



February 16, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE Washington, DC 20549-0609

Re: File No. S7-45-10

The Education Finance Council (EFC) is the association representing the nation's state-based and nonprofit student loan providers. We are pleased to submit the following comments on Proposed Rule File No. S7-45-10 (the "proposed rule"). Many student loan providers, particularly those who are instrumentalities of a state, have boards of directors who are appointed by a state legislature or executive. Thus, the requirement to have "appointed members of a municipal entity that are not elected ex officio members"¹ register as municipal advisors will have a significant affect on state based student loan providers.² Because the proposed rule would not yield any new information to investors and will likely cause significant operational harm to municipal student loan providers, EFC requests the SEC to keep in place the current exemption for these appointed board members.

The definition of "municipal advisor" created by the SEC would cover many of the individuals that currently serve on the boards of directors of municipal student loan providers. Clearly these boards would be considered "governing bodies" as many of them control the key strategic decisions of the provider - including types of and amounts of issuances. However, the input and direction these boards of directors provide are not analogous to the activities provided by municipal advisors that the SEC is seeking to regulate. For example, the examples cited by the SEC to describe the historic role of "municipal advisors" are "brokers, dealers, municipal securities dealers, investment advisors and banks."³ This list denotes entities that should be regulated are those providing outside counsel and advice.). Moreover, to treat members of the board of municipal entities, such as student loan providers, as municipal advisors is inconsistent with the reality of how these boards function. The boards of municipal student loan providers are *the* governing body for the provider and as such cannot be an "advisor" as the SEC contemplates.

¹ See proposed rule at 834.

² State agency student loan providers are within the definition of "municipal entity." See Proposed Rule at 829 describing the following "Exchange Act Section 15B(e)(8) provides that the term "municipal entity" means "any State, political subdivision of a State, or municipal corporate instrumentality of a State, including - (A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality."

³ Proposed rule at 825.



This unnecessary registration of board members of state based student loan providers, as proposed by the SEC, will inhibit people from serving on boards of directors at precisely the time these entities need them most. Recent changes to federal law eliminated a historic business line for state-based student loan providers. This seismic shift requires access to individuals with the capabilities and expertise to guide municipal student loan providers through this time of transition to ensure they can continue to meet the needs of students and families. It is not an understatement to say that in many instances individuals currently serving on boards will cease to do so rather than endure a superfluous registration. This action would have a detrimental affect on the ability of municipal organizations such as student loan providers to make critical financing decisions.

The SEC's position that appointed officials are not accountable to the citizens of the municipal entity is incorrect.⁴ In many states, individuals serving on boards of municipal entities such as student loan providers, are subject to ethics boards and operate under state "open meetings" laws. In some cases, while board appointees are not "employees" of the municipal entity in the strictest sense, they are considered by states to be public officers and thus subject to strict state financial disclosure statues.⁵ Therefore, those serving on boards of municipal student loan providers already have a fiduciary duty to act in the best interest of the citizens of a particular state. Finally, given that the information received under existing state laws covering board appointees of municipal student loan providers is easily accessible to the public, any interested party - including investors – can get information and insight into discussions that might affect them.

For the reasons stated above, EFC believes the proposed rule will not provide investors with additional information and will have the detrimental affect of driving interested and qualified board members away from municipal student loan providers. We are hopeful that the SEC understands the significant negative impact of this provision and does not require appointed or elected board members to register as "municipal advisors."

Sincerely,

A handwritten signature in black ink that reads 'Vince Sampson'.

Vince Sampson
President

⁴ Id.

⁵ For example, in Rhode Island, appointed (as well as elected) members of municipal boards are subject to the State Ethics Law, the State Access to Public Records Law and Uniform Prudent Management of Institutional Funds Act. In Alaska, board members of certain state corporations are subject to the Executive Branch Ethics Act.