UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services

July 9, 2010

FINAL ALERT MEMORANDUM

To: William J. Taggart
Chief Operating Officer
Federal Student Aid

From: Keith West /s/
Assistant Inspector General for Audit

Subject: Lender Agreements between Sallie Mae and Student Loan Xpress and Corinthian Colleges, Inc., Contained Inducements
Control Number ED-OIG/L02K0001

During our audits of *Everest Institute's Lender Agreements*, ED-OIG/A02J0001 and *National Aviation Academy-New England's Lender Agreements,* ED-OIG/A02J0005, we reviewed agreements between two lenders, Sallie Mae, Inc. (SLM) and Student Loan Xpress, Inc. (SLX), and Corinthian Colleges, Inc. (Corinthian),[1] which contained inducements prohibited by the Higher Education Act of 1965, as amended (HEA). According to Section 435(d)(5)(A) and (C) of the HEA, [2] eligible lenders are prohibited from offering or paying certain inducements in connection with Federal Family Education Loan Program (FFELP) loans:

> The term "eligible lender" does not include any lender that . . .
>
> (A) offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or individual in order to secure applicants for loans under this part; [or]
>
> . . . . . .
>
> (C) offered, directly or indirectly, loans under this part as an inducement to a prospective borrower to purchase a policy of insurance or other product . . . .

The purpose of this alert memorandum is to inform you of three inducement violations: (1) a private loan agreement between SLM and Corinthian that offered parents of Corinthian students inducements to borrow PLUS loans with SLM, (2) a private loan agreement between SLX and Corinthian that tied Corinthian students' access to alternative private loans to Corinthian's FFELP loan volume and the Federal cohort default rate, and (3) another private loan agreement

[1] The agreements between Corinthian and the lenders applied to all of Corinthian's schools, which included Everest Institute (Everest), located in Brighton, Massachusetts, and WyoTech-Bedford (WyoTech), located in Bedford, Massachusetts. On May 1, 2008, WyoTech changed its name to National Aviation Academy – New England.
[2] All citations to the HEA are to the requirements in effect during our audit period, from July 1, 2007 through September 30, 2008.

between SLX and Corinthian in which SLX would provide Corinthian with assistance in the development of a Web site and administrative reports. We conducted our work in accordance with the Office of Inspector General (OIG) quality standards for alert memoranda. We are referring these issues to you for appropriate action. The latter arrangements with SLX, however, may have been resolved in the Determination and Voluntary Disposition (Settlement Agreement), dated March 23, 2009, between the U. S. Department of Education (ED), Fifth Third Bank, SLX and SLX's parent company, CIT Group Inc.

Corinthian is a publicly traded corporation based in Santa Ana, California, that operates 89 for-profit colleges in the United States. Corinthian acquired Everest, then known as Bryman, in December 1995. The school's name was changed to Bryman Institute in June 1996 and was changed again in April 2007 to its current name, Everest Institute. During our audit period, Corinthian owned WyoTech-Bedford from July 1, 2007, through April 30, 2008. On May 1, 2008, National Aviation Academy of Mississippi, Inc. purchased the assets of WyoTech from Corinthian and changed the name of the school to National Aviation Academy – New England. Corinthian had assigned an audit liaison to represent Everest and WyoTech.

Sallie Mae Offered Parents an Inducement to Borrow PLUS Loans

On March 21, 2007, SLM entered into an agreement with Corinthian that granted Corinthian students access to SLM's Federal and private education loans. Included in this agreement was a provision for parents to obtain a one-time $500 credit towards their closing costs of a new home loan from SLM if the parent obtained a PLUS loan from SLM. This provision was not in compliance with Section 435(d)(5)(A) and (C) of the HEA because SLM offered an improper inducement to parents of Corinthian students to obtain PLUS loans.

On November 16, 2009, SLM was made aware of the results of our audit and given an opportunity to respond. SLM provided a response on December 4, 2009, indicating that it did not concur with our results. See Attachment A. According to its response, SLM did not believe that the $500 closing cost credit was an inducement by SLM for Corinthian parents to apply for or obtain PLUS loans from SLM. SLM stated in its response that it did not violate Section 435(d)(5)(A) and (C) of the HEA in view of the facts that: 1) the $500 closing cost credit was not marketed to any prospective parent borrower, and 2) Corinthian parents were allowed to obtain PLUS loans regardless of whether they agreed to apply for or obtain an SLM home loan.

