

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	CONSENT ORDER,
	)	ORDER FOR
SALLIE MAE BANK	)	RESTITUTION, AND
SALT LAKE CITY, UTAH	)	ORDER TO PAY
	)	CIVIL MONEY PENALTY
	)	
	)	FDIC-13-0366b
(INSURED STATE NONMEMBER BANK)	)	FDIC-13-0367k
	)	
_____	)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency under section 3(q) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1813(q), for Sallie Mae Bank, Salt Lake City, Utah (“the Bank”).

The FDIC determined that the Bank, together with Navient Solutions, Inc. (formerly known as Sallie Mae, Inc.) (“SMI”), an institution-affiliated party of the Bank and the Bank’s primary service provider, has engaged in: (1) unsafe or unsound banking practices; (2) deceptive and unfair acts and practices in or affecting commerce, in violation of section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), by (a) inadequately disclosing to consumers the payment allocation methodologies used while allocating underpayments in a manner that maximizes late fees incurred by consumers; (b) misrepresenting or inadequately disclosing in its billing statements how consumers could avoid late fees; (c) appearing to condition receipt of benefits under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. app. §§501-597b, upon the submission of a certification confirming the SCRA-protected

Servicemembers’<sup>1</sup> active-duty status and an agreement to recertify active-duty status annually; and (d) advising consumers that SCRA-protected Servicemembers must be deployed to receive benefits under the SCRA; (3) violations of the SCRA by charging interest<sup>2</sup> in excess of six percent (6%) on SCRA-protected Servicemembers’ qualifying student loans or otherwise failing to provide complete SCRA relief to certain SCRA-protected Servicemembers after having been put on notice of these borrowers’ active-duty status; and (4) other violations of law, including the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693 *et seq.*, and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 *et seq.*, and its implementing Regulation B, 12 C.F.R. § 1002.

During the Eligibility Period and until the close of trading on NASDAQ on April 30, 2014, the Bank and SMI were wholly owned subsidiaries of SLM Corporation. At the close of trading on NASDAQ on April 30, 2014, SLM Corporation distributed the stock of Navient Corporation to its shareholders, thereby dividing the business into two distinct parts. The Bank remains a wholly owned subsidiary of SLM Corporation. Navient Corporation owns all of the common stock of SMI. SLM Corporation has no ownership interest in Navient Corporation. The relationship between SLM Corporation and Navient Corporation is governed by a Separation and Distribution Agreement and a Transition Services Agreement, both dated as of April 30, 2014. During the current transition period after the separation, SLM Corporation owns a class of preferred stock in SMI and has the right to appoint one out of the five directors of SMI, with that director serving, at SLM Corporation’s option, as Chairman of SMI’s board of directors. SLM Corporation also has certain limited veto rights with respect to the transition services process as it relates to the separation of the computer systems of the two companies.

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<sup>1</sup> For purposes of this Order, “SCRA-protected Servicemember” includes servicemembers as defined in 50 U.S.C. app. § 511(1) and (2).

<sup>2</sup> For purposes of this Order, the term “interest” includes “service charges, renewal charges, fees or any other charges (except bona fide insurance) with respect to an obligation or liability.” 50 U.S.C. app. § 527(d)(1).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (“CONSENT AGREEMENT”), dated May 2, 2014, that is accepted by the FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation, to the issuance of this CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively “ORDER”) by the FDIC.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), have been satisfied, the FDIC hereby issues the following ORDER:

#### **DEFINITIONS**

For purposes of this ORDER, the following definitions shall apply:

1. “Clear and conspicuous” shall mean:
  - (a) As to written information, written in a type size and location sufficient for an ordinary consumer to read and comprehend it, and disclosed with language and syntax that would be easily recognizable and understandable to an ordinary consumer; and
  - (b) As to information presented orally, spoken and disclosed in a volume, cadence and syntax sufficient for an ordinary consumer to hear and comprehend.
2. “Compliance ROE” shall mean the FDIC Compliance Report of Examination dated August 27, 2012.

3. “Consumer Protection Laws” shall mean all applicable state and federal consumer protection laws and implementing rules and regulations, regulatory guidance, and statements of policy.

4. “DMDC” shall mean the Department of Defense Manpower Data Center database.

5. “Effective Date” shall mean the date on which the ORDER is issued.

6. “Eligibility Period” shall mean the period from November 28, 2005 to the Effective Date of this ORDER.

7. “Eligible Multiple Account” shall refer to a student loan account serviced by SMI containing two or more student loans, where one or more of these student loans were owned or originated by the Bank and were in repayment status during the Eligibility Period.

8. “Eligible Single Account” shall refer to a student loan account serviced by SMI containing one student loan that was owned or originated by the Bank and was in repayment status during the Eligibility Period.

9. “Late Payment” shall mean any payment on one or more private or Federal Family Education Loan Program (“FFELP”) loans that was made after the end of the applicable Past-Due Grace Period.

