



April 11, 2011

Ronald W. Smith  
Corporate Secretary  
MSRB  
1900 Duke Street  
Alexandria, VA 22314

RE: MSRB NOTICE 2011-14 (FEBRUARY 14, 2011)

The Education Finance Council (EFC) is the association representing the nation's state agency and nonprofit student loan providers. We are pleased to submit the following comments on Proposed Rule Notice 2011-14 which creates draft Rule G-36 and interpretive guidance (the "draft Rule"). EFC believes that the draft Rule creates an unnecessary disclosure requirement for members of boards of directors of nonprofit and state agency student loan providers.<sup>1</sup> 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. Those serving as directors are already subject to state laws that create duties of loyalty and care effectively similar to those created by the draft Rule.

The draft rule proposes to subject "municipal advisors" to a "fiduciary duty, which shall include a duty of loyalty and duty of care." The draft Rule incorporates the definition of "municipal advisor" found in section 15B(e)(4) of the Securities and Exchange Act of 1933.<sup>2</sup> The definition of "municipal advisor" referenced by the draft Rule would cover many of the individuals that currently serve on the boards of directors of municipal student loan providers. Clearly, these boards would be covered because they are not employees of the municipal student loan issuer and they 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 MSRB is seeking to regulate in the draft Rule. 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."

This unnecessary registration of board members of state agency student loan providers, as proposed by the draft Rule, 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. Access to individuals with the capabilities and expertise is critical so that municipal student loan providers make the critical decisions that will allow them to navigate through

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<sup>1</sup> See e.g., draft Rule, Appendix A.

<sup>2</sup> In footnote 1 of the preamble, the draft Rule states: "Municipal advisor" is defined in Section 15B(e)(4) of the Exchange Act as "a person (who is not a municipal entity or an employee of a municipal entity) that: (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a solicitation of a municipal entity."



this time of transition and continue meeting the needs of students and families. Unnecessary registration and disclosure will, in many instances, result in significant attrition of individuals currently serving on boards.

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 statutes. 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, due to the municipal advisor rulemakings underway at both the MSRB and the Securities and Exchange Commission (SEC), there could be conflicting standards for defining who would be considered and disclosure requirements for municipal advisors.<sup>3</sup> Therefore, the MSRB should coordinate with the SEC to determine a consistent standard for disclosure requirements.

For the reasons stated above, EFC believes the draft rule will not provide investors with additional substantive information and will have the damaging effect of driving interested and qualified board members away from municipal student loan providers. We are hopeful that MSRB does not require appointed or elected board members to be subject to the disclosure rules for "municipal advisors."

Sincerely,

A handwritten signature in black ink that reads "Vince Sampson". The signature is fluid and cursive, with the first letter 'V' being particularly large and stylized.

Vince Sampson  
President

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<sup>3</sup> See, draft Rule: "Commenters should note that the interpretive notice is based upon the statutory definition of municipal advisor set forth in the Dodd-Frank Act without regard to any interpretation of that term proposed by the Securities and Exchange Commission ("SEC") in its proposed permanent registration rule for municipal advisors (Securities Exchange Act Release No. 34-63576 (December 20, 2010)."