

October 19, 2017

Mr. Steven C. Taylor
Commissioner
District of Columbia Department of Insurance, Securities, and Banking
810 First St. NE, Suite, 701
Washington, DC 20002

Dear Commissioner Taylor:

The National Council of Higher Education Resources (“NCHER”) writes to urge you to withdraw the Notice of Emergency and Proposed Rulemaking issued by the Department of Insurance, Securities, and Banking (“DISB”) on September 8, 2017 pursuant to D.C. Law 21-214, and work with stakeholders to develop proposed rules implementing the law. As announced, the rules will have a severe impact on the ability of student loan servicers to service loans, both federal and private, made to residents of the District of Columbia. Because the Notice was effective upon its issuance, the questions and items that will be raised in this letter – as well as those that have been provided to Dr. Charles Burt of your staff – must be addressed immediately.

NCHER is a national, nonprofit trade association, based in the District of Columbia, representing state, nonprofit, and private organizations 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 included in the group of “larger participants” in the student loan servicing market, as such term is defined by the Consumer Financial Protection Bureau, are members of NCHER.

While we suspect that the Department of Insurance, Securities, and Banking may be contemplating issuing additional regulations applicable to student loan servicing, the issues of immediate concern relate to the requirement that student loan servicers obtain a license to service education loans to borrowers residing in the District of Columbia and clarification on the definition of “student loan servicer” since some entities provide default aversion services to borrowers but do not carry out traditional servicing responsibilities. We also seek reconsideration of the annual assessment fee set forth in Appendix A (\$800 plus \$6.60 per loan). As we suspect you know, the Department owns more than 75 percent of all outstanding education loans in the country. Its portfolio of Federal Direct Loans and Department-owned FFELP loans stood at \$1.1 trillion as of June 30, 2017.¹ The Department currently pays its federal student loan servicers a monthly fee to carry out those activities included in their contracts that averages around \$2.00 per month for each loan account. Since borrowers take out

¹ “Federal Student Aid Posts New Reports to FSA Data Center,” September 21, 2017. For more information, see <https://ifap.ed.gov/eannouncements/092117FSAPostsNewReportsToFSADataCenter.html>.

additional student loans for each academic year of study, each account is comprised of several loans (on average, there are nearly 5 loans per account). When comparing the annual assessment fee required under the Notice and the current monthly fee paid to the federal student loan servicers, it is obvious that the entire amount the Department pays its servicers would be consumed solely to pay the required annual assessment imposed by the DISB.² No funding would be left over to cover the basic operating costs of actually servicing the loans for students and parent borrowers in the District. The fee set forth in the rules makes it impossible to service federal student loans and is inherently anti-borrower and anti-student. The challenges that the Notice presents for the servicing of Department-owned loans are similar for those entities servicing FFELP loans and private education loans.

We welcome the opportunity to review with you and your staff the complexities involved in servicing federal student loans. Due to the variety of loan types and repayment and benefit features, student loans represent a unique asset class that presents real servicing challenges. Federal student loans are offered to all eligible students and parents without any assessment of the applicant's ability to repay the loan. Nonetheless, student loan defaults have been on the decline since the great recession. The 3-year cohort default rate on federal student loans has declined from the 14.7 percent rate announced in 2013 to the 11.5 percent rate announced just last month by the U.S. Department of Education³, and the annualized default rate for traditional (non-refinanced) private education loans held by the major private loan lenders declined from 6.31 percent in the second quarter of 2009 to 2.43 percent in the second quarter of 2017 based on the latest report issued by DBRS⁴. The improved performance is attributable in large part to the efforts of those servicing both federal and private student loans. In contrast, the emergency and proposed rules would reverse these promising trends.

NCHER hopes that, once the DISB learns more about federal and private student loan programs and student loan servicing and fully reviews the implications of the Notice, the DISB will come to the understanding that the Notice makes it impossible to provide high-quality servicing to District residents and withdraw the emergency rules and work with stakeholders in developing reasonable proposed rules. Absent that, the rules constitute an obstacle to the accomplishment of the purposes contemplated by the Congress when it created the federal loan programs through passage of the Higher Education Act of 1965.

Thank you for the opportunity to voice our concerns with the emergency and proposed rules in regard to student loan servicing. If you have any questions, please contact me at jbergeron@ncher.us or at (202) 822-2106.

Sincerely,



James P. Bergeron
President

² Even assuming the DISB did not intend for the "per loan" assessment to be read literally, but instead intended that the fee be assessed on a "per account" basis, the annual assessment fee would remain prohibitive, as around 30 percent of a servicer's revenue would be captured by the District of Columbia, leaving too little to provide high-quality servicing activities to student and parent borrowers in DC.

³ "U.S. Department of Education Releases National Student Loan FY 2014 Cohort Default Rate," September 27, 2017. For more information, see <https://www.ed.gov/news/press-releases/us-department-education-releases-national-student-loan-fy-2014-cohort-default-rate>.

⁴ "DBRS Student Loan ABS Update, Q2 2017 Performance Report," August 28, 2017. For more information, see <http://www.dbrs.com/research/315507/dbrs-publishes-q2-2017-student-loan-abs-performance-update.html>.