NCHER's Advocacy Priorities for the 116th Congress – Higher Education Act

The National Council of Higher Education Resources (NCHER) and its members assist students and families develop, pay for, and attain their educational goals so they can pursue meaningful and rewarding work and become contributing members of society. The following are NCHER's advocacy priorities for the 116th Congress:

Assisting students and families in making smart postsecondary education decisions

According to recent statistics, federal and private student loan debt totals nearly $1.56 trillion, an amount that policymakers and economists have cited is negatively impacting the ability of student borrowers to achieve postsecondary success, own a car, buy a house, or start a family. With college costs and student loan debt on the rise, more borrowers are struggling to repay their student loans on time. For more than 50 years, NCHER members have worked with students and families – including student and parent borrowers – to help them understand, manage, and pay for the costs of a postsecondary education. These state, nonprofit, and private organizations administer millions of dollars in federal and private education loans, grants, and scholarships; counsel students and families on how to apply for college and navigate the financial aid process, including offering assistance in filling out the Free Application for Federal Student Aid (FAFSA); advise against overborrowing and on the importance of managing student loan debt; help defaulted borrowers get a fresh start through loan rehabilitation; and provide year-round free college planning and financial aid assistance directly to students and families. In many instances, these services are proactively provided to student and parent borrowers at risk of default. However, these important services are largely going away, and some have already been eliminated, because of a lack of resources.

Under the Higher Education Act, institutions are required to provide basic entrance and exit counseling such as ensuring students know they have taken out loans, they are obligated to repay those loans, and of the availability of various repayment options. However, numerous reports make it clear the current automated counseling sessions are failing to fully engage students in understanding their responsibilities and full range of options. Finally, nearly every state in the country has a 529 Plan, which is designed to help families set aside funds and save for future college costs. 529 Plans - both prepaid tuition plans and college savings plans - are important tools used by millions of American families to meet the increasing costs of postsecondary education. **ASK: Encourage states and/or institutions to provide face-to-face financial education and counseling services to students, borrowers, and families; strengthen existing entrance and exit counseling requirements by supporting the "Empowering Students through Enhanced Financial Counseling Act," which requires institutions to provide annual counseling to all student and parent borrowers so they better understand their financial obligations; and promote the use of 529 Plans by exempting a certain percentage of the assets held in 529 Plans from federal financial aid calculations.**

Improving federal student aid programs

The U.S. Department of Education offers nine different repayment options to student borrowers who need help paying back their federal loans in a timely manner, including: standard repayment, graduated repayment, extended repayment, five repayment plans tied to borrower income (income-based repayment or IBR, income-contingent repayment or ICR, income-sensitive repayment, Pay As You Earn or PAYE, and Revised Pay As You Earn or REPAYE), and an alternative repayment plan established by the Secretary of Education. While each of the repayment plans have been developed over time by Congress and/or the Administration to address specific borrower circumstances, this overly-complicated patchwork is confusing to students and parents and creates unnecessary barriers to higher education for low- and moderate-income students who often believe that a postsecondary education degree is unaffordable. While the number of borrowers enrolled in income-driven repayment (IDR) plans has increased, it is clear that a significant number of borrowers remain with standard repayment, which is often a better option because it allows them to pay off their student loans earlier and at less cost. According to a U.S. Government Accountability Office report, the current estimated cost of IDR plans by cohort are more than double what was originally projected by the Department, resulting in a cost to the federal government of $21 for every $100 disbursed or a 21 percent subsidy rate. Congress should resist legislative proposals that would automatically enroll all borrowers in one of the income-driven repayment plans.

