>Note 1: Specify “2008-2009” for the Loan Participation Program for 2008-2009 academic year loans or “2009-2010” for the Loan Participation Program for 2009-2010 academic year loans.</p> <p>Note 2: Information from Monthly Aggregate Settlement Date Report: (a) Line 26, (b) Line 30, and (c) Line 22.</p>				

### Attachment 3 – Custodian, Sponsor, and Practitioner Information Sheet

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<b><u>Custodian Information:</u></b>	
Custodian Name:	
Custodian's Lender ID Number:	
Telephone Number:	
Fax Number:	
President:	
Contact Person & Title:	
<b><u>Sponsor Information:</u></b>	
Sponsor Name:	
Sponsor's Lender ID Numbers:	
<b><u>Audit Firm Information:</u></b>	
Partner In Charge:	
Email Address:	
State in Which Licensed and CPA License Number (Home State):	
If Engagement Performed Outside of Home State, Name of Other State and CPA License Number in That State:	
Firm's Name:	
Street:	
City, State, Zip:	
Telephone and Fax Numbers:	

## **Attachment 4 – Management's Assertions and Representations**

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[Custodian's Letterhead]

To: [Independent Public Auditor]

### **Assertions**

The management of [the Custodian] provides these assertions to your firm because it is conducting an engagement of [the Custodian's] compliance with selected terms and conditions specified in the Master Participation Agreement, for the [2008-2009 or 2009-2010] academic year, between [the Sponsor], as Sponsor, [ELT], as Eligible Lender Trustee, [the Custodian], as Custodian, and the U.S. Department of Education. The purpose of the compliance engagement is to express an opinion about whether [the Custodian] has complied in all material respects with these management's assertions.

Furthermore, we make the following individual assertions that during the period [date of initial Participation Interest purchase] through [termination date of the Participation Interest], [the Custodian] complied with the requirements, described in the following subsections of Section 3 of the U.S. Department of Education's Custodian Attestation Engagement Guide, *ECASLA Loan Participation Program for Loans for Academic Years 2008-2009 and 2009-2010 Custodian's Compliance with the Master Purchase Agreement*.

- §3.2 Eligible Servicing Agreements;
- §3.3 Participation Certificates;
- §3.4 Participation Purchase Requests, Loan Schedules and Custodian Certifications, and Exception Reports;
- §3.5 Loan Documents Held in Trust;
- §3.6 Collection Account and Permitted Investments;
- §3.7 Monthly Aggregate Settlement Date Reports;
- §3.8 Remittance of Purchase Price and Security Release Certificate;
- §3.9 Collection Activities;
- §3.10 Distributions from Collection Account;
- §3.11 Calculation of Participant's Yield;
- §3.12 Calculation of Class A Participation Balance;
- §3.13 Termination of Participation Interest;
- §3.14 Balances of Purchased Eligible Loans and Participation Interest; and
- §3.15 Servicer Deposits to the Collection Account

## **Representations**

We also represent that the management of [the Custodian]—

- Acknowledges and accepts responsibility for its compliance with the specified requirements;
- Acknowledges and accepts responsibility for exercising due care in the delegation of its duties to a third party, and in any reliance on a third party in performance of its own duties, in accordance with Section 18 of the Master Participation Agreement;
- Acknowledges and accepts responsibility for establishing an effective internal control structure over compliance;
- Has evaluated its compliance with the specified requirements or its controls for ensuring compliance and detecting noncompliance with requirements, as applicable;
- Asserts that, based on its evaluation of the requirements identified in Section 3 of the Custodian Attestation Engagement Guide, *ECASLA Loan Participation Program for Loans for Academic Years 2008-2009 and 2009-2010 Custodian's Compliance with the Master Purchase Agreement*, [the Custodian] is in compliance with those requirements and the internal controls relating to those requirements are effective;
- Has disclosed to you, the practitioner, all known noncompliance;
- Has made available to you, the practitioner, all documentation related to compliance with the specified requirements;
- Has disclosed any communications from regulatory agencies, internal auditors, and other practitioners concerning possible noncompliance with the specified requirements, including communications received between the end of the period addressed in the written assertion and the date of the practitioner's report;
- Has disclosed any known noncompliance occurring subsequent to the period for which, or date we are making these assertions, [month/day/year]; and
- Has not provided any interpretations to you, the practitioner, of compliance requirements that have varying interpretations.<sup>12</sup>

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The management of [the Custodian] confirms that the assertions and representations provided in this document are true and accurate, to the best of its knowledge and belief.

Sincerely,  
[Signature]  
[Title]  
[Date]

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<sup>12</sup> Any additional assertions or representations to be made by management should be included.