NELNET INC
Form 10-Q
November 10, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q

(Mark One)

þ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2008

or

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from __________ to __________.

COMMISSION FILE NUMBER 001-31924

NELNET, INC.
(Exact name of registrant as specified in its charter)

NEBRASKA	**84-0748903**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
121 SOUTH 13TH STREET, SUITE 201 LINCOLN, NEBRASKA	**68508**
(Address of principal executive offices)	(Zip Code)

(402) 458-2370
(Registrant s telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes þ No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer þ	Accelerated filer o	Non-accelerated filer o	Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No þ

As of October 31, 2008, there were 37,998,182 and 11,495,377 shares of Class A Common Stock and Class B Common Stock, par value $0.01 per share, outstanding, respectively (excluding 11,058,604 shares of Class A Common Stock held by a wholly owned subsidiary).

NELNET, INC.
FORM 10-Q
INDEX
September 30, 2008

Table of Contents

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

NELNET, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except share data)

		As of September 30, 2008 (unaudited)	As of December 31, 2007
Assets:			
Student loans receivable (net of allowance for loan losses of $49,070 and $45,592, respectively)	$	26,376,269	26,736,122
Cash and cash equivalents:			
Cash and cash equivalents not held at a related party		16,062	38,305
Cash and cash equivalents held at a related party		308,945	73,441
Total cash and cash equivalents		325,007	111,746
Restricted cash and investments		1,082,015	927,247
Restricted cash due to customers		47,859	81,845
Accrued interest receivable		530,102	593,322
Accounts receivable, net		49,204	49,084
Goodwill		175,178	164,695
Intangible assets, net		83,565	112,830
Property and equipment, net		43,629	55,797
Other assets		102,446	107,624
Fair value of derivative instruments		154,741	222,471
Total assets	$	28,970,015	29,162,783
Liabilities:			
Bonds and notes payable	$	28,004,835	28,115,829
Accrued interest payable		92,112	129,446
Other liabilities		192,550	220,899
Due to customers		47,859	81,845
Fair value of derivative instruments		22,929	5,885
Total liabilities		28,360,285	28,553,904
Shareholders equity:			
Preferred stock, $0.01 par value. Authorized 50,000,000 shares; no shares issued or outstanding			
Common stock:			
Class A, $0.01 par value. Authorized 600,000,000 shares; issued and outstanding 37,994,332 shares as of September 30, 2008 and 37,980,617 shares as of December 31, 2007		380	380

Class B, convertible, $0.01 par value. Authorized 60,000,000 shares; issued and outstanding 11,495,377 shares as of September 30, 2008 and December 31, 2007		115	115
Additional paid-in capital		101,757	96,185
Retained earnings		509,524	515,317
Employee notes receivable		(2,046)	(3,118)
Total shareholders equity		609,730	608,879
Commitments and contingencies			
Total liabilities and shareholders equity	$	28,970,015	29,162,783

See accompanying notes to consolidated financial statements.

Table of Contents

NELNET, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except share data)
(unaudited)

	Three months ended September 30, 2008	Three months ended September 30, 2007	Nine months ended September 30, 2008	Nine months ended September 30, 2007
Interest income:				
Loan interest	$ 284,468	437,251	911,140	1,251,391
Investment interest	9,118	21,023	29,914	61,231
Total interest income	293,586	458,274	941,054	1,312,622
Interest expense:				
Interest on bonds and notes payable	234,016	393,875	791,621	1,112,263
Net interest income	59,570	64,399	149,433	200,359
Less provision for loan losses	7,000	18,340	18,000	23,628
Net interest income after provision for loan losses	52,570	46,059	131,433	176,731
Other income (expense):				
Loan and guaranty servicing income	30,633	33,040	81,650	95,116
Other fee-based income	45,887	38,025	132,617	116,316
Software services income	4,217	5,426	15,865	17,022
Other income	1,242	7,028	4,298	14,048
Gain (loss) on sale of loans		492	(47,426)	3,288
Derivative market value, foreign currency, and put option adjustments and derivative settlements, net	6,874	16,113	10,468	18,966
Total other income	88,853	100,124	197,472	264,756
Operating expenses:				
Salaries and benefits	44,739	60,545	142,131	182,010
Other operating expenses:				
Impairment expense		49,504	18,834	49,504
Advertising and marketing	18,388	14,141	50,734	43,590
Depreciation and amortization	10,781	15,084	32,218	36,741
Professional and other services	10,963	9,336	27,548	28,219
Occupancy and communications	4,194	5,931	14,949	16,182
Postage and distribution	3,026	4,123	9,586	14,266
Trustee and other debt related fees	2,423	3,337	7,277	8,965
Other	9,155	11,444	27,151	35,843
Total other operating expenses	58,930	112,900	188,297	233,310

Total operating expenses		103,669	173,445	330,428	415,320
Income (loss) before income taxes		37,754	(27,262)	(1,523)	26,167
Income tax expense (benefit)		13,969	(10,664)	1,793	9,906
Income (loss) from continuing operations		23,785	(16,598)	(3,316)	16,261
Income (loss) from discontinued operations, net of tax			909	981	(2,416)
Net income (loss)	$	23,785	(15,689)	(2,335)	13,845
Earnings (loss) per share, basic and diluted:					
Income (loss) from continuing operations		0.48	(0.34)	(0.07)	0.32
Income (loss) from discontinued operations			0.02	0.02	(0.04)
Net income (loss)	$	0.48	(0.32)	(0.05)	0.28

See accompanying notes to consolidated financial statements.

Table of Contents

NELNET, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS EQUITY AND COMPREHENSIVE INCOME (LOSS)
(Dollars in thousands, except share data)
(unaudited)

	Preferred stock shares	Common stock shares Class A	Common stock shares Class B	Preferred stock	Class A common stock	Class B common stock	Additional paid-in capital	Retained earnings	Employee notes receivable	Accumulated other comprehensive income	Total shareholders equity
Balance as of June 30, 2007		37,661,381	11,495,377	$	377	115	94,473	518,910	(2,697)		611,178
Comprehensive income:											
Net loss								(15,689)			(15,689)
Total comprehensive income (loss)											(15,689)
Cash dividend on Class A and Class B common stock $0.07 per share								(3,453)			(3,453)
Reserve for uncertain income tax provisions							2,519				2,519
Issuance of common stock, net of forfeitures		514,782			5		1,408		(225)		1,188
Compensation expense for stock-based awards							1,575				1,575
Repurchase of common stock		(239,124)			(3)		(5,422)				(5,425)
Balance as of September 30, 2007		37,937,039	11,495,377	$	379	115	94,553	499,768	(2,922)		591,893
		37,952,246	11,495,377	$	380	115	99,854	485,739	(2,046)		584,042

Balance as of June 30, 2008									
Comprehensive income:									
Net income						23,785			23,785
Total comprehensive income									23,785
Issuance of common stock, net of forfeitures	49,650		1		960				961
Compensation expense for stock based awards					1,045				1,045
Repurchase of common stock	(7,564)		(1)		(102)				(103)
Balance as of September 30, 2008	37,994,332	11,495,377	$ 380	115	101,757	509,524	(2,046)		609,730
Balance as of December 31, 2006	39,035,169	13,505,812	$ 390	135	177,678	496,341	(2,825)	131	671,850
Comprehensive income:									
Net income						13,845			13,845
Other comprehensive income:									
Foreign currency translation								(322)	(322)
Non-pension postretirement benefit plan								191	191
Total comprehensive income									13,714
Cash dividend on Class A and Class B common stock $0.21 per share						(10,357)			(10,357)

