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April 23, 2018

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Re: Margin and Capital Requirements for Covered Swap Entities
(OCC Docket ID OCC-2018-0003; Docket No. R-1596, RIN 7100 AE-96; RIN 3064-AE70; RIN 3052-AD28; RIN 2590-AA92)

Ladies and Gentlemen:

Navient Corporation and its subsidiary Navient Solutions, LLC (collectively, "Navient") appreciate the opportunity to submit this letter in response to the request of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency (collectively, the "Agencies") for comments on the proposal to amend the Margin and Capital Requirements for Covered Swap Entities ("Swap Margin Rule") to clarify that a legacy swap will not be deemed to be a "covered swap" under the Swap Margin Rule if it is amended to conform to the QFC Rules ("Proposed Amendment").

We support the Agencies' initiatives to bring transparency and protection to the financial system by establishing margin requirements. Navient also commends the Agencies for reexamining the Swap Margin Rule. We support the Proposed Amendment and we respectfully request that the Agencies expand the Proposed Amendment to also provide relief from the Swap Margin Rule to swap contracts entered into with special purpose vehicles ("SPV") created for securitization transactions organized prior to March 2017 ("legacy securitizations").

Background on Navient

Navient is a leading provider of asset management and business processing solutions for education, health care, and government clients at the federal, state, and local levels. Navient is the largest private sector holder of education loans insured or federally guaranteed under the Federal Family Education Loan Program ("FFELP"). In addition, we hold the largest portfolio of private education loans and originate private education refinance loans.

Navient is a frequent sponsor of securitizations backed by FFELP loans and private education loans, including private education refinance loans. As of December 31, 2017, Navient had $71.2 billion aggregate outstanding principal of ABS backed by FFELP loans and $13.3 billion aggregate outstanding principal of ABS backed by private education loans.

We mitigate financial risk associated with these loans through a strategy that includes the use of fair value and cashflow derivative hedges that minimize the economic impact of changes in interest rates and foreign exchange rates.

Comments to Proposed Amendment

Navient supports the amendments proposed by the Agencies to safeguard legacy swaps from being subject to the Swap Margin Rule when the swap is amended solely to comply with the requirements of the QFC Rules. We appreciate the Agencies' recognition that the Swap Margin Rule did not contemplate that legacy swaps might be amended to meet other regulatory requirements imposed by one or more of the Agencies.

We agree that the QFC Rules are a prime example of a conflict imposed on legacy swaps by the Swap Margin Rule. However, there are additional situations outside of the control of the end user of a legacy swap that cannot be navigated because of the requirements of the Swap Margin Rule. For example, legacy swap contracts may need to be amended or novated in connection with the cessation of a commonly used benchmark rate, such as the London Inter-bank Offered Rate, or as a result of the downgrade of the credit rating of a swap counterparty below a minimum ratings threshold. Therefore, we encourage the Agencies to continue to examine the negative impacts imposed on legacy swaps by the Swap Margin Rule.

In particular, we respectfully request that the Agencies expand the scope of the Proposed Amendment to also provide relief from the Swap Margin Rule to swap contracts entered into with legacy securitization SPVs. This relief is needed to ensure that investors can remain

insulated from commercial risks such as interest rate or foreign currency risk through restoring the securitization SPV's ability to amend or novate existing swaps without being subject to the margin posting requirements under the Swap Margin Rule.

Impacts on Securitization SPVs

Investors of U.S.-issued ABS have been negatively affected by the Swap Margin Rule. Rating agencies view the Swap Margin Rule as "credit negative" because of its restriction on a legacy securitization SPV's ability to novate a swap contract to a new counterparty.[1] To the detriment of investors, rating agencies have taken actions that adversely affect the market value of an ABS, citing the Swap Margin Rule. For example, Moody's Investors Service downgraded the ratings assigned to 26 classes of ABS valued at approximately $9.6 billion and attributed the action to the reduced likelihood of counterparty replacement due to new margin requirements.[2]

This burden on investors is unnecessary because a typical novation or amendment of a legacy swap that is contractually permitted under securitization transaction documents would not change the material economic terms of the swap. In fact, as an investor protection, conventional securitization transaction documents require that a swap counterparty be replaced if the credit rating assigned to the swap counterparty has been downgraded below a minimum ratings threshold. In these circumstances, the novation of a legacy swap would be risk-mitigating and would not add risk to the financial system.