In addition, the FAFSA totals more than 10 pages and includes 108 questions on topics such as income, family size, expenses, and assets. While many students and families complete the form online, thus avoiding some of the questions, it's length and complexity has caused a number of low-income families to give up and lose access to federal financial aid. Also, the Higher Education Act includes specific annual and aggregate limits on the amount of loans that students can access for postsecondary education. Currently, financial aid administrators can implement 'professional judgment' to factor in special circumstances affecting a family's ability to pay for a student's education or to limit loan amounts. The process, however, is time-consuming. Finally, the American Enterprise Institute, New America Foundation, Heritage Foundation, and other think-tanks have examined the proliferation of student loan debt levels over the last decade and believe that the widespread availability of federal student loans, especially by parents without the ability to repay debt taken to finance their students' education, has contributed to the growing problem of unmanageable debt burdens. Parents can borrow the full cost of college for all of their dependent children, including amounts for living expenses, under the Parent PLUS program. While some can afford to borrow such high amounts, many parents become saddled with debt for which they have no ability to repay. **ASK: Simplify and streamline the myriad of student loan repayment plans by retaining the standard repayment plan and collapsing all of the existing IDR plans into a single plan for all student borrowers; dramatically reduce the number of questions on the Free Application for Federal Student Aid; provide authority to financial aid administrators to lower annual and aggregate student loan limits; and limit the amount that parents can borrow under the PLUS program.**

<u>Providing an alternative to LIBOR to promote stability for federal student loan borrowers</u>

Under the Higher Education Act, lenders can use the London InterBank Offered Rate (LIBOR) to calculate their special allowance payments under the federal guaranteed student loan program. LIBOR is a benchmark rate that represents the interest rate at which banks offer to lend funds to one another in the international market for short-term loans, and is used as an index to calculate interest rates on various loan products around the world such as mortgages, commercial loans, interest rate swaps, and other financial products. The rate is currently scheduled to be phased out by 2021. To ensure that the elimination of LIBOR does not weaken the federal student loan program for 14.3 million borrowers, the Federal Reserve and Federal Reserve Bank of New York convened an Alternative Reference Rates Committee or ARRC, a group of private market participants, that recommended the Secured Overnight Financing Rate be offered as an alternative to LIBOR. The committee is now focused on promoting voluntary market adoption of its recommended alternative and helping to ensure its successful implementation. But a statutory change is necessary to allow legacy lenders to adopt an alternative index. **Ask: Pass a technical amendment that lenders can use LIBOR or an alternative rate set by the ARRC when calculating special allowance payments under current law.**

<u>Improving access to loan rehabilitation for struggling borrowers</u>

According to the Department of Education, more than 33 million Americans collectively owe nearly $1.121 trillion in Federal Direct Loans. Of that amount, nearly $97 billion, owed by 5 million borrowers, is in default. One of the federal government's principal programs for assisting defaulted borrowers struggling to repay their student loans is loan rehabilitation. Under this program, student and parent borrowers who make nine voluntary, on-time payments within ten consecutive months have their defaulted loans rehabilitated, and regain eligibility for federal student aid, including grants and loans. Just as important, the default status is removed from the borrowers' credit reports and their accounts are no longer subject to wage garnishment or tax refund offset. Unfortunately, current law restricts loan rehabilitation to one-time per loan. As college costs continue to rise, many student borrowers continue to struggle to repay their loans and re-defaults are at record highs. Over the last few years, there have also been challenges in the transfer of rehabilitated loans primarily handled by private collection agencies and guaranty agencies to the federal student loan servicers. For example, under current federal regulations, borrowers can pay as little as $5/month and still rehabilitate their loans; however, these borrowers may have significantly higher monthly payments once they are in good standing on their loans, causing them to redefault. **ASK: Allow defaulted borrowers to rehabilitate their loans a second time, if needed; and streamline the transfer of rehabilitated loans to better assist borrowers.**

<u>Protecting students and families by combatting debt relief scams</u>

Over the last few years, the number of third-party debt relief companies has exploded led by the overall increase in student loan debt. These companies charge exorbitant fees to struggling student and parent borrowers, many of whom are already delinquent in repaying their student loans, for help in enrolling in an income-based repayment plan and/or applying for a consolidation loan – help that they can receive for free from their federal student loan servicers. In exchange for this assistance, the companies require students and parents to turn over their personally-identifiable information to the company in violation of federal law. Since 2015, the Department of Education has sent cease-and-desist letters to some of the companies that claim affiliation with its federal student loan servicers in order to prey on borrowers. The Consumer Financial Protection Bureau (CFPB) has filed suit against a number of companies that are in violation of consumer financial protection laws, and the Federal Trade Commission has been leading a coordinated federal-state law enforcement initiative targeting such companies. Led by its Ombudsman Caucus, NCHER members are collecting the names of these companies and providing them to the appropriate federal agencies. But more can – and must – be done to address the growing problem of these scams. **Ask: Support the "Stop Student Debt Relief Scams Act," authored by Sen. Tammy Baldwin (D-WI), that would restrict access to the Department's information technology systems for fraud, commercial advantage, or private financial gain; require institutions of higher education to provide a warning to borrowers that they may be contacted by third-party debt relief companies; and prevent improper access to the National Student Loan Data System (NSLDS) while continuing to allow guaranty agencies, eligible lenders, eligible institutions, and third-party organizations that acting on their behalf and are in compliance with federal law to access NSLDS as they continue to work with borrowers. These important changes should protect students and parent borrowers and crack down on these unlawful and unscrupulous companies who target struggling borrowers and drive them deeper into debt.**