10. “Minimum Late Fee” shall mean the minimum flat fee or fixed late fee, as defined under the terms of the relevant promissory note, that a borrower will incur on his/her student loan for a Late Payment.

11. “Past-Due Grace Period” shall refer to the allotted amount of time, as defined under the terms of the relevant promissory note, during which a borrower who is past due on

his/her student loan will not incur a late fee if the borrower pays the past due amount during that allotted amount of time.

12. “Payment Allocation Methodology” shall mean the methodology used to divide a single payment on a pro-rata basis across loans contained within an Eligible Multiple Account.

13. “Payment Processing Eligible Consumers” shall mean borrowers who meet one or both of the following criteria:

(a) Any borrower with one or more Eligible Multiple Account(s), who at any time during the Eligibility Period made an Underpayment that led to such borrower being charged a Minimum Late Fee on one or more student loans that would not have been charged had a different Payment Allocation Methodology to process the Underpayment been used;

(b) Any borrower who received a monthly billing statement with an Eligible Single Account or Eligible Multiple Account who at any time during the Eligibility Period made a Late Payment and incurred at least one late fee because the Late Payment was made after the expiration of the Past Due Grace Period reflected on that borrower’s preceding billing statement, even though the Late Payment was made before the expiration of the Past Due Grace Period reflected on the billing statement most recently received by the borrower before the Late Payment was tendered.

14. “Regional Director” shall mean the Regional Director of the FDIC’s San Francisco Regional Office.

15. “Restitution Consultant” shall mean an objective and unaffiliated third party who possesses the appropriate expertise and qualifications to review the restitution eligibility criteria described in the ORDER and SMI’s loan servicing system.

16. “SCRA Eligible Loan” shall mean a student loan originated or owned by the Bank where: (1) the student loan was taken out while a borrower was not on military service,<sup>3</sup> (2) thereafter, a borrower experienced a period of military service during the Eligibility Period, and (3) the Bank charged interest at a rate in excess of six percent (6%) per year on the then-outstanding balance (including any previously capitalized interest) on the student loan at any time during the borrower’s period of military service.

17. “Section 5 Guidance” shall mean the Financial Institution Letter, entitled *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (FIL-26-2004, issued March 11, 2004).

18. “SMI ORDER” shall mean the FDIC’s Consent Order, Order for Restitution, and Order to Pay Civil Money Penalty issued against SMI, FDIC-13-0382b and FDIC 13-0383k.

19. “Underpayment” shall mean, in the case of a borrower with one or more Eligible Multiple Accounts, a payment that is less than the total amount due for that billing cycle for each Eligible Multiple Account.

20. “USDOJ” shall mean the United States Department of Justice.

21. “USDOJ Order” shall mean the consent order issued resolving a complaint filed on or about May 13, 2014, by USDOJ in the United States District Court in the District of Delaware, *United States v. Sallie Mae, Inc., et al.*

## **I. CONSENT ORDER**

IT IS HEREBY ORDERED that the Bank, its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from engaging in unsafe or unsound banking practices and violations of law and regulations as described in this ORDER, and as more fully set forth in the Compliance ROE.

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<sup>3</sup> For purposes of this Order, the term “military service” is defined by Section 511(2) of the SCRA, 50 U.S.C. app. § 511(2).

IT IS FURTHER ORDERED that the Bank, its institution-affiliated parties, and its successors and assigns shall take the following affirmative actions:

**Correct Violations of Law**

22. Within sixty (60) days of the effective date of this ORDER, the Bank shall correct all violations of law, as more fully set forth in the Compliance ROE and as described in this ORDER, and implement procedures to prevent their recurrence. To the extent the Bank is required in the USDOJ Order to submit revised policies and procedures to the USDOJ for approval, the Bank shall implement the USDOJ-approved policies and procedures within thirty (30) days of the USDOJ's approval. The Bank's actions as required by this paragraph shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations.

**SCRA and Unfair and Deceptive Acts and Practices involving Servicemembers**

23. The Bank shall cease all violations of the SCRA and all unfair and deceptive acts or practices involving servicemembers, shall ensure that all third-party service providers cease all violations of the SCRA and all unfair and deceptive acts or practices, and shall comply with the Section 5 Guidance. Without limiting the generality of the foregoing:

(a) The Bank shall not charge interest at a rate in excess of six percent (6%) per year on the then-outstanding balance (including any previously capitalized interest) of any student loan taken out while a borrower was not on military service, where the borrower subsequently enters into military service and is eligible for SCRA protection under section 527 of the SCRA, 50 U.S.C. app. § 527 ("Section 527").

(b) The Bank shall not misinform consumers about SCRA protections and benefits available under Section 527, or otherwise discourage any borrower from invoking

SCRA protection pursuant to Section 527 on any student loan taken out by a borrower while not on military service.

(c) The Bank shall inform any borrower who inquires about receiving a military deferment or military forbearance of the SCRA protections and benefits available under Section 527.

