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April 24, 2017

Mr. Darrin A. King
Paperwork Reduction Act Officer
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Docket No. CFPB-2017-0002; OMB Control Number: 3170-XXXX; Student Loan Servicing Market Monitoring

Dear Mr. King:

This letter is submitted in response to the Consumer Financial Protection Bureau's (the "Bureau") Notice and Request for Comment (the "Notice") for a new Information Collection titled, "Student Loan Servicing Market Monitoring" that was published in the *Federal Register* on February 23, 2017. The Notice would require those student loan servicers under the Bureau's supervisory authority to comply with an extensive quarterly data collection regime.

The National Council of Higher Education Resources ("NCHER") is a national, nonprofit trade association representing state, nonprofit, and private higher education service agencies that administer education programs 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 (the "Department") 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. Seven of the organizations who we believe would be subject to the new reporting requirements are members of NCHER.

The Bureau currently has access to a wealth of information. Unfortunately, media coverage tends to be based on anecdotal reports. Better data would help place those stories in proper perspective and dispel some of unfair criticism of the nation's student loan servicers. However, the proposed data request goes far beyond what is necessary for this purpose, is duplicative of data that is otherwise available to the Bureau and, most significantly, is unduly burdensome on the servicers that would need to provide the data on a quarterly basis.

In this letter, NCHER outlines the nine concerns that we have with the proposed order contemplated by the Notice. We also want to associate ourselves with the comments filed by the Student Loan Servicing Alliance ("SLSA") and the Consumer Bankers Association raising additional concerns with the Notice.

A. The Bureau Grossly Underestimates the Burden on Servicers

The Bureau seeks comment on its estimate of the burden imposed on student loan servicers by the detailed requirements included in the Notice. NCHER believes that the Bureau's cost estimate of \$216,000 for the initial set-up underestimates by a wide margin the financial and regulatory burden imposed on federal and private student loan servicers. Coming up with a realistic estimate of the burden is difficult, in part because servicers are still investigating possible paths to some of the required data collection. Also, the Bureau's hourly cost assumption of \$44.67 per labor hour is unrealistic, particularly for the initial set-up as senior analyst and programming resources will be required; an all-in cost of \$75 per hour at minimum would be more realistic. One servicer has estimates that the initial compliance burden would involve 1600 hours of work. Based on this estimate, SLSA suggests that the lower bound of the overall burden to set up the required data collection system would be more than \$870,000. The Bureau estimates that the annual recurring costs for the servicers will be \$72,000. SLSA estimates that the recurring annual costs will be much higher. Bottom line, as SLSA's analysis indicates, the discrepancy, when compared with the Bureau's estimate, is substantial and far exceeds the estimates identified in the Notice.

B. The Bureau Has Access to Voluminous Responsive Data Already

NCHER believes that the Bureau has access to other sources from which it can obtain access to the types of information covered by the proposed order without requiring student loan servicers, at considerable expense, to compile and report the information. For federal student loans, much of the data requested is duplicative of information already accessible to the Bureau from the Department of Education. 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 consisting of Direct Loans and federally-owned FFELP loans, all of which are serviced by the nine servicers under contract with the Department. These servicers provide reports to Department on a regular basis, much of which is publicly available on the Department's Federal Student Aid Data Center. Under its Memorandum of Understanding with the Department, the Bureau could request additional information on the federal student loan portfolio directly from the Department. The Federal Student Aid Data Center and the National Student Loan Data System also contain information on FFELP loans provided by FFELP lenders and servicers.

For private education loans, the proposed information collection would substantially duplicate existing reports published by MeasureOne, a higher education data and analytics firm. For the past six years, the largest private education loan originators have worked together to voluntarily report data on their loan activity and loan performance. This reporting system provides a well-established, transparent, and trustworthy view of the private loan market, including its quarterly performance. Unfortunately, the proposed order would require the industry to substantially modify its current data collection efforts, instead of relying on readily available information that is currently being collected and that provides comparable information across the industry multiple times a year.

NCHER does not believe that there will be any appreciable benefit from modifying the existing information collection on private education loans and imposing additional unnecessary costs on these servicers. In fact, we question whether detailed monitoring of private loans is necessary. Private education loans comprise less than seven percent of outstanding student debt in the United States. As the data already published by MeasureOne reveals, the private loan market has relatively low risk factors for consumers. Private student loans are underwritten for ability to pay, taking into consideration credit history performance. The default rate on private education loans is less than two percent, far lower than federal loans and auto loans, which are secured. Private loans are underwritten for ability to repay, with most based on a cosigner who is employed. The stated purpose of data

gathering under section 1022 of the Notice is to “monitor for risks to consumers in the offering or provision of consumer financial products or services.” Given the current state of the private loan market, it is not necessary for the Bureau to “monitor risks to consumers” or to create a special data reporting system of private loans.

C. The Bureau Should Align Its Data Requests with the Department’s Reporting Requirements

As noted, federal student loan servicers and FFELP lenders and servicers currently provide a host of detailed data elements to the Department. In order to reduce the burden on the servicing industry, NCHER believes the Bureau should align its data reporting requirements with those already required by the Department. For example, the proposed order would require the reporting of loan status for loans in active repayment broken down, for loans not current, by certain delinquency categories. Federal loan servicers already provide this information to the Department, but the categories are defined slightly differently. Federal servicers should not be required to maintain two separate record systems.

