

April 19, 2017

The Honorable Daniel Biss
Illinois State Senate
417B Capitol Building
Springfield, IL 62706

Dear Senator Biss:

The National Council of Higher Education Resources (NCHER) is writing to register concerns with certain aspects of Senate Bill 1351, the “Student Loan Servicing Rights Act.” As currently drafted, the bill would create a separate set of rules for federal and private student loan borrowers residing in Illinois, which would cause confusion for borrowers and servicers alike.

NCHER is a national, nonprofit trade association representing state, nonprofit, and private organizations that make grant and loan assistance available to students and parents to pay for the costs of postsecondary education. Our membership includes organizations under contract with the U.S. Department of Education to service and recover outstanding loans made under the Federal Direct Loan Program, entities that service and recover outstanding loans made under the Federal Family Education Loan Program (FFELP), and organizations that service and recover private education loans.

Today, the total amount outstanding on loans made under the federal student loan programs authorized under the Higher Education Act of 1965 stands at approximately \$1.3 trillion, with more than \$1.0 trillion directly owned by the federal government. There are also approximately \$100 billion in outstanding private education loans. The U.S. Department of Education has issued comprehensive regulations and other guidance covering the servicing of federal student loans. For loans it owns, the Department has contracts with nine organizations to service the Federal Direct Loan portfolio; these contracts include detailed provisions governing many aspects of student loan servicing and updated performance metrics under which loan volume is allocated to those companies providing high-quality services to student and parent borrowers. In addition, the ten largest servicers of federal and private student loans, who together service a significant majority of all student loans, are subject to supervision by the Consumer Financial Protection Bureau (CFPB). Further, the CFPB has stated that it plans to issue its own regulations governing the servicing of all student loans in the near future.

NCHER understands that, with all the attention being devoted to the cost of college and how to pay for it, states are looking to identify their role in postsecondary education. Our organization agrees that more can be done at both the federal and state levels to increase college affordability—the real problem underlying most of the concerns addressed in the media. Borrowers are overburdened with debt not primarily because of decisions made by servicers, but because the cost of college continues to rise as states reduce their investment in higher education and colleges and universities continue to shift the burden of paying tuition and fees to students and their families. We also recognize and share in the concern about student loan

defaults, while noting that, at this time, delinquencies and defaults on student loans are actually on the decline.

Similar to other state efforts, Illinois SB 1351 would create a Student Loan Ombudsman in the state who would serve as a local advocate for student loan borrowers. Under FFELP, this important role was provided by state-based guaranty agencies such as the Illinois Student Assistance Commission (ISAC). With the elimination of new FFELP originations in 2010, the Department of Education's Federal Student Aid Ombudsman Group and the CFPB's Student Loan Ombudsman now largely handle this responsibility, at least for loans owned by the Department of Education. Despite the existence of multiple agencies involved in this effort, NCHER sees benefit in having state-based borrower advocates as long as the costs of running such offices are not passed on to the servicers. We also urge you to leverage the expertise of existing state and nonprofit organizations in assisting student and parent borrowers repay their student loans; organizations such as ISAC have more than 50 years' experience in counseling students and families on navigating the financial aid process, how to avoid over-borrowing, the importance of managing student loan debt, and budgeting and personal finance management skills.

SB 1351 would also establish a state licensing scheme for companies engaged in providing services to federal and private student loan borrowers. NCHER does not oppose this effort, and supports it with respect to unscrupulous debt-relief companies who prey on struggling borrowers and require the payment of high fees to perform those services that students and parents can receive free from their student loan servicer. But we would urge the state to differentiate between those "bad actors," organizations that service federal loans and are already overseen by both the U.S. Department of Education and the CFPB, companies that service private education loans that are supervised by the CFPB, and state agencies that perform delinquency and default prevention efforts.

As noted, NCHER does not necessarily oppose state licensing efforts, but we want to ensure that such efforts are not unduly onerous. We are specifically concerned with potential rules that would impose state-specific servicing routines, thus creating significant differences between the servicing of borrowers residing in Illinois and borrowers residing in other states who will be governed by both federal and state requirements. If the Illinois legislation is enacted as currently drafted, the additional regulatory burden would add unnecessary complexity to the federal student loan system, creating a regulatory and supervisory maze in the process and confusion for both student loan borrowers and their servicers. One example of the potential conflict presented by overlapping federal and state rules relates to the proposed requirements applicable to the transfer of servicing. More than three pages of detailed requirements on this subject are included in the bill under Section 5-60. However, there are already federal rules in place that apply to servicing transfers, and servicers themselves have adopted best practices to handle transfers of borrower accounts. Another example of the potential for confusion for borrowers is the repayment specialist provisions included in Section 5-30. The bill would require that all inbound and outbound calls with borrowers meeting certain criteria be routed to a repayment specialist. Thus, if an eligible borrower calls into a servicer to discuss his or her problem, he or she may spend several minutes detailing the circumstances for the call before the initial servicer representative realizes that the caller is a federal or private loan borrower eligible for referral to a repayment specialist, who would need to be on standby. More than likely, the borrower would need to repeat much of the conversation that he or she already had with the initial representative. Borrowers will certainly object to being passed around and having to start the conversation over with another person. Both federal and private student loan servicers employ highly-trained staff who have expertise in federal financial aid regulations, debt management services, and delinquency and default prevention activities. In this case, the requirements would seem to be inefficient, and unworkable for many smaller servicers who would be unable to absorb the expenses for a new staffing structure.

Further, a number of federal and private student loan servicers are relatively small in size and service a limited number of Illinois borrowers. The bill would encompass these state-based student loan

organizations created by their state legislatures to make and/or acquire, and then service, student loans. Under the federal tax code, these organizations can only service loans to students, and parents of students, residing in their state or for students attending schools within the state. However, recent graduates are mobile, and a certain percentage will likely move to states throughout the country, including Illinois. The cost of licensure and regulatory compliance in multiple states could be prohibitive for these state organizations. The result may very well be that they exit the servicing business, leaving only a small handful of large national servicers remaining. NCHER recommends that state-based servicers, who are already regulated by the federal government and their individual states, be exempt from the licensure requirement of the bill. Alternatively, we would recommend that servicers who service a limited number of Illinois borrowers, perhaps 100,000, be exempt from the licensure requirement. We also recommend that the legislation add state-based guaranty agencies that perform limited activities on behalf of the Department of Education to the list of exempt organizations in Section 15-5(b) of the bill. Guaranty agencies like ISAC perform delinquency and default prevention activities for FFELP borrowers on behalf of the Department of Education, and are paid administrative fees to carry out these activities by the federal government. They do not perform traditional servicing activities such as processing payments or maintaining student records while in grace and, as such, their activities would not be subject to the detailed requirements of the bill. Finally, state-based, nonprofit organizations – be it servicers or guaranty agencies - are chartered and structured to carry out the interests of their public missions. Many of these entities have Board of Directors composed of governors, state officials, and legislators, and their senior executives are public employees. The bill's requirement that such officials undergo an investigation and background check would be an overreach.

NCHER's intent in writing this letter is to provide a baseline understanding of some of the issues that could arise when states regulate federal and private student loan servicers and to urge caution, as overlapping federal and state requirements could create unnecessary compliance headaches and confusion for servicers and consumers alike. We urge the Illinois Senate to consider these comments, and those provided by all stakeholders, and amend Senate Bill 1351 in an effort to improve the student loan system for all students and parents. We would be happy to work with you and your staff on specific amendatory language reflecting our comments.

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

Sincerely,



James P. Bergeron
President