Student Loan Servicing Alliance
[redacted]

October 28, 2022

VIA EMAIL: regulations@dbo.ca.gov

Department of Financial Protection and Innovation
Attn: Sandra Navarro
2101 Arena Blvd.
Sacramento, California 95834

Re: PRO 06-21 – Comments on Rulemaking re: Student Loan Servicing Act

The Student Loan Servicing Alliance ("SLSA") appreciates the opportunity to provide feedback on the State of California's ("CA") Department of Financial Protection and Innovation proposed additional rulemaking related to the Student Loan Servicing Act. SLSA is a non-profit trade association that represents federal and private student loan servicers, who collectively service over 95% of all student loans in the country.

We understand that these proposed changes are largely focused on expansion of the definitional scope of the Student Loan Servicing Act to include other education financing products and services, and others will likely comment on those matters. SLSA's comments are focused on some of the other items with implications for student loan servicers. Our suggested revisions are intended to improve and strengthen the regulations and our ability to comply with the intent of the statute. We also understand statute binds the regulations, but we believe our suggestions only further refine, define, and clarify statutory intent, rather than alter that intent or meaning. Further, we recognize several flexibilities this proposed revision to regulation will make on multiple administrative fronts, and while we have no additional comments on those, we wish to express our appreciation for taking feedback from servicers along the way to continue to improve the requirements and process.

APRs

While we understand the goal for more price transparency and know that the APR proposed provisions do not impact traditional student loans, it is important to reiterate that APR calculations are required and disclosed in relation to an extension of credit and are helpful for borrowers making comparable choices before taking out a loan. Once a student loan or other

education financing product is originated, future APR recalculations are no longer a calculation that can be consistently compared because the revised APR calculation is a function of the term of the loan and other borrower statuses or decisions to use or not use contractual flexibilities, unlike most other credit products. Anywhere the Department can make changes that rely less on recalculation of a changing APR which can be confusing, and instead on the APR at origination, the current interest rate and index, or some other measure, that would improve understanding for borrowers. For example, the underlying effective interest rate and index are most critical for comparison once borrowers start making choices in repayment about when to leave school, return, use payment flexibilities, etc. While leveraging the definition found the federal Truth in Lending Regulations ("Regulation Z") to ensure consistency in disclosures is helpful, recalculated APRs during repayment is a measurement that is not the best way to offer any comparable or reliable information.

Definition of Student Loans

In Section 2032 of the proposed regulations, the expansion of the Act to cover additional products can certainly present definitional challenges since it's not clear the law permits some of these expansions; however, we appreciate some of the careful construction to try and apply regulations to products for which they make sense. This requires some very complicated naming conventions to align with the statutory terms and previously existing regulatory drafting. We do think though that several changes, with any cascading conforming changes elsewhere in the regulations, would help to simplify the understanding of what product is included in which definitional bucket and better align with federal regulation and industry and consumer nomenclature, while preserving the additional regulation that CA has chosen to implement. We suggest the following changes to the definitions in Section 2032 of the proposed regulations.

Private Student Loans – We suggest that the definition of private education loans reference the federal Regulation Z definition again so there is consistency for consumers, lenders, servicers, and regulation between California and federal statute interpretation. This would reduce confusion and align terms to have the same definition. Further this would improve the ability to define traditional education loans, by instead using the combination of private education loan and federal education loan to capture those same products. Therefore, we suggest the following definition:

> *(a)21 Private Student Loan(s) means a private education loan as set forth and defined in Regulation Z, 12 C.F.R. Part 1026 and education financing products as defined in this section.*

Federal Education Loans – We suggest using a more consistent definition of federal education loans that aligns with Regulations Z and again use a more inclusive definition that is well understood by consumers, lenders, servicers. This would accomplish the same objective but would also capture any future loan programs or types created by Congress without need for regulatory changes. Therefore, we suggest the following definition:

(a)7 Federal student loan(s) means an extension of credit that is made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

Student Loan – We appreciate that this definition is meant to capture all loan products as well as the income share agreements and installment contracts as defined. We suggest then changing the definition to align with the changes we suggest for the underlying loan product definitions.
Therefore, we suggest the following definition:

(a)25 Student Loan(s) means private education loans, federal education loans, and education financing products as defined in this section.

Education Financing Products – These products - as the regulation contemplates - are not captured in either the private education loan definition under Regulation Z nor are federal student loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965. However, we think it far simpler to leverage the definition of these products in the section and define the aggregation of that product list as education financing products rather than by including them in private education loans and then excluding them for purposes of this definition. Therefore, we suggest the following definition:

(a)4 Education financing product(s) means income share agreements and installment contracts as defined in this section.