(d) The Bank shall refrain from seeking any default judgment with respect to any student loan without first checking the Bank's files, including all customer service notes and the DMDC, to determine whether an individual against whom the Bank intends to seek a default judgment is in military service, and, if so, filing an accurate affidavit of military service, attaching to the affidavit the most recent military status report from the DMDC and a copy of the borrower's military orders, if available.

(e) The Bank shall impose no requirements for obtaining SCRA benefits beyond those expressly set forth under the SCRA. Without limiting the generality of the foregoing, the Bank shall not condition the granting of benefits upon the use of a specific form or require that a written notice explicitly request benefits.

(f) The Bank shall not engage in communications that, expressly or by implication, condition receipt of benefits under the SCRA upon an agreement that the borrower will recertify his/her active-duty status periodically.

(g) The Bank shall accept borrowers' military orders as written notice of eligibility for reduced interest rates pursuant to the SCRA via facsimile, mail, or overnight delivery. The Bank shall also accept borrowers' requests for a military deferment or forbearance as written notice of eligibility for reduced interest rates pursuant to the SCRA. Within six (6) months of the Effective Date, the Bank shall also create an online intake form. Thereafter, the



Bank shall also accept completed online intake forms as written notice of eligibility for reduced interest rates pursuant to the SCRA.

(h) The Bank shall not require that any military orders submitted have a specific end date for the period of military service. In the event that any military orders provided to the Bank do not list a specific end date for the period of military service, the Bank shall not remove protections other than as specified in subsection (m) of this paragraph. The Bank also shall not require that any military orders submitted specify the date upon which the borrower first entered active duty for this period of service. The Bank shall provide SCRA benefits beginning on the earliest eligible date provided in the orders or by the DMDC. However, if the earliest date provided indicates that the borrower was on active duty at the time of loan origination, the Bank shall notify the borrower and provide the borrower a reasonable opportunity to provide documentation showing that the borrower was not on active duty at the time of loan origination.

(i) The Bank shall accept, in lieu of military orders, a letter on official letterhead from a borrower's commanding officer that includes contact information for confirmation and:

- i. Sets forth the full name and Social Security number or date of birth of the borrower; and
- ii. Sets forth the period of military service of the borrower and, as may be applicable, that the military service of the borrower is indefinite, or the date on which the military service of the borrower ended or is scheduled to end.

(j) In the event that the Bank receives notice of SCRA eligibility via the online intake form or otherwise, the Bank shall check the DMDC to confirm the borrower's

SCRA eligibility. If the DMDC records confirm eligibility, the Bank shall provide the interest rate reduction required by the SCRA for the dates indicated by the DMDC and shall notify the borrower that the borrower may submit additional documentation to establish eligibility dates if the borrower disagrees with the dates provided by the DMDC. If the DMDC records do not confirm eligibility, Defendants may inform the borrower that he or she is not eligible for SCRA interest rate benefits unless he or she provides a copy of documents establishing military service. Such documents will include any document prepared exclusively by a branch of the military, the Department of Defense, or a borrower's commanding officer that indicates that the borrower is on active duty (e.g., active duty orders, change of station orders, DD-214 forms, letters from commanding officers, etc.). Such documents will not include a DOD Educational Loan Repayment Program (LRP) Annual Application, DD Form 2475.

(k) Within sixty (60) days of receiving a notice of eligibility from a borrower for a reduced interest rate pursuant to the SCRA, the Bank shall review all student loans owned by the Bank and taken out by the notifying borrower, shall determine the interest rate(s) charged on those student loans, and shall determine the borrower's eligibility for the reduced interest rate on all such student loans. If the borrower is determined to be eligible for SCRA benefits, the reduced interest rate will be applied within this sixty (60) day period. The Bank shall apply benefits retroactively to the first day of eligibility, including the date of receipt of orders for reservists and inductees, even if such reduction brings the monthly payment amount below any minimum payment amounts specified in the student loan agreement.

(l) Within thirty (30) days after determining that a borrower is not eligible for an interest rate reduction pursuant to the SCRA, the Bank shall notify the borrower in writing of the reason(s) for the denial. The Bank shall ensure that the borrower is given an opportunity to

provide additional documentation or information to establish eligibility for the reduced interest rate.

(m) The Bank shall not raise the interest rate on eligible SCRA-protected Servicemember student loans to an amount higher than six percent (6%) per year until it accesses the DMDC and the information on the DMDC shows that the borrower is no longer in military service or until the Bank otherwise receives notice of the end of military service.<sup>4</sup> Prior to removing a borrower from interest rate protection, the Bank shall notify the borrower in writing of the reason(s) for removal of protection and shall give the borrower at least thirty (30) days from the date the Bank sends notice to the borrower to provide additional documentation or information to establish continued eligibility for the reduced interest rate.

(n) The Bank shall maintain written policies and procedures to ensure compliance with the SCRA.

