

March 31, 2016

The Honorable John King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: FFELP Wind-Down Report

Dear Secretary King:

On behalf of the National Council of Higher Education Resources (NCHER), I am writing to share our recommendations as the Department develops its plan to assist guaranty agencies, lenders, and borrowers in the wind-down of the Federal Family Education Loan Program (FFELP) as required by the Consolidated Appropriations Act, 2016. NCHER is a nonprofit trade association that represents a nationwide network of higher education assistance agencies that administer state-based loan programs to assist students and families pay for the costs of postsecondary education, including 27 of the current guaranty agencies who manage over \$262 billion in outstanding FFELP loans.

Background

The U.S. Department of Education entered into agreements with state-based and nonprofit guaranty agencies in the 1970's to provide stability to the federal student loan program, move program management to the local level, and recruit lenders to participate in a new, guaranteed student loan program. Each state in the nation designated a guaranty agency – either an agency within state government or a not-for-profit organization.

Under the Higher Education Act, implementing regulations, and agreements between guaranty agencies and the Secretary of Education, guaranty agencies became responsible for multiple administrative functions, including:

- Providing a range of college access and outreach services and programs to students, parents, schools, and community organizations to help students gain access to and succeed at postsecondary education. This includes financial aid awareness, consumer education, FAFSA (Federal Application for Federal Student Aid) completion services and events, borrower assistance, ombudsman support, and training and assistance programs to high school counselors and financial aid administrators. These services – which complement the consumer protection services offered by federal and state agencies - are provided to students and families regardless of the type of loan they received to finance their postsecondary education, or even if they do not borrow at all. Many state-based agencies also administer their states' scholarship and grant programs.

- Helping students and families better manage their finances by designing materials and programs on budgeting, establishing good credit, paying for college, and successfully managing debt.
- Working closely with students, borrowers, and schools to provide information and support to ensure successful loan repayment and avoid default. This includes ongoing borrower contact, especially for those student and parent borrowers who have fallen behind on their payments; student loan application processing; student enrollment status management; and delinquency and default prevention activities.
- Reviewing FFELP default claims to ensure due diligence was performed by the lender; purchasing these claims; working with defaulted borrowers to rehabilitate their defaulted loans, restore their credit, and provide them with a fresh start; recovering defaulted loan dollars; processing discharge claims for eligible borrowers; and reporting actions to credit bureaus.
- Conducting detailed program reviews on behalf of the federal government to ensure program integrity and lender and school compliance with pertinent federal and state laws and regulations, and providing important program data and reports to federal and state governments, schools, lenders, and other stakeholders to improve the efficacy of FFELP.
- Protecting borrowers' personal data by complying with data security standards required by the Secretary of Education.

Over time, guaranty agencies built a service delivery infrastructure that essentially enabled them, collectively, to reach every family in every state. Important "front-end" services were expanded to assist families all across the country access and pay for postsecondary education.

NCHER's Recommendations for Inclusion in the FFELP Wind-Down Report

With the end of new FFELP guarantees as of July 1, 2010, the funding available to provide this broad array of services began to decline, resulting in a growing number of guaranty agencies turning their loan portfolios over to other agencies. Even though the program is in a wind-down mode, the remaining guaranty agencies continue to provide important services to students, borrowers, parents, and other stakeholders, services that are not otherwise made available by the Department or other parties. Any unnecessary or premature ending of these services would needlessly harm millions of students and their families nationwide.

NCHER expects that the Department's FFELP wind-down report will comply with the legislative language and Congressional intent included in the Consolidated Appropriations Act, 2016, which states that the plan:

"...shall specifically address guaranty agencies and their subsidies, the current status of the wind down, the financial stability of guaranty agencies, and an assessment of any authority necessary for purposes of the wind down."

To this end, we recommend that the report document the financial strain placed on guaranty agencies by the elimination of FFELP originations, and also recognize that agencies are trying to manage their portfolios under these trying circumstances and continue to provide critical services. We also hope that the report will recognize the important statutory functions that guaranty agencies continue to provide to borrowers, lenders, the federal government, taxpayers and other stakeholders in the FFELP, including but not limited to claim review and processing, regulatory compliance, reporting, default aversion assistance, debt collection and ombudsman support. According to the Department, there remains over \$262 billion in FFELP loans remain under the guaranty agency umbrella. Guaranty agencies provide

accountability for this sizeable federal asset and the functions described above need to continue throughout the wind-down period.