Traditional Student Loans – The term "traditional" student loan has been generally understood to be a proxy for the vast majority of the education finance market. While not a clearly defined term, it is most commonly used to describe both federal student loans and private education loans as defined by Regulation Z. As to the latter, there are several categories of lender that make "traditional" student loans, including non-bank financial institutions. Using the term "traditional lender" in the definition of "traditional student loan" is problematic for those entities that may have deep historical roots in the student lending market as lenders of "traditional student loans" but who fall outside a narrower understanding of what it means for a lender to be "traditional". Without a firm understanding of what a traditional lender is, a reasonable reader may envision a bank that has branches or similar characteristics and thus limit a "traditional" lender to merely state and federally chartered financial institutions, excluding a number of entities who for decades have originated "traditional" student loans. We believe our suggestion reflects the goal of the regulation which is to capture a set of products without regard to the structure (traditional or not) of the lender itself, thus reducing uncertainty but still capturing the products we believe you intend to. Therefore, we suggest the following definition:

(a)28 Traditional Student Loan(s) means a private education loan as set forth and defined in Regulation Z, 12 C.F.R. Part 1026 and an extension of credit that is made,

insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

As we mentioned, these modified definitions would require conforming changes to the same terms referenced elsewhere in the proposed rule.

Timely Received Payments

In Section 2036.5, we understand the intent of the proposed addition to provide further clarity on how payments received are to be credited. However, this proposed change creates confusion for servicers and CA borrowers. Also, as currently stated, is impossible for a servicer to comply or a CA examiner to regulate this change.

First, the challenge with the proposed language as drafted is that a servicer is unable to determine the time zone from which a payment is made. The vast majority of online payments in the United States are sent via Automated Clearinghouse (ACH). Unlike wire transactions, an ACH payment does not contain any geographic information from which the payment originated. A servicer only knows definitively the time zone where the servicer received the payment. Further, the California resident borrower making the payment may not be located in California when the payment is made. In addition, payments are regularly processed by third parties, who may or may not be in the State where the borrower resides or where the servicer is located at the time the payment is made. The only time zone information that a servicer has about a payment is when the payment is received in the time zone where the servicer conducts business.

Second, the concept of time zone in which the payment is *made* for electronic (online) payments does not align with Civil Code section 1788.102, subdivision (a)(1) which contemplates when a payment is *received*. Specifically, (a)(1): "*A payment received on or before 11:59 p.m. on the date on which that payment is due, in the amount, manner, and location indicated by the person engaged in student loan servicing, shall be credited as effective on the date on which the payment was received by the person engaged in student loan servicing in this state…"*

In addition to these issues, the statute also provides that a servicer establish payment processing polices that are disclosed to borrowers that include the manner and location indicated by the servicer. The proposed changes do not take into consideration what may have already been disclosed to the borrower. Further, creating an altered process for payments made on the due date, brings meaningful challenges to implementation; especially if a borrower requests a change in due date during the servicing of their loan. It also creates inconsistency where borrowers may be confused as to why there is different treatment of payments on different days in the billing cycle.

For all these reasons, we suggest that the language be clarified to say that the payment will be credited using the cut off time disclosed to the borrower or - absent any disclosure - be set at 11:59pm in the time zone the borrower resides. Therefore, we suggest the following revision:

(d) A licensee shall credit any electronic (online) payment made to a borrower's account on the same business day the payment is electronically paid by the borrower, if paid before the daily cut off time for same day crediting posted on the servicer's website, or the next business day, if after the posted cut off time.

Notwithstanding the previous sentence, for purposes of Civil Code section 1788.102, subdivision (a)(1), if the licensee has not posted a cut off time, a payment received on or before 11:59 p.m., in the time zone in which the borrower is known to reside, on the date on which that payment is due, shall be credited as received on such due date and treated as an on-time payment.

Qualified Written Request

In Section 2040.5, we understand the intent of the proposed addition to provide further clarity about the way in which servicers should communicate their responses to qualified written requests. We have concerns about the requirement for additional communication and associated costs that get passed onto borrowers where servicers must provide a written response if the borrower interaction occurs through another channel and either successfully resolves the issue or answers the question to the borrower's satisfaction. Requiring written confirmation of all qualified requests will incentivize a servicer to communicate only through the written process or drive communications to written channels rather than trying telephonic outreach to more quickly resolve a matter, since written correspondence and its cost must be incurred regardless of other efforts to communicate with the borrower. If you require all responses to all qualified requests must be in writing, then we hope to clarify that the written communication will made in the manner the borrower has selected for all official communications regarding their account, including mail, email, etc. We believe this is your intent, but the clarification would be helpful so servicers can confidently comply with borrower communication preferences. This clarification would be consistent with the other requirements of the regulations, using language already existing in the regulations. Therefore, we suggest the following revision:

> (a) A servicer is only required to send an acknowledgment of receipt of a "Qualified Written Request," within ten business days of receipt, if the action requested by the borrower has not been taken within ten business days of receipt of the Qualified Written Request. Acknowledgments of receipt and responses to Qualified Written Requests must be in writing by the preferred method of communication indicated by the borrower (email, or regular mail through the United States Postal Service).

We thank you for the opportunity to provide our industry expertise, and if you would like to discuss the comments provided, please contact me at [redacted] or [redacted].

Respectfully submitted,

C. Tapscott Buchanan
Executive Director