

No. 24 of 2001

**AN ACT TO PROVIDE FOR THE GUARANTEE
BY THE GOVERNMENT OF THE COMMONWEALTH OF
THE BAHAMAS OF EDUCATIONAL LOANS BY
FINANCIAL INSTITUTIONS TO STUDENTS WISHING TO
STUDY AT APPROVED INSTITUTIONS AND FOR
PURPOSES CONNECTED THERETO**

(Date of Assent:— 9th November, 2001)

Enacted by the Parliament of The Bahamas.

**Short title and
commencement.**

1. (1) This Act may be cited as the Educational Guarantee Fund Act, 2001.

(2) This Act shall be deemed to have come into force on the 23rd August, 2000.

Interpretation.

2. In this Act

“approved institutions” means those institutions of higher education approved by the Minister;

“approved lender” means -

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(a) any domestic bank licensed under the Banks and Trust Companies Regulations Act, 2000;

(b) any other financial institution approved by the Minister in accordance with section 5;

“borrower” means a person who is approved by the Minister for the purposes of this Act and includes the parent, guardian, or endorser of any deed, agreement, promissory note or other instrument issued by the approved lender as security for a guaranteed loan;

“Committee” means the Education Committee established by section 7;

“Education Policy” means the aims of the Minister for educational development as published by the Minister from time to time which may include the efficient use and management of resources and economic and social objectives in The Bahamas;

“Fund” means the Educational Guarantee Fund established under section 16;

“guaranteed loan” means a loan which complies with sections 12, 13 and 14 of this Act; and

“Minister” means the Minister responsible for education, except in respect of sections 3, 5 and 6, “Minister” means the Minister responsible for Finance.

**Powers of
Government
to guarantee
loans.**

- 3.** (1) The Government may in such manner and on such terms and subject to such conditions as may be agreed between it and an approved lender -
- (a) guarantee the discharge by a borrower of his obligations under any agreement (in this Act referred to as a “guaranteed loan”) which may be entered into by the borrower with an approved lender in respect of any borrowing or under any deed, agreement, promissory note or other instrument issued by the approved lender pursuant to any such agreement; and

- (b) assume such other obligation as may be agreed between the Minister and an approved lender in relation to or pursuant to any such deed, agreement, promissory note or other instrument.

Ch. 329. (2) Section 17 of the Financial Administration and Audit Act shall not apply to any guarantee made by the Minister under subsection (1).

Minister to be a corporation sole. 4. (1) The Minister shall, as respects the functions assigned to him by or under this Act, be a corporation sole, with power to enter into contracts, to sue and be sued and to do all things necessary for the purposes of this Act.

(2) Upon and by virtue of the appointment of any person to be the Minister charged with the responsibility for the administration of this Act, the benefit and burden of all deeds, contracts, securities and things in action vested in his predecessor at the time of his predecessor ceasing to hold office shall be transferred to and vested in and enure to the person so appointed in the same manner as if he had been contracted with instead of his predecessor and as if his name had been inserted in all such deeds, contracts or securities instead of the name of his predecessor.

Approval of lender. 5. (1) The Minister may, subject to such conditions as the Minister sees fit, approve any financial institution as an approved lender for the purposes of this Act.

(2) The Minister may at any time terminate the approval given to an approved lender under this section by giving to the approved lender not less than six months' written notice.

(3) No notice of termination under subsection (2) shall affect the rights or obligations of any person under any guarantee which is made or entered into before the date on which such termination takes effect.

**Approved
lender's
obligation.**

6. An approved lender shall submit bi-annual declarations to the Minister commencing from the date on which such loan would have been approved, in such form as may be prescribed and otherwise required under this Act, listing all guaranteed loans administered by it and which are in arrears at the end of that period and advising the Minister of the steps taken to recover such arrears.

**Establishment
of Education
Committee.**

7. (1) There is hereby established a Committee to be known as the Education Committee.

(2) The Schedule shall have effect with respect to the constitution and proceedings of the Education Committee.

**Functions
and powers
of the Committee.**

8. (1) The functions of the Committee shall be-
- (a) to advise the Minister on guaranteed loans;
 - (b) to issue, modify and revoke guaranteed loans in a manner consistent with the Education Policy;
 - (c) to formulate and implement standards in relation to the

Education Policy; and,

(d) to regulate, allocate and manage the use of the resources available for tertiary education.

(2) In carrying out its functions the Committee shall have the power-

(a) to require an applicant for a guaranteed loan to provide such information as the Committee determines necessary to process the application for a guaranteed loan;

(b) to conduct a means test for each applicant;

(c) to publish information, reports and other documents;

and,

(d) to modify the conditions of a guaranteed loan.

(3) In exercising its functions and powers under this Act, the

Committee shall at all times act in a manner that is timely, transparent, and non-discriminatory and consistent with the objectives of the Education Policy.

Directions.

