1100 Connecticut Avenue, NW
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August 20, 2018

Via Electronic Mail – sara.rietcheck@dfi.wa.gov

Ms. Sara Rietcheck
P.O. Box 41200
Olympia, WA 98504-1200

Re: Comments on proposed rules implementing SB 6029, c 62, Laws of 2018

Dear Ms. Rietcheck:

On behalf of the Student Loan Servicing Alliance (SLSA), I am transmitting these supplemental comments on the recently published proposed regulations to implement SB 6029, c 62, Laws of 2018, relating to establishing a student loan bill of rights (the "Act"). We sent you one comment on the federal preemption issue on August 7, and we appreciate the opportunity to offer these additional comments. SLSA is a non-profit, membership organization consisting of student loan servicers in the two principal federal education loan programs: the Federal Direct Loan Program ("FDLP") and the Federal Family Education Loan Program ("FFELP"), as well as private education loan servicers. Our approximately 25 servicer members work diligently to provide the full range of servicing operations for student loans, including conversion from in-school status to repayment, payment processing, collections, claims processing, and customer service. Together, SLSA members service approximately 95 percent of all outstanding student loans in the United States.

SLSA primarily focuses on the operational and technical issues that impact customer service and program administration. We develop industry positions and promote best practices, which help our members provide a high level of quality customer service. We also work with other organizations to support the continuing enhancement and streamlining of student loan programs to improve efficiency, reduce complexity, and promote both a better customer experience and the successful repayment of a customer's student loans. It is in that context that I submit these comments to the modified proposed regulations, acknowledging that all of the key stakeholders -- regulators, legislators, servicers, and, most importantly, student loan borrowers -- benefit from a cohesive regulatory scheme focused upon practices most likely to reduce borrower confusion and promote borrower success.

In addition to our concern that federal law preempts provisions of the Washington statute and these proposed regulations,[1] we offer the following comments. These are not arranged in order of importance, but rather seriatim, for your convenience in reading them:

WAC 208-620-010: Definition of "Business day" (pg. 1)

The definition of business day needs to be broader to include certain state holidays and other conditions such as severe inclement weather that cause businesses to be closed. In order to ensure that a payment can be credited on the next business day, or to send a required disclosure, a business needs to be open and functioning. The Department of Education permits its servicers to close in recognition of certain state holidays in the state where they are located; for example, Patriot's Day is widely recognized in Massachusetts and Maine; Emancipation Day is recognized in the District of Columbia and can even delay the national due date for the filing of federal income tax returns. In addition, many businesses are routinely closed on the Friday after Thanksgiving, and businesses in certain areas may be closed for weather emergencies. We request that the DFI modify its definition of business day to permit student loan servicers to operate in accordance with Department of Education requirements, including important State holidays and severe weather.

WAC 208-620-010: Definition of "Immediate family member" (pg. 2)

The definition of "immediate family member" in the proposed regulations does not match the U.S. Department of Education's definition, which is spouse, child, parent, or sibling of the borrower (including any persons who meet this definition by reason of adoption). Washington's definition also specifically includes grandparent, grandchild, stepparents, stepchildren and stepsiblings. While there are currently no provisions in the proposed regulations that would cause a conflict, there may be a provision that causes a conflict at some time in the future. We request that the DFI modify its definition of immediate family member to permit student loan servicers to operate in accordance with Department of Education requirements.

WAC 208-620-010: Definition of "Principal balance" (pg. 4)

The regulations define the "principal amount" as the loan amount advanced to or for the direct benefit of the borrower, and "principal balance" is defined as the principal amount plus any allowable origination fee. These definitions differ from the federal definitions used for federal student loans, which are controlling for purposes of all federal loan disclosures. Under federal law and regulations, borrowers are subject to statutory origination fees. These are deducted from the original loan amount (OLA) which is the equivalent of the principal balance under the Washington regulations. Required federal disclosures report the original loan amount, including the origination fee, and all computations are based on that initial amount. Under the Higher Education Act, interest is permitted to be capitalized under certain circumstances, and the principal balance would include any interest that has been capitalized to date. Thus the principal balance can be (and frequently is) a larger number than the original loan amount, and is subject to further increase with subsequent capitalization events. We are very concerned that if servicers

[1] There is express preemption of disclosures by states. 20 U.S.C. § 1098g provides that "[l]oans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) shall not be subject to any disclosure requirements of any State law." In addition, there is conflict and field preemption, as set forth more fully in our prior comment.

are required to report to Washington using the definitions contained in the regulations, we will confuse borrowers given that all federal disclosures are based on the rules outlined above.