As part of our audit, we did not examine how SLM marketed its mortgage loans or marketed the FFELP loans to Everest and WyoTech students and parents, and therefore cannot corroborate the statements made by SLM. However, whether or not the closing credit was in fact marketed to students or parents, we concluded the fact that SLM offered the inducement through the agreement is itself a violation of Section 435(d)(5)(A) of the HEA. While parents may have been allowed to obtain PLUS loans regardless of whether they agreed to apply for or obtain an SLM home loan, the $500 credit was an inducement to obtain PLUS loans, thus violating Section 435(d)(5)(C) of the HEA. Therefore, we are referring this issue to you for appropriate action.

SLX Induced Corinthian to Secure FFELP

A March 30, 2007, agreement between Corinthian and SLX offered Credit Risk Subsidy Program loans to WyoTech's and Everest's high-risk student borrowers. This agreement required Corinthian to pay a premium to share the risk of student default on private student loans with SLX. The agreement contained a provision that allowed SLX to temporarily terminate the agreement if private student loans SLX made to Everest or WyoTech students exceeded 15 percent of the total amount of all SLX's educational loans at each respective school, including loans made under the FFELP. Another provision in the agreement allowed SLX to immediately terminate the agreement if the school's Federal cohort default rate[3] exceeded 15 percent. As a result, SLX provided an inducement for Corinthian to encourage students to apply for FFELP loans with SLX to secure private loan funds and to maintain the ratio of private loans to all education loans (including FFELP), as described in the agreement.

In a second and separate agreement between SLX and Corinthian, it was established that SLX would assist Corinthian with the development of a Web site, and would provide Corinthian with administrative reports for each campus it owned. While the Web site was not designed to facilitate students' applications for SLX's FFELP loans, the service SLX provided was intended to induce Corinthian and secure its students' loan applications. The agreement specifically stated that "SLX shall assist Corinthian with the development of a [Web] site providing student loan information and assist Corinthian in establishing a link to SLX's [Web] site (including a splash page) for the purpose of PLUS pre-approval, loan management, and Stafford Loan applications."[4] SLX also agreed to provide administrative reports for each Corinthian campus, upon Corinthian's request. These services are inducements to Corinthian that are prohibited by Section 435(d)(5)(A) of the HEA.

A program review report of "Fifth Third Bank as Eligible Lender Trustee (ELT)" issued by ED's Federal Student Aid (FSA) on February 23, 2009, also stated the two concerns that are outlined in this alert memorandum. The program review report indicates that Fifth Third Bank, an ELT for SLX, provided Web site redesign services to a particular educational institution with the sole purpose of securing FFELP volume. According to the report, such services are prohibited by Section 435(d)(5)(A) of the HEA.

The program review report also stated that the termination clause that was present in many SLX agreements as written tied the overall education loan volume to private loans originated by SLX or Fifth Third Bank. The report stated that the application of the clause to the overall education loan volume which include FFELP loans could appear to be increasing the amount of private loan volume that a school may have available to its students. The report recommended that Fifth Third Bank modify its agreements to clearly explain that the relationship between a school's access to private loans and Fifth Third Bank's FFELP volume is to limit its financial risk.

[3] In general, Federal cohort default rates, calculated under 34 C.F.R. Part 668, Subpart M (for Federal fiscal year 2008 and earlier) were the percentage of a school's borrowers who entered repayment on FFELP or William D. Ford Federal Direct Loan Program loans during a Federal fiscal year and defaulted before the end of the following Federal fiscal year.

[4] A "splash page" is the page of a Web site that the user sees first before being given the option to continue to the main content of the site. Splash pages are used to promote a company, services, or product or are used to inform the user of what kind of software or browser is necessary in order to view the rest of the site's pages.

Resolution of the program review report was included in the Settlement Agreement, dated March 23, 2009, between ED, Fifth Third Bank, SLX and SLX's parent company, CIT Group Inc. Fifth Third Bank and CIT Group Inc. agreed to respectively pay ED the sum of $300,000 and $4,837,500. ED agreed to take no further action against Fifth Third Bank or CIT Group Inc. on the issues raised in the program review report.