Adjustment to adopt provisions of FASB Interpretation No. 48							(61)		(61)
Reserve for uncertain income tax provisions						2,519			2,519
Issuance of common stock, net of forfeitures	667,055			7		4,627		(225)	4,409
Compensation expense for stock based awards						3,105			3,105
Repurchase of common stock	(3,301,194)			(33)		(80,874)			(80,907)
Conversion of common stock	2,010,435	(2,010,435)		20	(20)				
Acquisition of enterprise under common control	(474,426)			(5)		(12,502)			(12,507)
Reduction of employee stock notes receivable								128	128
Balance as of September 30, 2007	37,937,039	11,495,377	$	379	115	94,553	499,768	(2,922)	591,893
Balance as of December 31, 2007	37,980,617	11,495,377	$	380	115	96,185	515,317	(3,118)	608,879
Comprehensive income:									
Net loss							(2,335)		(2,335)
Total comprehensive income (loss)									(2,335)
Cash dividend on Class A and Class B common stock							(3,458)		(3,458)

$0.07 per share								
Issuance of common stock, net of forfeitures	83,337		1		2,033			2,034
Compensation expense for stock based awards					4,308			4,308
Repurchase of common stock	(69,622)		(1)		(769)			(770)
Reduction of employee stock notes receivable							1,072	1,072
Balance as of September 30, 2008	37,994,332	11,495,377	$ 380	115	101,757	509,524	(2,046)	609,730

See accompanying notes to consolidated financial statements.

4

Table of Contents

NELNET, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)
(unaudited)

	Nine months ended September 30, 2008	Nine months ended September 30, 2007
Net income (loss)	$ (2,335)	13,845
Income (loss) from discontinued operations	981	(2,416)
Income (loss) from continuing operations	(3,316)	16,261
Adjustments to reconcile income (loss) from continuing operations to net cash provided by operating activities, net of business acquisitions:		
Depreciation and amortization, including loan premiums and deferred origination costs	107,944	223,552
Derivative market value adjustment	72,399	(93,031)
Foreign currency transaction adjustment	(40,360)	79,020
Change in value of put options issued in business acquisitions	3,483	2,145
Proceeds from termination of derivative instruments	15,403	50,843
Payments to terminate derivative instruments	(3,679)	(8,100)
Impairment expense	18,834	49,504
Loss on sale of business		8,132
Gain on sale of equity method investment		(3,942)
Loss (gain) on sale of student loans	47,426	(3,288)
Non-cash compensation expense	5,670	4,595
Deferred income tax benefit	(23,979)	(30,374)
Provision for loan losses	18,000	23,628
Other non-cash items	1,258	(2,900)
Decrease (increase) in accrued interest receivable	63,220	(125,929)
Decrease (increase) in accounts receivable	445	(7,045)
Decrease in other assets	13,928	7,450
(Decrease) increase in accrued interest payable	(37,334)	64,812
(Decrease) increase in other liabilities	(1,765)	19,785
Net cash flows from operating activities continuing operations	257,577	275,118
Net cash flows from operating activities discontinued operations		(3,558)
Net cash provided by operating activities	257,577	271,560
Cash flows from investing activities, net of business acquisitions:		
Originations, purchases, and consolidations of student loans, including loan premiums and deferred origination costs	(2,368,229)	(4,509,308)
Purchases of student loans, including loan premiums, from a related party	(212,888)	(232,769)
Net proceeds from student loan repayments, claims, capitalized interest, participations, and other	1,538,134	1,740,351
Proceeds from sale of student loans	1,267,826	107,673

Purchases of property and equipment, net	(5,094)	(18,375)
(Increase) decrease in restricted cash and investments, net	(154,768)	316,415
Purchases of equity method investments	(2,988)	
Distributions from equity method investments		747
Sale of business, net of cash sold		7,551
Business acquisitions, net of cash acquired	(18,000)	2,211
Proceeds from sale of equity method investment		10,000
Net cash flows from investing activities continuing operations	43,993	(2,575,504)
Net cash flows from investing activities discontinued operations		(294)
Net cash provided by (used in) investing activities	43,993	(2,575,798)
Cash flows from financing activities:		
Payments on bonds and notes payable	(5,328,782)	(4,496,077)
Proceeds from issuance of bonds and notes payable	5,225,548	7,022,018
Proceeds (payments) from issuance of notes payable due to a related party, net	32,790	(56,917)
Payments of debt issuance costs	(14,778)	(13,951)
Dividends paid	(3,458)	(10,357)
Payment on settlement of put option		(15,875)
Proceeds from issuance of common stock	566	1,231
Repurchases of common stock	(770)	(75,504)
Payments received on employee stock notes receivable	575	128
Net cash flows (used in) provided by financing activities continuing operations	(88,309)	2,354,696
Net cash flows from financing activities discontinued operations		
Net cash (used in) provided by financing activities	(88,309)	2,354,696
Effect of exchange rate fluctuations on cash		548
Net increase in cash and cash equivalents	213,261	51,006
Cash and cash equivalents, beginning of period	111,746	106,086
Cash and cash equivalents, end of period	$ 325,007	157,092
Supplemental disclosures of cash flow information:		
Interest paid	$ 814,469	920,966
Income taxes paid, net of refunds	$ 24,302	20,908

See accompanying notes to consolidated financial statements.

5

Table of Contents

NELNET, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Information as of September 30, 2008 and for the three months and nine months ended September 30, 2008 and 2007 is unaudited)
(Dollars in thousands, except per share amounts, unless otherwise noted)

1. Basis of Financial Reporting

The accompanying unaudited consolidated financial statements of Nelnet, Inc. and subsidiaries (the Company) as of September 30, 2008 and for the three and nine months ended September 30, 2008 and 2007 have been prepared on the same basis as the audited consolidated financial statements for the year ended December 31, 2007 and, in the opinion of the Company s management, the unaudited consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of results of operations for the interim periods presented. The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. Operating results for the three and nine months ended September 30, 2008 are not necessarily indicative of the results for the year ending December 31, 2008. The unaudited consolidated financial statements should be read in conjunction with the Company s Annual Report on Form 10-K for the year ended December 31, 2007. Certain amounts from 2007 have been reclassified to conform to the current period presentation.

2. Discontinued Operations

On May 25, 2007, the Company sold EDULINX Canada Corporation (EDULINX), a Canadian student loan service provider and a subsidiary of the Company, for initial proceeds of $19.0 million. The Company recognized an initial net loss of $9.0 million related to this transaction. During the three months ended June 30, 2008, the Company earned $2.0 million ($1.0 million net of tax) in additional consideration as a result of the sale of EDULINX. This payment represented contingent consideration earned by the Company based on EDULINX meeting certain performance measures. As a result of the sale of EDULINX, the results of operations for EDULINX, including the contingent payment earned in 2008, are reported as discontinued operations in the accompanying consolidated statements of operations.

The components of income (loss) from discontinued operations are presented below.

	Three months ended September 30,		Nine months ended September 30,	
	2008	2007	2008	2007
Operating income of discontinued operations	$			9,278
Income tax on operations				(3,562)
Gain (loss) on disposal		(6)	1,966	(8,157)
Income tax on disposal		915	(985)	25
Income (loss) from discontinued operations, net of tax	$	909	981	(2,416)

The following operations of EDULINX have been segregated from continuing operations and reported as discontinued operations through the date of disposition. Interest expense was not allocated to EDULINX and, therefore, all of the Company s interest expense is included within continuing operations.

	Nine months ended September 30, 2007

Net interest income	$	124
Other income		31,511
Operating expenses		(22,357)
Income before income taxes		9,278
Income tax expense		3,562
Operating income of discontinued operations, net of tax	$	5,716

Table of Contents

As a result of the contingent consideration received during the second quarter 2008, the Company earned $0.8 million of foreign tax credits available to offset future U.S. federal income taxes. Under current tax law, these tax credits expire in 2018. The Company established a valuation allowance for these tax credits due to the Company s assessment that this deferred tax asset did not meet the more-likely-than-not recognition criteria of Statement of Financial Accounting Standards (SFAS) No. 109, *Accounting for Income Taxes*.