<u>WAC 208-620-010: Definition of "Student education loan borrower" (pg. 5)</u>
Item (b) includes "any person who shares responsibility with such resident for repaying the student education loan." Washington State does not have the authority to govern non-residents who share responsibility for repaying the student education loan with a Washington resident. We suggest item (b) to be revised as follows: "any Washington resident who shares responsibility with such resident for repaying the student education loan."

<u>WAC 208-620-010: Definition of "Residential mortgage loan modification services" (pg. 8)</u>
The term "loan modification" is used throughout the proposed regulations in connection with student loans, but the only definition of "loan modification" occurs in the mortgage context. This makes sense as the concept of loan modifications is a term of art that applies to mortgages but not to student loans. There is no "loan modification" option available for federal student loans. Borrowers are entitled to change repayment plans and to request benefits like deferment and forbearance whenever they choose. They do not need to be in distress to make any of these changes.

<u>WAC 208-620-104: Who is exempt from licensing as a consumer loan company? (pg. 10)</u>
The "small servicer" exemption for student loan servicing is so small as to be virtually unworkable. Student loans are unique in that borrowers borrow every year that they are in school, so borrowers almost always have multiple loans. Most borrowers have at least five loans, so this exemption is basically a one-borrower exemption, which is meaningless. We would urge the DFI to look at Illinois which exempts small servicers with 20,000 accounts or less.

<u>WAC 208-620-324: What are the capital requirements for a student education loan servicer? (pg. 13)</u>
The net worth and liquidity requirements in Washington differ from and are more onerous than those we have seen in other states, particularly for small servicers, non-profit entities, and state agencies. Most states use a straightforward "net worth" calculation, whereas Washington uses tangible net worth as defined in the regulations, which may cause problems for some of these entities. For example, in item (1)(a), including "pledged assets" in the calculation of tangible net worth could be problematic in achieving the minimum, especially for small, non-profit, and/or state-based organizations. We would urge the department to use the more straightforward net worth calculation used by other states. If that is not possible, then we would ask that the department modify the definition of tangible net worth to exclude the reference to pledged assets. At the very least, net pension liability and net OPEB liability should be excluded since they are actuarially determined liabilities.

For item (1)(b), we suggest the sentence be edited to read, "In addition, the applicant or licensee must maintain liquidity (to include operating reserves) of .00035 times the unpaid principal balance of the student education loan servicer's Washington State portfolio." We do not believe that Washington has the power to regulate what we do outside the state.

The combination of the onerous capital requirements, the size of the annual assessment, and the lack of a meaningful exemption for small servicers will mean that many smaller student loan servicers cannot afford to service loans in Washington and will be forced to transfer servicing to other larger servicers. This will provide disruption to consumers and will not be in the best interest of Washington state residents. Even larger servicers will be forced to cut back on outreach and improvements to their systems and customer service.

WAC 208-620-370: What are the grounds for denying or conditioning my consumer loan company license application? (pg.14)

The grounds for denying or conditioning license application are overly broad and vague. The U.S. Department of Education has chosen contractors to service its federally-owned portfolio based on a public solicitation and competition that has already looked at the servicers' financial responsibility, experience, character, and general fitness to operate a business honestly, fairly and efficiently.