In addition, as described in comment letters we submitted to the Agencies on February 24, 2017, July 13, 2017 and August 18, 2017 ("Navient Comment Letters"),[3] swaps entered into by securitization SPVs do not pose the risk of nonpayment as other financial end users and, therefore, do not pose the same risks to the safety and soundness of Covered Swap Entities

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[1] The credit rating assigned to an ABS addresses the likelihood of timely payment of stated interest and the payment of principal at final maturity. Securitization SPVs typically enter into swap contracts as a means to manage a mismatch in the interest rate or currency between payments on the underlying loan assets owed to the securitization SPV and the payments owed by the securitization SPV on its ABS. The hedge provided by the swap contract helps ensure the stability of the cash flows available to make payments on the ABS. For more information regarding rating agency perspective regarding the impact of the swap margin rules on existing securitizations, please see: https://www.fitchratings.com/site/pr/1014938 and https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBS_1038135.

[2] Moody's Investors Service reduced the value of certain notching uplifts in connection with swaps that would become subject to margining requirements upon counterparty replacement. Future downgrades will be driven by downgrades in the ratings assigned to CSE swap counterparties. The press release can be found at: https://www.moodys.com/research/Moodys-concludes-reviews-of-12-student-loan-ABS-securitizations-following--PR_377893

[3] The Navient Comment Letters are attached hereto as Attachment A, Attachment B and Attachment C, respectively.

("CSE") or of the broader financial system.[4] Further, securitization SPVs commonly do not have the contractual authority to allocate assets to post margin in compliance with the Swap Margin Rule, causing a low likelihood that a securitization SPV would be able to amend or novate a legacy swap when the securitization transaction documents allow for or require that action.

Swaps are an ideal method to hedge commercial risks associated with interest rate and foreign currency mismatches and are used by securitization SPVs to hedge those risks within the securitization structure. The Swap Margin Rule has made it infeasible for securitization SPVs sponsored by companies other than "captive finance companies"[5] to enter into a swap.[6] It is our understanding that, outside of captive finance companies, securitization derivative hedging[7] in the U.S. has ceased since March of 2017.

We continue to believe that securitization SPVs should be provided an exception from the Swap Margin Rule. We respectfully reiterate our request to amend the Swap Margin Rule to provide an exception to swaps entered into by financial end user SPVs that meet certain "Qualified Loan Financing" criteria, as outlined in the Navient Comment Letters.

Exceptions Granted to Captive Finance Companies

Many financial end users have already been granted an exception by the Agencies. The Swap Margin Rule provides an exception for a swap contract that hedges the commercial risk of a captive finance company, an exception that has been interpreted to cover any securitization SPV

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[4] A CSE that enters into a swap with a securitization SPV is protected against the risk that a securitization SPV counterparty will fail to satisfy its payment obligations under a swap contract. Structural characteristics and credit enhancements offset the risk to the CSE and the financial system arising from the non-cleared swap. A more robust description of securitization SPVs and the protections afforded to swap providers who enter into swap contracts with securitization SPVs was provided in a comment letter submitted by the Structured Finance Industry Group to the Commodity Futures Trading Commission and the Agencies on November 24, 2014 ("SFIG Comment Letter"), and in a comment letter submitted by The Financial Services Roundtable to the Agencies on November 24, 2014. The letters can be found at: https://www.regulations.gov/document?D=OCC-2011-0008-0144 and https://www.regulations.gov/document?D=OCC-2011-0008-0155, respectively. The International Swaps and Derivatives Association directed the Agencies to the SFIG Comment Letter in a comment letter submitted to the Agencies on November 24, 2014, which can be found at: https://www.regulations.gov/document?D=OCC-2011-0008-0147.

[5] See, *e.g.*, Section 2(h)(7)(C)(iii) of the Commodity Exchange Act for definition.

[6] Descriptions of the challenges faced by securitization SPVs to post margin and recommendations to exclude securitization SPVs from the rules were provided in a comment letter submitted jointly by the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association to the Commodity Futures Trading Commission on September 14, 2012, and in a comment letter submitted by the Japan Financial Markets Council to the Agencies and the Commodity Futures Trading Commission on November 21, 2014. The letters can be found at: https://www.regulations.gov/document?D=OCC-2011-0008-0088 and https://www.regulations.gov/document?D=OCC-2011-0008-0137, respectively.

[7] Excluding interest rate caps.

that is wholly-owned by, and consolidated with, a captive finance company.[8] Even though a securitization SPV qualifies as a financial end user due to its loan-pooling nature, the Swap Margin Rule purposely excluded captive finance companies from the term under the belief that the financing activities of such companies generally pose less systemic risk to the financial system. All securitization SPVs meeting Navient's proposed Qualified Loan Financing criteria provide the same protections against the risk of nonpayment regardless of whether the securitization SPV is consolidated with a captive finance company. Therefore, all securitization SPVs meeting our proposed criteria should be granted the same exception.