3. Restructuring Charges

Legislative Impact

On September 6, 2007, the Company announced a strategic initiative to create efficiencies and lower costs in advance of the enactment of the College Cost Reduction and Access Act of 2007, which impacted the Federal Family Education Loan Program (the FFEL Program or FFELP) in which the Company participates. In anticipation of the federally driven cuts to the student loan programs, management initiated a variety of strategies to modify the Company s student loan business model, including lowering the cost of student loan acquisition, creating efficiencies in the Company s asset generation business, and decreasing operating expenses through a reduction in workforce and realignment of operating facilities. Implementation of the plan began immediately and was completed as of December 31, 2007. As a result of these strategic decisions, the Company recorded restructuring charges of $15.0 million and $5.3 million in the third and fourth quarters of 2007, respectively, and income of $0.2 million in the first quarter of 2008 to recognize adjustments from initial estimates.

Information related to the remaining restructuring accrual, which is included in other liabilities on the consolidated balance sheet, follows:

	Employee termination benefits	Lease terminations	Total
Restructuring accrual as of December 31, 2007	$ 1,193	3,682	4,875
Adjustment from initial estimated charges	(191)		(191)
Cash payments	(868)	(358)	(1,226)
Restructuring accrual as of March 31, 2008	134	3,324	3,458
Cash payments	(134)	(45)	(179)
Restructuring accrual as of June 30, 2008		3,279	3,279
Cash payments		(259)	(259)
Restructuring accrual as of September 30, 2008	$	3,020	3,020

Capital Markets Impact

On January 23, 2008, the Company announced a plan to further reduce operating expenses related to its student loan origination and related businesses as a result of ongoing disruptions in the credit markets. Management developed a restructuring plan related to its asset generation and supporting businesses which reduced marketing, sales, service, and related support costs through a reduction in workforce and realignment of operating facilities. Implementation of the plan began immediately and was completed as of June 30, 2008. As a result of these strategic decisions, the

Company recorded restructuring charges of $26.5 million in the first quarter of 2008 and income of $0.4 million in the second quarter of 2008 to recognize adjustments from initial estimates.

Table of Contents

Selected information relating to the restructuring charge follows:

	Employee termination benefits	Lease terminations	Write-down of assets	Total
Restructuring costs recognized during the three month period ended March 31, 2008	$ 6,095(a)	1,573(b)	18,834(c)	26,502
Write-down of assets to net realizable value			(18,834)	(18,834)
Cash payments	(4,952)			(4,952)
Restructuring accrual as of March 31, 2008	1,143	1,573		2,716
Adjustment from initial estimated charges	(190)(a)	(175)(b)		(365)
Cash payments	(792)	(369)		(1,161)
Restructuring accrual as of June 30, 2008	161	1,029		1,190
Cash payments	(121)	(265)		(386)
Restructuring accrual as of September 30, 2008	$ 40	764		804

(a) Employee termination benefits are included in salaries and benefits in the consolidated statements of operations.

(b) Lease termination costs are included in occupancy and communications in the consolidated statements of operations.

(c) Costs related to the write-down of assets are included in "impairment expense" in the consolidated statements of operations.

Selected information relating to the restructuring charge by operating segment and Corporate Activity and Overhead follows:

Operating segment	Restructuring costs recognized during the three month period ended March 31, 2008	Write-down of assets to net realizable value	Cash payments	Restructuring accrual as of March 31, 2008	Adjustment from initial estimated charges	Cash payments	Restructuring accrual as of June 30, 2008
Student Loan and Guaranty Servicing	$ 6,010	(5,074)	(430)	506	(104)	(352)	50
Tuition Payment Processing and Campus Commerce							
Enrollment Services and List Management	312		(291)	21	(15)	(19)	(13)
Software and Technical Services	518		(472)	46	(8)		38
Asset Generation and Management	11,287	(9,351)	(1,806)	130	(52)	(72)	6
Corporate Activity and Overhead	8,375	(4,409)	(1,953)	2,013	(186)	(718)	1,109
	$ 26,502	(18,834)	(4,952)	2,716	(365)	(1,161)	1,190

4. Legal, Industry, and Legislative Developments

Legal Proceedings

General

The Company is subject to various claims, lawsuits, and proceedings that arise in the normal course of business. These matters principally consist of claims by student loan borrowers disputing the manner in which their student loans have been processed and disputes with other business entities. On the basis of present information, anticipated insurance coverage, and advice received from counsel, it is the opinion of the Company s management that the disposition or ultimate determination of these claims, lawsuits, and proceedings will not have a material adverse effect on the Company s business, financial position, or results of operations.

Municipal Derivative Bid Practices Investigation

As previously disclosed, on February 8, 2008, Shockley Financial Corp. (SFC), an indirect, wholly-owned subsidiary of the Company that provides investment advisory services for the investment of proceeds from the issuance of municipal and corporate bonds, received a grand jury subpoena issued by the U.S. District Court for the Southern District of New York upon application of the Antitrust Division of the U.S. Department of Justice. The subpoena seeks certain information and documents from SFC in connection with the Department of Justice s ongoing criminal investigation of the bond industry with respect to possible anti-competitive practices related to awards of guaranteed investment contracts (GICs) and other products for the investment of proceeds from bond issuances. SFC currently has one employee. The Company and SFC are cooperating with the investigation.

On March 5, 2008, SFC received a subpoena from the Securities and Exchange Commission (the SEC) related to an ongoing industry-wide investigation concerning the bidding of municipal GICs. In addition, on or about June 6, 2008 and June 12, 2008, SFC received a subpoena from both the New York Attorney General (the NYAG) and the Florida Attorney General, respectively, relating to their investigations concerning the bidding of municipal GICs and possible violations of various state and federal laws. The subpoenas seek certain information and documents from SFC relating to its GIC business. The Company and SFC are cooperating with these investigations.

SFC has also been named as a defendant in a number of substantially identical purported class action lawsuits. In each of the lawsuits, a large number of financial institutions and financial service providers, including SFC, are named as defendants. The complaints allege that the defendants engaged in a conspiracy not to compete and to fix prices and rig bids for municipal derivatives (including GICs) sold to issuers of municipal bonds. All the complaints assert claims for violations of Section 1 of the Sherman Act and fraudulent concealment, and three complaints also assert claims for unfair competition and violation of the California Cartwright Act. On June 16, 2008, the United States Judicial Panel on Multidistrict Litigation issued an order transferring the cases then before it to the U.S. District Court for the Southern District of New York which consolidated several cases under the caption *Hinds County, Mississippi v. Wachovia Bank, N.A. et al.* SFC intends to vigorously contest these purported class action lawsuits.

SFC, the Company, or other subsidiaries of the Company may receive subpoenas from other regulatory agencies. Due to the preliminary nature of these matters as to SFC, the Company is unable to predict the ultimate outcome of the investigations or the class action lawsuits.

Industry Inquiries and Investigations

On January 11, 2007, the Company received a letter from the NYAG requesting certain information and documents from the Company in connection with the NYAG s investigation into preferred lender list activities. Since January 2007, a number of state attorneys general, including the NYAG, and the U.S. Senate Committee on Health, Education, Labor, and Pensions also announced or are reportedly conducting broad inquiries or investigations of the activities of various participants in the student loan industry, including activities which may involve perceived conflicts of interest. A focus of the inquiries or investigations has been on any financial arrangements among student loan lenders and other industry participants which may facilitate increased volumes of student loans for particular lenders. Like many other student loan lenders, the Company received requests for information from certain state attorneys general and the Chairman of the U.S. Senate Committee on Health, Education, Labor, and Pensions in connection with their inquiries or investigations. In addition, the Company received subpoenas for information from the NYAG, the New Jersey Attorney General, and the Ohio Attorney General. In each case the Company is cooperating with the requests and subpoenas for information that it has received.

