

April 5, 2013

Comments: Education and Family Benefits Tax Reform Working Group  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515  
[tax.reform@mail.house.gov](mailto:tax.reform@mail.house.gov)

The Education Finance Council (EFC) is the association representing the nation's nonprofit and state agency student finance organizations. These public purpose organizations are dedicated to the single purpose of making college more affordable. Historically, nonprofit student loan organizations have expanded access to higher education by ensuring easier and less expensive methods to pay for college. For decades, nonprofit student loan providers have been leaders in innovation to reduce the cost of a college education.

In connection with the Ways and Means Committee's consideration of tax reform, EFC would like to recommend a modification, described below, to the rules applicable to qualified scholarship funding bonds. The modification we are urging will help reduce student loan costs by updating the qualified scholarship funding bond rules as necessary to take account of changes to federal student loan programs enacted in the 2010 reconciliation legislation. While we believe this change would be appropriate independent of broader tax reform, Ways and Means Committee consideration of tax reform does present an opportunity, similar to that used in the 1986 tax reform legislation, to adopt improvements to the tax-exempt bond rules.

BACKGROUND: In 1976, as demand for student loans outpaced supply, Congress approved bipartisan legislation to address the growing need for student loans. The legislation authorized the issuance of tax-exempt debt by specialized student loan organizations. Such nonprofit student loan funding providers began to immediately provide the liquidity required to meet the country's growing college financing needs by raising money through the sale of tax exempt bonds to investors, and using that money to finance student loans, typically acquired from banks, savings and loans, and credit unions. States took different approaches to forming nonprofit student loan funding providers, with some being formed as state agencies or public authorities and some as nonprofit corporations under general state nonprofit law but also subject to additional requirements under the Internal Revenue Code ("Code"). These nonprofit corporations are currently referred to as "qualified scholarship funding corporations" and must comply with Code section 150(d), as well as section 501(c)(3) of the Code.

TAX-EXEMPT FINANCING: All nonprofit student loan funding providers are eligible to be designated by their state to issue tax-exempt private activity bonds to finance student loans. Each type (state agency or public authority or section 150(d) organization) has access to tax-exempt financing, subject to the private activity bond cap. The lower cost of tax-exempt financing is passed along to students in the form of lower overall borrowing cost. To a limited extent, it can also be used to help fund college access and financial literacy programs. As is explained in detail below, the only student loans eligible for this use of

tax exempt financing were those made under the Federal Family Education Loan Program (FFELP). In 2010, all new student loan originations under the FFELP were terminated.

RECENT CHANGES TO STUDENT LOANS: The Health Care and Education Reconciliation Act of 2010 eliminated the federal guaranteed student loan program and mandated that all federal student loans be provided directly by the Department of Education. Following this legislation, many nonprofit student loan funding providers can continue to fulfill their mission of providing lower-cost funding options and other assistance to students by offering alternative loan programs. Nonprofit student loan funding providers are uniquely situated to make these loans at the best possible terms, particularly with their access to tax-exempt financing. Indeed, this is exactly what many state entities are doing today.

ALTERNATIVE LOAN PROGRAMS: Tuition costs have in recent decades outpaced increases in federal statutory loan limits. This has increased the need for alternative borrowing to bridge the growing gap between students' cost of attendance and all other available aid. In particular, students attending high cost institutions or pursuing advanced degrees very often require additional borrowing in order to finance their education. Borrowers are in need of alternatives to high interest rate loans and credit cards. However, among nonprofit student loan funding providers, only section 150(d) organizations are currently ineligible to issue tax exempt bonds to finance these alternative loans.

THE ISSUE: The world of student loan financing was dramatically different when section 150(d) of the Code was written. At that time, there was no federal direct lending; only the guaranteed student loan program was in effect. Furthermore, there was little need for alternative loan programs as the cost of tuition was generally in line with federal loan program borrowing limits. This is why section 150(d) allows for qualified scholarship funding corporations to finance only federally guaranteed student loans. Given the dramatic increase in college costs and need for reasonable financing options, we are seeking to make a modest change to the language of section 150(d) to allow these organizations to continue to access tax-exempt financing for alternative private student loans. Simply striking the reference to the Higher Education Act and permitting section 150(d) organizations to be operated for the origination and acquisition of all student loans should accomplish this purpose. We note that a bill effectuating our proposal, H.R. 6209 (112<sup>th</sup> Congress), was introduced in July 2012.

TAX LAW ENSURES STUDENTS WILL BENEFIT: Current tax rules relating to tax-exempt bond arbitrage ensure that the reduced borrowing costs for bonds permitted by this change would flow through to students. The arbitrage rules limit the interest rate on bond-funded student loans to no more than two percentage points over the rate on the bonds.

EFC very much appreciates your consideration of this recommendation. If you have any questions, please do not hesitate to contact [REDACTED].