9. The Minister may give written directions to the Committee

concerning the performance of its functions, powers and duties, either generally or in relation to a particular matter, and the Committee shall give effect to those directions.

Review.

10. (1) A person aggrieved by a decision of the Committee .

(a) refusing an application for a guaranteed loan;

(b) modifying a guaranteed loan;

(c) revoking a guaranteed loan,

has the right to have the decision reviewed by the Minister.

- (2) An application for a review shall .
 - (a) be in writing;
 - (b) give particulars of the decision which the aggrieved person wants to be reviewed;
 - (c) include any material or representations that the aggrieved person wants to be taken into account; and
 - (d) be delivered to the Minister within thirty days after the aggrieved person is given notice of the decision by the Committee.
- (3) The Minister may confirm, vary or reverse the decision under review.

**Application for
guaranteed
loan.**

11. Every application made under this Act for a guaranteed loan shall be made to the Committee prior to the student entering university or college or where the student currently attends university or college before the funds are required.

**Conditions for
the grant of a
guaranteed
loan.**

12. (1) A loan may be guaranteed under this Act if all of the following conditions are satisfied -

- (a) the student is a Bahamian citizen;
- (b) the student is sixteen years of age or more;
- (c) the loan is made to a person who is eighteen years of age or more;
- (d) the student has been accepted into an approved institution;

- (e) the purpose of such loan is to provide assistance for university or college education or training at an approved institution of higher education;
- (f) the total amount of the loan does not exceed one hundred thousand dollars, and that loan is not advanced in amounts in excess of twenty thousand dollars per annum; and
- (g) the loan is made on terms that all money borrowed shall be repaid within a period of fifteen years from the completion or cessation of studies.

Ch. 317.

(2) The Minister shall require that there is a valid policy of insurance on the life of the borrower with an insurance company registered under the Insurance Act for such an amount as is sufficient to cover the full amount of the loan.

(3) Where a borrower does not qualify for a policy of insurance, the Minister may waive the requirement referred to in subsection (2).

Interest rate.

13. The rate of interest chargeable by an approved lender and payable by a borrower on any guaranteed loan under this Act shall be prime plus two per centum.

Loan guarantee premium fee.

14. (1) Subject to subsection (3), the approved lender shall pay a loan guarantee premium fee in respect of each loan to the Minister before the loan is guaranteed under this Act.

(2) The loan guarantee premium fee mentioned in subsection (1) shall be in a sum equal to two per centum of the amount guaranteed.

(3) The loan guarantee premium fee with respect to the period August, 2000 to August, 2002 is waived.

**Interest
Payment.**

15. Notwithstanding any agreement that a borrower and an approved lender may make with respect to the interest payable under a guaranteed loan, the Minister may, on the recommendation of the Committee, pay to the approved lender, for a qualified student, one-half of the interest due under that qualified student's guaranteed loan, until the student ceases or completes his studies.

**Educational
Fund.**

16. (1) For the purposes of this Act, the Minister shall establish a fund to be known as the Educational Guarantee Fund (in this Act referred to as "the Fund") into which -

(a) the Minister shall forthwith cause to be paid the sum of one million dollars; and

(b) all loan guarantee premium fees received pursuant to section 14 shall be paid.

(2) The fulfillment of all obligations of the Government under section 3 of this Act shall be guaranteed out of the Consolidated Fund and accordingly, there shall be paid into the Fund from time to time out of the Consolidated Fund by warrant under the hand of the Minister of Finance, such sums as may be necessary to increase the Fund to an amount which will enable the Minister to discharge these obligations.

(3) Whenever any sum is paid out of the Consolidated Fund under subsection (2), the Minister shall prepare a statement and lay it before the House of Assembly.

(4) Without prejudice to subsection (2), where the Fund at the end of any financial year exceeds ten percent of the total amount of guaranteed loans in force, the Minister shall apply the surplus towards repaying to the Consolidated Fund all sums paid therefrom into the Fund in accordance with subsection (2).

(5) The Minister may from time to time invest any of the liquid assets of the Fund in commercial bank deposits and securities which are obligations of the Government, as well as securities approved by the Governor-General.

(6) No payments shall be made out of the Fund except such payments as are authorized to be made by this Act.

**Authorised
limits on
guaranteed
loans.**

17. The aggregate amount of all borrowings in respect of all loans guaranteed by the Government under this Act shall not exceed one hundred million dollars.

**Accounts
and audit.**

18. (1) The Minister shall keep proper accounts and other records in relation to this Act and shall prepare annually a statement of accounts in a form satisfactory to the Minister of Finance being a form which shall conform with established accounting principles.

(2) The accounts of the Minister shall be audited by an auditor appointed annually by the Minister and approved by the Minister of Finance.

(3) Nothing in this Act shall prevent the Auditor-General from carrying out any functions of auditing or reporting on the accounts of the Minister at the request of the Minister of Finance and for that purpose the Auditor-General and his subordinate staff shall be entitled to have access to all books, records, returns and reports relating to such accounts.

