

September 1, 2016

The Honorable Jerry Brown
Governor
State of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: California Assembly Bill 2251, the Student Loan Servicing Act - VETO

Dear Governor Brown:

The National Council of Higher Education Resources (NCHER) strongly urges you to veto Assembly Bill 2251, the Student Loan Servicing Act. While we support the overall goals of the legislation and place a high priority on ensuring that student and parent borrowers receive high-quality customer service, the bill, as written, is overly broad, conflicts with current and pending federal student loan regulations, and will create more confusion for borrowers struggling to pay back their student loans. We believe that the legislation can be improved with a small number of common-sense changes, and passed during the next legislative session.

NCHER is a national nonprofit trade association that represents state and nonprofit agencies that make grant and loan assistance available to students and parents to pay for the costs of postsecondary education. Our members have contracts with the U.S. Department of Education to service federal loans made under the Federal Direct Loan Program, and have a long history of servicing federal loans made under the Federal Family Education Loan Program (FFELP) and private student loans. Many of our members, including state agencies and state-designated authorities, provide higher education access, outreach and financial literacy programs, counseling, and delinquency and default aversion services.


NCHER believes there are six specific items in Assembly Bill 2251 in need of serious and thoughtful consideration. First, the definition of “in this state” expands the legislation’s scope far outside of the state of California, including the nation’s federal student loan servicers (all of whom have loans from students in California randomly assigned by the U.S. Department of Education) who have to comply with existing regulations, requirements, policies, and practices set by the federal government, many of which conflict with the pending legislation. It also conflicts with other state laws meant to protect student and parent borrowers. Second, the bill’s definition of “servicing” that includes any interaction with a borrower to assist them in avoiding default is overly broad, and will likely encompass third-party servicers that work with institutions of higher education to improve their default prevention efforts, guaranty agencies and their collection agency partners in the FFELP program that assist struggling borrowers in late-stage delinquency, and private collection agencies under contract with the U.S. Department of Education that perform pre-default activities. We believe that both definitions should be significantly narrowed.

Third, the bill's language prohibiting the reporting of a borrower's payment dispute conflicts with the policies and procedures required under the Fair Credit Reporting Act (FCRA). The FCRA requires student loan servicers to report the balance and status of the loan, it does not envision parsing out disputed amounts or mandate the reporting of transactions to credit bureaus. The legislation should be amended to mirror the FCRA's language noting that the furnished information has been disputed by the consumer. Fourth, the bill's language setting pro rata shares of costs and expenses based on the licensee's activities in the state is overly burdensome since it would involve annual assessment payments instead of a standard pre-established formula, resulting in the industry incurring significant additional costs if the state launches expensive legal investigations, and unfair since (as stated above) the nation's federal student loan servicers do not directly or indirectly control the number of loans assigned to them in the state of California. Fifth, the bill's language on loan transfer notifications is contrary to the federal requirements set by the U.S. Department of Education in 34 CFR 682.208(e)(1) governing the transfer of federal student loans. These duplicative requirements will be confusing to student and parent borrowers who will receive two notices with different information and instructions. Sixth, the legislation uses terms and definitions when it comes to compliance that are inconsistent with those used by the U.S. Department of Education and the Consumer Financial Protection Bureau, which heavily regulate the activities of student loan servicers. We support amending the legislation to reflect commonly used terms under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The nation's student loan servicers provide an array of important, high-quality services to student and parent borrowers. While there are problems that have surfaced within student loan servicing, the U.S. Congress is in the process of reauthorizing the Higher Education Act to simplify and streamline the confusing and complex array of repayment plans that will increase access to reasonable and affordable ways to repay federal student loans, and to provide the necessary information to students and parents so they can make informed decisions about their postsecondary education. The U.S. Department of Education has also recently begun an effort to standardize some of the items across federal student servicers, including overpayments and other operational inconsistencies. These actions, as well as others under consideration, will greatly improve the federal student loan system. NCHER is concerned that Assembly Bill 2251 will undermine and harm these efforts on behalf of students and families.

Thank you again for the opportunity to share our views on Assembly Bill 2251. Once again, we urge you to veto the legislation so that we can work with the author and other interested parties to improve the bill during the next legislative session. If you have any questions about these comments and suggestions, please contact me at 202-822-2106 or jbergeron@ncher.us.

Sincerely,

A handwritten signature in black ink, appearing to read "J P Bergeron". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James P. Bergeron
President