February 16, 2018

Mr. Christian Washington
Legislative Analyst
District of Columbia Department of Insurance, Securities, and Banking
1050 First Street, NW, Suite 801
Washington, DC 20002

Dear Mr. Washington:

On behalf of the National Council of Higher Education Resources ("NCHER"), I am writing this letter in response to your February 9, 2018 request for comments on the latest version of the District of Columbia Student Loan Borrower's Bill of Rights ("Bill of Rights").

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 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, 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.

The Bill of Rights contains a number of aspirational principles, and NCHER agrees that most are commendable goals put forth to support student and parent borrowers. However, most of the principles are written in general terms and should not, in our view, create enforceable obligations. As we have stated in the past, our organization does not believe that the District should require federal and private student loan servicers to follow separate servicing routines for District residents. The compliance burden on these servicers to follow divergent and changing developments in all 50 states and the District, and to appropriately modify their systems to comply with these new requirements, would be enormous and unrealistic, particularly for smaller state-based servicers that service a limited number of loans to District residents. Under the federal tax code, these organizations can only service loans to students and parents of students who, at the time the loans were originated, resided in their state or who attended a school within their state. However, recent graduates are mobile, and a certain percentage move to states throughout the country, including the District. The cost of regulatory compliance in multiple states could be prohibitive for these state organizations. The result may very well be that they exit the business, leaving only a small handful of large national servicers to provide support to borrowers. NCHER urges the Department of Insurance, Securities and Banking ("DISB") to refocus its effort on the greatest threat to student loan borrowers, which is the proliferation of third-party debt relief companies and their scams that cheat students and families, not student loan servicers who work with borrowers to ensure they repay their financial obligations.

NCHER's opposition to state specific servicing licensing regimes does not mean that there is not a role for the District in protecting its residents against violations of generally applicable law, or that the District's Ombudsman should not be charged with helping student and parent borrowers in the District. Our membership supports the establishment of state-based student loan ombudsman who can serve as a local advocate for student loan borrowers. In fact, many of our guaranty agencies have played this important role on behalf of struggling students for more than 50 years.

With that said, NCHER's comments on specific provisions of the Bill of Rights follow:

- Article III. The article mentions that a borrower has a right to have an inquiry or complaint to a servicer addressed and resolved in a timely manner. But the article lacks a definition of what constitutes an "inquiry." We urge DISB to strike the word "inquiry" or to clarify such term.

- Article IV. The article specifies that a borrower has the right to have his or her payments applied to outstanding loan balances timely, appropriately, and fairly. What does it mean to apply payments "fairly" or "appropriately" and in the "best interests of the borrower?" Currently, servicers post their payment allocation procedures, but should not be held to a vague standard that could be interpreted to create a fiduciary responsibilities.

- Articles V and VI. The articles states that a borrower has the right to receive a monthly billing statement and quarterly periodic statement. Do these articles establish separate servicing requirements for District of Columbia residents? If so, the provisions would be overly burdensome to require that monthly payments be sent to borrowers in an in-school deferment.

- Article VII. The article mentions that a borrower has the right to receive timely and accurate annual tax statements. Does DISB contemplate additional provisions as part of this article besides compliance with current Internal Revenue Service regulations, which all servicers must follow.

- Article IX. This article states that a borrower has the right to a servicer's schedule of fees, which seems to be based on an inaccurate understanding of roles of the various players in the student loan industry. As a general matter, loan fees such as late fees and NSF fees are charged by lenders, not servicers, and are disclosed as part of the lender's Truth-in-Lending Act requirements. If this article purports to cover expedited payment or convenience fees, it should be understood that these optional payment services are selected by the borrower.

- Article X. The article specifies that a borrower has a right to receive timely information of organizational changes that could affect loan repayment or interaction with a servicer. What is meant by "organizational changes that could affect loan payments?"

- Article XI. The article states that a borrower has the right to timely and accurate reporting to credit bureaus. Does DISB contemplate additional provisions as part of this article than compliance with the Fair Credit Reporting Act (FCRA), which all servicers must follow?

- Article XII. The article specifies that a borrower has the right to access default diversion services from a servicer that notifies the borrower when he or she is at risk of default. What timeframe does DISB contemplate using when measuring whether a servicer has appropriately "notified" a borrower that he or she is "at risk of default?" What default diversion services are contemplated by DISB? Should we assume that normal past-due communications notifying customers of delinquency, identifying the various repayment assistance options available to borrowers under the law, and inviting the customers to call a specialist for assistance would be sufficient? Is the

Student Loan Ombudsman expecting servicers to offer all of the listed types of repayment assistance ("loan deferment, forbearance, alternative repayment plan, and loan modification") or are those intended to be illustrative of options that could be provided to the borrower? In the private student loan marketplace, the listed options to avoid default are offered by lenders not servicers. For banks and lending institutions, there are safety and soundness expectations of prudential regulators that influence what types of repayment assistance tools are made available -- presumably the Ombudsman is not inserting itself into the decisions that banks make about repayment assistance tools they can offer to struggling borrowers.

- Article XIII. The article states that a borrower has the right to receive financing that complies with certain principles. As is the case with Article IX, this article misconstrues the role of servicers since they do not make loans or extend credit. Also, the reference to financing that is in the "best interest of the borrower" sets up a fiduciary or suitability standard where compliance may be impossible. Prudential regulators expect a balancing of safety and soundness risks/ considerations along with customer interests -- financial institutions would be heavily criticized (and subject to supervisory consequences) if loan modification or refinancing options were designed and offered solely on the basis of the "best interest of the borrower" standard and to the exclusion of safety and soundness principles. Of course, any new financing would already be subject to Truth-in-Lending Act disclosure requirements.

Thank you for your consideration of these comments. If you have any questions, please contact me at jbergeron@ncher.us or at (202) 822-2106. NCHER would be happy to discuss these comments with you and other DISB staff.

Sincerely,

James P. Bergeron
President

Cc: Dr. Charles Burt