

**Prepared Testimony of ECMC  
Before House Education Committee of the Colorado General  
Assembly on Senate Bill 02**

**April 11, 2019**

Chair McLachlan, Vice Chair Buentello, and members of the Committee,

My name is Trey Rogers. I am an attorney at the law firm of Recht Kornfeld. I am here representing ECMC at today's hearing on Senate Bill 02. Educational Credit Management Corporation (or ECMC) is a nonprofit, federally-designated student loan guaranty agency based in Minneapolis, Minnesota.

As states like Colorado consider student loan servicing legislation, there continues to be confusion over the role of guaranty agencies that do not otherwise service loans in the federal student loan program and the critically important role they play in helping borrowers avoid default. The proposal in this bill to treat helping borrowers avoid default has the very real danger of resulting in grave consequences to individual borrowers, families, and Colorado's economy.

For example, since 2014, ECMC alone has helped more than 35,000 Colorado borrowers avoid default, ultimately helping these borrowers avoid having to pay approximately \$222,852,000 in additional debt.<sup>1</sup> This is because when a borrower defaults, federal law automatically adds to that borrower's total debt roughly 24% to cover any collection costs.<sup>2</sup> Thus, every time ECMC helps a borrower avoid default, it ends of saving that borrower, on average, \$6,367 in additional debt.<sup>3</sup> Given the significance of this positive impact, we do not believe helping borrowers avoid default should be treated as servicing a student loan.

As a quick background, guaranty agencies were created by Congress under the Higher Education Act of 1965 to help the U.S. Department of

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<sup>1</sup> This is based on: 35,000 (number of borrowers that have avoided default) *multiplied by* \$26,530 (average student loan balance per borrower in Colorado) *multiplied by* 24% (federally-mandated collection costs assessed to defaulted borrower).

<sup>2</sup> See 34 C.F.R. § 682.410(b)(2); 34 C.F.R. § 30.60. The current collection charges on defaulted federal Stafford, PLUS and consolidation loans is 19.58% of the payment. This is the equivalent of a payoff amount that adds 24.34% to the balance of the loan. See <http://www.finaid.org/loans/2008-05-collection-costs.pdf> (last visited April 10, 2019).

<sup>3</sup> This is based on: \$26,530 (average student loan balance per borrower in Colorado) *multiplied by* 24% (federally-mandated collection costs assessed to defaulted borrower).

Education administer the Federal Family Education Loan Program (FFEL) Program, commonly referred to as the guaranteed student loan program. By law, guaranty agencies must be either nonprofit organizations or part of the state government.<sup>4</sup> As part of the responsibilities as a guaranty agency, ECMC is mandated under federal law to perform default aversion services when a servicer makes a request for assistance.<sup>5</sup>

Each state must have a designated guaranty agency. Some guaranty agencies serve as the designated guarantor for more than one state. There are presently 24 guaranty agencies, most of which are state agencies. In Colorado, the state's guarantor is College Assist, which is part of the Department of Higher Education. In 2015, then Governor Hickenlooper selected ECMC to serve as a close partner to College Assist, providing operational support to the state's guaranty agency, including default prevention services under College Assist's oversight. ECMC continues to serve in this role.

Guaranty agencies provide college access, financial literacy, and default aversion assistance to students and schools.

Unfortunately, in many cases, the confusion around the role of guaranty agencies extends into whether guaranty agencies "service" student loans. However, guaranty agencies do not service student loans. Specifically, guaranty agencies do not:

- Receive scheduled periodic payments from a borrower;
- Receive any notification that a borrower made a scheduled periodic payment;
- Apply payments to the borrower's account pursuant to the terms of the student loan or the contract; or
- During a period when no payment is required on a student loan:
  - Maintain account records for the student loan; and
  - Communicate with the borrower regarding the student loan on behalf of the owner of the student loan promissory note.

These are traditional servicing activities that performed by student loan

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<sup>4</sup> 20 U.S.C. § 1078(c).

<sup>5</sup> 20. U.S.C. § 1078(l).

servicers, not guaranty agencies.<sup>6</sup>

But because guaranty agencies assist “a borrower related to that borrower’s student loan with the goal of helping the borrower avoid default on his or her student loan,” this legislation will apply not just to student loan servicers, but also guaranty agencies, including all of the state agencies.

Guaranty agencies’ default prevention borrower counseling is limited to situations when a borrower becomes delinquent on his or her student loan. In these situations, federal Higher Education Act of 1965 requires guaranty agencies to engage in default aversion activity, working with the borrower to help avoid default with the goal to inform the borrower about repayment options and connect them with their servicer to establish a repayment plan

Importantly, while the guaranty agency works with the borrower, the servicer continues to process payments, deferments, and forbearances, and maintains the servicing system and borrower’s account. The guaranty agency performs none of these tasks.