On November 17, 2009, SLX was made aware of the results of our audit and given an opportunity to respond. SLX's response was provided to us on December 4, 2009. See Attachment B. According to its response, SLX asserted no improper inducements occurred in its agreements with Corinthian since it had developed its loan programs in consultation with experienced industry counsel and within the context of the guidance that was available from ED at the time. In addition, SLX believes that the issues raised by our audit are moot because SLX has ceased originating both government guaranteed and private student loans, and any actual or potential issues on inducements had been resolved by the Settlement Agreement with ED.

In our review of the Settlement Agreement and program review report, it appears that issues related to the Credit Risk Subsidy Program agreement may have been resolved. Under Observation 4 of the program review report, FSA recommended that SLX modify its credit agreements, without limiting that recommendation to any particular agreement. In contrast, Finding 2 of the program review report related to Web site services appears to be limited only to services provided to the University of Wisconsin Milwaukee. The recommendation includes no general corrective action directed at services that may have been provided to other schools.

Recommendations

We recommend that your office:

1. Take appropriate administrative action regarding SLM's inducement violation.

2. Determine if the SLX Credit Risk Subsidy Program agreement and Web site service agreement issues were resolved by the Determination and Voluntary Disposition, dated March 23, 2009, and take appropriate administrative action for any issue not resolved by the Determination and Voluntary Disposition.

Department Comments

A draft of this memorandum was provided to FSA for comment. In its response to the draft alert memorandum, FSA concurred that the agreements examined by OIG need further review and appropriate action. However, FSA did not agree with the draft recommendation that it take action against SLM and SLX under Subpart G of 34 C.F.R. Part 682. As of July 1, 2010, no new loans will be made under FFELP. Accordingly, a limitation, suspension or termination of future participation would have very little effect. FSA responded to our suggested administrative remedy with a discussion of appropriate remedies after the July 1, 2010 changes to FFELP. FSA's response is included as Attachment C to this memorandum.

OIG Response

We have revised our draft recommendations for administrative action under specific regulatory provisions and have instead recommended that FSA take appropriate administrative action, without suggesting the specific action that should be taken.

Corrective actions proposed (resolution phase) and implemented (closure phase) by your office(s) will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS).

Alert memoranda issued by OIG will be made available to members of the press and general public to the extent information contained in the memoranda is not subject to exemptions in the Freedom of Information Act (5 U.S.C. § 552).

For further information, please contact Daniel P. Schultz, Regional Inspector General for Audit, at (646) 428-3888.

Electronic cc:

Marge White, Audit Liaison Officer, Federal Student Aid
Janie Funkhouser, Audit Liaison Officer, Office of Postsecondary Education
Harold Jenkins, Assistant General Counsel, Office of the General Counsel, Division of Postsecondary Education

Attachment A

SallieMae
SALLIE MAE, INC.
12061 Bluemont Way – V3306
Reston, VA 20190
Telephone: 703-984-5544
Facsimile: 703-984-5979
E-mail [illegible]a.com

ANDREW G. WACHTEL
Senior Vice President and Deputy General Counsel

December 4, 2009

VIA E-MAIL

Daniel Schultz
Regional Inspector General
United States Department of Education
New York/Boston Audit Region
Daniel.Schultz@ed.gov

Re: Excerpts From Draft Report Relating to Audits of Everest Institute and National Aviation Academy-New England (formerly known as Wyotech-Bedford)

Dear Mr. Schultz:

We are pleased to enclose Sallie Mae, Inc.'s ("Sallie Mae") response to the above-referenced excerpts from the draft report that were received by Sallie Mae by email from Kathleen Peer dated November 16, 2009. Pursuant to your email of November 19, 2009, this response is timely.

Please do not hesitate to contact me with any questions you may have regarding the enclosed response, including the accompanying exhibits. I may be reached at 703-984-5544.