Actions to Address Aspects of Swap Margin Rules

The U.S. Department of the Treasury ("Treasury") and the Commodity Futures Trading Commission ("CFTC") have already begun to address aspects of swap margin rules that affect the U.S. securitization market. The CFTC has granted no-action relief from the margin posting requirements to swap contracts entered into by legacy securitization SPVs.[9] Also, Treasury has recommended that the Agencies and the CFTC reconsider the one-size-fits-all treatment of financial end users for purposes of margin on non-cleared swaps and to tailor requirements to focus on the most significant source of risk and ensure the financial system is one that creates economic opportunities.[10] We believe our request aligns with this recommendation.

The Agencies' position in the treatment of securitization SPVs differs from other jurisdictions and has caused disparity in securitization markets. Similar rules in other countries generally do not apply to swaps entered into by securitization SPVs, allowing ABS swap hedging to continue to occur outside of the U.S.[11] Securitization SPVs commonly enter into a cross-currency swap in order to compete in foreign securitization markets. However, the Swap Margin Rule effectively prohibits U.S. securitization SPVs from competing in foreign-denominated securitization markets because it is infeasible for the SPV to enter into a cross-currency swap. As a result of the

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[8] The Division of Clearing and Risk of the Commodity Futures Trading Commission issued an interpretive letter to Ford Motor Credit Company LLC on May 4, 2015. CFTC Letter No. 15-27.

[9] The Division of Swap Dealer and Intermediary Oversight of the Commodity Futures Trading Commission issued a No-Action Position for variation margin requirements applicable to swaps with legacy special purpose vehicles on October 27, 2017. CFTC Letter No. 17-52.

[10] The U.S. Department of the Treasury released a report titled "A Financial System That Creates Economic Opportunities: Capital Markets" on October 6, 2017 detailing how to reform the U.S. regulatory system for the capital markets, in response to Executive Order 13772. The report can be found at: https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.

[11] Jurisdictional differences in rules are discussed in research by Moody's Investors Service titled "Proposed Changes to Moody's Rating Criteria Reflect New Swap Margin Rules", which can be found at: https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBS_1062454. A discussion of the differences in the treatment of securitization SPVs by the Agencies and the European Union was provided in a comment letter submitted by the Institute of International Bankers to the Agencies and the CFTC on November 24, 2014, which can be found at: https://www.regulations.gov/document?D=OCC-2011-0008-0143.

Swap Margin Rule, U.S. firms are placed at a competitive disadvantage to non-U.S. competitors. Following Treasury's recommendation to harmonize margin rules with non-U.S. jurisdictions[12], we believe an exception for securitization SPVs would level the securitization markets domestically and internationally.

Concluding Remarks

Thank you for considering our comments, and our request to protect investors through an expanded exception to the Swap Margin Rule. Please do not hesitate to contact us if you have questions or desire clarification concerning any of the matters discussed in this comment letter. Please contact me via telephone at 302-283-4045 or via e-mail at chris.lown@navient.com. You can also contact Rachel Gleason George, Vice President & Deputy General Counsel, via telephone at 703-984-6585 or via e-mail at rachel.george@navient.com or Jennifer Earyes, Director, Treasury Risk, via telephone at 703-984-5623 or via e-mail at jennifer.earyes@navient.com.

Sincerely,

Christian M. Lown
Executive Vice President & Chief Financial Officer
Navient Corporation

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[12] See, "A Financial System That Creates Economic Opportunities: Capital Markets" released by the U.S. Department of the Treasury on October 6, 2017.

Attachment A

Navient Letter Dated February 24, 2017

Navient Solutions, LLC
2001 Edmund Halley Drive
Reston, VA 20191

February 24, 2017

VIA EMAIL

Board of Governors of the Federal Reserve System;
Farm Credit Administration;
Federal Deposit Insurance Corporation;
Federal Housing Finance Agency; and
Office of the Comptroller of the Currency (collectively, the "Prudential Regulators")
Commodity Futures Trading Commission (the "CFTC")

Re: Request for Relief from Variation Margin Requirements

Ladies and Gentlemen:

Effective March 1, 2017, U.S. swap providers will be required to collect and post margin when entering into swap contracts with a "financial end user," a legal category that includes special purpose vehicles ("SPVs") created for securitization transactions.[1 2 3] Navient Corporation ("Navient") submits this letter requesting an exemption from the variation margin requirements for certain SPV swaps that meet the criteria we outline in this letter.

Background on Navient

Navient is a Fortune 500 company that provides asset management and business processing services to education, healthcare and government clients at the federal, state and local levels. We help our clients and millions of Americans achieve financial success through our services and support. Headquartered in Wilmington, Delaware, Navient employs team members in Western New York, Northeastern Pennsylvania, Indiana, Tennessee, Texas, Virginia, and other locations.

