



July 5, 2017

Senator Tony Mendoza
Chair
Senate Standing Committee on Insurance,
Banking, and Financial Institutions
State Capitol, Room 2195
Sacramento, CA 95814

Senator Ted Gaines
Vice Chair
Senate Standing Committee on Insurance,
Banking, and Financial Institutions
State Capitol, Room 2195
Sacramento, CA 95814

RE: Oppose in Current Form - Assembly Bill 38, the Student Loan Servicing Act

Dear Chair Mendoza and Vice Chair Gaines:

The National Council of Higher Education Resources (NCHER) urges you to amend Assembly Bill 38, the Student Loan Servicing Act, to exempt guaranty agencies that have agreements under section 428(b) of the Higher Education Act of 1965 and state and nonprofit servicers with fewer than 100,000 borrower accounts of California residents from the existing legislation's licensure, regulation, and oversight of student loan servicers by the Commissioner of Business Oversight.

Over the last year, NCHER and our 25 guaranty agency members, including the designated guarantor for the state of California, Educational Credit Management Corporation (ECMC), have engaged Assembly Member Mark Stone's office in an effort to talk about the work of our state and nonprofit agencies, the impact of on the new law on their ability to assist students and parents pay for college, and two exemptions to the Student Loan Servicing Act. These conversations occurred upon introduction of Assembly 38, before the bill was considered by the Assembly Banking and Finance Committee, before the bill was considered by the Assembly, and before the bill is considered by the Senate Standing Committee on Insurance, Banking, and Financial Institutions. If the two exemptions are ultimately granted, NCHER would support Assembly Bill 38. Absent these provisions though, NCHER regretfully opposes the bill.

NCHER represents state and nonprofit guaranty agencies that have agreements with the U.S. Department of Education under section 428(b) of the Higher Education Act of 1965 to help manage the Federal Family Education Loan Program (FFELP) at the state and local level and increase access to and success in postsecondary education. These state or nonprofit guaranty agencies are paid by the federal government to review default claims to ensure due diligence is performed by the lender and servicer, purchase the claims on behalf of the Department, work with defaulted student and parent borrowers to rehabilitate their defaulted loans and restore their credit, recover defaulted loans, process discharge claims for eligible borrowers, and report actions to credit bureaus. They are also required by the Department to perform late-stage delinquency services for struggling FFELP borrowers; these services supplement those services provided by an actual federal student loan servicer. However, guaranty agencies do not carry out the array of duties that are performed by servicers such as accepting and posting regularly scheduled payments. California's new law – and the overly broad definition of a “servicer” as it relates to “interacting with a borrower related to that borrower's student loan, with the

goal of helping the borrower avoid default on his or her student loan” - will hinder the ability of guaranty agencies to satisfy the requirements imposed on them by the Higher Education Act and the U.S. Department of Education’s regulations, especially as their portfolios are winding down and the agencies are struggling to continue to offer outreach services for both FFELP and Direct Loan borrowers. As noted, guaranty agencies do not perform the activities that are commonly associated with “servicing,” and should be granted an exemption from the requirements of the Student Loan Servicing Act.

NCHER also represents state and nonprofit higher education financing agencies and authorities, which are chartered by their state legislatures, such as Iowa, Kentucky, New Hampshire, North Carolina, Utah, and Vermont, with the public mission to expand college access and success for students in their state or students who attend institutions in their state. The governing structure of these agencies and authorities differ, but many of their Board of Directors include state representatives and state senators, treasurers, and representatives of the governor’s office. Due to the increased mobility of today’s generation, students with loans from these specific state agencies may currently reside in California. It is unreasonable to subject these public mission-oriented organizations to different state licensing and state specific servicing rules throughout the country. These smaller agencies should likewise be granted an exemption from the requirements of the Student Loan Servicing Act.

During consideration of similar student loan servicing legislation by the state of Illinois, NCHER and its members discussed the factors raised above with the Illinois Attorney General’s office and the leadership of the Illinois Senate and House. As a result, they included a number of exemptions in Illinois Senate Bill 1351, the Student Loan Servicing Rights Act, including exemptions for the state’s own guarantor (the Illinois Student Assistance Commission), other guaranty agencies which have agreements under section 428(b) of the Higher Education Act, and state and nonprofit servicers with fewer than a set number of borrower accounts. We urge California to follow Illinois’ lead to exempt ECMC, other guarantors, and small state and nonprofit servicers from the requirements of the Student Loan Servicing Act. We have attached the language from Illinois Senate Bill 1351 to this letter and would be happy to discuss the issue with the committee further.

Thank you again for the opportunity to share our views on Assembly Bill 38. We hope to work with the committee as the bill continues to move through the legislative process to improve student loan servicing in the state of California. If you have any questions or need further information, please contact me at 202-822-2106 or jbergeron@ncher.us.

Sincerely,



James P. Bergeron
President

Enclosure: Recommended Amendments to Assembly Bill 38

cc: Members of the Senate Standing Committee on Insurance, Banking, and Financial Institutions

Proposed Amendment to Section 2 of AB-38

The changes to Section 28102 of the Financial Code are revised by adding the following clauses to subsection (b):

“(6) in connection with its responsibilities as a guaranty agency, a guaranty agency having an agreement with the U.S. Secretary of Education under Section 428(b) of the Higher Education Act (20 U.S.C. 1078(b)), including without limitation, the Educational Credit Management Corporation.

(7) a State institution or a nonprofit private organization designated by a governmental entity to make or service student loans, provided in each case that the institution or organization services fewer than 100,000 student loan accounts of borrowers who reside in California.”