July 7, 2017

The Honorable Orrin Hatch
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch:

This letter responds to your June 16, 2017 solicitation to interested stakeholders requesting comments and recommendations on efforts to strengthen businesses by lowering tax rates and efforts to remove impediments and disincentives for savings and investments as the Senate Finance Committee embarks on comprehensive tax reform. The National Council of Higher Education Resources (NCHER) is a national trade association representing state and nonprofit agencies that administer grant and loan programs to help students and parents pay for the costs of postsecondary education. A number of our members, including the Utah Higher Education Assistance Authority, issue tax-exempt private activity bonds to finance low-cost loans that help students and parents pay the costs of securing a higher education credential that opens the door for a better life.

Preserving Tax-Exempt Private Activity Bonds for Education Loans

NCHER and its members commend Congress and the Administration for their work toward reforming our nation's tax code to promote growth, fuel job creation and deliver opportunity for all Americans. As the committee turns its focus to a much-needed overhaul of the Internal Revenue Code of 1986 (IRC), we would like to underscore the importance of preserving the ability of state and nonprofit issuers to issue tax-exempt private activity bonds to finance education loans to students and parents of students as a significant incentive for the private sector to invest in postsecondary education. The availability of tax-exempt financing allows state-based lenders to originate private loans that supplement federal student loans so students can pay their tuition bills, purchase required textbooks, and cover their living expenses. As tuition costs have outpaced increases in the loan limits authorized under the federal student loan program, the availability of private education loans financed by tax-exempt bonds has become more important in helping families across the nation "close the gap" in financing their higher education dreams, in many cases at lower rates than are generally available under the William D. Ford Federal Direct Loan Program. For those students and parents struggling to repay their federal and private education loans, new loans issued using tax-exempt financing can also help these borrowers refinance their loan debt, allowing them to lower their monthly payments and get back on their feet. State-based private education loans are an important part of the higher education financing system and a solution to the growing challenges that students and families face every day. These state lenders have the unique ability to offer loan assistance to students within their respective states, without the need to raise the nation's debt, and also continue to support their public-service mission to expand college access, financial literacy, and debt management programs within their state.

The long-standing tax status of private activity bonds for education loans is a fundamental component of our nation's public-private partnership when funding postsecondary education. This partnership encourages and facilitates investment in lower-cost education loans made available by tax-exempt student loan bonds which, in turn, supports economic growth and job creation by enabling more individuals to receive a high-quality undergraduate or graduate education that makes them more productive members of society. Secretary Steve Mnuchin has said that, "Private activity bonds are a valuable way to incentivize private investment in America's infrastructure." Investment in human capital – especially that which contributes to a more productive workforce that is critical to growing our economy and creating high-paying and in-demand jobs - is equally as important, and preserving the tax-exempt treatment of student loan bonds incentivizes such investment and will help keep the United States competitive globally.

Incorporating the Text of Student Loan Opportunity Act

For decades, states have taken different approaches to forming nonprofit organizations authorized to issue tax-exempt private activity bonds for education loans. Some states created state agencies or public authorities under section 144(b) of the IRC while others formed nonprofit qualified scholarship funding corporations under section 150(d), subject to additional requirements under section 501(c)(3) of the IRC. Under section 150(d), these nonprofit student loan organizations are authorized to issue tax-exempt bonds to finance only student loans made under the federal guaranteed student loan program. This limitation in section 150(d) should be stricken, as called for under the bipartisan "Student Loan Opportunity Act." This simple technical change would allow organizations in the affected states to make lower-cost private loans available to students and parents, refinance existing higher interest rate student loans, and expand opportunities and resources for students, borrowers, and families.

Clarifying Refunding Bonds

NCHER urges the committee to clarify that tax-exempt bonds used to make private education loans that refinance existing tax-exempt private loans are not advance refunding bonds. In 2015, the Internal Revenue Service (IRS), through the issuance of Notice 2015-78, provided guidance on the rules governing the use of tax-exempt funds to finance private education loans. While the guidance was welcome, it left some ambiguity that has caused confusion for many issuers and placed restraints on what the private capital markets can offer to student and parent borrowers in the form of lower borrowing costs to finance their postsecondary education. For example, there is a question of whether the refinancing of an original tax-exempt financed loan causes the bonds to be deemed refunding bonds. If it does, a separate set of restrictive rules would come into play, hamstringing any refinancing program using tax-exempt bonds. The committee should eliminate this impediment to investment in postsecondary education, and clarify or direct the IRS to clarify that tax-exempt bonds issued to refinance an original loan financed with tax-exempt bonds will not be considered advance refunding bonds, at least where the issuer utilizes new volume cap to issue the bonds that will refinance the original loans.

Repealing the Alternative Minimum Tax

Finally, NCHER supports repealing the Alternative Minimum Tax (AMT), as proposed by the President in the outline of his tax reform proposal, in an effort to lower the tax burden on businesses and individuals. The income to investors on tax-exempt student loan bonds is subject to the AMT, which adds approximately one-quarter of one percent to a full percentage point to the interest rate of these tax-exempt bonds and is passed through to student loan borrowers. The elimination of the AMT will directly benefit students and parents of students by allowing state and nonprofit lenders to offer lower-cost loans to borrowers, since the savings must be passed directly through to students borrowing to attend college.

NCHER supports a 21st Century tax system centered around strengthening businesses and encouraging savings and investments to spur economic growth and opportunity. There is no better way to build this system than by maintaining and expanding the availability of tax-exempt financing that promotes investment in the nation's postsecondary students.

If you have any questions or need additional information, please feel free to contact me at jbergeron@ncher.us or (202) 822-2106.

Sincerely,

James P. Bergeron
President

cc: Member, Senate Committee on Finance