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VIA EMAIL: regulations@dbo.ca.gov

Department of Financial Protection and Innovation
Attn: Mary Tomé, Senior Counsel
2101 Arena Blvd.
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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 many these proposed changes are largely focused on ongoing clarification of the definitional scope of the Student Loan Servicing Act and SLSA’s comments are focused on one change that has meaningful implications for student loan servicers, specifically the change to section addressing the handling of payments in a timely manner.

Timely Received Payments

In Section 2040, we understand the intent of the proposed addition to provide further clarity on how payments received are to be credited. However, this proposed change now would create challenges for implementation, could create borrower confusion and change from current clearly disclosed practices today, and seems a solution in search of a problem.

Servicers are generally national providers and as such work with borrowers across the country. They also have their centers of operations in various locations around the country, this means that they have historically had systems designed to operate on one standard for payment time cutoffs, which can vary but is always specific and disclosed. Those times are aligned with other vendors, providers, and the national banking system in general – or system requirements to clear payments efficiently. To not allow the reasonably and properly disclosed terms of the loan agreement or the policy clearly disclosed on their website that aligns with their

operational capabilities today to be the appropriate guide and protection for borrowers will be challenging and costly to implement. Requiring different cut off times for different borrowers on certain days, which deviate from current practices will require system changes and enhancements that could also create new operational risk created by the regulation and will once again require passing on the associated costs to consumers.

As we shared previously, 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 just 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 potential inconsistency where borrowers may be confused as to why there is different treatment of payments on different days in the billing cycle depending upon system implementations and capabilities.

This change also seems to be a solution in search of a problem. It is unclear what marketplace issue this proposed regulation attempts to address, since today borrowers clearly are told when payments need to be made and in general there are no material negative consequences to the borrowers who are current of a payment applied potentially the next day, given the industry does not charge late fees – if charged – until traditionally 5-15 days after the due date, if payment is not made by then. Further, credit reporting does not generally occur until at least 30 days of delinquency.

For all these reasons, we continue to suggest that the regulation guide that the payment will be credited using the cut off time disclosed to the borrower or – absent that disclosure - be set at 11:59pm in the time zone the borrower resides. Therefore, we suggest the following change:

(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.

DFPI's stated concern in the Notice of Modifications that the current drafted proposed rulemaking would address is as follows: "Without this change, a servicer could argue that it received a payment in Eastern Time and that the borrower's payment was not on-time, possibly subjecting the borrower to a late fee and other negative consequences." What we have proposed above addresses that by removing any "argument" a servicer could make. Either the

servicer has clearly disclosed what the cut off time is for payments and complies with that, or absent that then for CA borrowers the cut off time would be 11:59 p.m. in their time zone. Therefore, our suggested change addresses the stated concern, but also addresses the other concerns we have raised in this comment letter.

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,

[REDACTED]

Executive Director