ECMC

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November 16, 2018

Sara Rietcheck
Division of Consumer Services
P.O. Box 41200
Olympia, WA 98504-1200

VIA ELECTRONIC MAIL SARA.RIETCHECK@DFI.WA.GOV

Re: Comments on Proposed Rules Implementing SB 6029, c 62, Laws of 2018

Dear Ms. Rietcheck:

Educational Credit Management Corporation (ECMC) submits the following comments on the proposed regulations to implement SB 6029, c 62, Laws of 2018, relating to establishing a student loan bill of rights (the "Act"). ECMC is a nonprofit student loan guaranty agency and serves as the designated guarantor for Virginia, California, Connecticut, Oregon, Rhode Island, South Carolina, and Tennessee.

Overview of Guaranty Agencies

Each state has a designated guaranty agency that is either a state agency or private nonprofit corporation that has an agreement with the U.S. Department of Education (ED) under the Higher Education Act of 1965, as amended (HEA). These agencies help administer the Federal Family Education Loan Program (FFELP) by providing college access, financial literacy, and default aversion assistance to students and schools. They also play a unique role in regulating schools and lenders (and vicariously, their contracted servicers) that participate in the FFELP. "A guaranty agency shall take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty agency requirements."[1] Importantly, a servicer performs its activities under a private contract with the lender, but a guaranty agency's activities are mandated by the HEA and its regulations.

Guaranty agencies do not:

- Receive scheduled periodic payments from a borrower;
- Apply payments to the borrower's account pursuant to the terms of the student loan or the contract; or
- Work with the borrower to collect data, or collecting data, to make decisions to modify the loan.[2]

However, guaranty agencies are required by law to perform specific collection activities on defaulted student loans.[3] ECMC performs no collection activity beyond that mandated by law.

ECMC relies on its own employees to collect on newly defaulted loans. If we are unsuccessful for 420 days, we will engage the services of third-party vendors to seek payment from a

[1] 34 C.F.R. § 682.410(c).
[2] SB 6029, Sec. 9(35)(a-c); WAC 208-620-010 Definitions, "Student education loan servicing" or "service a student education loan" (a-c).
[3] 34 C.F.R. § 682.410(b)(6).

borrower. The use of third-party vendors is permitted so long as those vendors meet and adhere to extensive federal requirements.[4]

It is important to note that these regulations expressly preempt any state laws that conflict with or hinder a guaranty agency's ability to comply with the federal mandate to perform collection activity under the HEA and its implementing regulations.[5] This express preemption provision applies only to the guaranty agency and not any third-party vendor engaged by the guaranty agency to perform collection activities.

Application to Guaranty Agencies

We believe the proposed regulations impose requirements that will hinder and frustrate guaranty agency compliance with its regulatory obligations. Though the text of the statute indicates guaranty agencies are exempt, the proposed definition of "student loan education servicing" may unnecessarily operate to require guaranty agencies comply with the requirements from which they are purportedly exempt.

Specifically, because the proposed definition of "student loan education servicing" includes "administrative services with respect to a student education loan including *collection activities*" without further defining the scope of "*collection activity*," guaranty agencies that do not perform any collection activity beyond that which is required by federal law, and do not otherwise perform any of the enumerated activities in (a) – (c), will unnecessarily be subject to the Act and the proposed regulations. As a result, even though ECMC does not engage in any of the collection activities in (a) – (c) of the proposed definition of "student loan education servicing," and only performs those collection activities mandated under federal law, we may be unintentionally subject to the Act and the proposed regulations.

To resolve this conflict and fully implement the legislative intent of the guaranty agency exemption,[6] ECMC respectfully requests that "collection activity" within the definition of "student loan education servicing" exclude the federally mandated collection activities required of guaranty agencies under 34 C.F.R. § 682.410(b). We believe further defining collection activity in this way is consistent with the Legislature's clear intent to exempt guaranty agencies performing their federally mandated duties.[7]

Furthermore, excluding guaranty agency obligations to perform collection activity under 34 C.F.R. 682.410 will not affect application of the Act and the proposed regulations to third parties used by guaranty agencies. These third parties must be licensed by each state (and even some cities) that have a licensing requirement, including the state of Washington.

In the absence of a regulatory definition of "collection activity" specifically exempting the federally mandated collection activities of a guaranty agency, ECMC respectfully requests that the Department of Financial Institutions confirm that ECMC is exempt from the Act and its implementing regulations.

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[4] 34 C.F.R. § 682.416.
[5] 34 C.F.R. § 682.410(b)(8). "The provisions of [34 C.F.R. § 682.410](b)(2), (5), and (6) of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements of these provisions.
[6] Id.
[7] SB 6029, Sec. 10(c).

ECMC appreciates the opportunity to comment on the proposed regulations.

Respectfully submitted,

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