On July 31, 2007, the Company announced that it had agreed with the NYAG to adopt the NYAG s Code of Conduct, which is substantially similar to the Company s previously adopted Nelnet Student Loan Code of Conduct. As part of the agreement, the Company agreed to contribute $2.0 million to a national fund for educating high school students and their parents regarding the financial aid process (the NYAG Fund).

On October 10, 2007, the Company received a subpoena from the NYAG requesting certain information and documents from the Company in connection with the NYAG s investigation into direct-to-consumer marketing practices of student lenders. On September 9, 2008, the Company announced that it agreed to adopt the NYAG s Student Loan Direct Marketing Code of Conduct. As part of the agreement, the Company agreed to contribute $200,000 to the NYAG Fund.

While the Company cannot predict the ultimate outcome of any inquiry or investigation, the Company believes its activities have materially complied with applicable law, including the Higher Education Act of 1965 (the Higher Education Act), the rules and regulations adopted by the Department of Education (the Department) thereunder, and the Department s guidance regarding those rules and regulations.

Department of Education Review

The Department of Education periodically reviews participants in the FFEL Program for compliance with program provisions. On June 28, 2007, the Department notified the Company that it would be conducting a review of the Company s administration of the FFEL Program under the Higher Education Act. The Company understands that the Department has selected several schools and lenders for review. Specifically, the Department is reviewing the Company s practices in connection with the prohibited inducement provisions of the Higher Education Act and the provisions of the Higher Education Act and the associated regulations which allow borrowers to have a choice of lenders. The Company has responded to the Department s requests for information and documentation and is cooperating with their review.

Table of Contents

While the Company cannot predict the ultimate outcome of the review, the Company believes its activities have materially complied with the Higher Education Act, the rules and regulations adopted by the Department thereunder, and the Department s guidance regarding those rules and regulations.

Department of Justice

In connection with the Company s settlement with the Department of Education in January 2007 to resolve the Office of Inspector General of the Department of Education (the OIG) audit report with respect to the Company s student loan portfolio receiving special allowance payments at a minimum 9.5% interest rate, the Company was informed by the Department of Education that a civil attorney with the Department of Justice had opened a file regarding the issues set forth in the OIG report, which the Company understands is common procedure following an OIG audit report. The Company has engaged in discussions with and provided information to the Department of Justice in connection with the review.

While the Company is unable to predict the ultimate outcome of the review, the Company believes its practices complied with applicable law, including the provisions of the Higher Education Act, the rules and regulations adopted by the Department of Education thereunder, and the Department s guidance regarding those rules and regulations.

Internal Revenue Service

In October 2007, the Company received a letter from the Internal Revenue Service (IRS) revoking a previously issued Private Letter Ruling retroactive to September 30, 2003 concerning the Company s arbitrage and excess interest calculations on certain of its tax-exempt bonds. The IRS letter provided procedures for the Company to follow to appeal the retroactive application of the revocation. The Company responded to the IRS in November 2007 requesting relief from retroactivity. In March 2008, the IRS responded with a final determination that the revocation of the Private Letter Ruling would apply prospectively beginning on July 1, 2008. Management believes that the July 1, 2008 prospective application of the Private Letter Ruling revocation will not have a significant impact on the Company s operating results.

Legislative Developments

On May 7, 2008, the President signed into law the Ensuring Continued Access to Student Loans Act of 2008 (the Ensuring Continued Access to Student Loans Act). This legislation contains provisions that expand the federal government s support of financing the cost of higher education. Among other things, the Ensuring Continued Access to Student Loans Act:

- Increases statutory limits on annual and aggregate borrowing for FFELP loans; and
- Allows the Department to act as a secondary market and enter into agreements with lenders to purchase certain FFELP loans or participation interests in those loans.

As a result of this legislation, the Departments of Education and Treasury developed a plan to implement the Ensuring Continued Access to Student Loans Act. Among other things, this plan:

- Allows the Department to purchase certain loans from lenders for the 2008-2009 academic year and offers lenders access to short-term liquidity; and
- Commits to continue working with the FFELP community to explore programs to reengage the capital markets in the long-run.

On May 22, 2008, the Company announced that, as a result of the above plan, it would continue originating new federal student loans for the 2008-2009 academic year to all students regardless of the school they attend.

On July 1, 2008, pursuant to the Ensuring Continued Access to Student Loans Act, the Department of Education announced terms under which it will offer to purchase FFELP student loans and loan participations from lenders. See note 7 for information related to the Department s programs.

On August 14, 2008, the President signed into law the Higher Education Opportunity Act, which amends the Higher Education Act to revise and reauthorize the Higher Education Act programs. Among other items, this legislation:

- Contains school code of conduct requirements applicable to FFELP and private education lenders;
- Contains additional provisions and reporting requirements for lenders and schools participating in preferred lender arrangements; and

Contains additional disclosures that FFELP lenders must make to borrowers as well as added FFELP loan servicing requirements for lenders.

Table of Contents

On October 7, 2008, legislation was enacted to extend the Department s authority to address FFELP student loans made for the 2009-2010 academic year. See note 7 for additional information related to this extension.

5. Student Loans Receivable and Allowance for Loan Losses

Student loans receivable consisted of the following:

		As of September 30, 2008	As of December 31, 2007
Federally insured loans	$	25,725,893	26,054,398
Non-federally insured loans		275,520	274,815
		26,001,413	26,329,213
Unamortized loan premiums and deferred origination costs		423,926	452,501
Allowance for loan losses federally insured loans		(24,366)	(24,534)
Allowance for loan losses non-federally insured loans		(24,704)	(21,058)
	$	26,376,269	26,736,122
Federally insured allowance as a percentage of ending balance of federally insured loans		0.09%	0.09%
Non-federally insured allowance as a percentage of ending balance of non-federally insured loans		8.97%	7.66%
Total allowance as a percentage of ending balance of total loans		0.19%	0.17%

Loan Sales

On March 31, 2008, the Company sold $857.8 million (par value) of federally insured student loans resulting in the recognition of a loss of $30.4 million. In addition, on April 8, 2008, the Company sold $428.6 million (par value) of federally insured student loans. The portfolio of student loans sold on April 8, 2008 was presented as held for sale on the March 31, 2008 consolidated balance sheet and was valued at the lower of cost or fair value. The Company recognized a loss of $17.1 million during the three month period ended March 31, 2008 as a result of marking these loans to fair value. Combined, the portfolios sold on March 31, 2008 and April 8, 2008 were sold for a purchase price of approximately 98% of the par value of such loans. As a result of the disruptions in the debt and secondary markets, the Company sold these loan portfolios in order to reduce the amount of student loans remaining under the Company s multi-year committed financing facility for FFELP loans, which reduced the Company s exposure related to certain equity support provisions included in this facility (see note 7 for additional information related to these equity support provisions).

As part of the Company s asset management strategy, the Company periodically sells student loan portfolios to third parties. During the three and nine months ended September 30, 2007, the Company sold $17.7 million (par value) and $103.7 million (par value), respectively, of federally insured student loans resulting in the recognition of gains of $0.5 million and $3.3 million, respectively.