<u>Promoting greater consumer choice for both federal and private student loan borrowers</u>

Private education loans are an important funding source that students and parents rely upon to achieve their higher education goals. These programs fill the widening gap between the cost of an affordable postsecondary education and the availability of federal, state, and institutional support. Private education loans are designed to supplement - and not supplant - other funding sources. Private education loan providers actively encourage responsible borrowing and counsel students and parents to work with financial aid professionals at their colleges and universities to explore other sources of federal, state, and institutional aid, whether grant or loan, prior to applying for a private education loan. Nearly all private education loans are certified by the school's financial aid office. Private education loan programs are offered through a combination of not-for-profit and for-profit lenders, ensuring there is competition among student loan providers. A popular misconception is that all private education loans are more expensive than federal student loans and interest rates on outstanding loans will rise over time. For some borrowers, however, private education loans offer an attractive alternative to federal student loans, particularly when compared to Parent PLUS Loans.

Under the Higher Education Opportunity Act of 2008, colleges and universities choosing to maintain a list of preferred lenders for private education loans must comply with a set of complicated disclosures and reporting requirements. Because of the new rules, many schools have shied away from having preferred lender lists and largely ended counseling students and parents on various sources of financial aid, with the result being that students and parents do not learn about the availability of private education loans that may be less costly than federal education loans, particularly Parent PLUS loans. For many students and families, an institution's financial aid office is the primary way that they learn about various options to finance their postsecondary education; financial aid administrators should encourage students and parents to investigate all of the financing options available to them before taking out high interest rate loans. Also, the Truth-in-Lending Act ensures applicants for almost all consumer loans are provided with a federally-mandated disclosure of the true cost of their loans (the annual percentage rate or APR), which includes the interest rate, any origination fees, and all other loan costs. The purpose of the notice is to allow borrowers to compare different loan options before they become financially obligated. But federal student loans are exempt from this requirement. **ASK: Remove preferred lender list restrictions; and support the "Transparency in Student Lending Act" (S. 234/H.R. 811), which mandates that Direct Loan borrowers receive accurate disclosure of the cost of their loans.**

<u>Allowing struggling borrowers to rehabilitate their private education loans</u>

Under the federal student loan program, defaulted borrowers who make nine voluntary, on-time payments over a ten-month period can have their student loans rehabilitated, and the default status removed from their credit reports. This provides a powerful incentive for borrowers to undertake what is needed to rehabilitate their federal student loans. Even though the CFPB strongly recommends that private education loan lenders help distressed borrowers, until recently, these lenders were inhibited from utilizing this tool. In 2017, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act, which allows private education loan borrowers to request a "financial institution" remove the default record from his or her credit report if he or she has successfully completed a loan rehabilitation program. However, the law inadvertently used a definition of "financial institution" that excludes state and nonprofit organizations and other nonbanks. These organizations continue to be constrained from offering private loan rehabilitation. **Ask: Allow "private education lenders" as defined under the Truth-in-Lending Act to offer private loan rehabilitation.**

<u>Promoting better loan servicing for student and parent borrowers</u>

Since 2009, the Department of Education has used not-for-profit and for-profit organizations to provide important services to borrowers with loans made under the Federal Direct Loan Program. Besides handling general billing and payment processes, student loan servicers are the primary contact point for borrowers regarding their Direct Loans; assist students and parents that are in repayment on their student loans, including working with these borrowers to identify and enroll in the most appropriate repayment and loan consolidation plans to meet their unique and individual financial situations; assist servicemen and women in understanding and signing-up for the benefits under the Servicemembers Civil Relief Act; and help borrowers who are delinquent in repaying their Direct Loans, including ensuring they are aware of the various options under the law to get their loans back in good standing. The current competitive structure - using a mix of state and nonprofit and national for-profit organizations - promotes high levels of customer service, establishes a benchmark for quality servicing, and saves taxpayers money.

