

March 29, 2017

The Honorable Thad Cochran
Chairman
Senate Appropriations Committee
S- 128, The Capitol
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Senate Appropriations Committee
S-128, The Capitol
Washington, DC 20510

The Honorable Shelley Moore Capito
Chairwoman
Senate Financial Services and General Government
Appropriations Subcommittee
125 Hart Senate Office Building
Washington, DC 20510

The Honorable Christopher Coons
Ranking Member
Senate Financial Services and General Government
Appropriations Subcommittee
125 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Cochran, Ranking Member Leahy, Chairwoman Capito, and Ranking Member Coons:

As the subcommittee begins its work on the Fiscal Year 2018 Financial Services and General Government Appropriations Act, the National Council of Higher Education Resources (NCHER) urges you to include report language directing the Internal Revenue Service (IRS) to clarify that tax-exempt bonds used to make private education loans that refinance existing tax-exempt private loans are not advance refunding bonds, and directing the Federal Communications Commission (FCC) to clarify that the recent amendment to the Telephone Consumer Protection Act (TCPA) applies to federally guaranteed student loans consistent with the Bipartisan Budget Act of 2015. NCHER is a national trade association representing state and nonprofit agencies that issue tax-exempt private activity bonds to finance low-cost loans that help students and parents pay the costs of securing a higher education credential that opens the door for a better life. Our members also include those organizations under contract with the U.S. Department of Education to service and recover outstanding loans made under the Federal Direct Loan Program and organizations that service and recover outstanding loans made under the Federal Family Education Loan Program (FFELP).

First, since 1976, state and nonprofit student loan organizations have been authorized by Congress to issue tax-exempt bonds to provide low-cost loans to students and parents to help them pay for the costs of a postsecondary education. These organizations originate new private education loans and refinance those with higher rates, thus offering borrowers a competitive interest rate and lower or non-existent fees. Private educational loans issued through tax-exempt financing by state and nonprofit lenders supplement federal student loans so students can pay their tuition bills, purchase required textbooks, and cover their living expenses. With the cost of college continuing to rise, federal student loans and family resources are often inadequate to cover the cost of attending a postsecondary education institution. State-based lenders help families across the nation “close the gap” in financing their higher education dreams, in many cases at lower rates than are generally available under the federal program, and do so without the need to increase the nation’s debt. These lenders also offer college access and success, financial literacy, and debt management programs within their respective states to help students and families manage their student loan obligations, regardless of whether they took out a federal or private education loan.

In 2015, the IRS, through the issuance of Notice 2015-78, provided guidance on the rules governing the uses of tax-exempt funds to finance private education loans. While the guidance was welcome, it left some ambiguity that has caused confusion for many issuers and placed restraints on what the private capital markets can offer to student and parent borrowers in the form of lower-borrowing costs to finance their postsecondary education. For example, there is a question of whether the refinancing of an original tax-exempt financed loan causes the bonds to be deemed refunding bonds. If it does, a separate set of restrictive rules would come into play, hamstringing any refinancing program using tax-exempt bonds. The subcommittee should direct the IRS to clarify that tax-exempt bonds issued to refinance an original loan financed with tax-exempt bonds will not be considered advance refunding bonds, particularly where the issuer utilizes new volume cap to issue the bonds that will refinance the original loans.

Second, in November 2015, Congress passed the Bipartisan Budget Act of 2015, which included an important provision amending the TCPA so that calls (including both voice calls and text messages) to collect federally-owned or -guaranteed debt can be made to cellular telephones using an auto-dialer or prerecorded voice without prior consent. The purpose of the new law was to allow more borrowers, particularly those in distress, to receive timely information to avoid or get out of delinquency or default. The change, if properly applied, will strengthen the student loan servicing and collection system and improve borrower communication. The new law authorized the FCC to issue rules to consider limits to the number and duration of calls to cellular phones. On August 2, 2016, the Commission adopted rules that were overly-broad in their reach and unreasonably restrictive, permitting only three-call-attempts (not actual contacts) over a 30-day period and subjecting callers to strict liability if they inadvertently dial a reassigned number, essentially gutting the intent of the law.

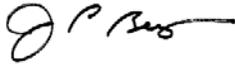
Since passage of the Bipartisan Budget Act of 2015, there have been attempts by some detractors to portray the provision as a tool to harass consumers. To the contrary, this important consumer protection will provide a way to help those struggling with student loan debt. According to the U.S. Department of Education, more than 42 million Americans collectively owe nearly \$1.3 trillion in federal student loan debt. Of that amount, nearly \$133 billion, owed by 7.7 million borrowers, is in default. While a relatively small number of borrowers (less than 1 percent) have student loans over \$100,000, the average debt for those receiving a bachelor's degree is approximately \$30,000, an amount that has risen at more than twice the rate of inflation over the last decade. With college costs and student loan debt on the rise and high youth unemployment and underemployment, more borrowers are struggling to get a good job and repay their federal student loans on time. Clearly, many Americans are in need of assistance in managing their student loan debt. But current law has not kept pace with the needs of the growing majority of borrowers who are moving away from traditional landline telephones in favor of cell phones. According to a recent U.S. Department of Health and Human Services study, nearly 50 percent of all American households are now exclusively wireless, and the average is nearly 70 percent for age groups most likely to have student loans.

NCHER believes that Congress and the Administration must continue to support efforts to remove barriers that prevent student loan servicers and collectors from assisting struggling and defaulted student loan borrowers. We urge the subcommittee to direct the FCC to reconsider its final rule and strike a more appropriate balance between protecting consumers and allowing reasonable and responsible use of dialer technology to reach borrowers on their cell phones to provide them with needed assistance. Student loan servicers and collectors do not make telemarketing calls; they have established relationships with borrowers and can assist them in repaying their higher education obligations. In addition, recently, a federal court in California issued an opinion in a TCPA case that found Section 301 of the Bipartisan Budget Act of 2015 does not apply to FFELP loans even though, under the Higher Education Act of 1965, repayment of the loans is 100 percent backed by the federal government and current law explicitly states that it applies to those calls "made solely to collect a debt owed to or guaranteed by the United States." The subcommittee should direct the FCC to clarify that the recent changes to the TCPA apply to FFELP loans consistent with Section 301 of the Bipartisan Budget Act of 2015.

NCHER commends the subcommittee for its work to strengthen the operations of the IRS and FCC. We urge you to clarify the use of tax-exempt financing to support student and parent borrowers and clarify the use of new technology to assist struggling borrowers stay out delinquency or default.

If you have any questions or need additional information, please feel free to contact me at (202) 822-2106 or jbergeron@ncher.us.

Sincerely,

A handwritten signature in black ink, appearing to read "J P Bergeron". The signature is fluid and cursive, with a long horizontal stroke at the end.

James P. Bergeron
President