Navient holds the largest portfolio of education loans insured or federally guaranteed under the

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[1] The Dodd-Frank Act required the U.S. Commodity Futures Trading Commission (the "CFTC"), the U.S. Securities and Exchange Commission and the Prudential Regulators to jointly adopt rules for swap dealers and major swap participants imposing margin requirements on all uncleared swaps. The Dodd-Frank Act mandate is being implemented under Prudential Regulator Release *Margin and Capital Requirements for Covered Swap Entities*, Final Rule, 80 Fed. Reg. 7840 (November 30, 2015); and CFTC Release *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, Final Rule, 81 Fed. Reg. 636 (January 6, 2016).

[2] For swap providers that are regulated by the CFTC, the compliance date for variation margin has been extended until September 1, 2017. The Division of Swap Dealer and Intermediary Oversight issued a letter granting such an extension on February 13, 2017. CFTC Letter No. 17-11.

[3] For swap providers that are regulated by the Prudential Regulators, the compliance date for variation margin has been extended until September 1, 2017. The Federal Reserve Division of Supervision and Regulation released a letter providing guidance for such an extension on February 23, 2017. SR Letter 17-3.

Federal Family Education Loan Program ("FFELP"). We also hold the largest portfolio of Private Education Loans.

Navient services its own portfolio of education loans as well as education loans owned by the United States Department of Education ("ED"), financial institutions and nonprofit education lenders. Navient is one of the largest servicers to ED under its Direct Student Lending Program. Our data-driven insight, service and innovation support customers on the path to successful education loan repayment.

Navient also provides business processing services to education-related clients, such as guaranty agencies and colleges and universities.

Finally, the company leverages its scale and expertise to provide additional business processing services to a variety of other clients, including federal agencies, state and local governments, regional authorities, courts, hospitals and health care systems, financial service providers and municipalities.

For all our clients, we aim to improve their financial performance, optimize their operations and maintain compassionate, compliant service for their customers and constituents.

Navient is a frequent sponsor of securitizations backed by FFELP Loans and Private Education Loans. As of December 31, 2016, Navient had $73.5 billion aggregate outstanding principal amount in Student Loan ABS backed by FFELP Loans and $13.6 billion aggregate outstanding principal amount of Student Loan ABS backed by Private Education Loans.

Overview of New Margin Rules

Effective March 1, 2017, a U.S. swap provider will be required to collect and post margin when it enters into a swap contract with a "financial end user," a legal category that includes SPVs created for a securitization.

The swap provider will be obligated to collect or post initial variation margin no later than the day following execution of an uncleared swap contract[4] with a securitization SPV and on a daily basis thereafter.[5] The swap provider will be required to hold variation margin against the market

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[4] A cleared swap is a swap that takes place through a derivatives clearing organization (a "DCO") that acts as an intermediary between the two counterparties to the swap. In its role as intermediary, the DCO becomes responsible for all payments and margin calls and in essence guarantees the financial integrity of all transactions it has accepted. By contrast, an uncleared swap is a swap that takes place bilaterally between two counterparties. Each party to an uncleared swap faces risk that the other party will be unable to perform its obligations under the swap contract. The Dodd-Frank Act mandated that the CFTC and the Prudential Regulators adopt margin rules to help ensure the safety and soundness of swap providers that enter into uncleared swaps and, thereby, minimize any risks posed to the financial system by uncleared swaps. To accomplish that, the CFTC and Prudential Regulators established minimum initial and variation margin requirements for all uncleared swaps unless an exception has been expressly mandated by Congress.

[5] Existing regulations impose margin requirements for swap contracts that are cleared. However, swap contracts

value of the swap when it is "in-the-money" and to post variation margin against the market value of the swap when it is "out-of-the-money." The SPV will be required to do the same.

As a result of these margin rules, securitization SPVs that enter into swaps to hedge commercial risks such as interest rate or currency risk will be exposed to significant additional expense that may cause the securitization to be economically infeasible. However, it is not necessary to require securitization SPVs to post margin because they do not pose the same risk of nonpayment as other financial end users and, therefore, do not present the same risks to the safety and soundness of swap providers or of the broader financial system. As a result, uncleared swaps with securitization SPVs should be excluded from the new margin rules.

Utilization of Swap Contracts by Securitization SPVs

In a typical securitization transaction, a company seeking securitization funding sells a pool of loans (*e.g.*, education loans, equipment loans, auto loans, etc.) to an SPV, which in turn sells debt securities to investors.[6] The SPV's obligation to make payments on the debt securities is supported by the payments made by borrowers on the underlying loans. By way of example:

- The SPV is structured to be bankruptcy remote (*i.e.*, to isolate ownership of the loans held by the SPV from the bankruptcy estate of the securitizing company).
- The SPV's sole purpose is to facilitate the securitization transaction. It conducts no other business and has no other business operations or risks.
- As the SPV collects payments on the underlying loans, the SPV pays out interest owed on the debt securities.
- In this example, the loans that have been securitized bear interest at a fixed rate. However, the interest payment obligations on the debt securities are floating rate obligations. This creates an interest rate mismatch.
- The SPV enters into an interest rate swap contract as a means to manage the interest rate mismatch. As a result of the swap, the SPV is able to pay interest to investors according to the floating-rate terms of the debt securities while paying all or a portion of the fixed rate received on the loans to the swap counterparty.
- The swap contract obligations of the SPV are secured by an interest in the loans and payable by the SPV prior to, or at least *pari passu* with, making interest payments to investors in the debt securities.