(o) The Bank shall ensure all appropriate Bank employees are adequately trained on the requirements of the SCRA.

(p) The Bank shall designate customer service representatives who have been specifically trained on the protections of the SCRA and who are responsible for the intake of notices of eligibility and application of benefits across all student loans that are owned by the Bank. The Bank shall also ensure that it has a designated telephone number at which borrowers may reach the designated SCRA customer service representatives who will address questions or concerns regarding reduced interest rates pursuant to the SCRA.

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<sup>4</sup> If the Bank receives valid military orders that include an end date of military service inconsistent with that appearing on the DMDC, the Bank shall not raise the interest rate on the borrower's loan(s) until the latter of the two dates has passed.

Unfair and Deceptive Acts and Practices involving Payment Processing

24. The Bank shall cease all unfair and deceptive acts or practices involving the Bank's payment processing and loan servicing, shall ensure that all third-party service providers cease all unfair and deceptive acts or practices, and shall comply with the Section 5 Guidance.

Without limiting the generality of the foregoing, the Bank shall:

(a) Ensure that, as of January 1, 2015, all student loan promissory notes entered into between a borrower and the Bank on or after that date shall clearly describe where the borrower can obtain payment allocation information in the event the borrower has more than one loan with the Bank.

(b) Ensure that, as of August 1, 2014, the website of any servicer servicing Bank loans clearly and conspicuously describe the Payment Allocation Methodology in cases of prepayment, Underpayment and delinquency, and late-fee assessment, including clear and conspicuous disclosure of any requirement that the consumer communicate with the Bank or any third-party service provider concerning these policies and procedures, and ensure that all billing statements contain a sufficiently clear and adequate summary of the servicer's policies and refer consumers to the more detailed information available on the servicer's website;

(c) At the time the Bank groups any or all of the borrower's student loans for billing purposes or when more than one of a borrower's student loans are moved from a deferred status into active, repayment status, the Bank shall provide the following disclosure to the borrower and any affected co-signer:

i. If Underpayments are accepted, an explanation of how the servicer will allocate and apply Underpayments to any or all of the grouped or multiple student loans,

along with illustrative examples of the effects of Underpayments on allocation and application and the potential consequences for principal, interest, and fees in these examples; and

ii. A statement that the borrower or co-signer may, at any time, opt out of the grouping of any or all of the borrower's student loans for billing purposes; and

iii. A statement that the borrower may direct how payments are allocated among any of the borrower's individual student loans, with clear and conspicuous instructions on how to do so, along with illustrative examples and potential consequences for principal, interest, and fees in these examples;

(d) Ensure that all borrowers and co-signers are provided with the opportunity at all times to opt out of the grouping of any or all of the borrower's student loans for billing purposes;

(e) Ensure that all borrowers are provided with the opportunity at all times to direct how payments are allocated among any of the borrower's individual student loans;

(f) Cease imposing a Minimum Late Fee on any student loan grouped for billing purposes or when a borrower has more than one student loan in repayment status;

(g) Comply with all borrower instructions related to allocation of payments, and institute policies and procedures to ensure these instructions are followed; and

(h) On each billing statement, accurately disclose all late fees that may be imposed before the due date for the current amount due and the date each such late fee will be imposed, including late fees related to past-due amounts.

### **Board and Senior Management Oversight**

25. The Board shall participate fully in the oversight of the Bank's Compliance Management System ("CMS"), and shall be responsible for the approval of sound policies and

objectives and effectively supervise all the Bank's compliance-related activities, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity and offering comparable banking products and services.

#### Compliance Officer

26. Within thirty (30) days from the Effective Date, the Bank shall have a Compliance Officer who reports directly to the Board and who has with sufficient authority and resources to effectively manage the Bank's CMS, including oversight of third-party service providers. The Compliance Officer will provide a monthly presentation to the Board regarding the enhancements made to the Bank's Compliance Program and compliance with each provision of this ORDER. The Board shall provide the Compliance Officer with sufficient authority to correct identified deficiencies and violations of Consumer Protection Laws.

#### Compliance Committee

27. Within thirty (30) days from the effective date of this ORDER, the Board shall maintain a compliance committee composed of at least three outside directors, who are not officers of the Bank or any affiliate of the Bank, at least one member of senior management, and the Compliance Officer ("Compliance Committee").

(a) The Compliance Committee shall meet at least monthly and, at a minimum, the following areas shall be reviewed and approved: minutes of the Compliance Committee, Compliance Officer reports, Compliance Program audit reports, Compliance Program policies, and progress reports concerning compliance with this ORDER that include, at a minimum, corrective action due dates, names of individuals assigned responsibility for the corrective action, and any follow-through testing and reporting to ensure corrective action is completed and effective.

