BRAZOS HIGHER EDUCATION AUTHORITY, INC.

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

October 30, 2013

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street, SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219
Docket Number OCC-2013-0010
Via E-Mail: regs.comments@occ.treas.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn.: Robert deV. Frierson, Secretary
Docket No. R-1411
Via E-Mail: regs.comments@federalreserve.gov

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

Federal Housing Finance Agency
Constitution Center, (OGC) Eighth Floor
400 7th Street SW
Washington, DC 20024
Attn.: Alfred M. Pollard, General Counsel
Comments/RIN 2590-AA43
Via E-Mail: regcomments@fhfa.gov

Department of Housing and Urban Development
Office of General Counsel
Regulations Division
451 7th Street, SW
Room 10276
Washington, DC 20410-0500
RIN 2501-AD53

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

Re: Credit 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 agencies listed above (the "Agencies") for comments regarding the revised *Credit Risk Retention; Re-proposed Rules,* which were published on August 28, 2013 (the "Re-Proposed Rule"). The Re-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"), which was codified as new Section 15G of the Securities Exchange Act of 1934 (the "Exchange Act").

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"). For over thirty years, Brazos has

been dedicated to providing assistance to the families of students who seek the opportunity for higher education and, in carrying out this vital role to society, Brazos has financed more than 2 million student loans.

Limited Recourse Revenue Bonds and the Definition of "Sponsor"

Pursuant to Section __.3(a) of the Re-Proposed Rule, the "sponsor" of a securitization transaction (or a majority owned affiliate of the sponsor) is required to comply with the risk retention requirements. The Re-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 of this definition is that an entity *sale* or *transfer* assets directly or indirectly to an issuing entity.

Like many nonprofit student loan companies ("Nonprofit Issuers") that finance student loans, Brazos originates and acquires student loans directly with the proceeds of taxable or tax-exempt bonds that it issues. There is no sale or transfer of assets to a separate issuing entity in these structures. The securities are directly issued by the Nonprofit Issuer as limited recourse revenue bonds that are payable from and secured by the student loans that are originated or acquired by the Nonprofit Issuer. The bonds are secured under an indenture of trust that creates, in favor of an indenture trustee for the benefit of the related bondholders, a security interest in the financed student loans. In these transactions, the Nonprofit Issuer continues to own all of the student loan assets on its balance sheet throughout the term of the bonds. When the bonds are paid-off, the security interest created under the indenture of trust is released and the Nonprofit Issuer then owns the remaining student loan assets free and clear of the lien created under the indenture of trust.

Based on the Re-Proposed Rule, it appears that direct issue revenue bonds that do not include selling or transferring assets to an issuing entity do not have a "sponsor", and, therefore, should not be subject to require risk retention. This interpretation also seems consistent with the policy objectives of risk retention as the potential misalignment of interests between issuers and investors does not exist when the issuer never divests itself from the risks associated with assets through a transfer or sale of those assets.

Brazos would like to thank Agency staff for their extensive efforts to constructively assist market participants with their understanding of this complicated Rule. During this process, the question has been raised as to whether the granting of a security interest to an indenture trustee under an indenture of trust should be characterized as a sale or transfer of assets to an issuing entity for purposes of the definition of a sponsor. Brazos requests clarification that the granting of a security interest to an indenture trustee under an indenture of trust does not constitute a sale or transfer to an issuing entity for purposes of the definition of a sponsor.

We recognize that the treatment of whether a transaction constitutes a sale in traditional securitizations structures utilizing an SPV issuer can be complex because a given transfer of receivables may well be a sale for certain purposes but not others. For example, the criteria for establishing an accounting sale may be different than the criteria for establishing a sale under bankruptcy law. These complexities, however, do not exist when Nonprofit Issuers issue limited recourse revenue bonds. In these transactions, the grant of a security interest to an indenture

trustee is not treated as a sale for any purpose under any applicable legal regime, including bankruptcy laws, accounting rules or tax laws or regulations. In addition, in a typical transaction, if a Nonprofit Issuer defaults on its obligation to make payments to investors, its own assets (i.e., the pledged student loans) are subject to foreclosure by the indenture trustee under the terms of the related indenture of trust. This type of foreclosure remedy, pursuant to which a Nonprofit Issuer could lose its student loan assets, further demonstrates the clear distinction between a grant and a sale (i.e., prior to a default and foreclosure, the indenture trustee has no legal title or equitable title to the pledged student loans only a security interest therein). As such, Brazos believes that there is no legal basis for re-characterizing this grant as a sale for purpose of the definition of a sponsor.