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with securitization SPVs do not qualify for central clearing at this time because of contractual provisions that must be included in the swap contract to ensure that the SPV is bankruptcy remote.

[6] A more robust description of securitization SPVs and the protections afforded to swap providers who enter into swap contracts with securitization SPVs was provided in a comments letter submitted by the Structured Finance Industry Group to the CFTC and the Prudential Regulators on November 24, 2014, which can be found at:https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60007&SearchText=sfig%2011/24/2014 ("SFIG Comment Letter"). The International Swaps and Derivatives Association directed the CFTC and the Prudential Regulators to the SFIG Comment Letter in comment letters submitted to the CFTC and the Prudential Regulators on November 24, 2014. Those letters can be found at: https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60009&SearchText and https://www.fdic.gov/regulations/laws/federal/2014/2014-covered_swap_entities-c_11.pdf.

A securitization SPV's obligations to make payments under a swap contract are fully secured by assets that are isolated from the bankruptcy estate of the securitizing company and are payable at a level of priority at least as high as the SPV's obligations to pay interest on debt securities. In addition, frequently the SPV's obligations to make payment under the swap contract and the debt securities are over-collateralized, meaning that the value of the loans that serve as collateral for those obligations exceeds the value of those obligations. As a result, swap dealers have protections against the risk that a securitization SPV counterparty will fail to satisfy its payment obligations under a swap contract.

Concern Relating to New Swap Contracts

For securitizations entered into after the compliance date, securitization SPVs will need to be structured to accommodate the requirement to post margin. By nature, a securitization SPV is a passive entity with a limited pool of assets that are required to be allocated only in the manner prescribed in its securitization transaction documents. To accommodate an obligation to post variation margin, a securitization SPV would need to be structured from the outset either (1) with sufficient capitalization to fund large cash reserves designated for potential use as a source for posting margin or (2) with a revolving loan agreement under which it can borrow money to post margin when required. Both of these options would impose significant additional expense that may cause securitization to become economically infeasible and, as a result, could increase the cost of loans for consumer borrowers.

Concern Relating to Existing Swap Contracts

The new margin requirements for uncleared swaps are not retroactive. The rules will not apply to a swap contract that was entered into prior to the March 2017 compliance date. However, if an existing swap is amended, novated or otherwise materially modified, it could result in a legacy transaction also having to comply with the new margin rules.

Securitization SPVs organized prior to the finalization of the new rules commonly do not have authority under their securitization transaction documents to allocate collections on securitized loans to post initial or variation margin. Because of this restriction on the securitization SPV's ability to novate the swap contract to a new counterparty if the original swap provider breaches its obligations under the swap contract, the ratings on outstanding bonds issued by the securitization SPV may be downgraded.[7]

Current Exception for Captive Finance Companies

As mandated by Congress, the new margin rules provide an exception for a swap contract that hedges the commercial risk of a "captive finance company."[8] The CFTC has interpreted the exception to cover any securitization SPV that is wholly-owned by, and consolidated with, a

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[7] For more information regarding rating agency perspective regarding the impact of the new margin rules on existing securitizations, please see: https://www.fitchratings.com/site/pr/1014938.

[8] See, *e.g.*, Section 2(h)(7)(C)(iii) of the Commodity Exchange Act.

captive finance company.[9]

To be eligible for the "captive finance company" exclusion, a securitization SPV must be wholly owned by, and consolidated with, a company that meets the following four-prong test:

(1) the entity's primary business is providing financing;
(2) the entity uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures;
(3) 90% or more of which arise from financing that facilitates the purchase or lease of products; and
(4) 90% or more of which are manufactured by the parent company or another subsidiary of the parent company.

Because of the fourth prong, companies that are not affiliated with the manufacturing industry cannot rely on the captive finance company exception. However, the securitization structure protects swap dealers who enter into swap contracts with securitization SPVs regardless of whether the securitized assets were manufactured by the SPV's parent company.

Rationale for Exemption for Securitization SPVs

Securitization SPVs should be exempt from the requirement to post margin in connection with uncleared swaps. Justification for the exemption include:

(A) The policy objective of the new margin requirement is to reduce counterparty risk associated with uncleared swaps. However, swap providers are already sufficiently insulated from the counterparty risk of securitization SPVs by their security interest in the loans and by the fact that payments to the swap provider are paid either prior to, or *pari passu* with, payments owed to bondholders.