WAC 208-620-442: Calculation of annual assessment (pg.16)

Given that the revenues for federal loan servicers under contract to the Department of Education are fixed pursuant to the contract terms, and that servicer margins under the contract are very narrow, the annual assessment proposed by the department will severely curtail any profits to the servicers, and may force some servicers to reduce delinquency and default prevention outreach, investment in innovation, and in severe cases, may impact customer service levels. Because of the expense and burden of the licensing process, combined with the annual assessment and onerous capital requirements, small servicers not under contract to the Department of Education with only a few borrowers in Washington may refuse to service loans for Washington State residents and transfer existing loans to larger servicers.

As of the most recent FSA quarterly data report, there are 685,000 borrowers in Washington state with just under $20.97 billion in outstanding non-defaulted Direct Loans.[2] There is not sufficient publicly available data to calculate the dollar volume and number of borrowers for ED-owned FFELP loans, commercial FFELP and Perkins loans. However, using the multiplier in the proposed regulations, the annual assessment for the Direct Loan portfolio alone would be over $806,500. Using $24.76 as an estimate of the average payment per borrower for federally owned loans, the Washington annual assessment is therefore over 4.75% of the total annual servicing fees received by federal servicers based on their Direct Loan portfolios.[3]

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[2] *See* Direct Loan Portfolio by Location and Direct Loan Portfolio by Delinquency and Debt Size, available at https://studentaid.ed.gov/sa/about/data-center/student/portfolio

[3] Federal Student Aid used to report on the per borrower servicing cost to the federal government in its annual reports. The last time it reported such information was for FY 2015. See, Federal Student Aid FY 2015 Annual Report, available at https://www2.ed.gov/about/reports/annual/2015report/fsa-report.pdf, p. 22. Servicers are paid based on the status of the borrower, and the cost of servicing has gone up in recent years due to increasing numbers of borrowers leaving school and entering repayment status, which requires substantially more work from the servicer. Applying the amount of the increase in servicing costs from FY 2014 to FY 2015 to subsequent years would mean that the average servicing costs would currently be approximately $24.76 per year. We believe this to be a reasonable estimate.

This is based on the gross compensation paid to federal servicers, before even $1 is spent on any servicing activities. Nearly all of what the Department of Education pays companies for servicing is for the systems, payment and paperwork processing, billing, postage, and customer call centers. Most servicers report very little margin on servicing Department of Education-owned loans, if any at all. Some smaller servicers have already dropped out of the Department's servicing contract because of the high costs of performance and the low reimbursement rate (and that was prior to the imposition of fees by states). Some large servicers have confirmed to SLSA that the size of the Washington annual assessment will materially impact, and in some cases eliminate profitability, on the majority of their portfolios. For all servicers, the high level of this fee would require reductions in the only costs over which servicers have control, which is the level of delinquency and default prevention outreach that they undertake. We do not believe that it is the intent of the state regulators to curtail these important activities.

In addition, as currently structured, the proposed regulations will artificially inflate the amount of the annual assessment, both in the process used to compute the assessment, and by using loan volume as the measure of the assessment. Subsection (2) of the proposed regulations requires a snapshot of loan volume as of December 31 of the prior year, plus the addition of any new loan volume since December 31st. It fails to take into account that some loans need to be subtracted from the December 31 snapshot; these would include loans that have been transferred to another servicer, paid in full, discharged, or forgiven, or that have defaulted since December 31. These loans are no longer being serviced by the servicer, and the servicer is not receiving any compensation for them. Failing to take these loans into account also causes transferred loans to be double counted as they would be counted in the prior servicer's December 31 snapshot, and would be included in the new servicer's loans added since the end of the year. Thus, DFI needs to either subtract loans no longer in the servicer's portfolio, or simply to set a date at which a snapshot of the servicer's portfolio should be taken. The latter would be simpler and more straightforward to implement.

Moreover, we believe that the DFI should base any annual assessment on borrower counts rather than loan volume. That is how the Department of Education pays its contractors and therefore how servicers of by far the largest segment of the loan programs are compensated. Many other student loan servicers are paid that way as well. An annual assessment based on loan volume unfairly increases the required annual assessment for federal loans because of the number of borrowers in income driven repayment (IDR) plans with increasing loan balances due to negative amortization. Basing the assessment on loan volume will create a perverse counter-incentive to the objective of most regulators to enroll more borrowers into income-driven repayment. Income-driven repayment plans base payment amounts on borrowers' income and frequently increase borrowers' balances (sometime dramatically) since payment levels do not cover the interest costs on the loans and the loans are subject to negative amortization. Department of Education data shows that, while the number of direct student loan borrowers in income-driven repayment plans has doubled over the last three years, the dollar volume has grown much faster, by 124%.[4] Regulators should avoid penalizing servicers for enrolling borrowers in income-driven repayment plans.

