Written Testimony from James P. Bergeron, President of the National Council of Higher Education Resources (NCHER) Before the California Senate Banking and Financial Institutions Committee on Assembly Bill 2251, the Student Loan Servicing Act

August 25, 2016

Chair Glazer, Vice Chair Vidak, members of the Committee,

Thank you for the opportunity to testify today in opposition to Assembly Bill 2251, the Student Loan Servicing Act.

My name is James Bergeron and I am President of the National Council of Higher Education Resources, a national nonprofit trade association representing state, nonprofit, and private organizations that assist students and families in paying for college and managing their student loan debt.

Our state-based members provide many services in the higher education industry. Some are under contract with the U.S. Department of Education to service Federal Direct Loans; others are servicers and guaranty agencies supporting the legacy Federal Family Education Loan Program (FFELP); and still others work with institutions of higher education and their student and parent borrowers to help reduce instances of delinquency and default. We also have member organizations that provide and service private education loans that are used to cover the cost of attendance above the loan limits imposed by the federal government.

Like members of the Committee, NCHER members are growing increasingly concerned with the amount of debt shouldered by student and parent borrowers and the impact that this burden is having on the ability of young Americans to own a house, buy a car, and save for retirement. The White House Council of Economic Advisors discusses many items around student loan debt in a July report titled, "Investing in Higher Education: Benefits, Challenges, and the State of Student Debt." The report talks about how the majority of the rise in student loan debt can be attributed to increased enrollment and that student loan debt, while steadily rising, "as an investment in education, is associated with additional income, putting many households in a better position." To address the challenges for borrowers with lower earnings, the report highlights the work of Congress and the Obama Administration to increase funding for Pell Grants and help student and parent borrowers enroll in income-based repayment plans. It discusses the importance of state efforts to increase discretionary funding to institutions to alleviate tuition increases (looking at a state-by-state approach, the report would have commended the California Legislature's work to strengthen the Cal Grant program), and the efforts of states and institutions to educate students and families about postsecondary education.

Assembly Bill 2251 isn't about addressing the nation's student loan debt, it's about imposing new requirements on student loan servicers, including how they communicate with student and parent borrowers and comply with California specific rules. The focus on improving student loan servicing is commendable and one that our members take seriously. Many of our members have over 45 years of expertise in providing high-quality customer service to students and families. Our members have daily conversations with the U.S. Department of Education about ways to improve borrower communication and service generally. These ongoing efforts, and those of consumer groups and industry, resulted in the Department's recent release of a new policy direction on student loan servicing in late July. Under the new directive, the Department is moving to a single servicing system focused on providing a single point of contact for all borrowers, measuring servicing performance on a range of indicators, and providing standardized practices for all borrowers around how payments are credited to borrower accounts, how to deal with overpayments, and consistent credit reporting. The initial outline of these requirements runs to 56 pages.

For our servicers under contract with the U.S. Department of Education, Assembly Bill 2251's licensing regime doesn't make sense. By the time that this legislation would become effective, more than 80 percent of federal student loans will be owned by the Department and the new single student loan servicing system will be in place. State-specific requirements not only would likely be unnecessary, but would create conflicts. For example, Assembly Bill 2251 mandates that servicers notify the borrower who their servicer is upon the assignment of the student loan, even though the servicer's contract is expected to mandate that it notifies borrowers that their servicer is the U.S. Department of Education. This doesn't even get into the challenges posed if the state pulls the license of a service provider that may be processing applications or providing high-touch servicing for the Department of Education, as envisioned under the new system.

For smaller services not under contract with the Department of Education, the legislation will impose a significant financial and compliance burden. These small servicers do not have the operational capacity to comply with the legislation's litany of requirements or the financial capacity to shoulder the pro-rata portion of the bill's financing structure. Consolidation or a transfer of California borrowers to larger servicers is simply not feasible. A better solution would be to exempt state-based, nonprofit lenders and servicers from the bill's requirements. These lender/servicers have smaller portfolios, with few California borrowers – generally just California residents who attended a school in their state or in-state residents who moved to California after college. It would be a tremendous burden for these lender/servicers to apply for a California license and to comply with a separate set of rules for the California residents whose loans they service.

Finally, state and nonprofit guaranty agencies that assist delinquent borrowers seem to be covered by the definition of "servicing" in the bill even though they do not perform traditional servicing activities. Guaranty agencies have agreements with the U.S. Department of Education to provide delinquency prevention work and default collections on FFELP loans. One guarantor – ECMC – employs 250 individuals in the Sacramento area. They work with borrowers throughout the nation, which means that any rules adopted by the Department of Business Oversight would have a nationwide impact. The regulator for these activities is, and should continue to be, the Department of Education. Many of these agencies, and some state, nonprofit secondary markets, also work directly with institutions of higher education to help reduce their delinquency and default rates. The underlying bill exempts nonprofit debt settlement and debt management companies. It should similarly exempt state and nonprofit guaranty agencies and third-party organizations who work with institutions of higher education through a specific exclusion as provided to others in section 28102(b).

Thank you again for the opportunity to share NCHER's comments on Assembly Bill 2251. As noted, 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. There are common-sense changes that can be - and should be - made to the bill to address each of the items raised in the testimony. We urge the Committee to vote to hold the bill, where we can work with the author and committee members in the next session to improve student loan servicing.