(B) Subjecting securitization SPVs to margin requirements would severely restrict the feasibility of securitizing loans for which there would be an interest rate or currency mismatch. Swaps are the ideal method to precisely hedge risks associated with these types of mismatches but may not be economically feasible for securitization SPVs following the compliance date due to the additional expense of margin posting requirements.

(C) With respect to legacy securitizations, existing securitization SPVs have no legal or financial ability to post margin. As a result, if an existing swap provider is downgraded, the securitization SPV's inability to post margin will preclude it from moving the swap to a new swap counterparty and, as a result, outstanding bonds may be downgraded.

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[9] The Division of Clearing and Risk of the CFTC issued an interpretive letter to Ford Motor Credit Company LLC on May 4, 2015. CFTC Letter No. 15-27.

(D) Some securitizations are already excluded from the new margin requirement pursuant to the captive finance company exclusion summarized above.

Requested Interpretation

We respectfully request that the Prudential Regulators and the CFTC interpret the margin requirement exclusions permitted under the Dodd-Frank Act such that swaps with SPV financial end users that meet the following "Qualified Loan Financing" criteria at the time such swap is executed be excluded from the requirement to post initial margin and variation margin:

(1) The SPV's primary business is facilitating financing of pools of loans;

(2) The SPV has assets with a value of less than $5 billion;

(3) The SPV uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures directly related to such pools of loans;

(4) The transaction to which the swap relates is secured by collateral the value of which equals or exceeds the principal amount of debt issued by the SPV; and

(5) The SPV will report certain information, including how it generally meets its financial obligations associated with entering into the swap, to the CFTC.

Impact on an End User Not Regulated by the CFTC or the Prudential Regulators

Navient is not regulated by the CFTC nor the Prudential Regulators. It is a true "end user" of derivatives products to manage commercial risks. Notwithstanding that reality, Navient is being negatively impacted by the margin rules whereas other end users, small banks and even other SPVs affiliated with captive finance companies have been excluded. This result is that, absent interpretive guidance from the CFTC and the Prudential Regulators, Navient's SPVs, which grant swap providers a senior secured position in the pools of loans they own, are being prejudiced and financially penalized.

Disparate Treatment for US Securitization Transactions

Pursuant to European Market Infrastructure Regulations ("EMIR") most securitization SPVs that are subject to the European Regulatory Technical Standards will be characterized as non-financial counterparties "NFC-". As a result of their NFC- status, SPVs subject to EMIR will not be subject to mandatory variation margin requirements allowing them to execute transactions on more financially advantageous terms and putting them at an advantage relative to SPVs subject to U.S. regulations.

Concluding Remarks

Thank you for considering our request. Please do not hesitate to contact us if you have questions or desire clarification concerning any of the matters discussed in this comment letter. Please contact me via telephone at 703-984-6885 or via e-mail at steve.oconnell@navient.com. You can also contact Rachel Gleason George, Vice President & Associate General Counsel, via telephone at 703-984-6585 or via e-mail at rachel.george@navient.com or Jennifer Earyes, Director, Treasury Risk, via telephone at 703-984-5623 or via e-mail at jennifer.earyes@navient.com.

Sincerely,

Stephen J. O'Connell
Senior Vice President & Treasurer
Navient Corporation

Attachment B

Navient Letter Dated July 13, 2017

Navient Solutions, LLC
2001 Edmund Halley Drive
Reston, VA 20191

July 13, 2017

VIA EMAIL

Board of Governors of the Federal Reserve System;
Farm Credit Administration;
Federal Deposit Insurance Corporation;
Federal Housing Finance Agency; and
Office of the Comptroller of the Currency (collectively, the "Prudential Regulators")
Commodity Futures Trading Commission (the "CFTC")

Re: Request for Relief from September 1, 2017 Compliance Date for Variation Margin Requirements

Ladies and Gentlemen:

Navient Corporation ("Navient") submits this letter requesting a six-month temporary stay from the September 1, 2017 variation margin rules for legacy securitization special purpose vehicle ("SPV") swaps. This relief is urgently needed to ensure that legacy securitization SPVs can continue to enter into new or novate existing swaps to hedge commercial risks such as interest rate or currency risk and, therefore, to protect investors from downgrades of the credit ratings assigned to asset-backed securities issued by those legacy securitization SPVs.

Background on Variation Margin Rules

The Dodd-Frank Act required the CFTC and the Prudential Regulators to jointly adopt rules for swap dealers and major swap participants imposing margin requirements on uncleared swaps.