While guaranty agencies do not service student loans, Colorado would still would still treat them as servicers as a result of this legislation’s overly broad definition of “servicing.” Unlike what is traditionally considered servicing, this bill proposes to treat “interactions with a borrower to prevent default” as a servicing activity. We believe this will have unintended consequences, applying broadly to impact the important default aversion work of not only ECMC, but also organizations like the American Federation of Teachers’ student debt clinics and AFL-CIO’s The Borrower’s Hotline, which all interact with borrowers for the very same purpose—to provide them with information on how to avoid default.

To help prevent default, guaranty agencies provide borrowers with critically-important financial literacy resources, mediate calls between borrowers and servicers to help resolve any issues, and counsel borrowers on their rights and obligations, helping them understand the importance of avoiding default. ECMC does not receive any compensation from borrowers, servicers, or lenders for this work.

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<sup>6</sup> See attached Life of a Student Loan Timeline illustrating the different responsibilities of a loan servicing company compared to those of a guaranty agency.

During the “servicing” period, the borrower’s information is retained and updated by the servicer, not the guaranty agency.

In closing, as Colorado considers adopting student loan servicing legislation, ECMC believes it should follow the same approach taken by other states that have already passed similar laws and exclude guaranty agencies. This can be done either by (1) removing from the definition of “servicing” “interacting with borrowers to avoid default” or (2) expressly exempting guaranty agencies from the legislation, which is the approach taken by the states of California, Illinois, and Washington.

Pursuing either of these options will not, in any way, interfere with the state’s ability to regulate student loan servicers, or guaranty agencies that may also engage in traditional servicing activity. If the state of Colorado adopts the legislation as currently proposed, without specifically exempting the federally-mandated default aversion activity performed by guaranty agencies, it will clearly create a federal-state conflict that we believe the state should seek to avoid. This will also put the state’s regulators in the difficult position of having to license agencies of other states as most guaranty agencies are state agencies.

Thank you.

## Summary of Responsibilities

**SERVICER:** The loan servicer maintains the system of record, receives payments pursuant to the terms of the loan, applies those payments to the borrower's account, and is responsible for the majority of borrower interactions.

**GUARANTOR:** The guarantor provides financial literacy and college access counseling, issues the guaranty on the loan, provides default prevention counseling to help borrowers resolve their delinquency and connects borrowers to their servicers to resolve delinquency.

### Activities Performed By Servicer:

**School**  
Notes borrower's eligibility for federal student loans and loan amounts.

**Borrower**  
Completes loan application/promissory note, selects lender & guaranty agency, and submits application/promissory note to servicer.

**Servicer**  
Receives application/promissory note, and disburses loan funds.

- Establishes a repayment start date and repayment schedule in a statement provided to the borrower
- Provides a bill or statement for each installment period
- Receives and applies borrower payments to outstanding loan balance and maintains loan balance information on its system of record
- Receives borrower requests for temporary suspension of payment (e.g., forbearance, deferment); then, reviews the documentation, approves/denies the request and updates the borrower's account record
- Receives borrower requests for alternative repayment plan; then, reviews the application and approves/denies the payment plan
- Sends payment histories from its system of record, if requested by the borrower
- Sends paid-in-full letters to borrowers who successfully repay their student loans
- Performs required specific due diligence activities (e.g., phone calls, letters) to continue borrower repayment of the loan, if the borrower misses a payment(s)
- Submits a Default Aversion Assistance Request (DAAR) to the guarantor between 60-120 days delinquent
- Cancels the DAAR, if the borrower brings his/her loan current
- Sends a 30-day final demand letter, if the borrower becomes 240 days delinquent
- Files a claim for reinsurance with the guarantor if the borrower becomes 270 days or more delinquent and technically defaults

In School  
(length of time varies)/  
Student Loan Disbursement

Grace Period  
(6 months)

Repayment  
(From 10 to 30 years)

Delinquent

Default

**Guarantor**  
Reviews request for guarantee, confirms borrower's eligibility and loan amount, and issues loan guaranty.

### Guarantor Activities:

- Locates borrower, if necessary
- Counsels borrower on delinquency resolution options that will best meet his/her individual circumstances to help achieve a successful student loan repayment experience
- Advises borrower to avoid default and informs him/her of the consequences of default
- Connects borrower to his/her servicer to resolve delinquency.