BRAZOS HIGHER EDUCATION AUTHORITY, INC.

2600 Washington Ave.
P.O. Box 1308
Waco, Texas 76703-1308
(254) 753-0915
Fax (254) 754-0267

March 8, 2011

VIA E-MAIL: ***rule-comments@sec.gov***
KnightJ@SEC.GOV

Securities and Exchange Commission
Attn: The Honorable Mary L. Schapiro, Chairman
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: **Comments to Rulemaking under Section 941 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Risk Retention)**

Ladies and Gentlemen:

Brazos Higher Education Authority, Inc. ("Brazos") appreciates the opportunity to submit this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding the new risk retention requirements to be developed and implemented pursuant to Section 941 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd–Frank Act").

Background

Brazos is a nonprofit corporation organized in 1975 under the Texas Nonprofit Corporation Law and is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Brazos' nonprofit mission is to assist students and parents by originating student loans or buying student loans from originating banks, savings and loans and credit unions, and thereby increasing the lending capacity and liquidity of those institutions.

To raise the funds necessary to provide this assistance, Brazos directly accesses the capital markets by issuing student loan revenue bonds. These bonds are issued under an indenture of trust as "limited recourse obligations" that are payable solely from and secured solely by the student loans that are financed. The total aggregate outstanding principal amount of all of the student loan revenue bonds we have issued as of December 31, 2010, was $7,347,810,000.

Brazos is governed by a Board of Directors that serve without compensation. Brazos' Articles of Incorporation and 501(c)(3) designation both require that, after the payments of expenses and debt service on bonds, all revenue be utilized to finance additional student loans. Upon dissolution, all funds and property of Brazos are required to be transferred to another organization which is exempt from federal income taxation under the Code, and which is engaged in activities substantially similar to the activities of Brazos, or paid to the Federal Government. Brazos has no members or equity owners.

Effect of Risk Retention Requirement

Section 941 is intended to help align the interests of key participants in a securitization with the interests of investors.[1] The Dodd–Frank Act requires, as a general matter, that the securitizer or originator retain some of the credit risk of the assets being securitized. By retaining a portion of the credit risk, the Dodd–Frank Act is intended to improve the incentive alignment between various participants in a securitization chain by requiring that securitizers or originators maintain exposure to the credit risk of the assets they securitize. This feature is often referred to as "skin in the game."

The Dodd–Frank Act also recognizes that "skin in the game" may not be necessary or appropriate to align interests in all circumstances. Specifically, Section 941(c)(1)(G) authorizes the implementing regulations to provide "a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors." Section 941(c)(1)(G) further contemplates a total or partial exemption for any asset-backed security that is "a security defined as a qualified scholarship funding bond in section 150(d)(2) of the Internal Revenue Code of 1986."

We strongly believe that the implementing regulations for risk retention should provide a <u>total</u> exemption for nonprofit issuers of student loan bonds that have received 501(c)(3) designations under the Code. Without an exemption, nonprofit issuers of student loan bonds maybe completely cut-off from accessing the capital markets and fulfilling their nonprofit missions.

Nonprofits are required under the Code to devote their economic resources to fulfill their public missions. As such, nonprofit student loan issuers are generally thinly capitalized, with all available resources devoted toward and utilized in the advancement of their charitable goals. As a result, nonprofits have not retained or accumulated the large amount of capital necessary to provide "skin in the game" for their bond financings. **To the contrary, accumulating capital seems to be inconsistent with the very public mission that nonprofit student loan issuers are organized to fulfill.**

Applying risk retention to nonprofit student loan issuers may inadvertently put nonprofits at a distinct disadvantage relative to for-profit corporations that finance student loans. For-profit corporations can engage in other business activities to generate capital and can also raise capital in the public equity markets. Nonprofits issuers, however, are only permitted to engage in their limited educational missions in accordance with their 501(c)(3) designations and are not permitted under the Code to raise capital in the public equity markets.

In addition, the potential for a misalignment of interest between nonprofit student loan issuers and investors is dramatically different in comparison to for-profit securitizers. The goals

---

[1] The scope of the definition of "securitization" in the Dodd–Frank Act appears to be so broad as to regulate "limited recourse" student loan revenue bonds directly issued by nonprofit corporations.

of nonprofit student loan issuers are to fulfill a public mission of enhancing access to higher education, rather than maximize profits or stock value for equity owners. Nonprofit issuers issue their securities directly as limited obligations and retain full ownership of all of their student loans. Furthermore, nonprofit issuers of student loans continue to be actively engaged over the life of their transactions as primary servicers and administrators. In fact, the operating income that nonprofits earn to operate their businesses and fulfill their public missions are derived from: (i) the administrative fees and servicing fees earned over the life of their bond financings as consideration for their active management and servicing roles and (ii) the residual interest in their bond financings. In other words, the interests' of investors and nonprofit issuers are already closely aligned, as nonprofits depend on the ongoing success of their bond financings for the very operating income that is necessary for them to run their businesses.

Finally, the reference to a public policy exception for "qualified scholarship funding bonds" in Section 941(c)(1)(G) of the Dodd–Frank Act strongly suggests the appropriateness of a regulatory exemption for nonprofit student loan issuers. Historically, nonprofit issuers have issued both taxable and tax-exempt student loan bonds. The financing structures and the alignment of interests between issuers and investors for taxable and tax-exempt bonds issued by nonprofits are virtually identical.[2] **We believe the determining factor for the application of risk retention should not be the tax treatment of the obligations, but rather the stated purpose of aligning interests between securitizers and investors. Again, we believe that the interests' of investors and nonprofit issuers are already closely aligned.**

Conclusion

We strongly believe that the implementing regulations for risk retention should provide a <u>total</u> exemption for nonprofit issuers of student loan bonds that have received 501(c)(3) designations under the Code. Without an exemption, nonprofit issuers of student loan bonds may be completely cut-off from accessing the capital markets and fulfilling their nonprofit missions.

Brazos very much appreciates the opportunity to provide the foregoing views in connection with the Commission's rulemaking process. We are available at your convenience to discuss our comments. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me at (512) 380-7799 or ellis.tredway@brazos.us.com.

Sincerely,

Murray Watson, Jr.
General Counsel
Brazos Higher Education Authority

2 Nonprofit corporations have issued "qualified scholarship funding bonds" as tax-exempt "qualified student loan bonds" under Section 144(b) of the Code. However, the amount of tax-exempt qualified scholarship funding bonds that can be issued is limited by volume cap allocation under the Code. As the costs of higher education have increased faster than the amount of available cap allocation, nonprofits have also historically issued taxable bonds.