[4] *See* Figure 2, FSA Data Center at a Glance, June 2018 Update, available at https://news.navient.com/static-files/3a9206f3-7b33-4022-aa46-970b95c986ea. Nearly 30% of all Direct Loan borrowers and 46% of outstanding Direct Loan dollars are enrolled in IDR.

Fees imposed in Washington will exacerbate the cuts that servicers are already facing. It is important to recognize that the funding for paying federal servicers comes from the annual congressional appropriation process, as part of the Department of Education's Student Aid Administration appropriation. The Administration, in its "Statement of Administration Position" on the funding bill, has objected to the funding shortfall in the bill for servicing. Below is the text:

> Student Aid Administration. The Administration objects to the funding level for Student Aid Administration which is $93 million below the FY 2019 Budget request. The requested increase is needed to service an ever-increasing volume of Federal student loans, improve cybersecurity, and protect the data of 40 million Americans with student loans.

Essentially, the Department of Education is citing a $93 million shortfall in funding for administering the student loan portfolio for FY 2019 and, if applied nationally, the Washington assessment would exacerbate that shortfall by another $38.5 million for the Direct Loan portfolio alone.

WAC 208-620-505: What are my disclosure obligations to consumers? (pg. 18-20)
This section contains several disclosure requirements which are expressly preempted by 20 U.S.C. 1098g. Please refer to our comments dated August 7, 2018 for more detail.

A clarification should be made to this section to ensure that student loan servicers are only required to comply with applicable federal and state laws. As it currently reads, it could be construed that student loan servicers are required to comply with laws that do not apply to them, such as the Real Estate Settlement Procedures Act, the Home Mortgage Disclosure Act, etc. In addition, it should be noted that the Higher Education Act exempts federal student loans from the requirements of the Truth in Lending Act (TILA).

Subsection (7) (on page 20), which requires a special disclosure for a private education loan that refinances a federal student loan, is the only disclosure requirement in this section that applies to student loans. All of the other disclosure requirements in this section appear to apply to mortgage loans. The refinance disclosure must be given to a borrower prior to the new loan being made; therefore, we assume that the "licensee" referred to here is the lender. Many private loan lenders use a separate entity (an "originator") to originate private education loans, and then the loan is transferred to the servicer after it is originated. Therefore, this requirement would not be applicable to many private education loan servicers.

WAC 208-620-520: How long must I maintain my records under the Consumer Loan Act? What are the records I must maintain? (pg. 21)
In some instances, servicers will not be able to comply with the requirement to maintain servicing records for a minimum of three years. For example, when the U.S. Department of Education decommissions one of its federal servicer contractors, the servicer is required to purge all of its records for loans serviced for the Department within a much shorter period of time, generally within a matter of months. The servicer's contract with the Department states that all of

the data and records held by the contractor belong to the federal government, and therefore once the servicer no longer has a relationship with the Department, it must remove all data and information related to the federal contracts from its servicing system. Some private loan lenders exercise similar control over their loans and require the servicer to delete all records within a shorter timeframe than 3 years. Therefore, an exception to the three-year period must be created for these situations.

In addition, the record keeping requirements are broader than we have seen in other states. Given that student loan servicers do not advertise, and that federal loan servicers and many private loan servicers do not originate loans, many of the requirements in this section do not apply to us, and we do not have access to some of the records that are listed. It would be helpful if the department could clarify that student loan servicers are only required to maintain general records in accordance with subsection (4).

