

December 7, 2016

The Honorable Donald J. Trump  
President-Elect  
United States of America  
Presidential Transition Headquarters  
1800 F Street, NW, Room G117  
Washington, DC 20270-0117

Dear President-Elect Trump:

On behalf of the National Council of Higher Education Resources (NCHER), I am writing to congratulate you on your recent election as President of the United States. NCHER and its membership stand ready to work with you as your staff begins the process of developing higher education proposals and policy during the transition and in the initial days of the new Administration.

### **Introduction**

NCHER is the nation's oldest and largest higher education finance trade association. The organization represents its members on public policy initiatives within the legislative and executive branches of the federal government, and brings together the higher education community to strengthen all federal and private student loan and state grant programs to promote college access and success. We are actively involved with Congress, the U.S. Department of Education, the U.S. Department of Treasury, the Consumer Financial Protection Bureau, the Federal Communications Commission (FCC), other federal agencies, associations, and organizations engaged in higher education financing policy. Many of NCHER's members fit into one or more of these categories:

- Servicers and collection agencies with contracts with the U.S. Department of Education to service and recover loans made under the Federal Direct Loan Program;
- Lenders, servicers, and collectors involved in providing and administering private or alternative loans to student and parent borrowers;
- Lenders, holders, servicers, guaranty agencies, and collection agencies responsible for administering the Federal Family Education Loan Program (FFELP). For more than 40 years, NCHER supported the community by sharing best practices in the servicing of federal student loans and designing and updating the Common Manual that set uniform standards for the industry;
- Third-party service providers that assist colleges and universities and their students in the proper management of student loan debt, and assist student and parent borrowers in avoiding delinquency and default;
- State grant agencies focused on improving pre-college, in-school, and post-college financial literacy and promoting college access and success; and
- Colleges and universities interested in higher education financing.

NCHER's mission is to enhance its member organizations' abilities to help families and students develop, pay for, and attain their educational goals so they can pursue meaningful and rewarding work and become contributing members of society. The mission covers a broad range of postsecondary education service opportunities for students, parents, schools, and community organizations to help students gain access to and succeed at postsecondary education. This includes financial aid awareness, consumer education, Federal Application for Federal Student Aid completion services and events, borrower assistance, ombudsman support, training and assistance programs to high school counselors and financial aid administrators, and a wide range of programs and services on budgeting, establishing good credit, paying for college, and successfully managing student loan debt.

### **Suggested Changes to the Obama Administration's Regulatory Agenda and New Opportunities**

Many of NCHER's members have more than 45 years of expertise in providing high-quality customer service to students and families, and can be helpful to the new Administration as it begins to review and carry out its regulatory agenda and develop policies and proposals to send to Congress for consideration during the upcoming reauthorization of the Higher Education Act. We have identified the following six areas that should be reviewed by incoming personnel within the first 100 days:

#### **Dear Colleague Letter on Collection Costs – U.S. Department of Education**

On July 10, 2015, the U.S. Department of Education issued a Dear Colleague Letter (DCL GEN-15-14), which states that the Department's policy precludes the charging of collection costs to defaulted borrowers who enter into rehabilitation agreements within 60 days of notice of default and comply with the terms of the agreement. The Department issued the DCL even though, historically, guaranty agencies were permitted by the Department to charge these fees. Guaranty agencies had been audited by the Department on multiple occasions and never been found to have improperly charged collection costs or advised of any restriction on the date that such fees could be assessed. In addition, annual Office of Management and Budget circulars expressly permitted guaranty agencies to charge collection costs in these circumstances. Because the DCL has retroactive effect, it imposes substantial liability on guarantors for prior conduct which the agencies thought was compliant with the Higher Education Act and the corresponding regulations.

**The Trump Administration should rescind the DCL on collection costs upon the basis that it illegally imposed a new substantive rule of which guarantors had no fair warning, and make clear the collection costs at issue were not prohibited prior to the issuance of the Dear Colleague Letter.**

#### **Final Rules on the Telephone Consumer Protection Act – FCC and U.S. Department of Education**

On August 11, 2016, the FCC issued final rules implementing Section 301 of the Bipartisan Budget Act of 2015, which granted an exception to restrictions in the Telephone Consumer Protection Act (TCPA) so that calls (including both voice calls and text messages) to collect federally-owned or -guaranteed debt can be made to cellular telephones using an autodialer or prerecorded voice without prior consent. The purpose of the new law was to allow more borrowers, particularly those in distress, to receive timely information either to avoid, or to get out of, delinquency and/or default. This includes the need for borrowers to receive critical information on the range of loan repayment options available to assist them in managing their student loan debt. Unfortunately, the FCC's rule restricted the number of call attempts to three-per-30-day period and subjected these calls to several of the limitations from its July 2015 omnibus declaratory rule, including restrictions on calls to reassigned numbers. According to the U.S. Department of Education, 41.5 million Americans collectively owe \$1.26 trillion in federal student loan debt. Of the amount, the Department indicates that over \$128 billion is in default. Clearly, many Americans are in need of assistance in managing their student loan debt and live borrower contact is the key to making this happen.

