

December 2, 2021

The Honorable James Kvaal
Under Secretary of Education
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20002

Dear Mr. Kvaal:

Thank you for the recent call with several members of the NCHER Board of Directors to discuss the implementation of Dear Colleague Letter (DCL) GEN 21-03. As relayed during the meeting, NCHER members have been in the process of complying with the DCL's provisions that require the pause of payments, interest accrual, and involuntary collection activities for defaulted loans, and retroactive refunds and account adjustments, on Federal Family Education Loans (FFEL) managed by state and nonprofit guaranty agencies. As discussed in our meeting (and in numerous earlier meetings with Department staff), the DCL's suspension and retroactive-reimbursement provisions are having considerable adverse economic implications for guaranty agencies. Without additional federal resources to support the federal directives, many guaranty agencies will not be able to fully implement the DCL. These mandates will also result in a number of agencies falling below the minimum reserve ratio, jeopardizing their ability to carry out the functions required by the Higher Education Act. The relief promised to student and parent borrowers cannot be universally delivered by guarantors without the Department of Education being prepared and willing to provide additional resources.

Separate from the need for funding to make the required refunds and account adjustments, but related to the DCL, the Department is in the beginning stages of implementing the new "special mandatory assignment" (SMA) process. NCHER and its members continue to strongly oppose the directive that guarantors assign their defaulted FFEL loans to the Department, as required by the DCL, without compensation.

As we fast approach a critical juncture in the implementation of the DCL and expectations of guaranty agencies, NCHER and its membership, by virtue of this letter, respectfully request a suspension of the current loan transfer process resulting from the DCL for a minimum of 45 days. Within that 45-day window, we ask for a direct conversation with you to constructively determine best alternatives to ensure, prior to any additional steps being taken, that struggling borrowers receive the help that they need during the national emergency and beyond while also properly providing funding to guaranty agencies to accomplish the Department's objectives and honor commitments made to borrowers. We ask you to consider the following:

- Lack of Support for Struggling Borrowers: In multiple conversations with White House and Department staff prior to your confirmation, NCHER and its membership made clear that the SMA process would be the least effective pathway to helping struggling borrowers impacted by the

pandemic. Guaranty agencies have established procedures to effectively locate and communicate with recently defaulted borrowers. Our agencies have an existing relationship, dating back to the time when the loan was originated, with defaulted borrowers. They have developed a history of trust with many of these borrowers. The Department lacks any similar contact or history, which means borrowers will be confused when called by the Department's designated federal student loan servicer or collection agent. Given the typical length of the current mandatory assignment process and the time that it will take for the Department to make arrangements with borrowers, as well as the issues that have arisen to date with the limited account transfers, it is likely that the Department or its contractor will have little to no contact with these struggling borrowers for a year or more. The absence of contact will further disadvantage these borrowers, as communication is key to showing borrowers how they can take advantage of rehabilitation and income-based repayment in order to get back into good standing and remain there over time.

- Implementation by Federal Student Aid. Unfortunately, over the last few months, our worst fears have been realized. After taking almost three months to answer basic operational questions, Federal Student Aid (FSA) began setting unrealistic schedules and deadlines for accepting the transfer of accounts from agencies. When FSA finally began the transition process, starting with a few smaller agencies, it experienced rejection rates of as much as 80 percent. At present, FSA has yet to outline how FFEL borrowers are going to receive comparable services from its designated federal student loan servicer to those they could receive from an experienced guaranty agency, or even when the loans will be placed with its federal student loan servicer. More concerning, still, the Department has set an arbitrary and rushed deadline of March 2022 to have all accounts transferred to the Department.
- Loss of Revenue and Limited FSA Resources: Under the Department's announcement suspending involuntary collections, guaranty agencies are not expected to have any recoveries for at least one year. For loans subject to the SMA process, the revenue will be permanently lost. Even though the Department has said that guarantors can reimburse themselves for lost revenue from their Federal Funds, those funds are wholly inadequate in two significant respects. First, the Department did not account for future revenue streams that guaranty agencies will lose due to the SMA process and instead expressly limited reimbursement to "the share of what a guaranty agency might have reasonably collected during the suspension," but for the moratorium. Second, Federal Fund levels are in many instances wholly inadequate to reimburse guarantors for the limited category of losses for which reimbursement is permitted. The process will bankrupt some guarantors' Federal Funds, resulting in possible closure of the agency, which is not in the best interest of the taxpayer or student and parent borrowers. Also, it is worth noting that the SMA process is occurring at a time when FSA and its servicers are gearing up for the unprecedented challenge to bring millions of borrowers back into payment status.

NCHER looks forward to resolving these important matters for the benefit of struggling borrowers and the Department of Education. In addition to working to truly assist struggling borrowers, there is an immediate need to identify funding to fully compensate guaranty agencies for the cost of refunds and other account adjustments and for the lost revenue caused by the DCL. However, time is of the essence. We ask you to temporarily pause the SMA process for 45 days while we attempt to identify solutions to both areas of the DCL. For more than 55 years, NCHER members have worked with students and their families to transition from high school to college and helped struggling borrowers repay their federal student loans. The SMA process will have a negative impact on FFEL borrowers and our ability to carry out our public service missions to promote college access and success.

If you have any questions or need any other information, please contact me at jbergeron@ncher.org or (202) 822-2106.

Sincerely,

A handwritten signature in black ink, appearing to read "J P Bergeron", with a long horizontal flourish extending to the right.

James P. Bergeron
President