Subsection (5) provides that, in addition to the recordkeeping requirements of this section, education loan servicers must also collect, maintain and report to the department specific information about loans in their portfolio, including "loan volume, default, refinance and modification information; loan type (subsidized, deferred, etc.) information; and collection practices." We would suggest that this subsection be moved from its current spot; the reporting required by this subsection makes it not a good fit for the other provisions of the section, which are about record-keeping.

In addition, it should be noted that servicers do not generally hold defaulted loans; loans owned by the Department of Education are transferred back to the Department when they are severely delinquent; FFELP loans are transferred to a guaranty agency when they are severely delinquent; and private loans are generally transferred to the lender, or, at the lender's instruction to a collection agency when they are about to be charged off. Thus, it is unclear what information about default and collection practices could be shared as we do not perform these functions. In addition, "deferred" is a loan status, not a loan type. Federal loan types include Stafford or Direct (subsidized or unsubsidized), PLUS, and Consolidation.

WAC 208-620-550: What business practices are prohibited? (pg. 23)

Subsection (1) requires servicers to provide loan payoff information within seven business days. All of the other notifications and disclosures in the regulations must be provided with 15 business days. We would request that this notification be changed to 15 business days in order to align with all other notifications.

Another prohibited business practice is "(8) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks." This requirement should exclude student education loan servicers, as they are required to send borrowers forms that contain blanks so that the borrower can fill in the form with the necessary information and sign it. The federal student loan programs use OMB-approved forms which are always sent out with blanks, or the borrower can download a blank form from the servicer's website. If there is a blank, it is because the borrower did not fill it out. In addition, many federal student loan forms use skip logic, which instructs the borrower to leave a section blank if certain conditions apply.

WAC 208-620-569: "What fees can I charge when servicing student education loans?" (pg. 24)
We suggest changing the title of this section to, "What fees can I charge to the borrower when servicing student education loans?" This clarification is needed to ensure the section does not also apply to fees paid between servicers and loan owners.

WAC 208-620-950: Servicing student education loans – General requirements (pg. 25)
This section contains several disclosure requirements which are expressly preempted by 20 U.S.C. 1098g. Please refer to our comments dated August 7, 2018 for more detail.

Subsection (2) requires a servicer to send a specific separate document seeking the borrower's authorization to receive all communications electronically and requires that the servicer keep the borrower's agreement to receive electronic communications. All student loan servicers comply with the federal ESIGN Act (15 U.S.C. ch. 96) in terms of collecting consent to receive electronic communications. However, for Direct Loans made by the Department of Education, this step is handled by another contractor before the servicer receives the loan. The loan origination process for Direct Loans is handled through the Department of Education's Common Origination and Disbursement (COD) system by Accenture, working through colleges and universities to disburse the loan funds. During the COD process the borrower may consent to receive communications electronically; if they do so, then the servicer receives the borrower's file with a field indicating that communication should be electronic. Therefore, servicers of Direct Loans will not have access to the electronic authorization agreement provided by the borrower to the Department of Education.

Subsection (3)(b) contains a sentence referring to the "scheduled method of accounting" that should be deleted. The proposed regulations in several places seem to assume that student loans are like mortgages, when they are not. Student loans use the simple interest method (a definition of the simple interest method is set forth in WAC 208-620-011 at the bottom of page 8 of the proposed regulations). Unlike mortgages, student loans do not employ the scheduled method of accounting, they do not involve escrow accounts, and they do not utilize suspense accounts, except a very general suspense account when there is not enough information on a payment to know which borrower's account the payment should be applied to.

In addition, please refer to our comment on the definition of "business day" with respect to crediting payments.

Subsection (3)(c) requires the servicer to notify the borrower if a payment is received but not credited to the borrower's account. This requirement does not make sense in terms of student loans. The only reason that a payment will not be credited promptly is that there is insufficient information provided in connection with the payment. Generally, that means that the servicer does not know the identity of the borrower. We can't send a notice to a borrower whose identity we do not know. Once the servicer researches the payment and is able to determine which borrower's account the payment should be applied to, the payment will be credited as of the next business day after receipt.