**The Trump Administration should review the final TCPA rules to ensure they strike a more appropriate balance between protecting consumers and allowing reasonable and responsible use of dialer technology to reach borrowers on their cell phones to provide them with needed assistance. The final rules need to reflect the fact that student loan servicers do not make “robocalls,” but, rather, are reaching out to borrowers to assist them in avoiding or limiting delinquency and default. The calls are not random calls or those made to market products, they are made to borrowers who are currently repaying student loans owned or guaranteed by the federal government.**

#### Procurement for a New Student Loan Servicing Platform – U.S. Department of Education

On October 26, 2016, the U.S. Department of Education issued a Request for Proposals (RFP) on student loan servicing. Built on the principles included in the President’s Student Aid Bill of Rights, the new procurement is centered on establishing common borrower experience and branding and common servicer practices, and improving customer service through fewer borrower transfers and improved oversight and data collection and analysis. The RFP, which is one of the largest civilian contracts across the federal government, proposes to select a single loan servicing system provider where all federal student loans reside on a singular platform where borrowers can access and manage their loan services (payment information, loan forms, etc.). Under the new system, there would be a single telephone number for contact and the use of social media to provide borrower service. The single student loan platform would use a network of customer service providers to carry out the new requirements. Currently, the deadline for responses is January 9, 2017, with the final selection potentially occurring in February 2017. Since the initial announcement, the RFP process has suffered from a lack of communication between the Department and the student loan industry and a lack of detail on many of the basic functions around student loan servicing. For example, the initial conceptual Phase 1 request and the more detailed Phase 2 request lacked any detail on the pricing structure for subcontractors, how loans will be allocated to the multiple service providers, whether there will be a second procurement for determining the multiple student loan service providers, how loans will be transitioned to the new system, how borrowers will continue to receive high-quality services, and many other important questions. The Department also contemplates an as-yet-undefined Phase 3 solicitation for additional customer service providers, adding more uncertainty. At the core, the Department has failed to answer how this new system will provide better services to student and parent borrowers.

**The Trump Administration should review the current RFP on student loan servicing, consider delaying the upcoming award, and determine what policies and approaches need change or modification to make meaningful, sustainable improvements to federal student loan servicing.**

#### Guidance on Use of Tax-Exempt Bonds to Finance Education Loans – Internal Revenue Service

In November of 2014, the Internal Revenue Service issued Notice 2015-78 addressing a number of issues that had been raised regarding the tax-exempt financing of education loans. While the guidance was welcome and generally helpful, it did not clarify whether tax-exempt bonds issued to refinance loans previously financed on a tax-exempt basis are or are not deemed to be an advance refunding, particularly where the issuer will be utilizing new tax-exempt volume cap. The Notice’s silence on the issue, and the resulting confusion, has hamstrung 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.

**The Trump Administration should issue clarifying guidance that, in the case of a refinancing of an original loan financed with tax-exempt bonds, the bonds issued for refinancing purposes will not be considered refunding bonds where the issuer is utilizing a new volume cap allocation to issue the bonds that will refinance the original loans.**

## State Licensing of Student Loan Servicers – U.S. Department of Education

On September 29, 2016, California Governor Jerry Brown signed Assembly Bill 2251, the Student Loan Servicing Act, to impose new licensing and regulatory requirements on federal and private student loan servicers. Among many provisions, the new law sets requirements on how servicers under contract with the U.S. Department of Education must service loans made under the Federal Direct Loan Program - as well as those servicers with FFELP loans. The Department already has detailed rules on the same topics. For example, Assembly Bill 2251 mandates servicers notify the borrower who their servicer is upon the assignment of the student loan, even though the upcoming contract is expected to mandate that borrowers be notified that their servicer is the U.S. Department of Education. The law's language on loan transfer notifications is also contrary to the federal requirements set by the Department in 34 CFR 682.208(e)(1). These duplicative and conflicting requirements will be confusing to student and parent borrowers who will receive two notices with different information and instructions. There will be additional challenges if the state pulls the licenses of federal student loan servicers, all of whom have loans from students in California randomly assigned by the Department. Connecticut and the District of Columbia have passed comparable laws, and several states are considering similar legislative efforts.

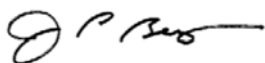
**The Trump Administration should review state student loan servicing laws and determine that federal law and contractual requirements preempt state law when it comes to federal student loan servicing.**

## Private Capital in the Federal Student Loan Program – U.S. Department of Education and U.S. Department of Treasury

Since passage of the Affordable Care Act in 2010, the U.S. Department of Education originates all new federal student loans at a pace of nearly \$100 billion per year. The Federal Direct Loan portfolio now stands at \$911.6 billion and is expected to continue to grow at a substantial rate, leaving taxpayers at significant risk as default rates, severe delinquencies, and the cost of generous loan forgiveness programs continue to rise. NCHER believes the private sector – led by state, nonprofit, and for-profit entities at the local level – can do a better job of administering the student loan programs than the federal government. We look forward to working with the Trump Administration on potential proposals to enhance the role of private capital and leverage local expertise in financing the cost of college and administering education loans. One such short-term idea is to securitize a portion of the Direct Loan portfolio initially on a limited basis using state, nonprofit, and for-profit entities, who could be responsible for servicing and collecting the loans. This would remove the debt, and the corresponding risk, from the nation's balance sheet and decrease taxpayer exposure. Longer-term, we believe the prior system of a public-private partnership for funding and administering student loans was and would still prove to be a more beneficial approach for students, families, and taxpayers.

Thank you again for the opportunity to introduce you and your staff to NCHER. Our members look forward to playing an active role in the future and supporting federal policies that promote college access and success. If you have any questions or need additional information, please feel free to contact me at [jbergeron@ncher.us](mailto:jbergeron@ncher.us) or (202) 822-2106.

Sincerely,



James P. Bergeron  
President