The NCHER membership also believes that the report should recognize the important services, including but not limited to financial aid awareness, college access, consumer education, FAFSA completion services and events, borrower assistance, and ombudsman support that guaranty agencies provide to students and families regardless of the type of loan they received to finance their postsecondary education, and that a significant gap in services may result should guaranty agencies leave FFELP prematurely. A recent NCHER survey revealed that our state and nonprofit agencies provided college and career planning to more than 2.6 million individuals, college completion services to more than 942,700 students, financial literacy education and support to 747,800 persons, and student grants and scholarships to 1.7 million students. These services enhance college affordability, increase financial literacy of college-age students and families, encourage responsible borrowing, and reduce defaults, resulting in substantial cost savings to the federal government. Students and their families – FFELP and Direct Loan borrowers and even those that do not take out student loans to finance their postsecondary education - benefit from the services described above, and most of these services are not otherwise provided in a comprehensive manner by the Department or other entities. The Department should work with Congress on the reauthorization of the Higher Education Act to ensure that these services continue in the re-examination of the federal student loan programs.

The following is a list of specific policy items that NCHER recommends the Department include in the wind-down report, including actions the Department can take to ensure the orderly wind-down of guaranty agencies and FFELP in a manner that preserves the continued delivery of these services for as long as the guaranty agencies are willing and able to provide them:

Transition Processes and Support

- Process for Relinquishing FFELP Portfolios: The Department should work in collaboration with guaranty agencies to develop and delineate a specific process for those agencies interested in relinquishing their FFELP portfolios and related guarantor functions, and the criteria and process that the Department will use when selecting successor agencies. The process should be open and transparent for all agencies and the terms and conditions should be known in advance, and the process should include ways to minimize borrower disruption and maximize borrower communication, while also continuing college access and outreach services to all students and families in the affected states.
 - *Rationale: NCHER understands that additional consolidation among guaranty agencies is inevitable and believes that it is critically important that the Department's processes to support such activity are well-constructed, predictable, transparent, and guaranty agency-driven.*

- Continued Collection of Defaulted Accounts: The Department should allow collection agencies working on behalf of guaranty agencies relinquishing their FFELP portfolios, if they are so willing, to continue being responsible for the collection of defaulted accounts where the borrower is currently making payments, is subject to a rehabilitation agreement, or is under an administrative wage garnishment. This could be accomplished by allowing the successor agency to assume the collection contracts of the former guarantor.
 - *Rationale: Borrower contact, particularly as it relates to defaulted loan recovery, is critical. We know that the transfer of accounts from one collection agency to another inevitably results in a break in contact. Consideration should be given to maintaining continuity whenever possible to ensure borrowers are not adversely affected by such transfers.*

- Technical Assistance and Support: The Department should provide technical assistance to those guaranty agencies relinquishing their FFELP portfolios and related guarantor functions, including job training assistance using, where possible, U.S. Department of Labor programs.
 - *Rationale: Guaranty agencies relinquishing their portfolios should not be responsible for technology costs related to converting accounts to the successor agency. In addition, collectively, impacted agencies will need to retrain and/or place thousands of employees whose jobs will be lost as portfolios are transferred. The Department should assist with this effort to the extent possible.*

Stabilization of Federal Assets, including the Federal Reserve Fund

- Just-in-Time Payments: The Department should provide “just-in-time” reinsurance payments to guaranty agencies and define the process that the Department will use to ensure timely reinsurance reimbursement. Currently, agencies do not receive reinsurance for claim payments for three weeks or more, putting unnecessary stress on the cash flow of many agencies’ Federal Reserve Funds.
 - *Rationale: Recent Congressional passage of language providing guaranty agencies with 100 percent reinsurance ensures that agencies will be able to fulfill their claim-payment responsibilities; however, cash-flow issues continue to hinder the claim processing function. The Department should reimburse guaranty agencies within 72 hours of claim payment to mitigate the unnecessary cash-flow concerns of many agencies.*
- Payment of DAF After the Initial Delinquency: The Department should support payment of the default aversion fee (DAF) more than once on any loan, as specifically permitted by the Higher Education Act of 1965. Section 428(l)(2)(B) of the Act permits payment on a loan more than once, if at least 18 months has elapsed after the borrower reenters current repayment status and the date of a subsequent default aversion assistance request, so long as during the period between such dates the borrower was not more than 30 days past due. However, under current FFELP regulations (34 CFR 682.404(j)(1)), DAF may not be paid more than once for any loan. This is harmful to struggling borrowers, as a significant number of students and parents encounter financial difficulties again after receiving default aversion services to cure the initial delinquency. Given the end of new FFELP originations, many guaranty agencies will struggle to provide these important services without additional resources. This situation is especially acute given the rising number of re-delinquencies over the past several years, where default aversion services must be provided in the absence of revenues to support those services.
 - *Rationale: The implementing regulations authorizing payment of a single default aversion fee were workable only for a growing federal student loan program where new loan originations ensured a revenue stream adequate for guaranty agencies to provide successful default aversion services. In today’s environment, borrowers who continue to need assistance cannot be well served if agencies have to provide the activities essentially without reimbursement. This proposed change is in the best interest of the program, borrowers, and taxpayers.*
- Direct Federal Payment of DAF: The Department should support direct federal payment of the default aversion fee, instead of indirect payment from the Federal Reserve Fund as provided under Section 422A(d) of the Higher Education Act of 1965. That section was written before the 2010 changes to the federal student loan programs ended new FFELP originations. While this could be accomplished through legislation, the Department might consider using the authority under Section 428A to enter into voluntary flexible agreements with guaranty agencies to implement the change.
 - *Rationale: While it should make little to no fiscal difference to the federal government, direct payment by the Department, instead of payment from the Federal Reserve Fund,*