**Annual
report.**

19. (1) The Minister shall, not later than four months after the expiration of each financial year and in any event not later than the thirtieth day of October next or such other later date as may be approved by the Minister of Finance, submit to the Minister of Finance a report containing .

- (a) an account of his transactions throughout the preceding financial year in such detail as the Minister of Finance may direct; and
- (b) a statement of the account of the Minister audited in accordance with section 18(2).

(2) The Minister shall cause a copy of the report together with a copy of the auditor's report to be laid before both Houses of Parliament and such reports shall be published in one newspaper published and circulating in The Bahamas.

**Borrower
to repay to
Government
sums paid**

20. If any sum is paid out of the Fund established under section 16 in respect of any liability incurred by the Minister under a guarantee or other undertaking given in exercise of the powers conferred by section 16, the borrower shall repay such sum (together with interest thereon at such rate as the

from the Minister may prescribe) to the Fund, as the case may be, in such manner and at
Fund. such time as the Minister may direct.

Settlement of 21. (1) An approved lender, who is the creditor in respect of a guaranteed
guaranteed loan shall notify the Minister where default has occurred in respect of the loan.
loan. (2) The approved lender shall make all reasonable efforts to recover
the loan and if such efforts have failed the Minister shall within a period not exceeding
two months following the receipt in writing of the claim under the guarantee pay to
the approved lender all sums owing in respect of the guaranteed loan and the approved
lender shall transfer to the Minister or his nominee, all rights to and in respect of the
guaranteed loan.

(3) The payment by the Minister to an approved lender in respect of a
guaranteed loan shall discharge the Government from all liability to the approved lender in
respect of the guaranteed loan.

(4) In this section a person is in "default" whose payments due under the loan
have been outstanding for a period of three months or more.

Offences in 22. If any person, in giving any information, making any application or claim for the
respect of a purposes of this Act, makes any statement which he knows to be false in a material particular,
guarantee. or recklessly makes any statement which is false in a material particular, that person shall be
liable on summary conviction to a fine not exceeding three thousand dollars.

Regulations. 23. The Minister may make regulations for the purpose of giving effect to this Act,
and in particular for prescribing anything by this Act required to be prescribed.

Exemption from stamp duty. **24.** Instruments or transactions relating to any loan guaranteed under this Act shall be exempt from the payment of stamp duty under the Stamp Act.

Ch. 334.

SCHEDULE

Constitution of the Committee. **1.** (1) The Committee shall consist of a chairman, a deputy chairman and not less than three nor more than five other members appointed by the Minister from persons appearing to him to be qualified as having experience of, or having shown capacity in matters relating to education, industry, commerce, transportation, finance, government, administration or organization of workers.

(2) The Permanent Secretary of the Ministry of Education or a person designated by him shall be an ex officio member of the Committee.

Tenure. **2.** A member of the Committee shall hold office for such period, not exceeding three years as the Minister may direct in the instrument of appointment of such member, but such member shall be eligible for reappointment.

Chairman and Deputy Chairman. **3.** The Minister shall appoint a chairman and a deputy chairman of the Committee from among members appointed under paragraph 1 and if the chairman is absent or unable to act, the deputy chairman shall act as chairman during the time the absence or inability continues.

Resignation. **4.** A member of the Committee, other than the ex officio member, may at any

time resign his office by instrument in writing addressed to the Minister and from the date of receipt by the Minister of the instrument that member shall cease to be a member of the Committee.

Removal. 5. The Minister by instrument in writing, may revoke the appointment of a member of The Committee if the Minister thinks it expedient to do so.

Publication. 6. The appointment, removal, death or resignation of a member of the Committee shall be notified in the Gazette.

Remuneration. 7. There shall be paid to the chairman and other members of the Committee such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances, if any, as the Minister may determine.

Meetings. 8. (1) The Committee shall meet as often as may be required for the performance of its functions.

 (2) The chairman, or in his absence the deputy chairman, shall preside at all meetings of the Committee.

 (3) The chairman, or in his absence the deputy chairman, and three other members of the Committee shall form a quorum.

 (4) The decisions of the Committee are by a majority of votes and in any case in which the voting is equal, the member presiding at the meeting shall have, in addition to an original vote, a casting vote.

(5) Minutes of each meeting in proper form are to be kept by the secretary or any officer the Committee may appoint for that purpose, and confirmed by the Committee at the next meeting and signed by the chairman or a member of the Committee designated by the chairman as the case may be.

(6) The Committee may co-opt any one or more persons to attend any particular meeting of the Committee for the purpose of assisting any particular meeting of the Committee or advising the Committee in any matter with which the Committee is dealing, but no co-opted person has the right to vote.

(7) Where a quorum is present, the validity of any proceeding of the Committee shall not be affected by any vacancy amongst the members thereof by any defect in the appointment of a member.

**Authority to
regulate its
proceedings.**

9. Subject to this Schedule, the Committee has the power to regulate its proceedings.