(b) The Compliance Committee shall report its discussions to the Board at each regularly scheduled Board meeting, and the Board minutes shall document the review and approval of all items before the Board, including the names of any dissenting directors. Nothing in this ORDER shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

(c) The Board, in conjunction with the Compliance Committee, shall allocate resources that are commensurate with the level of complexity of the Bank's operations to ensure the establishment and implementation of an adequate CMS, as described in the FDIC's Compliance Examination Manual, Section II-2.1 to 2.4, and shall include specific procedures to ensure the Bank's compliance with all Consumer Protection Laws. The allocated resources shall be sufficient to ensure the Bank's timely compliance with this ORDER.

(d) The Board, in conjunction with the Compliance Committee, shall oversee the following actions:

(i) Ensure that the Bank has appropriate oversight of all processing systems, including systems provided by any third parties, to maintain compliance with all Consumer Protection Laws;

(ii) Ensure that the Bank has a qualified Compliance Officer who possesses the requisite knowledge and experience to administer an effective CMS;

(iii) Ensure that all disclosures provided over the telephone, online, or through direct mail, including materials prepared by third parties, are reviewed and approved by the Bank prior to their use, and clearly and conspicuously disclose relevant Bank procedures and comply with all Consumer Protection Laws;

(iv) Ensure that the duties and responsibilities of the Compliance Officer are clearly defined and provide the Compliance Officer access to both Board and Compliance Committee members;

(v) Ensure that the Compliance Officer has and retains sufficient authority and independence to implement policies related to Consumer Protection Laws and to institute corrective action as needed. This authority shall include the ability to oversee activities of all third parties and across all departmental lines within the Bank, to have access to all areas of the Bank's operations, and to effectuate corrective action upon discovering deficiencies;

(vi) Ensure that the Compliance Officer and all individuals with compliance oversight responsibilities receive ongoing training, sufficient time, and adequate resources to effectively oversee, coordinate, and implement the Bank's CMS;

(vii) Require the Compliance Officer to provide to the Compliance Committee and the Board monthly written reports, including, but not limited to, reports related to the enactment and/or promulgation of new Consumer Protection Laws and changes to existing Consumer Protection Laws, training performed, monitoring and compliance audits performed, corrective action taken, and compliance with this ORDER;

(viii) Ensure proper and timely follow-up and resolution to audit and examination findings indicating the need for corrective action(s); and

(ix) Develop and implement an internal monitoring system of employees' performance to ensure that compliance policies, procedures, and regulatory requirements are adequately followed and employees are held accountable for following adopted policies, procedures, and regulatory requirements.



## Audit

28. Within thirty (30) days from the effective date of this ORDER, the Bank shall schedule independent audits to be conducted at least annually to ensure compliance with all Consumer Protection Laws. The audits shall be conducted by qualified personnel with experience in conducting independent audits of compliance programs of banks of comparable complexity. The audits identified on the schedule will assess the Bank's CMS and Compliance Program, and at a minimum, shall include the following:

- (a) Define a comprehensive scope to include appropriate aspects of each law or regulation based on a risk analysis;
- (b) Identify the number of transactions sampled by category or product type;
- (c) Identify deficiencies;
- (d) Provide descriptions of or suggestions for corrective actions and timeframes for correction; and
- (e) Establish follow-up procedures to verify that corrective actions are implemented and effective.

29. Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Bank's Audit Committee within fifteen (15) days after completion of the independent audit. In addition, the audit report should be thoroughly reviewed by the Board and fully documented in the Board's minutes.

30. Within forty-five (45) days from receipt of the independent auditor's written report, the Board shall take action to address the audit's findings and develop and implement a plan to:

- (a) Correct any deficiencies noted; and

(b) Implement any recommendations or explain in a written document signed by all Board members why a particular recommendation is not being implemented.

**Oversight of Third-Party Agreements and Services**

31. Within sixty (60) days from the effective date of this ORDER, the Bank shall develop and implement an effective third-party oversight program based on the principles set forth in *Third-Party Risk Guidance for Managing Third-Party Risk*, (FIL 44-2008, issued June 6, 2008). The program shall, at a minimum, include the following:

(a) Review of all aspects of the Bank's agreements with third parties and the services performed for the Bank pursuant to these agreements ("Third-Party Agreements");

(b) Procedures for effective monitoring, training, record-keeping, and audit over its third parties;

(c) Access by Bank employees to all systems necessary to ensure compliance with all Consumer Protection Laws and to perform their duties, including monitoring, training, and fulfilling regulatory requests;

(d) Monitoring of Third-Party Agreements to ensure that they are formalized, enforceable, and contain the specific expectations, obligations, and consequences, for both the Bank and the third party;

(e) Maintenance of records of all service provider agreements and approved marketing and solicitation materials, including any changes or amendments with respect to such materials;

(f) Prompt notification to the Bank by any third-party provider of all regulatory agencies' inquiries, customer complaint correspondence, and/or legal action received (other than routine requests such as requests to cease and desist collection contact); and

(g) Procedures for promptly addressing and resolving consumer complaints and inquiries, regardless of the source.

