EDUCATION FINANCE COUNCIL

November 20, 2012

Office of the Comptroller of the Currency
250 E. Street, SW.
Mail Stop 2-3
Washington, DC 20219
Docket No. OCC-2011-002
Via E-Mail: *regs.comments@occ.treas.gov*

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW.
Washington, DC 20552
RIN 2590-AA43
Via E-Mail: *regcomments@fhfa.gov*

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW.
Washington, DC 20551
Docket No. R-1411
Via E-Mail:
regs.comments@federalreserve.gov

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW.
Room 10276
Washington, DC 20410-0500
Docket No. FR-5504-P-01
Via Federal eRulemaking Portal:
www.regulations.gov

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429
RIN 3064-AD74
Via E-Mail: *comments@fdic.gov*

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE.
Washington, DC 20549-1090
File Number S7-14-11
Via E-Mail: *rule-comments@sec.gov*

Re: Credit Risk Retention

Ladies and Gentlemen:

The Education Finance Council (EFC), the association representing the nation's nonprofit and state-based student loan providers, submits the following information to assist the proposing agencies in the development the credit risk regulation as described in the "Credit Risk Retention; Proposing Release, 76 F.R. 24090 (April 29, 2011) (the "Proposing Release"). This letter discusses the rationale for expanding the exemption for certain nonprofit and state agency student lenders.

EFC believes that the Proposing Release makes an erroneous distinction between those nonprofit lenders that use tax-exempt "qualified scholarship funding bonds" as defined in section 150(d)(2) of the Internal Revenue Code and those who do not. All nonprofit and state agency student lenders are chartered to perform a specific public purpose: to provide reasonable financing to prospective students who want to enroll in higher education institutions. Securitizations used by these nonprofit student lenders to accomplish this goal offer the same high level of retained risk. For example, state agency and nonprofit student loan providers do not utilize bankruptcy-remote, special purpose vehicles ("SPVs") for securitizations. The practical effect of not using SPVs is that the student loan ABS remain "on the books" of these lenders, regardless of whether they are a state agency, 150(d) nonprofit, or other state designated nonprofit student loan organization. Further, these nonprofits account for their residual interest in student loan ABS issued by them as income is earned throughout the life of the deal; they do not monetize the value of the residual as a onetime boost to income in the year that the ABS are issued. The proposing agencies have the legislative authority to grant the exception for all nonprofit and state agency student lenders. As pointed out in the Proposing Release:

> "In addition, section 15G(e)(1) permits the Federal banking agencies and the Commission jointly to adopt or issue additional exemptions, exceptions, or adjustments to the risk retention requirements of the rules, including exemptions, exceptions, or adjustments for classes of institutions or assets, if the exemption, exception, or adjustment would: […] (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors."[1]

As noted above, all nonprofit and state agencies serve the same public purpose mission and employ the same financing structures with risk mitigation features and investor protections. Thus, EFC believes that the final risk retention rule should extend the exception for 150(d) nonprofit student lenders to all nonprofit student lenders.

To ensure equitable treatment for nonprofit and state agency student lenders, we propose that section _.21(a)(3) of the Proposing Release be amended to include the underlined language:

"(3) Any asset-backed security that is a security issued or guaranteed by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of a State or territory that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)) <u>or any student loan-backed security that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(4) of that Act (15 U.S.C. 77c(a)(4)),"</u>

[1] See, Proposing Release at 102, citing 15 U.S.C. § 78o-11(e)(1) and (2).

The clear focus of the Dodd-Frank legislation is on securitizations that carry a far greater risk to investors than student loan securitizations issued by nonprofit and state agencies, which already have retained risk in excess of the five percent requirement imposed by Dodd-Frank. Additional risk retention for would limit the ability to originate new loans, thereby negatively impacting students and families. The proposing agencies should use their discretion which is supported with legislative authority, to grant a total exemption for state agencies, 150(d) and other nonprofit student lenders from its risk retention regulation.

I am available to answer any questions you may have.

Sincerely,

Vince Sampson
President
Education Finance Council