Subsection (4) requires that the licensee must provide on its web site information or links to information regarding repayment and loan forgiveness options that may be available to

borrowers. This is relatively simple for the majority of federal loans. The Department of Education has extensive information available on its website for repayment and loan forgiveness options. However, in the case of private loans, the information may be so voluminous as to require a large spreadsheet to display it, which would be more confusing than helpful to consumers. The terms of private loans, including repayment and forgiveness options, are set by the lender, not by the servicer. And lenders have designed lending programs that vary over time, by school, and even by program within a school. Many of these were designed at the request of a college or university that wanted a specific loan program to meet the needs of a certain segment of its students (for, example, law or medical loans). And each promissory note is governed by specific terms that do not change once the loan is made. Private loans are therefore unlike credit cards, which only have a few programs that may change over time, but can be easily displayed on the creditor's website. For example, CapitalOne has 13 different credit cards, and a consumer can look at his card to see which one he has and then look up the terms of that card on the CapitalOne website. A private loan borrower would need to know the academic year the loan was taken out, which school, and which program within the school. To create this information would require large spreadsheets, would be an enormous burden, and would cause confusion and end up misleading borrowers who look at the wrong loan program.

This requirement also goes against best practices in website design. Servicers currently work with web designers and graphic artists to ensure that their websites are easy to navigate so that borrowers can find important information quickly. By requiring that large amounts of information be displayed prominently, the department is ensuring that nothing is actually prominent.

Many lenders consider the terms of their loans to be proprietary, and do not permit servicers to put information regarding loan terms on public-facing webpages. In addition, borrowers who might be looking for a new loan would see information on loan programs that may no longer be offered, which would be confusing and misleading. The far better approach is to provide the borrower with the information that is relevant to him when he logs into his account.

In addition, subsection (4) requires that the licensee must provide on its web site, "the availability of the student loan advocate to provide assistance." We want to clarify that this information cannot be provided until it is made available to servicers. In addition, if other states enact similar requirements, then servicers will have to publish a lengthy list of ombudsmen and advocates, and the Washington student loan advocate may receive calls from borrowers who are not Washington residents.

WAC 208-620-960: Servicing student education loans -- Requests for information (pg. 26)

This section contains several disclosure requirements which are expressly preempted by 20 U.S.C. 1098g. Please refer to our comments dated August 7, 2018 for more detail.

We would urge the DFI to clarify the intent of this provision, which is written very broadly. Student loan servicers receive many requests for information from borrowers in connection with their student loan accounts, including very simple and straightforward requests for information on how to change their address, a request for a form, which repayment plan they are currently enrolled in, etc. The information that a servicer is required to send out in response to a "request

for information" is not appropriate as a response to these everyday borrower requests, and would result in a servicer sending out all of the listed information every time they spoke with a borrower. It appears that the intent of the section is to trigger providing certain information when there is a dispute of some kind by the borrower. California has a similar requirement; they termed their request a qualified written request (similar to the RESPA requirements) to denote that it is a special category of request with heightened response requirements. We would ask that the DFI rename the "request for information" to provide clarity that it is triggered by a borrower dispute, and not by more mundane requests for information.

In subsection (2)(a), the proposed regulations require the servicer to tell the borrower if the account is current, and if not, to provide information regarding the default. We would recommend changing the word "default" to "delinquency." Federal student loans do not default until they have been delinquent for between 270 and 360 days. At that point the servicer transfers them to either the Department of Education or to a guaranty agency, and the servicer no longer holds the loan.

In subsection (2)(b), the current balance includes the amount of funds, if any, held in a suspense account. As indicated elsewhere in these comments, suspense accounts are typically used in the mortgage world and they are not common for student loans. The only time a suspense account might be used is when a servicer does not have enough information about the identity of the borrower to be able to post a payment. If we don't know the identity of the borrower, then we can hardly be expected to provide information on payments in a suspense account and to tie them to a specific borrower.