Sincerely,

Andrew G. Wachtel

Enclosures

cc: Kathleen Peer
Kathleen.Peer@ed.gov

RESPONSE TO UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

EXCERPT OF DRAFT REPORT RELATING TO
AUDITS OF EVEREST INSTITUTE
AND
NATIONAL AVIATION ACADEMY-NEW ENGLAND
(FORMERLY KNOWN AS WYOTECH-BEDFORD)

AS PROVIDED TO SALLIE MAE BY E-MAIL DATED NOVEMBER 16, 2009

December 4, 2009

Introduction

The U.S. Department of Education's Office of Inspector General ("OIG") has recently conducted two audits, one at Everest Institute ("Everest") and one at National Aviation Academy-New England, formerly known under a prior owner as WyoTech-Bedford ("WyoTech"). Everest is owned by, and WyoTech was owned by, Corinthian Colleges, Inc. ("Corinthian"). According to the two-paragraph excerpt of a draft report provided by the OIG to Sallie Mae by email dated November 16, 2009, the audits disclosed an agreement (the "Agreement") dated March 21, 2007 between Corinthian and Sallie Mae, Inc. ("Sallie Mae") that included a provision the OIG claims constitutes a prohibited inducement in violation of what formerly was §435(d)(5)(C) of the Higher Education Act of 1965, as amended (the "HEA"), because Sallie Mae "offer[ed] an inducement to prospective borrowers and lure[d] Corinthian students to PLUS loans offered by SLM in order to qualify for [a] one-time $500 credit towards closing costs on a new SLM Home Loan." For the following reasons, Sallie Mae strongly disagrees with the OIG's draft conclusion and requests that the language be stricken from the final report. Because Sallie Mae did not market the credit to prospective Corinthian Parent PLUS borrowers, the credit did not induce any of them to apply for or obtain a PLUS Loan from Sallie Mae. Consequently, Sallie Mae did not violate §435(d)(5)(A) of the HEA. And because Sallie Mae allowed Corinthian parents to obtain Parent PLUS loans regardless of whether they agreed to apply for or obtain a Sallie Mae home loan, Sallie Mae did not violate §435(d)(5)(C) of the HEA.

Sallie Mae Did Not Induce Borrowers to Obtain Federal Loans

The OIG's draft report erroneously indicates that Sallie Mae induced prospective borrowers and parents of Everest and WyoTech students to obtain Sallie Mae PLUS loans by offering a $500 credit toward the closing costs on a new first-mortgage loan from Sallie Mae. This characterization is inaccurate.

Section 435(d)(5)(A) of the HEA at the time excluded from the definition of an eligible lender under the Federal Family Education Loan Program ("FFELP"):

> any lender that the Secretary determines, after notice and opportunity for a hearing, has […] offered, directly or indirectly, points, premiums, payments or other inducements, to any educational institution or individual in order to secure applicants for loans under this part[.]

Consequently, in order to have offered an impermissible inducement to prospective borrowers, as indicated in the OIG's draft report, Sallie Mae would have had to make the prospective borrowers and parents aware of the existence of that benefit. However, Sallie Mae did not advertise or otherwise circulate, distribute, or make available to prospective Parent PLUS borrowers from Everest and WyoTech any marketing material stating that they could receive a $500 credit toward closing costs of a new mortgage loan from Sallie Mae if they applied for or obtained a new Parent PLUS loan.

Sallie Mae's Parent PLUS Loan marketing materials aimed directly at Corinthian parents for the 2006-2007 academic year (the year at issue here) are provided in Exhibit A. Both documents inform parents that if they were to obtain a Parent PLUS loan from Sallie Mae, they could earn two loan credits equal to a total of 2.5% of the original loan amount. To qualify, borrowers would have to sign up to receive account information by email and (i) make the first 12 payments on time to receive a 1% loan credit and (ii) make the first 36 payments on time to receive an additional 1.5% loan credit. Neither marketing document mentioned the availability of a $500 credit toward the closing costs of a new mortgage loan from Sallie Mae. Similarly, Sallie Mae's non-school-specific marketing brochure, which is attached in Exhibit B, addressed Parent PLUS loans offered for the 2006-07 academic year and did not mention the availability of a $500 credit for Parent PLUS borrowers who obtain a new first-mortgage loan from Sallie Mae.

While Sallie Mae did list in its agreement with Corinthian that Sallie Mae's existing Parent PLUS borrowers who asked could get a credit toward the closing costs on a new first-mortgage loan from Sallie Mae, the important point is that Sallie Mae never marketed the credit in conjunction with its marketing of Parent PLUS loans to Everest and WyoTech parents. A prospective applicant or borrower cannot be claimed to have been induced by Sallie Mae to obtain a PLUS Loan if the availability of the so-called inducement (*i.e.*, the closing cost credit) was not even made known to that applicant or borrower prior to the applicant applying for the loan. Consequently, Sallie Mae did not violate §435(d)(5)(A) of the HEA. Incidentally, a review of our records indicates that no Sallie Mae Education Trust PLUS borrowers from these schools during the applicable timeframe also obtained a mortgage loan from Sallie Mae.