In November 2015 and January 2016, respectively, the CFTC and the Prudential Regulators adopted new variation margin rules under which, effective March 1, 2017, U.S. swap providers will be required to collect and post margin when entering into swap contracts with a "financial end user," a legal category that includes SPVs created for securitization transactions.[1] Under these new rules, the swap provider will be obligated to collect or post initial variation margin no later than the day following execution of an uncleared swap contract with a securitization SPV and on a daily basis thereafter. The swap provider will be required to hold variation margin against the market value of the swap when it is "in-the-money" and to post variation margin against the market value of the swap when it is "out-of-the-money." The securitization SPV will be required to do the same.

[1] The Dodd-Frank mandate is being implemented under Prudential Regulator release *Margin and Capital Requirements for Covered Swap Entities*, Final Rule, 80 Fed. Reg. 7840 (November 30, 2015) and CFTC Release *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, Final Rule, 81 Fed. Reg. 636 (January 6, 2016).

In February 2017, in response to requests received from virtually all swap dealers and entities that use swaps to hedge commercial risk, the CFTC and the Prudential Regulators issued guidance extending the compliance date for the variation margin rules to September 1, 2017.[2]

On February 24, 2017, Navient submitted a comment letter to the CFTC and the Prudential Regulators (the "Prior Navient Comment Letter") requesting that securitization SPVs be exempt from the requirement to post margin in connection with uncleared swaps.[3] Similar to comment letters submitted to the CFTC and the Prudential Regulators by other participants in the securitization industry,[4] the Prior Navient Comment Letter argued that uncleared swaps with securitization SPVs should be excluded from the variation margin rules because a securitization SPV's obligations to make payments under a swap contract are fully secured by assets that are isolated from the bankruptcy estate of the securitizing company and typically are payable at a level at least as high as the SPV's obligations to pay interest on debt securities. Simply put, securitization SPVs that enter into swap contracts do not pose the risk of nonpayment as other financial end users and, therefore, do not pose the same risks to the safety and soundness of swap providers or of the broader financial system.

Concern Relating to Existing Swap Contracts

While Navient continues to believe that securitization SPVs should be exempt from the variation margin rules, our urgent focus as the September 1, 2017 compliance date draws near is on the impact of the new variation margin rules on asset-backed securities issued by existing securitization SPVs.

The variation margin rules for uncleared swaps are not retroactive. The rules will not apply to a swap contract that was entered into prior to the compliance date. However, if an existing swap is amended, novated or otherwise materially modified, it would result in a legacy securitization SPV also having to comply with the variation margin rules.

Securitization SPVs organized prior to the compliance date commonly do not have the legal authority under their securitization transaction documents to allocate collections on securitized

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[2] The CFTC's Division of Swap Dealer and Intermediary Oversight issued a letter granting such an extension on February 13, 2017. *See* CFTC Letter 17-11. The Federal Reserve Division of Supervision and Regulation released a letter providing guidance for such an extension on February 23, 2017. *See* SR Letter 17-3.

[3] The Prior Navient Comment Letter is included as Attachment A to this letter.

[4] For example, the Structured Finance Industry Group ("SFIG") submitted comment letters to the CFTC and the Prudential Regulators on November 24, 2014 and February 6, 2017, which can be found at: https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60007&SearchText=sfig%2011/24/2014 and http://www.sfindustry.org/images/uploads/pdfs/Request_for_Temp_Relief_from_Variation_Margin_Compliance_Date_FINAL_for_website.pdf. The International Swaps and Derivatives Association directed the CFTC and the Prudential Regulators to the SFIG comment letter in letters submitted on November 24, 2014, which can be found at: https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60009&SearchText and https://www.fdic.gov/regulations/laws/federal/2014/2014-covered_swap_entities-c_11.pdf.

loans to post initial or variation margin. Therefore, the variation margin rules reduce the likelihood that a legacy securitization SPV would be able to replace the current swap counterparty if the securitization transaction documents require that action.[5]

The restriction on a legacy securitization SPV's ability to novate a swap contract to a new counterparty is viewed as credit negative by credit rating agencies[6] and, as a result, the credit ratings on outstanding asset-backed securities that benefit from an uncleared swap contract will likely be downgraded when the variation margin rules become effective.[7] A downgrade in the credit rating assigned to an asset-backed security can adversely affect its market value, thereby reducing liquidity in the securitization markets to the detriment of both issuers and investors.

We believe that the restriction on a legacy securitization SPV's ability to continue to utilize swaps to hedge commercial risk such as interest rate or currency risk and the resulting negative impact on the credit ratings, market value and liquidity of asset-backed securities issued by those legacy securitization SPVs are unintended consequences of the variation margin rules.