Table of Contents

6. Intangible Assets and Goodwill

Intangible assets consist of the following:

	Weighted average remaining useful life as of September 30, 2008	As of September 30, 2008	As of December 31, 2007
Amortizable intangible assets:			
Customer relationships (net of accumulated amortization of $27,393 and $20,299, respectively)	109	$ 52,967	60,061
Trade names (net of accumulated amortization of $4,431 and $1,258, respectively)	45	12,628	1,609
Covenants not to compete (net of accumulated amortization of $13,451 and $11,815, respectively)	22	10,171	15,425
Database and content (net of accumulated amortization of $4,883 and $3,193, respectively)	25	4,597	6,287
Computer software (net of accumulated amortization of $6,839 and $4,898, respectively)	12	2,163	4,189
Student lists (net of accumulated amortization of $7,343 and $5,806, respectively)	5	854	2,391
Other (net of accumulated amortization of $89 and $71, respectively)	89	185	203
Loan origination rights (net of accumulated amortization of $8,180)			8,473
Total amortizable intangible assets	81 months	83,565	98,638
Unamortizable intangible assets trade names			14,192
		$ 83,565	112,830

As disclosed in note 3, as a result of the disruptions in the debt and secondary markets and the student loan business model modifications the Company implemented due to the disruptions, the Company recorded an impairment charge of $18.8 million during the first quarter of 2008. This charge is included in impairment expense in the Company s consolidated statements of operations. Information related to the impairment charge follows:

Asset	Operating segment	Impairment charge
Amortizable intangible assets:		
Covenants not to compete	Student Loan and Guaranty Servicing	$ 4,689
Covenants not to compete	Asset Generation and Management	336
Loan origination rights	Asset Generation and Management	8,336
Computer software	Asset Generation and Management	12

Goodwill	Asset Generation and Management		667
Property and equipment	Student Loan and Guaranty Servicing		385
Property and equipment	Corporate activities		4,409
Total impairment charge		$	18,834

The fair value of the intangible assets and reporting unit within the Asset Generation and Management operating segment were estimated using the expected present value of future cash flows.

During the first quarter of 2008, management determined that the trade names not subject to amortization have a finite useful life. As such, these assets will be amortized prospectively over their estimated remaining useful lives.

Table of Contents

The Company recorded amortization expense on its intangible assets of $6.6 million and $10.9 million for the three months ended September 30, 2008 and 2007, respectively, and $19.7 million and $24.0 million for the nine months ended September 30, 2008 and 2007, respectively. The Company will continue to amortize intangible assets over their remaining useful lives. As of September 30, 2008, the Company estimates it will record amortization expense as follows:

2008	$ 6,511
2009	22,319
2010	15,985
2011	10,031
2012	9,029
2013 and thereafter	19,690
	$ 83,565

The change in the carrying amount of goodwill by operating segment was as follows:

	Student Loan and Guaranty Servicing	Tuition Payment Processing and Campus Commerce	Enrollment Services and List Management	Software and Technical Services	Asset Generation and Management	Total
Balance as of December 31, 2007	$	58,086	55,463	8,596	42,550	164,695
Additional contingent consideration paid (a)			11,150			11,150
Impairment charge					(667)	(667)
Balance as of March 31, 2008 (b)	$	58,086	66,613	8,596	41,883	175,178

(a) In January 2008, the Company paid $18.0 million (of which $6.8 million was accrued as of December 31, 2007) of additional consideration related to its 2005 acquisitions of

Student Marketing Group, Inc. and National Honor Roll, L.L.C. This payment satisfies all of the Company s obligations related to the contingencies per the terms of the purchase agreement.

(b) During the quarters ended June 30, 2008 and September 30, 2008, there was no change in goodwill.

Table of Contents

7. Bonds and Notes Payable

The following tables summarize outstanding bonds and notes payable by type of instrument:

	As of September 30, 2008		
	Carrying amount	Interest rate range	Final maturity
Variable-rate bonds and notes (a):			
Bonds and notes based on indices	$ 20,891,535	2.79% - 5.07%	09/25/13 - 06/25/41
Bonds and notes based on auction or remarketing (b)	2,771,445	0.00% - 9.01%	11/01/09 - 07/01/43
Total variable-rate bonds and notes	23,662,980		
Commercial paper FFELP facility (c)	2,525,410	2.54% - 3.94%	05/09/10
Commercial paper private loan facility (c)	132,020	3.14%	03/14/09
Fixed-rate bonds and notes (a)	205,435	5.30% - 6.68%	11/01/09 - 05/01/29
Unsecured fixed rate debt	475,000	5.13% and 7.40%	06/01/10 and 09/15/61
Unsecured line of credit	645,000	2.90% - 3.65%	05/08/12
Department of Education Participation	263,920	3.25%	09/30/09
Other borrowings	95,070	4.09% - 5.10%	05/22/09 - 11/01/15
	$ 28,004,835		

	As of December 31, 2007		
	Carrying amount	Interest rate range	Final maturity
Variable-rate bonds and notes (a):			
Bonds and notes based on indices	$ 17,508,810	4.73% - 5.78%	09/25/12 - 06/25/41
Bonds and notes based on auction or remarketing	2,905,295	2.96% - 7.25%	11/01/09 - 07/01/43
Total variable-rate bonds and notes	20,414,105		
Commercial paper FFELP facility (c)	6,629,109	5.22% - 5.98%	05/09/10
Commercial paper private loan facility (c)	226,250	5.58%	03/14/09
Fixed-rate bonds and notes (a)	214,476	5.20% - 6.68%	11/01/09 - 05/01/29
Unsecured fixed rate debt	475,000	5.13% and 7.40%	06/01/10 and 09/15/61
Unsecured line of credit	80,000	5.40% - 5.53%	05/08/12
Other borrowings	76,889	4.65% - 5.20%	09/28/08 - 11/01/15
	$ 28,115,829		

(a) Issued in asset-backed

securitizations.

(b) As of September 30, 2008, the Company had $165 million of bonds based on an auction rate of 0%, due to the Maximum Rate auction provisions in the underlying documents for such financings. The Maximum Rate provisions include multiple components, one of which is based on T-bill rates. The T-bill component calculation for these bonds produced negative rates, which resulted in auction rates of zero percent for the applicable period.

(c) Loan warehouse facilities.

Secured Financing Transactions

The Company has historically relied upon secured financing vehicles as its most significant source of funding for student loans. The net cash flow the Company receives from the securitized student loans generally represents the excess amounts, if any, generated by the underlying student loans over the amounts required to be paid to the bondholders, after deducting servicing fees and any other expenses relating to the securitizations. The Company s rights to cash flow from securitized student loans are subordinate to bondholder interests and may fail to generate any cash flow beyond what is due to bondholders. The Company s secured financing vehicles are loan warehouse facilities and asset-backed securitizations.

In August 2008, the Company began to fund FFELP student loan originations for the 2008-2009 academic year pursuant to the Department of Education s Loan Participation Program (Participation Program) and an existing participation agreement with Union Bank and Trust Company (Union Bank), an entity under common control with the Company.

