Submitted by email to Savings@finance.senate.gov and CommunityDevelopment@finance.senate.gov

April 14, 2015

The Honorable Orrin Hatch
Chair, Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member, Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Sirs:

This is in response to your request dated March 11, 2015 for ideas and input on comprehensive tax reform. The Education Finance Council (EFC) and the National Council of Higher Education Resources (NCHER) are trade associations whose members include organizations that finance education loans by issuing tax-exempt Qualified Student Loan Bonds under Section 144(b) of the Internal Revenue Code ("Code") or Qualified Scholarship Funding Bonds under Section 150(d) of the Code. Our recommendations relate to the financing on a tax-exempt basis of private education loans, and are made with the goal of ensuring the Code's provisions in this area are clearer and fair, and providing a potential source of lower cost financing and refinancing of education loans for students and families.

Currently, student loan debt is a national issue that is front and center in the media every day. Students are leaving college with debt levels that are impacting their credit, spending habits, and ability to begin saving for a home, children, and even retirement. As tuition costs have outpaced increases in the loan limits authorized under the federal student loan program and as more education loan borrowers seek lower cost refinancing options, the need for private financing has become stronger. By amending the Code to make the changes outlined below, our members will be able to do more to ease the burden college debt presents for these individuals. We should also point out that the changes we are recommending will reduce the amount of federal debt needed to finance student loans.

States have taken different approaches to forming nonprofit student loan providers; some formed state agencies or public authorities which issue Qualified Student Loan Bonds under Section 144(b) of the Code, while others formed nonprofit corporations, referred to as "qualified scholarship funding corporations," pursuant to Section 150(d) of the Code. The lower cost of tax-exempt financing is passed along to students and families in the form of lower student loan interest rates and fees, and also helps support college access and financial literacy programs in each of the respective states. Both types of student loan organizations are authorized to issue tax-exempt bonds to finance student loans made under the Higher Education Act, including the federally guaranteed student loan program. Organizations subject to Section 144(b) can also issue tax-exempt bonds to finance private student loans.

At the outset, we want to say that tax-exempt funding of education loans by eligible state and nonprofit organizations provides an important public benefit that needs to be preserved as part of any comprehensive reform of the tax code. However, current provisions can and should be made clearer and fairer. We believe that all of these recommendations can be made without increasing or changing the existing private activity bond cap allocations to each state. Also, the clarifications to Sections 144(b), 149(d), and 150(d) should result in no long-term cost to the U.S. Treasury. Accordingly, we urge the Congress to remove interpretive uncertainties and statutory obstacles which prevent issuers of tax-exempt bonds from assisting students, families, and borrowers by:

- <u>Clarifying that tax-exempt funding may be used to make private student loans to parents, and to refinance federal and private education loans.</u>

  In late November 2014, the Internal Revenue Service (IRS) released a Private Letter Ruling[1] outlining its basis for allowing, and the restrictions around using, tax-exempt funding under Section 144(b)(1)(B) of the Code to refinance private student loans originally financed by that same issuer. However, during its consideration of the request for the ruling, the IRS signaled that Qualified Student Loan Bonds can only be used: (i) to refinance federal and private education loans if the issuer already owns the loans being refinanced, and (ii) to make private loans to parents if the student is also a co-signer. Notably, the IRS also seems to have stated that bonds issued for tax-exempt financing purposes are considered refunding bonds under Section 149(d) (subject to restrictions that would inhibit the ability to refinance student loans).

  We believe these interpretations of the Code are incorrect, and are preventing many student and parent loan borrowers from accessing less costly loan refinancing and limiting the ability of tax-exempt bond issuers to help parents pay the costs of education for their children. Today, there are limited options available to students and parents for refinancing their private loan debt. Further, it is not possible to lower the interest rate on a federal student loan (both those issued under the Direct Loan and Federal Family Education Loan (FFEL) Programs) by consolidating (refinancing) the loan. With interest rates expected to remain lower than normal for some time, the refinancing of these loans under Section 144(b)(1)(B) would lower the borrowers' monthly payments and overall cost. In the Ruling, the IRS concluded that the issuer's tax-exempt bonds may refinance loans originally made by the issuer. However, this Ruling only benefits a narrow class of borrowers. Expanding the access to private refinancing loans to include borrowers of private student loans made by other lenders (including lenders that are no longer making new loans) and to borrowers of federal student loans would be appropriate and would be in line with the Consumer Financial Protection Bureau's position that student loan borrowers need more refinancing options.[2] We also believe an amendment to Section 149(d) is

