BRAZOS HIGHER EDUCATION AUTHORITY, INC.

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January 12, 2012

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

Re: Credit Risk Retention

Ladies and Gentlemen:

Brazos Higher Education Authority, Inc. ("Brazos") appreciates the opportunity to submit this additional letter to the Board of Governors of the Federal Reserve System (the "Board") regarding *Credit Risk Retention; Proposed Rule, 76 F.R. 24090* (April 29, 2011) (the "Proposed Rule"). The Proposed Rule was published by the Agencies pursuant to the requirements of Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). Reference is hereby made to the prior letter dated July 5, 2011 that was previously submitted by Brazos regarding the Proposed Rule.

Background

Section 941(b) of the Dodd-Frank Act directs the Agencies to adopt rules requiring a "securitizer" to retain a portion of the credit risk of securitized assets. Section 941(b) defines "securitizer" as: (A) an issuer of an asset-backed security; or (B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.

In the credit risk retention proposing release (the "Proposing Release"), the Agencies provide helpful clarification by interpreting the reference to an "issuer of an asset-backed security" in clause (A) of this definition as referring to the "depositor" of the ABS, which is consistent with how that term has been defined and used under the federal securities laws in connection with ABS.[1] In the Proposing Release, the Agencies also note that clause (B) of this definition refers to the "sponsor" of a securitization transaction and that the sponsor would be responsible for ensuring compliance with the risk retention requirements.

[1] Proposing Release at 24099. Regulation AB defines "depositor" as "the depositor who receives or purchases and transfers or sells the pool assets to the issuing entity." In other words, clause (A) of the definition of a securitizer refers to an intermediate SPE in a classical two step securitization structure.

As such, under Section __.3(a) of the Proposed Rule, the "sponsor" of a securitization transaction is required to comply with the risk retention requirements set forth in the Proposed Rule. The Proposed Rule defines sponsor as "a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity."

A key feature included in the definitions of "securitizer" and "sponsor" is that an entity *transfer* assets directly or indirectly to the issuing entity.

Limited Recourse Revenue Bonds

Like most nonprofit student loan companies and state agencies that finance student loans, Brazos originates and acquires student loans directly with the proceeds of taxable or tax-exempt bonds that it issues. The bonds are issued as limited recourse revenue bonds that are payable from and secured by the student loans that are originated or acquired. Unlike a traditional securitization, Brazos does not sell or transfer assets directly or indirectly to an issuing entity; rather, Brazos itself is the issuing entity. Therefore, neither Brazos nor any other entity involved in a bond financing conducted by Brazos, is a "sponsor" under the Proposed Rule or a "securitizer" under the Dodd-Frank Act. This conclusion is not a technicality. Brazos retains 100% of the assets and pledges them in support of securities that Brazos itself issues. This is completely different from the types of securitizations to which the rules are intended to apply, which involve transfers of assets (and their attendant risk) by the sponsor to another entity for securitization by that other entity. In a transaction without a sponsor or a securitizer, neither the Proposed Rule nor the Dodd-Frank Act requires risk retention.

Clarification Sought

Section __.21 of the Proposed Rule contains an exemption for ABS that meets the definition of a "qualified scholarship funding bond" as set forth in Section 150(d)(2) of the Internal Revenue Code. In addition, Section __.21 of the Proposed Rule contains an exemption for securities issued by states and state agencies.

Historically in the student loan markets, however, almost all qualified scholarship funding bonds and municipal bonds have been issued in transactions that do not involve a transfer of assets by a sponsor or depositor to an issuing entity. To the contrary, these securities have typically been issued directly by the nonprofit student loan companies or state agencies under a limited recourse revenue bond structure.

We request clarification either in the adopting release or in the final rule itself that neither the qualified scholarship funding bond exemption nor the municipal bond exemption is intended to suggest that the risk retention rules apply where the transaction involves no sponsor.

Specifically, Brazos requests adding a new clause to Section __.21(c) (Rules of Construction) of the Proposed Rule as follows:

"Clauses (a)(3) and (a)(4) above have been included to exempt state/state agency bonds and qualified scholarship funding bonds, respectively, issued in securitization transactions involving a sponsor as defined in section __.2. Such exemptions shall not be construed to mean

that the risk retention requirements of this part shall apply to asset-backed securities issued in transactions that do not involve a sponsor." See the attached PDF.

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We very much appreciate the opportunity to provide the foregoing comments on the Proposed Rule. 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 the undersigned at (254) 753-0913 or murray.watson@brazos.us.com.

Very truly yours,

BRAZOS HIGHER EDUCATION AUTHORITY, INC.

By: _____
Name: Murray Watson, Jr.
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cc: Flora H. Ahn
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Advisor, Division of Banking Supervision and Regulation

Attachment

asset-backed securities issued in a securitization transaction:

(A) For which credit risk was retained as required under subpart B of this part; or

(B) That was exempted from the credit risk retention requirements of this part pursuant to subpart D of this part;

(ii) Is structured so that it involves the issuance of only a single class of ABS interests; and

(iii) Provides for the pass-through of all principal and interest payments received on the underlying ABS (net of expenses of the issuing entity) to the holders of such class.

