

July 16, 2015

Ms. Lynn B. Mahaffie
Deputy Assistant Secretary for Policy, Planning, and Innovation
Office of Postsecondary Education
U.S. Department of Education
1990 K Street, NW
Washington, DC 20006

Dear Ms. Mahaffie:

I am writing to express our serious concern with the July 10, 2015 Dear Colleague Letter (GEN-15-14) regarding “Repayment Agreements and Liability for Collection Costs on Federal Family Education Loan Program (FFELP) Loans.” Because of the seriousness of the impact on the nation’s guaranty agencies, I respectfully request a face-to-face meeting within the next week to discuss this important matter.

The Dear Colleague Letter purports to “restate and *clarify* (emphasis added) the rules that bar a guaranty agency from charging collection costs to a borrower who promptly after default enters into a repayment agreement, in particular a rehabilitation agreement, with that agency, and who honors that agreement.” To the contrary, we know of no specific regulation or guidance provided by the Department addressing this point. Over the past two decades, the Department conducted hundreds of audits of guaranty agencies that among other things reviewed agency policies on collection costs and issued no findings in cases where agencies did not follow the policy announced – for the first time – in this Dear Colleague Letter. In fact, NCHER is aware of Department audit findings that write-up guaranty agencies that did not assess collection costs to borrowers, further illustrating the lack of clear direction from the Department in this area.

The Dear Colleague Letter includes a reference that few borrowers enter into repayment within the 60-day notice period, suggesting that the clarifying guidance will not have a material impact on the guaranty agency community. Once again, to the contrary, this policy change will have a substantial impact on guaranty agencies who relied on an accepted understanding of the regulation involved - a regulation that gives the guaranty agency the authority to determine when a borrower entering into a repayment agreement should not be charged collection costs. It should be noted that, contrary to the implication in the Dear Colleague Letter, guaranty agencies (and the Department for that matter) incur substantial costs in assisting borrowers with loan rehabilitation, including those activities that occur during the first two months when

early intervention is key. We also note that the new guidance has no effective date. It certainly would be improper for guaranty agencies to incur potential liability for a rule change for which they had no notice.

As I am sure that you agree, time is of the essence as loan rehabilitation portfolios are sold every week and agencies are now uncertain of the status of their compliance with applicable laws and regulations concerning collection costs. Please let me know at your earliest convenience when you can meet to discuss the ramifications of this Dear Colleague Letter.

Thank you for your prompt attention to this request.

Sincerely,

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

James P. Bergeron
President