32. The Bank's Compliance Committee shall, on at least a quarterly basis, submit a written report to the Board and senior management addressing whether third parties are in compliance with Third-Party Agreements. The written report shall include potential violations, deficiencies, consumer complaints and inquiries, or other concerns. The Board shall be responsible for ensuring that corrective actions are taken to address the findings of the written report and for assuring that a sound annual review of compliance-related Third-Party Agreements is performed.

### **Cohort Default Rate in Scoring Models and Underwriting**

33. During a prior compliance examination, the FDIC determined that certain of the Bank's scoring models for the pricing of private student loans violated the Equal Credit Opportunity Act, 15 U.S.C. §§1591 et seq., and its implementing Regulation B, 12 C.F.R. §1002.<sup>5</sup> At the FDIC's request, the Bank ceased using a cohort default rate in its scoring models. The Bank shall not reinstitute the use of a cohort default rate in either its scoring models for the pricing of private student loans or in its underwriting of private student loans.

## **II. ORDER FOR RESTITUTION**

IT IS FURTHER ORDERED that the Bank provide restitution to consumers as follows:

### **Reserve Account**

34. Within ten (10) days from the Effective Date, the Bank shall reserve or deposit into a segregated deposit account an amount not less than thirty million dollars (\$30,000,000) for the purpose of providing restitution as required by the ORDER ("Reserve Account"). SMI may contribute funds to the Reserve Account.

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<sup>5</sup> Formerly, 12 C.F.R. § 202.

35. The USDOJ Order requires SMI, the Bank, and SLM DE Corporation to deposit sixty million dollars (\$60,000,000) into an interest-bearing escrow account for the repayment of SCRA-related restitution. Pursuant to this ORDER, the Bank shall ensure that sufficient funds shall be deposited into this account to redress the SCRA-related restitution claims for all Bank owned or originated loans.

36. The Bank shall make all restitution payments required by the ORDER, regardless of whether the total of such payments exceeds the amount of funds in the Reserve Account. If the total of such payments is less than the funds in the Reserve Account, the excess may be returned to the Bank's general funds or returned as agreed between SMI and the Bank.

37. Restitution under this ORDER and the SMI Order are intended to cover the same consumers. The Bank and SMI may reach separate agreement concerning the funding and distributing of restitution under this ORDER and the SMI Order. Regardless of any separate agreement that may be entered into between the parties, the Bank is ultimately responsible for funding and distributing restitution to consumers as required by this ORDER.

#### **Restitution Plan for SCRA**

38. The Bank has engaged the services of an independent consultant approved by the USDOJ to review the Bank's entire portfolio of SCRA-Eligible Loans for potential SCRA violations.

39. Within sixty (60) days from the effective date of this ORDER, the Bank shall prepare and submit a comprehensive Restitution Plan for all borrowers with SCRA Eligible Loans that were owned or originated by the Bank ("SCRA Restitution Plan"). The SCRA Restitution Plan, at a minimum, shall require the Bank to provide restitution to consumers for SCRA Eligible Loans from November 28, 2005 to the Effective Date of this ORDER. The Bank

shall submit the SCRA Restitution Plan, including samples of letters to consumers, to the Regional Director for review, comment, and non-objection prior to implementation.

### **Restitution Plan for Payment Processing**

40. Within ninety (90) days from the effective date of this ORDER, the Bank shall prepare and submit a comprehensive Restitution Plan for all Payment Processing Eligible Consumers (“Payment Processing Restitution Plan”). The Payment Processing Restitution Plan, at a minimum, shall require the Bank to provide restitution to all Payment Processing Eligible Consumers as follows:

(a) For Payment Processing Eligible Consumers defined under Paragraph 13(a), the difference between the Minimum Late Fee assessed on each student loan and the amount of the late fee that would have been assessed had the Minimum Late Fee not been imposed; and

(b) For Payment Processing Eligible Consumers defined under Paragraph 13(b), actual late fees incurred up to a maximum of six late fees on each Eligible Single Account and each Eligible Multiple Account.

41. The Payment Processing Restitution Plan shall include a plan for removing negative payment history, when appropriate, attributable to payment processing violations for which restitution is provided under the approved restitution methodology to correct the credit histories of accounts belonging to borrowers and any co-signer(s).

42. Restitution shall be calculated for all Payment Processing Eligible Consumers during the Eligibility Period. The Bank shall submit the Payment Processing Restitution Plan, including samples of letters to consumers, to the Regional Director for review, comment, and non-objection prior to implementation.

### **Effect of Prior Determinations or Other Monetary Relief**

43. In the event that the USDOJ determines that an SCRA Eligible Loan is ineligible to receive SCRA-related restitution under the USDOJ Order, nothing contained in this ORDER shall require the Bank or SMI to pay SCRA-related restitution on such a loan.

44. If the Bank or SMI provides restitution for the entire time period covered by this ORDER to any borrower for any of the violations identified in this ORDER or pursuant to the USDOJ Order for specific fees or interest improperly assessed against the borrower, then this ORDER shall not be construed as requiring the Bank to provide a duplicate credit or payment for those fees or interest charges for the same time period.