We object to the requirement that servicers provide the telephone number and mailing address of an individual servicer representative with ability to answer questions and resolve disputes. All customer service representatives who answer the phone are trained to answer questions and resolve disputes, and servicers all have processes in place for escalation of disputes and inquiries. The Department of Education uses specialty servicers for some areas such as disability determinations or PSLF; these servicers may have special units to deal with certain situations that may be common only to that specialty servicer. An individual may not be available when the borrower calls which will delay the borrower's ability to resolve the issue. That is not good customer service. In addition, there are additional methods of borrower communication such as live chat and email, which are preferred by some borrowers. When the Bureau of Consumer Financial Protection was enacting its mortgage servicing rules, it considered adopting the concept of individual servicer contacts, but in the end decided that requiring mortgage servicers to provide individual contacts was too burdensome to the servicer and ultimately not beneficial to the consumer.

The Department of Education regulations require servicers to respond to a borrower's inquiry within 30 days. Given the shorter response times for these "requests for information," we would recommend that the department add language that will allow servicers to designate a specific address to which borrowers should send "requests for information," as California has done for its qualified written requests. This will ensure that the servicer realizes that it has received a "request for information" so that it can respond expeditiously.

Subsection (5) provides a list of more detailed information that borrowers may request. Many of these are also disclosures that are prohibited by 20 U.S.C. 1098g in connection with federal student loans. In addition, federal student loan servicers under contract to the Department of Education are not given a full copy of the borrower's original Master Promissory Note. They are generally only given the signature page.

There is another reference to suspense account activity in subsection (5)(b) which should be struck.

The regulations acknowledge that the servicing statement required by this regulation is burdensome and expensive to produce. The servicer is entitled to charge $30 for second and subsequent statements to a borrower. While we believe that $30 is a very reasonable fee to the consumer for the amount of work needed to create the statement, federal loan servicers are not permitted by the Higher Education Act and its regulations to charge borrowers at all to provide information. Therefore, we would urge the department to eliminate the annual statement requirement or at the very least to strictly limit the number of servicing statements to only one. Given that the average servicing fee received by a federal student loan servicer under contract to the Department of Education is less than $25 per year per borrower, creating these reports on an annual basis would be an enormous financial burden on servicers.

<u>WAC 208-620-970: Servicing student education loans – Acquiring, transferring or selling servicing activities (pg. 27-28)</u>
This section contains several disclosure requirements which are expressly preempted by 20 U.S.C. 1098g. Please refer to our comments dated August 7, 2018 for more detail.

It should be noted that student loan servicing rights are not considered an asset which can bought and sold, as is the case for mortgage servicing. Student loan servicing is a straightforward contract between a servicer and the owner of the loan. Therefore we suggest deleting all references in the section to acquiring or selling servicing rights. Student loans involve a transfer of the loan from one servicer to another, based on the instructions of the loan holder.

The 15-day window in the proposed regulations (no more than 60 days and no less than 45 days before the effective date of the transfer) does not work in terms of how federal student loan servicing transfers are handled by the Department of Education. Contractors for the Department of Education are required to transfer loans when instructed to by the Department, which frequently provides shorter lead times to the servicer than is contained in the notice requirements.

Washington is the only state that is requiring that transfer notices be given so far in advance (45-60 days) of a transfer. The notification timeframe depends on when the prior servicer is ready to convert the loans onto the transferee servicer's system. If a notification is sent too early, there is a good possibility that the information included on the letter (i.e. principal, interest, fees) will change. Servicers have provided feedback that the timeline proposed by Washington is too far in advance of the transfer to be workable. Servicer transfers are carefully coordinated between servicers, with shifts in the actual effective transfer dates to ensure that there is as little disruption as possible in payment dates, especially when borrowers are paying by ACH. SLSA

members are concerned that, as the effective date of the transfer changes, they will have to provide multiple transfer notices to borrowers, which will be expensive to servicers, but more importantly, will be confusing to the borrowers receiving the multiple notices. We are very concerned that borrowers receiving these notices so far in advance will stop making payments to their existing servicer, which will cause them to be seriously delinquent by the time the loan is actually transferred to the new servicer. We would urge the department to adopt a standard like that of Illinois, which requires transfer notices to be sent at least 15 days prior to the transfer. The closer to the transfer date that the notice is permitted, the more accurate it will be.