D. The Proposed Order Ignores the Heterogeneity of Data Systems

NCHER believes the proposed order fails to recognize the complexity of the student loan process and the servicing systems currently used to administer federal and private student loans. The Notice would require the submission of reports from a number of servicing platforms, each of which was developed independently. Currently, there are four major systems used to support the servicing of federal student loans. Private education loans are serviced either on derivatives of these systems, or on loan servicing platforms that have their genesis in servicing a broader range of consumer loans. The servicing systems, which were built over decades at considerable cost, use different approaches to collecting and disseminating data. The proposed order would require the servicers to normalize the data output of these different, legacy systems. We question whether the Bureau has the authority to require private participants to normalize data produced by their separate systems where doing so would require extensive reprogramming of those systems and the generation of new data not currently produced.

E. Some of the Requested Data Is Not Maintained by Servicers or Is Not Maintained in a Format that Can Be Compiled Electronically

The proposed order would require the collection and dissemination of data that is not readily available. For example, Section 6 of Table 1 (Federal Loan Portfolio Composition and Performance) requires data on whether borrowers have or have not completed their program of study. This information is not generally maintained by servicers and, to comply, servicers would need to secure this information from institutions of higher education and other third parties. NCHER does not believe that federal and private student loan servicers should be required to report on data that they do not maintain themselves. In addition, Table 2 (Federal Loan: Consumer Outreach) requests information on inbound and outbound live contacts. Currently, records of inbound and outbound contacts are included in notations by customer service personnel. However, these notes are not commonly susceptible to being tabulated into a report format, and to do so would require substantial reprogramming.

F. Servicers Should Not Be Required to Review and Create Data Points for Activity from Prior Periods

The proposed order requires student loan servicers to provide a report on the fourth quarter of calendar year 2016 that includes outcomes for processes begun in the first quarter of calendar year 2016. To comply, in some cases, servicers would need to manually review records for those prior periods. NCHER believes it is unreasonable to require servicers to retroactively analyze and compile a report on prior activity. The effective date for any required reporting should begin after sufficient time is given for servicers to revise their reporting systems, and then should only cover prospective activity.

G. The Proposed Order Provides Insufficient Protection Against Improper Use of the Data Collected

The proposed order states that the Bureau will not publicly disclose data that identifies a particular company and “will otherwise treat company-specific data consistently with the Bureau’s rules on Confidential Information, Part 1070 et seq.” The provisions of section 1070 do not prohibit disclosure of confidential information to Bureau employees or, presumably, State Attorneys General and, thus, it would seem that the information could be used in investigations and civil enforcement. NCHER believes this would be an improper use of the Bureau’s authority under the information collection on student loan servicing market monitoring. Our concern over the expanded use of this information is heightened by a recent comment from the Director of the Bureau’s Office of Fair Lending that it is investigating activities of student loan servicing companies based on “data analysis.” We point out that the requested data for all ten of the servicers subject to the proposed order is available to the Bureau through the supervisory process, which sets a high bar on confidentiality.

H. The Statute Does Not Authorize the Bureau to Require Quarterly Reporting

Section 1022(c)(4)(B)(ii) of the Dodd-Frank Wall Street Reform and Consumer Protection Act allows the Bureau to require the filing of “annual or special reports.” NCHER believes that the authorizing legislation precludes the Bureau from requiring the submission of quarterly reports on a regular basis, as set forth in the proposed order.

I. Legal Risk for Servicers Would be Unacceptable

Under section 1055 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau can bring an action for violation of an “order.” If a federal or private student loan servicer subject to an order issued pursuant to the information collection on student loan market monitoring were to fail to provide a single item of the data requested, including information that does not exist or cannot be gathered without substantial manual effort, the Bureau could take the position that such failure constitutes violation of an “order” and impose substantial civil money penalties. Given the voluminous nature of the proposed data request, NCHER believes the legal risk to the industry would be unacceptable and would give the Bureau unacceptable leverage.

Conclusion

In summary, NCHER does not believe that the Bureau has demonstrated it has designed the proposed order with the view toward reducing the burden on federal and private student loan servicers who would be required to provide the requested information. As demonstrated, the burden would be unreasonable. Since information with respect to federal student loans is available from the Department and information on private student loans is available from MeasureOne, the Bureau should not seek to duplicate information already available to federal agencies and should rely on those sources. This would be a much less burdensome approach for providing the Bureau with a transparent view on student loan servicing. We suggest that, instead of proceeding with the information collection described in the Notice, a more productive approach would be for the Bureau to sit down with the affected servicers to collaboratively discuss what data is already available and what can realistically be provided, rather than imposing unrealistic demands on servicers without understanding the data production difficulties. NCHER understands that the servicers subject to the proposed order are willing to work with the Bureau on realistic data reporting.

Thank you for the opportunity to provide these comments on this important matter. If you have any questions about these comments or need additional information, please contact me at jbergeron@ncher.us or at (202) 822-2106.

Sincerely,

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

James P. Bergeron
President