The Department is currently in the process of re-competing its student loan servicing contracts by embarking on a new vision known as the Next Generation Financial Services Environment. The new initiative envisions several different components, including a unified digital platform that supports a mobile-first, mobile-complete environment under a single brand; contact center operations that provide operational personnel who can resolve customer issues; customer outreach providers who can conduct proactive outreach and communication via multiple channels with guidance and advice; and processing operations. The Consolidated Appropriations

Act, 2018 and 2019 included bill language prohibiting the Department from moving forward with a new student loan servicing contract unless it includes the participation of multiple student loan servicers that contract directly with the Department and allocates borrower accounts to participating servicers based on performance. It also included report language stating that each federal student loan servicer should be responsible for managing the full life-cycle of loans, from disbursement to pay-off. **Ask: Develop a federal student loan servicing system that includes a single portal so that borrowers can easily access important information about their federal student loans; develop a Common Manual to set high-quality and strong national servicing standards and protections for all Direct Loan borrowers (the manual could include best practices around payment allocation, repayment options, due diligence, default aversion, etc.); provide greater support for those borrowers that are in late-stage delinquency and need additional help to repay their student loans; and foster the participation of multiple service providers to promote competition.**

<u>Eliminating unnecessary barriers to assist federal student loan borrowers</u>

Since 1965, guaranty agencies have provided important services to students, borrowers, families, and the federal government by helping to manage the federal student loan program at the local level, and increasing access to and success in postsecondary education. Among many activities, the agencies provide a range of outreach services and programs to students, families, schools, and community organizations to help students gain access to and succeed at postsecondary education; help students and families better manage their finances by designing and disseminating materials and programs on budgeting, establishing good credit, paying for college, and successfully managing debt; and provide information and support to students, borrowers, and schools to promote successful loan repayment and reduce defaults. As part of their agreements with the Secretary of Education to administer certain aspects of the federal guaranteed student loan program, the agencies review default claims; work with defaulted borrowers to cure their defaults and restore their credit histories; recover defaulted loan dollars; process discharge claims for eligible borrowers; and report actions to credit bureaus. Even though Congress ended all new originations in 2010, guaranty agencies continue to carry out their public missions and federal responsibilities. As of June 30, 2018, according to the Department of Education, the federal guaranteed loan portfolio consisted of about $167.5 billion in outstanding student loans held by private lenders. In addition to their responsibilities on the outstanding portfolio, guaranty agencies are responsible for servicing over $30.2 billion in defaulted loans on behalf of the federal government.

Guaranty agencies receive Account Maintenance Fees (AMF) to carry out many of the administrative activities described above, including college access and success initiatives. This funding is critical to ensuring that the agencies are able to perform critical functions that assist borrowers and protect federal taxpayers. The Fiscal Year 2016, 2017, 2018, and 2019 appropriations bills included a one-year extension of AMF because it is essential for guaranty agencies to provide important services on behalf of the federal government. But a longer-term funding solution must be provided so that the agencies can continue to provide services to federal student loan borrowers. Also, currently, guaranty agencies do not receive reinsurance for claim repayments for three weeks or more following the time they pay a claim. This puts unnecessary stress on an agency's Federal Fund, which is the property of the federal government, and can curtail an agency's ability to provide critical services to assist struggling borrowers. Finally, the Higher Education Act caps the percentage of recoveries that a guaranty agency can make through Direct Consolidation Loans. An expected decline in loan rehabilitations may increase the percentage of guaranty agency collections represented by Federal Direct Consolidation Loans, potentially restricting the ability of agencies to help certain defaulted borrowers. **ASK: Extend the payment of AMF for the life of the reauthorization process; provide just-in-time reinsurance payments to facilitate cash flow into the Federal Fund; and remove the 45 percent cap on Federal Direct Consolidation Loans.**

If you have any questions or need more information, please contact James Bergeron, President of NCHER, at jbergeron@ncher.us or (202) 822-2106.