Subsection (1)(a)(iv) requires the transferee servicer to provide information about how to obtain a payment history from the prior servicer or the transferee servicer, including a count of payments that qualifies toward "any" forgiveness options. Both income driven repayment (IDR) plans and public service loan forgiveness (PSLF) require the borrower to make a certain number of qualifying payments in order to receive forgiveness. There are multiple IDR plans, all with different eligibility requirements, and borrowers are required to choose which repayment plan they wish to be in. Servicers monitor borrowers' payments based on the current plan chosen by the borrower. So any information provided would be limited to the borrower's current repayment plan. With respect to PSLF, the servicer may not have any information about the borrower's employment and is therefore unable to provide a count of payments that might otherwise be eligible for PSLF. Once a borrower expresses interest in PSLF, the Department of Education requires that the borrower's loans be transferred to its designated PSLF servicer, which is the only servicer permitted to make estimates regarding payment eligibility for PSLF. In addition, unless the borrower has submitted employer certification forms to the designated servicer, even that servicer is unable to provide information on whether or not the borrower has made a qualifying payment. The Department of Education makes all final determinations regarding forgiveness in the PSLF program.

Subsection (1)(a)(v) requires that a "notification indicating whether an alternative repayment plan or loan consolidation application is pending," be included in the transfer letter by the transferee servicer. In thinking about notifications from the transferee servicer, the DFI must keep in mind that the servicing transfer has not yet taken place, and the new servicer has not loaded any of the loans onto its system yet. Therefore the notifications that it can provide are limited to general "boilerplate" notifications that do not require any knowledge of the loans that will soon be loaded onto its servicing system. In this regard, prior to the transfer, the transferee servicer has no actual knowledge of whether an alternative repayment plan or loan consolidation application is pending for the borrower, and therefore this notification is impossible for the transferee to make. Therefore this requirement should be struck.

Subsection (1)(a)(vi) requires the transferee servicer to provide information on how to submit a complaint to the Department of Education, the student loan advocate, "student loan ombuds, and other relevant federal or state agencies that collect borrower complaints, in the event of a servicing error." The first two in the list are clear, but who is the student loan ombuds? In terms of other relevant federal agencies, we assume that the regulations are referring to the Bureau of Consumer Financial Protection's consumer complaint portal. The Federal Trade Commission also collects general consumer complaints about many financial products and services. Are these the relevant federal agencies contemplated by the regulations? And in terms of state agencies, we

are not aware of any and assume that Washington State would provide us with the names of any Washington agencies other than the office of the student loan advocate.

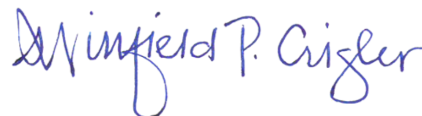
Subsections 1(b) and 2(b) both address loan modifications. As pointed out earlier in these comments, loan modification is a mortgage term and is not applicable to federal student loans.

Subsection (2)(a)(i) requires the transferring servicer to include the "effective date of the transfer of servicing…" This date is fluid and could move based on the servicer receiving the loans, which is out of the control of the transferring servicer. Therefore, we suggest updating this to read, "general timeframe of the transfer of servicing."

<u>Effective date of the servicer licensing and regulatory requirements:</u> It is our understanding that the effective date of the student loan servicer licensing and regulatory requirements is the earlier of January 1, 2019 or the adoption of final regulations. As currently written, the proposed regulations contain requirements that will require servicers to change certain practices, to adopt new practices, and to put in place systems to capture certain information in order to be able to report information to Washington State. These changes cannot be finalized until we have final regulations. Therefore, it is critical that we have enough time to create the systems and procedures to put these changes into effect after the adoption of the final regulations. We would urge the DFI not to begin examinations or enforcement or reporting pursuant to the final regulations until January 1, 2019 at the earliest.

Thank you for permitting us to comment on the proposed regulations. I would be happy to answer any questions you may have concerning our comments, or to discuss them further at your convenience.

Sincerely,



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