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NELNET INC
Form S-3/A
May 12, 2005

As filed with the Securities and Exchange Commission on May 12, 2005
Registration No. 333- 124043

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 1
TO
FORM S-3
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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

Nebraska
(State or other jurisdiction
of incorporation or organization)

84-0748903
(I.R.S. Employer Identification Number)

121 South 13th Street, Suite 201
Lincoln, Nebraska 68508
Telephone: (402) 458-2370
(Address, including zip code, and telephone number,
including area code, of registrant's principal
executive office)

Terry J. Heimes
Chief Financial Officer
Nelnet, Inc.
121 South 13th Street, Suite 201
Lincoln, Nebraska 68508
Telephone: (402) 458-2303
Facsimile: (402) 458-2294
(Name, address, including zip code, and
number, including area code, of agent for

Gerald S. Tanenbaum, Esq.
Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
Telephone: (212) 701-3000
Facsimile: (212) 269-5420

Copies to:

Daniel F. Kaplan, Esq.
Perry, Guthery, Haase & Gessford, P.C.
233 South 13th Street, Suite 1400
Lincoln, Nebraska 68508
Telephone: (402) 476-9200
Facsimile: (402) 476-0094

Approximate date of commencement of proposed sale to the public: From time
to time after the registration statement becomes effective.

If the only securities being registered on this Form are being offered
pursuant to dividend or interest reinvestment plans, please check the following
box. / /

If any of the securities being registered on this Form are to be offered on

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a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, please check the following box. /X/

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. / /

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. / /

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. / /

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Explanatory Note

The sole purpose of this Amendment is to file Exhibits 25.1 and 25.2 and to amend Exhibits 4.1 and 4.3 to the Registration Statement. Accordingly, this Amendment consists only of the facing page, this explanatory note and Part II of the Registration Statement. The Prospectus is unchanged and has been omitted.

PART II INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, incurred in connection with the distribution of the securities being registered (all amounts are estimated except the SEC registration fee).

SEC registration fee.....	\$ 88,275
Printing and engraving expenses.....	200,000
Legal fees and expenses.....	250,000
Rating agency fees.....	200,000
Accounting fees and expenses.....	250,000

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Trustees and transfer agents fees.....	100,000
Miscellaneous.....	50,000

Total.....	\$1,138,275*
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* All expenses, except the SEC registration fee, are estimated.

Item 15. Indemnification of Directors and Officers.

Under the Nebraska Business Corporation Act, a Nebraska corporation may provide indemnification to directors and officers for judgments, fines, settlements and expenses, including attorney's fees, incurred in connection with any threatened, pending or completed action, suit or proceeding other than an action by or in the right of the corporation. This applies to any civil, criminal, investigative or administrative action provided that the director or officer involved acted in good faith, in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The corporation may also provide indemnification to directors and officers for judgments, fines, settlements and expenses, including attorney's fees, incurred in connection with any threatened, pending or completed action or suit by or in the right of the corporation if such director or officer acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation. However, no indemnification shall be made in respect of any claim, issue or matter in which such person is adjudged to be liable for negligence or misconduct in the performance of his duties to the corporation unless the court in which the action is brought deems indemnity proper. The grant of indemnification to a director or officer shall be determined by a majority of a quorum of disinterested directors, by a written opinion from independent legal counsel or by the shareholders. Indemnification shall be provided to any directors and officers for expenses, including attorney's fees, actually and reasonably incurred in the defense of any action, suit or proceeding to the extent that he or she has been successful on the merits.

The registrant's amended and restated articles of incorporation provide that the registrant shall, to the maximum extent and in the manner permitted by the Nebraska Business Corporation Act, indemnify each of its directors, officers, employees and agents against expenses, including attorney's fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that such person is or was an agent of the registrant. The registrant shall pay expenses incurred in defending any civil or criminal action or proceeding for which indemnification is available in advance of the final disposition of such action or proceeding, following authorization thereof by the board of directors in the case of an employee or agent, upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall be ultimately determined by final judicial

In addition, the registrant's amended and restated articles of incorporation provide that the registrant may purchase and maintain insurance on behalf of any person who is or was an agent of the registrant against any liability asserted against or incurred by such person in such capacity arising out of such person's status as such, whether or not the registrant would have the power to indemnify him or her against such liability under the registrant's amended and restated articles of incorporation and the Nebraska Business Corporation Act. The registrant has obtained insurance for the benefit of its officers and directors insuring such persons against liabilities, including liabilities under the securities laws.

