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Department of Financial Institutions, Division of Consumer Services
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Re: Comments on Rulemaking for the WA Consumer Loan Act Rulemaking

The Student Loan Servicing Alliance (SLSA) appreciates the opportunity to provide feedback on the WA Consumer Loan Act Rulemaking in advance of proposed rulemaking. SLSA is a non-profit trade association that represents federal and private student loan servicers, who collectively service over 90% of all student loans in the country. Members of SLSA are committed to serving our customers with care and appropriate protections, and the rulemaking process is critical to ensuring that laws are enforced consistent with their intent and in ways that are both practical and beneficial to Washington consumers and borrowers.

While many of the proposed changes in rules and regulation are not directly applicable to student loan servicing, we wished to provide broad feedback on certain provisions as follows:

WAC 208-620-554 Conducting student education loan servicing activities in the United States or outside the United States.

Most student loans are made and owned by the federal government, and there exist contractual and regulatory provisions that address performance of work servicing federal student loans, including requirements that work be performed and data be stored only in the United States. These contractual and regulatory requirements are driven by federal government privacy and information security laws. These requirements cover the vast majority of all student loans being serviced in the United States and mean most servicing functions are handled domestically. However, commercially-owned FFELP loans and private student loans—which represent a minority share of student loans outstanding—fall outside of the government privacy and information security rules, and therefore lenders and servicers have been free to engage offshore service providers.

With respect to such FFELP and private loans, this newly proposed regulation poses some challenges that should be addressed before regulating on this topic: as drafted the rule seems arbitrary and capricious in its determination of what activities are not permitted outside or

inside the United States since no basis is provided, the rule could reduce efficiency and borrower responsiveness that could harm consumers, while also potentially increasing the costs of borrowing for future borrowers. Since this is a new provision without guidance on what assessment, analysis, or facts support its application, it seems important to share some relevant points which one might merely speculate could be the basis for such a proposed rule:

1. Servicers have robust compliance and vendor management operations that regularly review and hold all operations, regardless of location, to rigorous standards that ensure the servicer in total can meet and exceed standards of applicable federal and state law. As such, whether a provider is domestic or not, the resulting efforts are similarly controlled and managed. There is no reason to think that one set of functions versus another should or can be by law restricted to domestic operations, excepting some payment functions for which law already is prescriptive in the manner in which, or whether, they can be handled outside of the United States.
2. Specifically, for (1)(c) and (d) there does not appear to be any reasonable basis for why all communications should be domestic, especially in a modern servicing environment where customers interact online and through various channels and expect responsiveness. In fact, for emails or other electronic communication, it is reasonable to think that if a servicer did choose to leverage operations outside of the United States then that is to provide coverage during non-traditional hours and in order to expedite response, which also lowered the cost of loans – all of which benefits consumers.
3. Also, this provision would subject student loans to requirements that are unique to this asset class, without a reasonable basis as to why that distinction should be made for this asset class versus others that are regulated by the state, such as mortgages or auto loans.

SLSA recommends either eliminating this provision, or at least amending the proposed provision so that (1)(c) and (1)(d) are moved and renamed (2)(f) and (2)(g), respectively.

WAC 208-620-950 Servicing student education loans—General requirements. AND

WAC 208-620-960 Servicing student education loans—Requests for information.

SLSA supports generally the changes made to these sections which seeks to clarify in regulation that which is clear in statute: that federal government owned and serviced loans are pre-empted from state regulation. While the proposed changes themselves are merely re-affirmation of what federal law and courts have determined, clarification is always helpful.

We believe that consolidating the clarification and ensuring it is read to encompass all areas in which state regulation may be in direct conflict with federal requirements, which enjoys conflict pre-emption under the law, is appropriate.

SLSA recommends, for drafting simplification and consistent clarification, that instead of the proposed amendments, the 950 section be merely amended to include the following provision:

"(6) If you are in compliance with an applicable federal requirement for any subsection, you are deemed in compliance with that subsection."

Below are some other specific sections we wish to comment on:

WAC 208-620-490 (5): "You must notify the department in writing within thirty days after an occurrence of any of the following . . . (b) Actions by employees discovered, known, or reasonably should have known. This includes illegal, fraudulent, or any other act that could subject the company to a violation described in RCW 31.04.027."

While "reasonably should have known" is vague and undefined and should be clarified, we are more concerned with the language and references that subject the servicer to an unreasonable standard. The purpose of the law and regulation should be clear that the goal is to ensure that servicers are not engaging in behavior or activities to knowingly and willfully harm borrowers. Reasonable mistakes can and do occur, but are quickly identified and remediated.

SLSA recommends the language be amended as follows:

"(b) Actions by employees discovered, known, or reasonably should have known. This includes illegal, fraudulent, or any other act that could subject the company to a willful and knowing violation described in RCW 31.04.027."

WAC 208-620-510 (8)(a): "Student education loans. (a) All loans. In addition to the applicable disclosures required for all consumer loans made by a licensee, the licensee must disclose to all service members their rights under state and federal service member laws and regulations."

This provision as drafted reflects a misunderstanding of the role of the servicer and portions are not possible to comply with, as most servicers themselves do not make loans to consumers. While the state may wish to reaffirm lending disclosure requirements, it is improper to subject servicers to such requirements by reference. Regardless, it would be important for the state to provide model disclosure to servicers describing the Washington-specific servicemember protections that it believes are appropriate for servicing applicable private student loans in order to provide safe harbor for compliance as well as provide clarity for consumers, if the provision remains. This is especially critical given recent broad confusion about the applicability of WA-specific protections to service members themselves and potentially their spouses.

SLSA recommends eliminating this provision or that it be redrafted to correct the referential error.

WAC 208-620-550 (2)

While it is likely that the intent of this provision is clear to most policy experts, given this is state regulatory guidance it is important to clarify that the language is referring to the United States Department of Education, rather than some state government agency.

SLSA recommends the language be amended as follows:

"If you are in compliance with the U.S. Department of Education contractual requirements, you are not subject to this subsection"

We thank for the opportunity to provide our industry expertise and comments so we can continue to work together to create policy and regulations that best achieve improved practices and outcomes in the student loan market and for consumers. If you would like to discuss the comments provided, please contact me at (202)955-6055 or scott.buchanan@slsa.net.

Respectfully submitted,

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Executive Director