### **Payment of Restitution and Recordkeeping**

45. Within sixty (60) days of receipt of non-objection from the Regional Director, the Bank shall implement the SCRA Restitution Plan and Payment Processing Restitution Plan (collectively, "Restitution Plans"). Any restitution due to a Payment Processing Eligible Consumer who has an existing account balance shall be paid in the form of an account credit. Any restitution due to a Payment Processing Eligible Consumer that exceeds the Payment Processing Eligible Consumer's outstanding balance shall be paid in the form of a certified or bank check.

46. The Bank shall make all restitution payments required by the ORDER, regardless of whether the total of such payments exceeds the funded Reserve Account.

47. Restitution provided by the Bank under this ORDER shall not limit consumers' rights in any way.

48. The Bank shall retain for seven years all records pertaining to the Restitution Plans, including but not limited to: documentation of the processes and procedures used to

determine the Eligible Consumers; the names, contact, and account information of the Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

### **Account Credits and Refunds**

49. The Bank shall send letters to all Payment Processing Eligible Consumers regarding restitution checks or account credits. Within sixty (60) days from the Effective Date, the Bank shall submit to the Regional Director for review a plan for providing refunds, including the proposed text of letters that shall be sent to Payment Processing Eligible Consumers regarding account credits or restitution checks. Such letters shall include satisfactory language explaining the reason the Bank is crediting an account or sending a restitution check. The Bank shall then address any comments of the Regional Director, making such changes as may be required to the proposed letters. The letters, incorporating any changes that may be required in response to comments by the Regional Director, shall be sent by mail to all Payment Processing Eligible Consumers entitled to receive account credits or restitution checks in accordance with the ORDER.

50. When the Bank makes cash restitution by certified or bank check made payable to a Payment Processing Eligible Consumer, the Bank shall send the certified or bank check by United States Postal Service first-class mail, address correction service requested, to the Payment Processing Eligible Consumer's last address as maintained by the Bank's records. The Bank shall make reasonable attempts to obtain a current address for any Payment Processing Eligible Consumer whose notification letter and/or restitution check is returned for any reason, using standard address search methodologies, and shall promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the certified or bank check for any Payment

Processing Eligible Consumer is returned to the Bank after such second mailing by the Bank, or if a current mailing address cannot be identified using standard address search methodologies, the Bank shall retain the restitution amount of such Payment Processing Eligible Consumer for a period of three-hundred and sixty (360) days from the date the restitution check was originally mailed, during which period such amount may be claimed by such Payment Processing Eligible Consumer upon appropriate proof of identity. After such time, these monies will be disposed of in accordance with the appropriate Restitution Plan.

51. The Bank shall not undertake collection efforts in the same mailing as that containing any of the restitution checks and/or notification letters. Further, the Bank shall not condition, expressly or by implication, the provision of a credit or cash payment pursuant to this ORDER on the payment of any outstanding debt.

#### **Credit Reporting**

52. No later than sixty (60) days after completing financial restitution under this ORDER, the Bank shall request that all three (3) major credit bureaus and all other credit reporting agencies and bureaus to which the Bank has reported any borrower's negative payment history remove:

(a) negative payment history for those months during which the SCRA independent consultant determines, under the approved SCRA restitution methodology, that a borrower may have been eligible for the SCRA interest rate benefit and was assessed interest at a rate greater than six percent, to correct the credit histories of accounts belonging to borrowers and any co-signer(s); and

(b) negative payment history, when appropriate, attributable to payment processing violations for which restitution is provided under the approved restitution



methodology to correct the credit histories of accounts belonging to borrowers and any co-signer(s) as detailed in the Payment Processing Restitution Plan.

**Independent Restitution Consultant and Certified Accounting Firm**

53. Within thirty (30) days from the Effective Date, the Bank shall submit to the Regional Director for non-objection the name and qualifications of a Restitution Consultant.

54. Within thirty (30) days from the receipt of non-objection by the Regional Director of the selection of the Restitution Consultant, the Bank shall retain the Restitution Consultant at its own expense and shall develop, in consultation with the Restitution Consultant, and submit to the Regional Director for non-objection, a review schedule for the independent analysis that shall include, at a minimum:

(a) A list of all student loan portfolios and applicable loan servicing systems to be reviewed with a prioritized review schedule;

(b) The date by which the review will be completed for each student loan portfolio and loan servicing system; and

(c) The date that a final written report will be completed for all student loan portfolios. The Restitution Consultant's final written report shall be submitted to the Board no later than one hundred eighty (180) days from the Effective Date.