Requested Relief

Navient requests that the CFTC and the Prudential Regulators provide an additional deferment of at least six months for compliance with the variation margin rules for legacy securitization SPVs, such deferment to begin on September 1, 2017 and to extend to at least March 1, 2018. We believe that such an extension is urgently needed to protect the ability of legacy securitization SPVs to continue to hedge commercial risks such as interest rate or currency risk and, therefore, to protect the financial interests of investors holding bonds issued by such legacy securitization SPVs. During the additional deferment period, we look forward to continued dialogue among the securitization industry, legislators and regulators about whether securitization SPVs should be entirely excluded from the definition of "financial end user" and, therefore, excluded from the obligation to comply with the variation margin rules.

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[5] For example, securitization transaction documents typically require that a swap counterparty be replaced if the credit rating of the swap counterparty has been downgraded below a minimum ratings threshold.

[6] The credit rating assigned to an asset-backed security addresses the likelihood of timely payment of stated interest and the payment of principal at final maturity. Securitization SPVs typically enter into swap contracts as a means to manage a mismatch in the interest rate or currency between payments on the underlying loan assets owed to the securitization SPV and the payments owed by the securitization SPV on its asset-backed securities. The hedge provided by the swap contract helps ensure the stability of the cash flows available to make payments on the asset-backed securities. If a legacy securitization SPV's ability to maintain the hedge is undermined, there is increased risk that the payments collected on the underlying loan assets will be insufficient to make payments on the asset-backed securities when due.

[7] For more information regarding rating agency perspective regarding the impact of the variation margin rules on existing securitizations, please see: https://www.fitchratings.com/site/pr/1014938 and https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBS_1062454.

Concluding Remarks

Thank you for considering our request. Please do not hesitate to contact us if you have questions or desire clarification concerning any of the matters discussed in this comment letter. Please contact me via telephone at 302-283-4045 or via e-mail at chris.lown@navient.com. You can also contact Stephen O'Connell, Senior Vice President & Treasurer, via telephone at 703-984-6885 or via e-mail at steve.oconnell@navient.com, Rachel Gleason George, Vice President & Associate General Counsel, via telephone at 703-984-6585 or via e-mail at rachel.george@navient.com or Jennifer Earyes, Director, Treasury Risk, via telephone at 703-984-5623 or via e-mail at jennifer.earyes@navient.com.

Sincerely,

Christian M. Lown
Executive Vice President & Chief Financial Officer
Navient Corporation

Attachment C

Navient Letter Dated August 18, 2017

NAVIENT

Navient Solutions, LLC
2001 Edmund Halley Drive
Reston, VA 20191

August 18, 2017

VIA EMAIL

Board of Governors of the Federal Reserve System;
Farm Credit Administration;
Federal Deposit Insurance Corporation;
Federal Housing Finance Agency; and
Office of the Comptroller of the Currency (collectively, the "Prudential Regulators")
Commodity Futures Trading Commission (the "CFTC")

Re: Request for Relief for Legacy Securitizations from September 1, 2017 Compliance Date for Variation Margin Requirements

Ladies and Gentlemen:

Thank you for inviting Navient Corporation to participate in a joint agency conference call held on August 2, 2017 to discuss our request for a six-month temporary stay from the September 1, 2017 variation margin rules for legacy securitization special purpose vehicles ("SPV").

As discussed on our conference call and in comment letters submitted by Navient on February 24, 2017 and July 13, 2017, relief is urgently needed to ensure that securitizations structured prior to the compliance date can continue to enter into new, or novate existing, swaps to hedge commercial risks (such as interest rate or currency risk) and, therefore, to protect investors from downgrades of the credit ratings assigned to asset-backed securities issued by those legacy securitization SPVs.

We believe that the variation margin rules' restriction on a legacy securitization SPV's ability to continue to utilize swaps and the resulting negative impact on the credit ratings, market value and liquidity of asset-backed securities issued by those legacy securitization SPVs are unintended consequences of the variation margin rules. Therefore, we reiterate our request that enforcement of the variation margin rules with respect to swap contracts entered into with legacy securitization SPVs be delayed until at least March 1, 2018 to allow for further analysis of the effect of the variation margin requirements on financial markets and various securitization participants.

We appreciate your continued attention and consideration to this issue. Please do not hesitate to contact us if you have questions regarding the impact of the variation margin rules on legacy securitization SPVs or regarding our requested relief. Please contact me via telephone at 703-984-6885 or via e-mail at steve.oconnell@navient.com. You may also contact Chris Lown, Executive Vice President & Chief Financial Officer, via telephone at 302-283-4045 or via e-mail at chris.lown@navient.com, Rachel Gleason George, Vice President & Associate General Counsel, via telephone at 703-984-6585 or via e-mail at rachel.george@navient.com, or Jennifer Earyes, Director, Treasury Risk, via telephone at 703-984-5623 or via e-mail at jennifer.earyes@navient.com.

Sincerely,

Stephen J. O'Connell
Senior Vice President & Treasurer
Navient Corporation