(b) This part shall not apply to any securitization transaction if the asset-backed securities issued in the transaction are:

(1) Collateralized solely (excluding cash and cash equivalents) by obligations issued by the United States or an agency of the United States;

(2) Collateralized solely (excluding cash and cash equivalents) by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than those referred to in paragraph (a)(1)(i) of this section); or

(3) Fully guaranteed as to the timely payment of principal and interest by the United States or any agency of the United States; (2)

(c) *Rule of construction.* (1)

Securitization transactions involving the issuance of asset-backed securities that are either issued, insured, or guaranteed by, or are collateralized by obligations issued by, or loans that are issued, insured, or guaranteed by, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal home loan bank shall not on that basis qualify for exemption under this section.

Rider X

§ __.22 Safe harbor for certain foreign-related transactions.

(a) *In general.* This part shall not apply to a securitization transaction if all the following conditions are met:

(1) The securitization transaction is not required to be and is not registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*);

(2) No more than 10 percent of the dollar value by proceeds (or equivalent if sold in a foreign currency) of all classes of ABS interests sold in the securitization transaction are sold to U.S. persons or for the account or benefit of U.S. persons;

(3) Neither the sponsor of the securitization transaction nor the issuing entity is:

(i) Chartered, incorporated, or organized under the laws of the United States, any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States (each of the foregoing, a "U.S. jurisdiction");

(ii) An unincorporated branch or office (wherever located) of an entity chartered, incorporated, or organized under the laws of a U.S. jurisdiction; or

(iii) An unincorporated branch or office located in a U.S. jurisdiction of an entity that is chartered, incorporated, or organized under the laws of a jurisdiction other than a U.S. jurisdiction; and

(4) If the sponsor or issuing entity is chartered, incorporated, or organized under the laws of a jurisdiction other than a U.S. jurisdiction, no more than 25 percent (as determined based on unpaid principal balance) of the assets that collateralize the ABS interests sold in the securitization transaction were acquired by the sponsor or issuing entity, directly or indirectly, from:

(i) A consolidated affiliate of the sponsor or issuing entity that is chartered, incorporated, or organized under the laws of a U.S. jurisdiction; or

(ii) An unincorporated branch or office of the sponsor or issuing entity that is located in a U.S. jurisdiction.

(b) *Evasions prohibited.* In view of the objective of these rules and the policies underlying Section 15G of the Exchange Act, the safe harbor described in paragraph (a) of this section is not available with respect to any transaction or series of transactions that, although in technical compliance with such paragraph (a), is part of a plan or scheme to evade the requirements of section 15G and this Regulation. In such cases, compliance with section 15G and this part is required.

§ __.23 Additional exemptions.

(a) *Securitization transactions.* The federal agencies with rulewriting authority under section 15G(b) of the Exchange Act (15 U.S.C. 78o–11(b)) with respect to the type of assets involved may jointly provide a total or partial exemption of any securitization transaction as such agencies determine may be appropriate in the public interest and for the protection of investors.

(b) *Exceptions, exemptions, and adjustments.* The Federal banking agencies and the Commission, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, may jointly adopt or issue exemptions, exceptions or adjustments to the requirements of this part, including exemptions, exceptions or adjustments for classes of institutions or assets in accordance with section 15G(e) of the Exchange Act (15 U.S.C. 78o–11(e)).

Appendix A to Part __—Additional QRM Standards; Standards for Determining Acceptable Sources of Borrower Funds, Borrower's Monthly Gross Income, Monthly Housing Debt, and Total Monthly Debt

I. Borrower Funds to Close

A. Cash and Savings/Checking Accounts as Acceptable Sources of Funds

1. Earnest Money Deposit

a. The lender must verify with documentation, the deposit amount and source of funds, if the amount of the earnest money deposit:

i. Exceeds 2 percent of the sales price, or

ii. Appears excessive based on the borrower's history of accumulating savings. Satisfactory documentation includes:

iii. A copy of the borrower's cancelled check

iv. Certification from the deposit-holder acknowledging receipt of funds, or

v. Separate evidence of the source of funds.

b. Separate evidence includes a verification of deposit (VOD) or bank statement showing that the average balance was sufficient to cover the amount of the earnest money deposit, at the time of the deposit.

2. Savings and Checking Accounts

a. A VOD, along with the most recent bank statement, may be used to verify savings and checking accounts.

b. If there is a large increase in an account, or the account was recently opened, the lender must obtain from the borrower a credible explanation of the source of the funds.

3. Cash Saved at Home

a. Borrowers who have saved cash at home and are able to adequately demonstrate the ability to do so, are permitted to have this money included as an acceptable source of funds to close the mortgage.

b. To include cash saved at home when assessing the borrower's cash assets, the:

i. Money must be verified, whether deposited in a financial institution, or held by the escrow/title company, and

ii. Borrower must provide satisfactory evidence of the ability to accumulate such savings.