[1] Ruling Number 201447023, dated August 01, 2014 and released on November 21, 2014.
[2] Consumer Financial Protection Bureau Report entitled "Student Loan Affordability" dated May 8, 2013.

necessary to make it clear that new bonds issued to help students and parents refinance loans previously funded with tax-exempt bond proceeds would not trigger the requirement to redeem the prior bonds within the 90-day requirement under Section 149(d)(5).

With respect to parent loans, we note that most private educational loans to students are also cosigned by their parents. In fact, the loans are generally underwritten based on the parents' credit, since the student borrowers do not have the credit necessary for loan approval. Nonetheless, when a student graduates and attempts to obtain credit, makes purchases, rents an apartment, etc., the private student loan debt, along with any other loan debt including federal student loans, appears on his/her credit report. This combined debt has a negative impact on a recent graduate's purchasing power. A majority of the parents who are co-signing these loans intend to be responsible for repaying the loans and question why this debt, made based on their credit, should be negatively impacting their child's ability to get started in life. Allowing an option for a parent to be the primary borrower, without the student on the loan note, would place the credit reporting where it should be and minimize the negative impact on the student's credit.

The ability of state and nonprofit organizations to provide postsecondary education support to low- and middle-income students and their families is being curtailed at the same time that tuition and fees, and other costs of college, are rising. Congress should clarify that the proceeds of tax-exempt financings issued by nonprofit student loan providers can be used to fund loans to refinance student and parent federal and private loans, and to make loans to parents.

- <u>Allowing Qualified Scholarship Funding Corporations to access tax-exempt financing for private student loans.</u>

  When Section 150(d) of the Code was enacted, the federal government operated only the guaranteed student loan program and there was little need for private loan programs since college costs were generally in line with the loan limits authorized under the federal program. This is mainly why Section 150(d) allows for qualified scholarship funding corporations to finance loans under the Higher Education Act, including federally guaranteed student loans. Student loan originations under the guaranteed program were eliminated in 2010. All federally-sponsored loans are now made under the Direct Loan Program. However, given that loan limits under the Direct Loan Program are not increasing but the cost of college is, there is a need for private financing. Qualified scholarship funding corporations should have the same access to tax-exempt financing to fund private educations loans as entities subject to Section 144(b). Congress should amend Section 150(d) by striking the reference to the Higher Education Act so that qualified scholarship funding corporations can access tax-exempt financing to fill this need for private educational loans. There is no public policy justification for the unequal treatment that currently exists under the Code.

- <u>Exempting student loan-based securities from the Alternative Minimum Tax (AMT)</u>.

  Tax-exempt bonds issued by nonprofit student loan providers directly benefit student and parent borrowers through lower interest rates and robust college access and financial literacy programs. Treatment of tax-exempt student loan bond interest as an alternative minimum tax preference limits the market for these bonds, resulting in increased costs to borrowers. The AMT adds between a quarter to a full percentage point to the interest rate of these tax-exempt bonds which must be passed through to student loan borrowers. The AMT is a significant barrier to nonprofit organizations whose sole mission is to assist students and families access a college education. We also should point out that these bonds are issued for the benefit of a large class of individual borrowers, rather than any specific private entity.

We appreciate the opportunity to provide these important recommendations as the Committee begins the effort to enact comprehensive tax reform. Our requested reforms involve a critical public policy issue – ensuring that students and families have greater access to an affordable college education. We would be happy to provide further background as needed, and also suggested legislative language. Please do not hesitate to contact us if follow-up is needed, or if you have questions.

Sincerely,

Debra J. Chromy, Ed.D.
President
Education Finance Council
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James P. Bergeron
President
National Council of Higher Education Resources
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