55. In accordance with the review schedule, the Restitution Consultant shall:

(a) Complete an independent analysis to identify all Payment Processing Eligible Consumers and the restitution amounts due under this ORDER. The analysis should include a review of all servicing systems, documents, and files necessary to identify all Payment Processing Eligible Consumers and the corresponding restitution amounts. The Restitution Consultant should compare its completed independent analysis with the list of Payment

Processing Eligible Consumers and restitution amounts identified pursuant to the Bank's Payment Processing Restitution Plan to identify and explain any discrepancies.

(b) Provide to the Board a detailed written report containing the analysis, assessments, and recommendations, including any discrepancies between the Restitution Consultant's analysis and the Bank's Payment Processing Restitution Plan.

56. The Board shall review the Restitution Consultant's final report at the next scheduled Board meeting or within sixty (60) days of receipt, whichever is sooner. This review shall be recorded and noted in the Board minutes.

57. The Bank shall, within fifteen (15) days of the Board's review of the Restitution Consultant's final report, provide the Regional Director with a copy of the report.

58. If any report prepared by the Restitution Consultant identifies issues such as additional consumers eligible for restitution or additional restitution due under the ORDER, the Bank shall:

(a) Within sixty (60) days of receiving the Restitution Consultant's report, submit a supplemental restitution plan ("Supplemental Restitution Plan") to the Regional Director for non-objection prior to implementation; and

(b) Within thirty (30) days of receiving non-objection from the Regional Director, the Bank shall implement any Supplemental Restitution Plan.

59. The Bank shall retain, at its expense, an independent certified accounting firm ("Firm") to determine compliance with the Restitution Plans, including any Supplemental Restitution Plan(s). Prior to the engagement of the Firm, and no later than sixty (60) days from the effective date of this ORDER, the Bank shall submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm and the proposed agreed-upon

procedures, to the Regional Director for non-objection. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures for engagements.

60. The engagement letter between the Bank and the Firm shall grant the FDIC access to the Firm's staff, work-papers, and materials prepared in the course of the Firm's engagement and preparation of the reports required by the Restitution Order.

61. To be acceptable to the Regional Director, the Firm must be an objective and unaffiliated third party and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy and meet auditor independence requirements of the Securities and Exchange Commission.

62. Nothing in this ORDER or the SMI Order prohibits the Bank and SMI from retaining the same unaffiliated third parties to act as Restitution Consultant and Firm to fulfill the obligations under the ORDER or the SMI Order. To the extent the Bank and SMI hire the same Restitution Consultant and Firm, they may reach separate agreement concerning the costs and expenses associated with each. Regardless of any separate agreement that may be entered into between the parties, the Bank is ultimately responsible for compliance with these provisions.

### **III. ORDER TO PAY CIVIL MONEY PENALTY**

63. IT IS FURTHER ORDERED that by reason of the violations of law and/or regulations set forth herein, and after taking into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the Bank, the gravity of the violations, the history of previous violations by the Bank, and such other matters as justice may require, including the severity of the risks to and losses of consumers, pursuant to 12 U.S.C. § 1818(i)(2), a penalty of three million, three hundred thousand dollars (\$3,300,000) is assessed

against the Bank. The Bank shall pay such amount to the Treasury of the United States, as directed by the FDIC.

64. IT IS FURTHER ORDERED that the Bank is prohibited from seeking or accepting indemnification from any third party for the civil money penalty assessed and paid in this matter.

#### **IV. NOTIFICATION AND REPORTING REQUIREMENTS**

##### **Progress Reports and Certifications of Compliance**

65. Within thirty (30) days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall provide a written progress report addressing each provision of the ORDER and detailing the form, manner, results and dates of any actions taken to secure compliance with the provisions of the ORDER to the Regional Director. All progress reports and other written responses to the ORDER shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the entire Board. The certification of compliance shall include the following:

(a) A statement confirming that the Bank is in compliance with all provisions of the ORDER; or

(b) If the Bank is not in compliance with all provisions of the ORDER, the Bank must provide:

(i) A list of the provisions with which the Bank is not yet in compliance, an explanation of why the Bank is not yet in compliance with each specific provision, and a description of the actions the Bank has taken to comply with the provision; and

(ii) A statement as to when the Bank will be in full compliance with the ORDER.

### **Shareholder Notification**

66. The Bank shall either provide a copy of the ORDER to its shareholder SLM Corporation or otherwise furnish a description of the ORDER in conjunction with the next Board of Directors meeting of SLM Corporation, in which case such description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Disclosure and Securities Section, 550 17th Street, N.W., Washington, D.C. 20429, for non-objection or comment prior to dissemination to the Bank's shareholder. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement. This description shall be disseminated in conjunction with the Bank's next shareholder communication and in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The terms "next shareholder communication" and "next shareholder meeting" mean the next shareholder communication and next shareholder meeting immediately after the FDIC provides the Bank with either non-objection of or comments about the description.

### **V. SAVINGS CLAUSE AND EFFECTIVE DATE**

The provisions of the ORDER shall not bar, estop, or otherwise prevent the FDIC or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u).

The ORDER shall be effective on the date of issuance.

