August 1, 2011

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: RIN 3064-AD74

Dear Mr. Feldman:

This is in response to the jointly issued Notice by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission, the Federal Housing Agency and the Department of Housing and Urban Development (collectively, the "Agencies") in which the Agencies proposed rules (the "Proposed Rules") implementing the credit risk retention requirements of section 15G of the Securities and Exchange Act of 1934 (the "Exchange Act"), as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

Kentucky Higher Education Student Loan Corporation (KHESLC) appreciates the opportunity to comment on the Proposed Rules and the potential impact. The General Assembly of the Commonwealth established KHESLC in 1978 pursuant to the Authorizing Act to provide a program of financing, making and purchasing student loans in the Commonwealth. KHESLC is an independent *de jure* municipal corporation and political subdivision of the Commonwealth.

KHESLC supports the principle that securitizers should retain an appropriate amount of credit risk in order to ensure that the interests of securitizers and investors are aligned, as outlined in the Dodd-Frank Act. However, with the flexible authority the Agencies have been given under Section 15G of the Exchange Act to provide appropriate exemptions, the structure of the student loan market presents a strong case for a suitable set of exemptions. As explained below, KHESLC believes that the final risk retention rules should provide exemptions to asset-backed securities collateralized by FFELP loans, securities issued by nonprofit issuers backed by supplemental loans and public-purpose student loan providers.

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Securities issued to fund education loans are collateralized by two distinct asset classes: federally sponsored education loans made under the Federal Family Education Loan Program (FFELP) and supplemental education loans (Supplemental Loans). Such securities include conventional revenue bonds as well as conventional asset-backed securities. Securities issued by State Issuers to finance either FFELP Loans or Supplemental Loans and securities issued by certain Nonprofit Issuers to finance FFELP Loans may be issued on either a federally tax-exempt or taxable basis. These are issued on a nonrecourse basis with respect to the general assets of the issuer, but are secured by pledged collateral that may include an equity contribution. Securities issued by a State Issuer may also be secured by a "moral obligation" pledge by the sponsoring State (effectively assuring, subject to appropriation, the availability of State moneys to effect payment of all or a portion of debt service in the event of a revenue shortfall) or by other programmatic external credit support. Nonprofit Issuers include, but are not limited to, issuers whose activities are limited to comply with Section 150(d) of the Internal Revenue Code (Code Section 150(d) and Qualified Scholarship Funding Bond Issuers). We note that under Code Section 150(d), qualified scholarship funding bonds may be issued only by not-for-profit corporations that are formed at the request of a State or political subdivision exclusively for the purpose of financing FFELP Loans.

In the case of a Qualified Scholarship Funding Bond Issuer, the issuer by definition is limited to performing the nonprofit function set forth in the Internal Revenue Code. There is no evidence that securities issued by State Issuers and Qualified Scholarship Funding Bond Issuers contributed to the problems that the risk retention requirements are designed to address. Our student loan revenue bonds do not constitute "securitization transactions" for purposes of the Proposed Rules for reasons that may include the absence of an "issuing entity" as defined and, in certain cases, the absence of primary reliance upon the performance of the student loan collateral.

FFELP Loans have federal guarantees administered by guaranty agencies on behalf of the Department of Education (DOE), which is ultimately responsible for payment of guaranty claims. So long as the FFELP Loans are serviced in accordance with HEA Requirements, 97 to 100% of the principal and interest on defaulted loans is guaranteed by the applicable guaranty agency, which pays guaranty claims with funds held in a "Federal Fund" that is owned by the United States. Each guaranty agency is reinsured by the federal government pursuant to agreements between the U.S. Secretary of Education and the guaranty agency. In the event a guaranty agency is unable to meet its insurance obligations, the HEA provides that a holder of loans insured by the agency may submit claims directly to the DOE, which shall pay the holder of the loan the full insurance obligation. The insurance of FFELP Loans under the Higher Education Act is considered a federal guaranty. We think this level of insurance coverage and involvement should be recognized as being sufficient to meet the statutory exemption. Absent an exemption, there would be the anomalous situation under which a 5 percent risk retention requirement would be applied to an asset where, at most, 3 percent of the asset is at risk.

Additionally, KHESLC does not use special purpose funding vehicles (SPV's) as in traditional securitizations. To the contrary, nonprofit student loan issuers directly issue limited recourse revenue bonds that are secured by and payable from the pledged student loans financed. In addition, nonprofit student loan issuers retain the residual interest in their financings. The issuers are therefore incentivized to carefully underwrite and monitor the assets they originate and

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securitize. In fact, not only do nonprofits maintain the residual, they own all of the student loans on their balance sheets throughout the term of the security. Thus, they retain far more than 5 percent of the credit risk of the securitized assets. They retain all of the securitized assets and are vulnerable to losing them to foreclosure under their financing if there is a default in one of their securitization transactions. This result is completely different than the result in a traditional securitization structure.

In closing, applying risk retention requirements to securitizations conducted by KHESLC is unnecessary and will cause financial distress, thus impairing our ability to carry out a public-interest mission. There is no benefit to imposing a risk retention requirement on public purpose student loan providers because their interests are already strongly aligned with those of investors. Risk retention should not be required for securitizations collateralized by FFELP Loans or supplemental student loans. FFELP Loans have negligible credit risk and are not susceptible to any improvement in underwriting standards. A supplemental student loan exemption would facilitate the creation and securitization of well-underwritten supplemental student loans, thus addressing the concerns underlying risk retention without constraining the supply of available funding for higher education.

Sincerely,

Edward J. Cunningham
Executive Director & CEO

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