In addition, the definition of sponsor requires that the assets be sold or transferred to an "issuing entity". Under the Re-Proposed Rule an issuing entity means "the trust or other entity: (1) That owns or holds the pool of assets to be securitized; and (2) In whose name the asset-backed securities are issued". As such, even if an indenture trustee was viewed as owning or holding the pool of assets securitized, an indenture trustee would still not be an issuing entity as the securities are not issued in its name.

Third Party Credit Enhancement

Historically, many student loan revenue bonds issued by Nonprofit Issuers have been supported by third party credit enhancement. Third party credit enhancement in these transactions has taken various forms, including bond insurance, bank letters of credit, liquidity facilities or standby bond purchase agreements and purchase commitments. For example, student loan revenue bonds have been issued as variable rate demand obligations (VRDOs) that are supported by a bank letter of credit. In these VRDO transactions, holders typically have the right to tender their bonds and the obligation to purchase any tendered bonds is fully supported by the bank letter of credit.

In these transactions, the bonds are rated based upon the creditworthiness and structure of the applicable third party credit enhancement, rather than the quality and expected cash flows from the pledged student loans assets. The third party credit provider, in making its business decision to provide credit enhancement, analyzes the likelihood of repayment from the pledged student loans relative to the fee or premium it can earn for undertaking that risk. Investors, however, make their investment decision based upon the creditworthiness and structure of the applicable third party credit enhancement.

Brazos believes that these types of transactions provide market benefits that are not available through traditional ABS structures. Transactions that are fully supported by third party credit enhancement eliminate barriers to entry by allowing smaller market participants with new loan programs to access the capital markets.

Based upon the Re-Proposed Rule, it is unclear how transactions that are fully supported by third party credit enhancement would be treated. Brazos believes the Agencies should consider adding clarity for these types of transactions. Specifically, we believe that the Re-Proposed Rule should provide a clear full exemption for any security that is rated based upon the creditworthiness and structure of third party credit enhancement, rather than the quality and

expected cash flows from pledged receivables. Policy objectives of properly aligning interest between investors and issuers are not promoted when investors are not making their investment decision based upon the credit risk and performance of a pool of collateralized assets. Moreover, for this reason, Brazos believes that most market participants do not view these types of transactions as ABS or securitization transactions.

Full Exemption for Bonds Secured by FFELP Loans

The Re-Proposed Rule provides for a limited exemption for securities collateralized by student loans made under the Federal Family Education Loan Program (the "FFELP Loans") Loans. FFELP Loans are subject to a federal guaranty that ranges from 97% to 100%. Under this limited exception, the risk retention requirement is tied to the unguaranteed portion of the FFELP Loans rather than the standard 5% set forth in the Re-Proposed Rule.

We request that the Re-Proposed Rule provide a full exemption for any security that is collateralized by FFELP Loans.

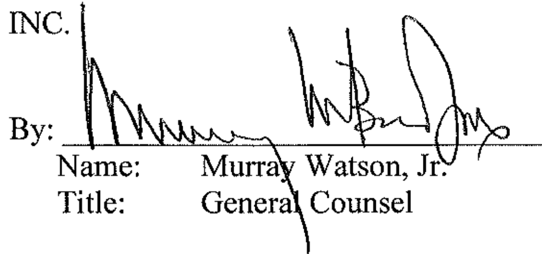
Brazos notes that the Re-Proposed Rule provides a full exemption to securitizations that are collateralized solely by residential, multifamily and health care facility mortgage loan assets that are insured or guaranteed (in whole or in part) as to payment of principal and interest by the United States or an agency of the United States. The federal guarantee level for these asset types, however, can be significantly lower than the guarantee level for FFELP Loans. Brazos believes providing a full exemption for securities collateralized by FFELP Loans is necessary to avoid regulatory inconsistency and inequitable treatment between market sectors collateralized by guaranteed assets.

***

We very much appreciate the opportunity to provide the foregoing comments on the Re-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.
Title: General Counsel