14

Loan warehouse facilities
Student loan warehousing has historically allowed the Company to buy and manage student loans prior to transferring them into more permanent financing arrangements. The Company has historically relied upon three conduit warehouse loan financing vehicles to support its funding needs on a short-term basis: a multi-year committed facility for FFELP loans, a $250.0 million private loan warehouse for non-federally insured student loans, and a single-seller extendible commercial paper conduit for FFELP loans.
FFELP Warehouse facility
The Company s multi-year committed facility for FFELP loans terminates in May 2010 and was supported by 364-day liquidity which was up for renewal on May 9, 2008. The Company obtained an extension on this renewal until July 31, 2008. On July 31, 2008, the Company did not renew the liquidity provisions of this facility. Accordingly, as of July 31, 2008, the facility became a term facility with a final maturity date of May 9, 2010. Pursuant to the terms of the agreement, since liquidity was not renewed, the Company s cost of financing under this facility increased 10 basis points. The agreement also includes provisions which allow the banks to charge a rate equal to LIBOR plus 128.5 basis points if they choose to finance their portion of the facility with sources of funds other than their commercial paper conduit. In addition, the FFELP warehouse facility has a provision requiring the Company to refinance or remove 75% of the pledged collateral on an annual basis. The Company believes it has met this requirement for the annual period ending in May 2009. Under the current terms of the facility, the remaining collateral will need to be refinanced or removed by May 9, 2010. As of September 30, 2008 and November 7, 2008, $2.5 billion and $2.1 billion, respectively, was outstanding under this facility.
The terms and conditions of the Company s warehouse facility for FFELP loans provide for mark-to-market advance rates. On October 22, 2008, the Company posted $165.5 million in additional funds to the facility based on this mark-to-market provision. While the Company does not believe that the loan valuation formula is reflective of the actual fair value of its loans, it is subject to compliance with such mark-to-market provisions of the warehouse facility agreement. As of September 30, 2008 and November 7, 2008, the Company had a cumulative amount of $209.1 million and $374.6 million, respectively, posted as equity funding support for this facility.
The Company has utilized its $750.0 million unsecured line of credit to fund equity advances on its warehouse facility. As of November 7, 2008, the Company has $691.5 million outstanding under this line of credit. The line of credit terminates in May 2012.
Continued dislocations in the credit markets may cause additional volatility in the loan valuation formula. Should a significant change in the valuation of loans result in additional required equity funding support for the warehouse facility greater than what the Company can provide and the Company has not amended the facility as discussed below, the warehouse facility could be subject to an event of default resulting in a termination of the facility and an acceleration of the repayment provisions. A default on the FFELP warehouse facility would result in an event of default on the Company s unsecured line of credit that would result in the outstanding balance on the line of credit becoming immediately due and payable.
To reduce the Company s exposure from the mark-to-market advance rate provision included in the FFELP warehouse facility, the Company has signed a letter agreement engaging Banc of America Securities LLC to arrange an amendment of certain of the Company s credit facilities, including but not limited to an amendment to place a floor on the valuation of collateral in the Company s FFELP loan warehouse line of credit for which Bank of America, N.A. acts as administrative agent. Banc of America Securities LLC has commenced the amendment process and together with the Company is seeking the approval of the Company s lenders of a proposed amendment of such credit facilities on mutually agreeable terms. In addition, the Company continues to look at various alternatives to remove loans from the warehouse facility including other financing arrangements and/or selling loans to third parties.
In addition, on November 8, 2008, the Department announced they intend to provide liquidity support to one or more conforming asset backed commercial paper conduits to purchase and provide longer-term financing for FFELP loans. While details of this conduit are forthcoming, it is intended that all fully-disbursed non-consolidation FFELP loans awarded between October 1, 2003 and July 1, 2009 will be eligible for inclusion. As of November 7, 2008, the Company had approximately $900 million of loans included in its warehouse facility that would be eligible for this proposed conduit program.

Private Loan Warehouse Facility

The private loan warehouse facility, which terminates on March 14, 2009, is an uncommitted facility that is offered to the Company by a banking partner. As of September 30, 2008 and November 7, 2008, $132.0 million was outstanding under this facility. New advances are also subject to approval by the sponsor bank, and the Company believes it is unlikely such approval would be granted in the future. The Company guarantees the performance of the assets in the private loan warehouse facility. This facility provides for advance rates on subject collateral which require certain levels of equity enhancement support. As of September 30, 2008 and November 7, 2008, the Company had $50.5 million utilized as equity funding support based on provisions of this agreement. There can be no assurance that the Company will be able to maintain this conduit facility, find alternative funding, or make adequate equity contributions, if necessary. While the Company s bank supported facilities have historically been renewed for successive terms, there can be no assurance that this will continue in the future. In January 2008, the Company suspended originating private loans.

Commercial Paper Warehouse Program

In August 2006, the Company established a $5.0 billion extendable commercial paper warehouse program for FFELP loans, under which it can issue one or more short-term extendable secured liquidity notes. As of September 30, 2008, no notes were outstanding under this warehouse program. As a result of the disruption of the credit markets, there is no market for the issuance of notes under this facility. Management believes it is currently unlikely a market will exist in the foreseeable future.

Department of Education s Loan Participation and Purchase Commitment Programs

On July 1, 2008, pursuant to the Ensuring Continued Access to Student Loans Act, the Department of Education announced terms under which it will offer to purchase certain FFELP student loans and participation interests in certain FFELP student loans from FFELP lenders. Under the Department s Loan Purchase Commitment Program (Purchase Program), the Department will purchase loans at a price equal to the sum of (i) par value, (ii) accrued interest, (iii) the one percent origination fee paid to the Department, and (iv) a fixed amount of $75 per loan. Under the Participation Program, the Department provides interim short-term liquidity to FFELP lenders by purchasing participation interests in pools of FFELP loans. FFELP lenders are charged a rate of commercial paper plus 50 basis points on the principal amount of participation interests outstanding. Loans funded under the Participation Program must be either refinanced by the lender or sold to the Department pursuant to the Purchase Program prior to its expiration on September 30, 2009. To be eligible for purchase or participation under the Department s programs, loans must be FFELP Stafford or PLUS loans made for the academic year 2008-2009, first disbursed between May 1, 2008 and July 1, 2009, with eligible borrower benefits.

On October 7, 2008, legislation was enacted to extend the Department s authority to address FFELP student loans made for the 2009-2010 academic year and allowing for the extension of the Participation Program and Purchase Program from September 30, 2009 to September 30, 2010. The Department has provided preliminary guidance relating to the extension and has indicated that programs similar to the Participation Program and Purchase Program will be implemented for the 2009-2010 academic year along with providing liquidity support for one or more asset backed commercial paper conduits for FFELP Stafford and PLUS loans awarded between October 1, 2003 and July 1, 2009. The Department has indicated that loans for the 2008-2009 academic year which are funded under the Department s Participation Program will need to be refinanced or sold to the Department prior to September 30, 2009. Management understands that such loans will not be eligible for participation under the Department s 2009-2010 Participation Program, but should be eligible for refinancing through the Department s commercial paper conduit program. Management of the Company is encouraged by these developments; however, until the Department provides additional details regarding the programs, the Company is unable to determine the full impact these programs will have on the Company.

The Company has completed and filed all relevant documents to participate in the Department of Education s Participation Program and began to utilize the Participation Program in the third quarter of 2008 to fund a significant portion of its loan originations for the 2008-2009 academic year. As of September 30, 2008 and November 7, 2008, $263.9 million and $504.4 million of loans, respectively, were funded using the Participation Program.

Union Bank Participation Agreement

The Company maintains an agreement with Union Bank, as trustee for various grantor trusts, under which Union Bank has agreed to purchase from the Company participation interests in student loans (the FFELP Participation Agreement). The Company has the option to purchase the participation interests from the grantor trusts at the end of a 364-day term upon termination of the participation certificate. As of September 30, 2008 and November 7, 2008, $221.6 million and $335.3 million, respectively, of loans were subject to outstanding participation interests held by Union Bank, as trustee, under this agreement. The agreement automatically renews annually and is terminable by either party upon five business days notice. This agreement provides beneficiaries of Union Bank s grantor trusts with access to investments in interests in student loans, while providing liquidity to the Company on a short-term basis. The Company can participate loans to Union Bank to the extent of availability under the grantor trusts, up to $750 million. Loans participated under this agreement qualify as a sale pursuant to the provisions of SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (SFAS No. 140). Accordingly, the participation interests sold are not included on the Company s consolidated balance sheet.

Asset-backed Securitizations

On March 7, 2008, April 2, 2008, April 22, 2008, and May 19, 2008, the Company completed asset-backed securities transactions of $1.2 billion, $0.5 billion, $1.5 billion, and $1.3 billion, respectively. Notes issued in these transactions carry interest rates based on a spread to LIBOR. As part of the Company s issuance of asset-backed securitizations in March 2008 and May 2008, due to credit market conditions when these notes were issued, the Company purchased the Class B subordinated notes of $36 million (par value) and $41 million (par value), respectively. These notes are not included on the Company s consolidated balance sheet. If the credit market conditions improve, the Company anticipates selling these notes to third parties. Upon a sale to third parties, the Company would obtain cash proceeds equal to the market value of the notes on the date of such sale. Upon sale, these notes would be shown as bonds and notes payable on the Company s consolidated balance sheet. Unless there is a significant market improvement, the Company believes the market value of such notes will be less than par value. The difference between the par value and market value would be recognized by the Company as interest expense over the life of the bonds.