removes unnecessary cash-flow concerns on a guaranty agency's Federal Reserve Fund and ensures that important default aversion and prevention services can be provided to struggling borrowers.

Operational Activities

- Data on the FFELP Portfolio: The Department should provide guaranty agencies with available data within its possession, including estimates and projections, on the amortization of the FFELP portfolio.
 - *Rationale: Guaranty agencies will need to make critical decisions as the FFELP wind-down proceeds and, while they have data on their own portfolios, the agencies would also benefit from the Department's program-wide and agency specific information and analyses.*
- AMF Payments: The Department should support a statutory change under which the Account Maintenance Fee (AMF) would continue to be paid throughout the FFELP wind-down period. Congress included a one-year extension of the authority for AMF payments in the Consolidated Appropriations Act, 2016 and NCHER and its membership have requested that Congress do so again through the upcoming budget and appropriations processes.
 - *Rationale: AMF is a necessary component of the funding required for guaranty agencies to carry out their statutory and regulatory responsibilities and the Department should support Congressional action that will ensure payment of AMF throughout the FFELP wind-down.*
- Cap on Federal Direct Consolidation Loans: The Department should support a statutory change to remove the 45 percent cap on Federal Direct Consolidation Loans contained in section 428(c)(6)(B)(ii) and 428(c)(6)(C). Recent changes to regulations governing loan rehabilitation that reduce recoveries through administrative wage garnishment, and an expected decline in FFELP loan rehabilitations, may very well increase the percentage of guaranty agency collections represented by Direct Loan Consolidation.
 - *Rationale: For a program in a wind-down mode and with the advent of rehabilitation loans being assigned to the Department due to lack of private sector interest, it is no longer logical to cap Direct Loan consolidations at what is now an arbitrary benchmark. In appropriate cases, Direct Loan consolidation also aligns with the borrower's interest in obtaining assistance in repaying back their student loans, including becoming eligible for additional income-driven repayment options.*

Continued Support to Students and Families

- NDNH Access for Guarantors: The Department should pursue an agreement with the U.S. Department of Health and Human Services to resume matches against the National Directory of New Hires (NDNH) as authorized by 42 U.S.C. 653(j)(6) and to provide that information to guaranty agencies as authorized by 42 U.S.C. 653(j)(6)(E)(i)(I).
 - *Rationale: Accessing NDNH data allows the Department and guaranty agencies to locate borrowers who are employed but not making payments on their defaulted student loans. This proposed change will allow agencies to contact and assist struggling borrowers in entering into voluntary repayment agreements in an effort to get their federal student loans back into good-standing. It will also assist the federal government in initiating administrative wage garnishment against borrowers unwilling to voluntarily enter into repayment agreements, increasing default recovery and returning scarce resources to the program.*
- Financial Education Services to Students and Families: The Department should support legislative and regulatory proposals to create avenues for the provision of personalized financial education, debt management, and default prevention services to students, families and

borrowers under the Federal Direct Loan Program. This approach could also assist institutions in providing financial literacy and counseling activities as well as default management and prevention to struggling borrowers.

- *Rationale: The need for personalized financial education services will only grow even as FFELP winds-down. The Department should actively support proposals that would ensure services continue to be provided to students and families, preferably by organizations with experience in assisting student and parent borrowers repay their federal student loans. This will benefit student and parent borrowers who lack basic information and do not understand their repayment obligations, and will ultimately save taxpayer money.*

Finally, we urge the Department to work in partnership with guaranty agencies during the wind-down period. By working together, we can avoid any unnecessary surprises that will imperil agencies and threaten federal assets. The threat of retroactive application of the new policy set forth in Dear Colleague Letter GEN-15-14 was just such a surprise, and could cause substantial harm to guaranty agencies and their programs that help students and borrowers. We ask the Department to reconsider this policy so that it applies only to loan rehabilitation agreements entered into after July 10, 2015, the date of issuance, and ask further that the report reflect a commitment to work together with guaranty agencies in the critical period ahead.

NCHER supports the important and successful work of guaranty agencies in helping students, families, and borrowers access higher education. We urge the Department to adopt our recommendations and provide for an orderly wind-down of the federal guaranteed student loan program.

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

Sincerely,



James P. Bergeron
President