The registrant's amended and restated articles of incorporation also limit the personal liability of the directors and officers of the registrant for breaches of fiduciary duty to the registrant or its shareholders, except in certain circumstances including (1) breach of the duty of loyalty to the registrant or its shareholders, (2) acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, (3) acts or omissions for which the Nebraska Business Corporation Act does not permit indemnity for directors under Section 21-2018(2)(e) of the Nebraska Business Corporation Act, which include intentional infliction of harm on the registrant or its shareholders, voting for or assenting to an unlawful distribution and intentional violation of criminal law, or (4) any transaction from which the director derived an improper personal benefit.

Item 16. Exhibits.

See Exhibit Index immediately preceding the Exhibits.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (a) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
 - (b) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of the prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
 - (c) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (1)(a) and (1)(b) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment will be deemed to be a new registration statement relating to the securities

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offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

II-2

- (5) To deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered, to each person to whom the prospectus is sent or given the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.
- (6) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of a registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act will be deemed to be part of this registration statement as of the time it was declared effective.
- (7) For the purposes of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.
- (8) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the SEC under section 305(b)(2) of the Trust Indenture Act.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described under Item 15 above, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person

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in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

II-3

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Lincoln, Nebraska on May 12, 2005.

NELNET, INC.

By: /s/ Michael S. Dunlap

Name: Michael S. Dunlap
Title: Chairman and Co-Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Pre-Effective Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature -----	Title -----
/s/ Michael S. Dunlap ----- Michael S. Dunlap	Chairman and Co-Chief Executive Officer (Co-Principal Executive Officer)
* ----- Stephen F. Butterfield	Vice Chairman and Co-Chief Executive Officer (Co-Principal Executive Officer)
* ----- Terry J. Heimes	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

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* ----- Don R. Bouc	Director
* ----- James P. Abel	Director
* ----- Michael D. Reardon	Director
* ----- Arturo Moreno	Director
* ----- Brian J. O'Connor	Director
* ----- Thomas E. Henning	Director
* ----- James H. VanHorn	Director
* By: /s/ Michael S. Dunlap ----- Name: Michael S. Dunlap Title: Attorney-in-Fact	

EXHIBITS

Exhibit Number -----	Description -----
1.1*	Form of Underwriting Agreement (Nelnet, Inc. Equity)
1.2*	Form of Underwriting Agreement (Nelnet, Inc. Debt)
1.3*	Form of Underwriting Agreement (Nelnet, Inc. Stock Purchase Contracts)
1.4*	Form of Underwriting Agreement (Nelnet, Inc. Stock Purchase Units)
4.1**	Form of Nelnet, Inc. Senior Debt Securities Indenture
4.2*	Form of Nelnet, Inc. Senior Debt Security

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- 4.3** Form of Nelnet, Inc. Subordinated Debt Securities Indenture
- 4.4* Form of Nelnet, Inc. Subordinated Debt Security
- 4.5* Form of Nelnet, Inc. Standard Stock Warrant Agreement
- 4.6* Form of Nelnet, Inc. Standard Stock Warrant Certificate
- 4.7* Form of Standard Stock Purchase Contract Agreement
- 5.1*** Opinion of Perry, Guthery, Haase & Gessford, P.C., L.L.O. regarding legality of certain securities being offered
- 5.2*** Opinion of Cahill Gordon & Reindel LLP regarding legality of certain securities being offered
- 12.1*** Statement of Ratio of Earnings to Fixed Charges and Preferred Stock Dividends
- 23.1*** Consent of Perry, Guthery, Haase & Gessford, P.C., L.L.O. (included as part of Exhibit 5.1)
- 23.2*** Consent of Cahill Gordon & Reindel LLP (included as part of Exhibit 5.2)
- 23.3*** Consent of KPMG LLP, Independent Registered Public Accounting Firm
- 24.1*** Powers of Attorney authorizing execution of registration statement on Form S-3 on behalf of certain directors and officers of Nelnet, Inc.
- 25.1** Form T-1 Statement of Eligibility of Trustee (Nelnet, Inc. Senior Debt Securities Indenture)
- 25.2** Form T-1 Statement of Eligibility of Trustee (Nelnet, Inc. Subordinated Debt Securities Indenture)

* To be filed as an amendment to this registration statement or as an exhibit to an Exchange Act report of the registrant and incorporated herein by reference.

** Filed herewith.

*** Previously filed.