Notes issued during 2006 included 773.2 million (950 million in U.S. dollars) with variable interest rates initially based on a spread to EURIBOR (the Euro Notes). As of September 30, 2008 and December 31, 2007, the Euro Notes were recorded on the Company s balance sheet at $1.1 billion. The changes in the principal amount of Euro Notes as a result of the fluctuation of the foreign currency exchange rate were decreases of $128.9 million and $40.4 million for the three and nine months ended September 30, 2008, respectively, and increases of $54.0 million and $79.0 million for the three and nine months ended September 30, 2007, respectively, and are included in the derivative market value, foreign currency, and put option adjustments and derivative settlements, net in the consolidated statements of operations. Concurrently with the issuance of the Euro Notes, the Company entered into cross-currency interest rate swaps which are further discussed in note 8.

The interest rates on certain of the Company s asset-backed securities are set and periodically reset via a dutch auction (Auction Rate Securities) or through a remarketing utilizing broker-dealers and remarketing agents (Variable Rate Demand Notes). The Company is currently sponsor on approximately $1.9 billion of Auction Rate Securities and $0.8 billion of Variable Rate Demand Notes.

For Auction Rate Securities, investors and potential investors submit orders through a broker-dealer as to the principal amount of notes they wish to buy, hold, or sell at various interest rates. The broker-dealers submit their clients orders to the auction agent, who then determines the clearing interest rate for the upcoming period. Interest rates on these Auction Rate Securities are reset periodically, generally every 7 to 35 days, by the auction agent or agents. During the first quarter of 2008, as part of the credit market crisis, several auction rate securities from various issuers failed to receive sufficient order interest from potential investors to clear successfully, resulting in failed auction status. Since February 8, 2008, the Company s Auction Rate Securities have failed in this manner. Under normal conditions, banks have historically stepped in when investor demand is weak. However, banks have been allowing these auctions to fail.

As a result of a failed auction, the Auction Rate Securities will generally pay interest to the holder at a maximum rate as defined by the commercial paper, governing documents, or indenture. While these rates will vary by the trust structure the notes were issued from as well as the class and rating of the security, they will generally be based on a spread to LIBOR, commercial paper, or Treasury Securities. Based on the relative levels of these indices as of September 30, 2008, the rates expected to be paid by the Company range from 91-day T-Bill plus 125 basis points, on the low end, to LIBOR plus 250 basis points, on the high end.

During the three month period ended September 30, 2008, the Company paid favorable interest rates on the majority of its Auction Rate Securities as a result of the application of certain of these maximum rate auction provisions in the underlying documents for such financings.

The Company cannot predict whether future auctions related to its Auction Rate Securities will be successful, but management believes it is likely auctions will continue to fail indefinitely. The Company is currently seeking alternatives for reducing its exposure to the auction rate market, but may not be able to achieve alternate financing for some or all of its Auction Rate Securities.

For Variable Rate Demand Notes, the remarketing agents set the price, which is then offered to investors. If there are insufficient potential bid orders to purchase all of the notes offered for sale, the Company could be subject to interest costs substantially above the anticipated and historical rates paid on these types of securities. The maximum rate for Variable Rate Demand Notes is based on a spread to certain indexes as defined in the underlying documents, with the highest to the Company being Prime plus 200 basis points. Certain of the Variable Rate Demand Notes are secured by financial guaranty insurance policies issued by MBIA Insurance Corporation. These Variable Rate Demand Notes are currently experiencing reduced investor demand and certain of these securities have been put to the liquidity provider, Lloyds TSB Bank, at a cost ranging from Federal Funds plus 150 basis points to LIBOR plus 175 basis points.

Unsecured Lines of Credit

The Company has a $750.0 million unsecured line of credit that terminates in May 2012. As of September 30, 2008, there was $645.0 million outstanding on this line and $105.0 million available for future use. The weighted average interest rate on this line of credit was 3.44% as of September 30, 2008. Upon termination in 2012, there can be no assurance that the Company will be able to maintain this line of credit, find alternative funding, or increase the amount outstanding under the line, if necessary. As discussed previously, the Company may need to fund certain loans or provide additional equity funding support related to advance rates on its warehouse facilities. As of November 7, 2008, the Company has contributed $425.1 million in equity funding support to these facilities. The Company has funded these contributions primarily by advances on its operating line of credit. As of November 7, 2008, the Company has $691.5 million outstanding under this line of credit and $58.5 million available for future uses. The lending commitment on the Company s unsecured line of credit is provided by multiple banks. Lehman Brothers Bank, FSB (Lehman Bank) represents seven percent of the lending commitment under the line of credit. On September 15, 2008, Lehman Brothers Holdings Inc. filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Since the bankruptcy filing, the Company has experienced funding delays from Lehman Bank for its portion of the lending commitment under the line of credit. As of November 7, 2008, excluding Lehman Bank s lending commitment, the Company has $51.2 million available for future use under its unsecured line of credit.

The line of credit agreement contains certain financial covenants that, if not met, lead to an event of default under the agreement. The covenants include maintaining:

(i) A minimum consolidated net worth;

(ii) A minimum adjusted EBITDA to corporate debt interest (over the last four rolling quarters);

(iii) A limitation on subsidiary indebtedness; and

(iv) A limitation on the percentage of non-guaranteed loans in the Company s portfolio.

As of September 30, 2008, the Company was in compliance with all of these requirements. Many of these covenants are duplicated in the Company s other lending facilities, including its FFELP and private loan warehouses.

As previously discussed, continued dislocations in the credit markets may cause additional volatility in the loan valuation formula included in the Company s FFELP warehouse facility. Should a significant change in the valuation of loans result in additional required equity funding support for the warehouse facility greater than what the Company can provide, the warehouse facility could be subject to an event of default resulting in a termination of the facility and an acceleration of the repayment provisions. A default on the FFELP warehouse facility would result in an event of default on the Company s unsecured line of credit that would result in the outstanding balance on the line of credit becoming immediately due and payable.

The Company s operating line of credit does not have any covenants related to unsecured debt ratings. However, changes in the Company s ratings (as well as the amounts the Company borrows) have modest implications on the pricing level at which the Company obtains funding.

Other Borrowings

As of September 30, 2008 and December 31, 2007, bonds and notes payable includes $90.1 million and $57.3 million, respectively, of notes due to Union Bank. The Company has used the proceeds from these notes to invest in student loan assets via a participation agreement. This participation agreement is in addition to the $750 million FFELP Participation Agreement, and participations under this participation agreement do not qualify as sales pursuant to SFAS No. 140. On October 23, 2008, the Company paid Union Bank $89.5 million to pay off the remaining balance on these notes.

8. Derivative Financial Instruments

The Company maintains an overall risk management strategy that incorporates the use of derivative instruments to reduce the economic effect of interest rate volatility and fluctuations in foreign currency exchange rates. Derivative instruments used as part of the Company s risk management strategy include interest rate swaps, basis swaps, and cross-currency interest rate swaps.

Interest Rate Swaps

FFELP student loans generally earn interest at the higher of a floating rate based on the Special Allowance Payment or SAP formula set by the Department and the borrower rate, which is fixed over a period of time. The Company generally finances its student loan portfolio with variable-rate debt. In low and/or declining interest rate environments, when the fixed borrower rate is higher than the rate produced by the SAP formula, the Company s student loans earn at a fixed rate while the interest on the variable-rate debt continues to decline. In these interest rate environments, the Company earns additional spread income that it refers to as floor income.

Depending on the type of the student loan and when it was originated, the borrower rate is either fixed to term or is reset to market rate each July 1. As a result, for loans where the borrower rate is fixed to term, the Company earns floor income for an extended period of time, which the Company refers to as fixed rate floor income, and for those loans where the borrower rate is reset annually on July 1, the Company earns floor income to the next reset date, which the Company refers to as variable-rate floor income. In accordance with legislation enacted in 2006, lenders are required to rebate fixed-rate floor income and variable-rate floor income to the Department for all FFELP loans originated on or after April 1, 2006.

Absent the use of derivative instruments, a rise in interest rates will have an adverse effect on earnings due to interest margin compression caused by increasing financing costs, until such time as the federally insured loans earn interest at a variable rate in accordance with the SAP formula. In higher interest rate environments, where the interest rate rises above the borrower rate and fixed-rate loans effectively become variable rate loans, the impact of the rate fluctuations is reduced.

Table of Contents

As of September 30, 2008, the Company held the following interest rate swaps to hedge student loan assets earning fixed rate floor income.

Maturity	Notional Amount	Weighted average fixed rate paid by the Company (a)
2009	$ 500,000	4.08%
2010	500,000	3.84
	$ 1,000,000	3.96%

(a) For all interest rate derivatives for which the Company pays a fixed rate, the Company receives discrete three-month LIBOR.

During the third quarter of 2008, the Company terminated certain interest rate swaps with a total notional amount of $1.4 billion and original maturity dates ranging from 2010 to 2012 for total net proceeds of $5.6 million.

Basis Swaps

The Company has entered into basis swaps in which the Company receives three-month LIBOR set discretely in advance and pays a daily weighted average three-month LIBOR less a spread as defined in the individual agreements. The Company entered into these derivative instruments to better match the interest rate characteristics on its student loan assets and the debt funding such assets. The following table summarizes these derivatives as of September 30, 2008:

Maturity	Notional Amounts
2008	$ 1,000,000
2009	1,000,000
2010	5,500,000
2011	2,700,000
2012	2,400,000
	$ 12,600,000

During the first and third quarters of 2008, the Company terminated certain basis swaps with total notional amounts of $2.9 billion and $9.8 billion, respectively, with original maturity dates ranging from 2009 to 2012 for total net proceeds of $7.1 million and total net payments of $1.5 million, respectively. In October 2008, the Company terminated a basis swap with a notional amount of $1.0 billion and an original maturity date in 2010 for proceeds of $0.6 million. This derivative is included in the above table.

Cross-Currency Interest Rate Swaps

The Company entered into derivative instruments in 2006 as a result of the issuance of the Euro Notes as discussed in note 7. Under the terms of these derivative instrument agreements, the Company receives from a counterparty a spread to the EURIBOR index based on a notional amount of 420.5 million and 352.7 million, respectively, and pays a spread to the LIBOR index based on a notional amount of $500.0 million and $450.0 million, respectively. In addition, under the terms of these agreements, all principal payments on the Euro Notes will effectively be paid at the exchange rate in effect as of the issuance of these notes.

Accounting for Derivative Financial Instruments

The Company accounts for derivative instruments under SFAS No. 133, which requires that every derivative instrument be recorded on the balance sheet as either an asset or liability measured at its fair value. Management has structured all of the Company s derivative transactions with the intent that each is economically effective; however, the Company s derivative instruments do not qualify for hedge accounting under SFAS No. 133. As a result, the change in fair value of derivative instruments is recorded in the consolidated statements of operations at each reporting date. Upon termination of a derivative instrument, any proceeds received or payments made by the Company are included in derivative market value, foreign currency, and put option adjustments and derivative settlements, net on the consolidated statements of operations and is accounted for as a change in fair value on such derivative.

The following table summarizes the net fair value of the Company s derivative portfolio:

		As of September 30, 2008	As of December 31, 2007
Interest rate swaps	$	(5,579)	(2,695)
Basis swaps		(17,082)	27,525
Cross-currency interest rate swaps		154,473	191,756
Net fair value	$	131,812	216,586

The change in the fair value of the Company s derivative portfolio included in derivative market value, foreign currency, and put option adjustments and derivative settlements, net on the Company s consolidated statements of operations resulted in a loss of $119.9 million and income of $72.7 million for the three months ended September 30, 2008 and 2007, respectively, and a loss of $72.4 million and income of $93.0 million for the nine months ended September 30, 2008 and 2007, respectively.

The following table summarizes the net derivative settlements which are included in the derivative market value, foreign currency, and put option adjustments and derivative settlements, net in the consolidated statements of operations:

		Three months ended September 30,		Nine months ended September 30,	
		2008	2007	2008	2007
Interest rate swaps	$	(3,176)	1,729	(14,194)	16,803
Basis swaps		(3,999)	(2,608)	41,605	(2,489)
Cross-currency interest rate swaps		7,963	(1,457)	18,577	(7,214)
Derivative settlements received (paid), net	$	788	(2,336)	45,988	7,100

By using derivative instruments, the Company is exposed to credit and market risk. When the fair value of a derivative contract is positive, this generally indicates that the counterparty owes the Company. If the counterparty fails to perform, credit risk is equal to the extent of the fair value gain in a derivative. When the fair value of a derivative contract is negative, the Company owes the counterparty and, therefore, it has no credit risk. The Company minimizes the credit (or repayment) risk in derivative instruments by entering into transactions with high-quality counterparties that are reviewed periodically by the Company s risk committee. The Company also maintains a policy of requiring that all derivative contracts be governed by an International Swaps and Derivatives Association, Inc. Master Agreement.

Market risk is the adverse effect that a change in interest rates, or implied volatility rates, has on the value of a financial instrument. The Company manages market risk associated with interest rates by establishing and monitoring limits as to the types and degree of risk that may be undertaken.

9. Fair Value

On January 1, 2008, the Company adopted SFAS No. 157, *Fair Value Measurements* (SFAS No. 157). SFAS No. 157 defines fair value, establishes a consistent framework for measuring fair value, and expands disclosure requirements about fair value measurements. The Company elected to delay the application of SFAS No. 157 to nonfinancial assets and nonfinancial liabilities, as allowed by FASB Staff Position SFAS No. 157-2. SFAS No. 157 applies when other

accounting pronouncements require or permit fair value measurements; it does not require new fair value measurements.
Fair value under SFAS No. 157 is defined as the price to sell an asset or transfer a liability in an orderly transaction between willing and able market participants. The Company determines fair value using valuation techniques which are based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company s market assumptions. Transaction costs are not included in the determination of fair value. When possible, the Company seeks to validate the model s output to market transactions. Depending on the availability of observable inputs and prices, different valuation models could produce materially different fair value estimates. The values presented may not represent future fair values and may not be realizable. Additionally, there may be inherent weaknesses in any calculation technique, and changes in the underlying assumptions used, including discount rates and estimates of future cash flows, could significantly affect the results of current or future values.

Table of Contents

Under SFAS No. 157, the Company categorizes its fair value estimates based on a hierarchal framework associated with three levels of price transparency utilized in measuring financial instruments at fair value. Classification is based on the lowest level of input that is significant to the fair value of the instrument. The three levels include:

Level 1: Quoted prices for *identical* instruments in active markets. The types of financial instruments included in Level 1 are highly liquid instruments with quoted prices.

Level 2: Quoted prices for *similar* instruments in active markets, quoted prices for identical or similar instruments in markets that are not active; and model derived valuations whose inputs are observable or whose primary value drivers are observable.

Level 3: Instruments whose primary value drivers are *unobservable*. Inputs are developed based on the best information available; however, significant judgment is required by management in developing the inputs.

The following table presents the Company s financial assets and liabilities that are measured at fair value on a recurring basis. All financial assets and liabilities that are measured at fair value are categorized as Level 1 or 2 based on the above hierarchy.

	As of September 30, 2008
	Level 1