Sallie Mae Did Not Offer its PLUS loans to Induce Prospective Borrowers to Obtain Mortgage Loans

The OIG's draft report also indicates that Sallie Mae somehow violated what was then §435(d)(5)(C) of the HEA. Section 435(d)(5)(C) (as then in force) bars an eligible lender from offering FFELP loans to induce the purchase of insurance or other products from that lender.

More specifically, §435(d)(5)(C) of the HEA (as then in force) excluded from the definition of an eligible lender:

> any lender that the Secretary determines, after notice and opportunity for a hearing, has […] offered, directly or indirectly, *loans under this part* as an inducement to a prospective borrower to purchase a policy of insurance or other product[.]

(*Emphasis added*.) The HEA, therefore, barred (and still bars) eligible lenders from limiting the availability of FFELP loans to only those persons who would purchase the lender's insurance or other products, thereby inducing the purchase of such other products by customers who desired to obtain FFELP loans from such lender. Consequently, for Sallie Mae to have violated Section 435(d)(5)(C) of the HEA, Sallie Mae would have had to refuse to provide Parent PLUS loans to WyoTech and Everest parents (or otherwise limit the availability of such PLUS Loans) unless those potential customers also agreed to purchase, or obtain, a first-mortgage loan from Sallie

Mae. Only in such a circumstance would the Parent PLUS loan have been an impermissible inducement to obtain a mortgage loan (*i.e.*, the "other product").

Such a scenario did not occur. Sallie Mae at no time conditioned or tied the availability of its Parent PLUS loans to WyoTech and Everest parents on or to any requirement that those parents had to apply for or obtain a first-mortgage loan from Sallie Mae. Nor were they marketed together or in any other manner linked. Rather, Sallie Mae offered Parent PLUS loans to all eligible WyoTech and Everest parents who wanted them, regardless of whether the parent agreed to apply for or obtain a first-mortgage loan from Sallie Mae. Indeed, Sallie Mae's Parent PLUS loan marketing materials aimed directly at Corinthian parents for the 2006-2007 academic year (the year at issue here) (see Exhibit A), encourage borrowers needing a Parent PLUS loan to use Sallie Mae as their lender. The marketing materials do not mention Sallie Mae's mortgage offerings and cannot be interpreted as conditioning in any manner the availability of the PLUS loan on or to any requirement that the applicant or customer also apply for or obtain a mortgage loan from Sallie Mae. As stated previously, a review of our records also indicates that no Sallie Mae Education Trust PLUS borrowers from these schools during the applicable timeframe also obtained a mortgage loan from Sallie Mae.

Sallie Mae did not limit access to its Parent PLUS loans to Everest and Wyotech applicants who agreed to apply for or obtain Sallie Mae home mortgage loans. Therefore, Sallie Mae did not violate §435(d)(5)(C) of the HEA because it did not offer FFELP loans to induce the purchase of another product, namely the first-mortgage loans.

Conclusion

Sallie Mae appreciates the opportunity to provide this response to the two paragraphs of the OIG's draft report that were provided to us, and to clear up any misunderstandings about the unadvertised closing cost credit it made available to Corinthian parents who were already Parent PLUS Loan borrowers. Because Sallie Mae did not market this credit to prospective Corinthian Parent PLUS borrowers, the credit did not induce any of them to apply for or obtain a PLUS Loan from Sallie Mae. Consequently, Sallie Mae did not violate §435(d)(5)(A) of the HEA. And because Sallie Mae allowed Corinthian parents to obtain Parent PLUS loans regardless of whether they agreed to apply for or obtain a Sallie Mae home loan, Sallie Mae did not violate §435(d)(5)(C) of the HEA. Sallie Mae, therefore, requests that the OIG's draft conclusion – that Sallie Mae offered an improper inducement – be stricken from the final report. In the event that Sallie Mae is discussed in the OIG's report in any other manner, we would appreciate the opportunity to comment on the language prior to the finalization of the OIG's report.

Sallie Mae values its status as an eligible lender under the HEA and intends to continue its operations in full compliance with the letter and spirit of the law.

Attachment B

McDermott
Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Stephen M. Ryan
Attorney at Law
sryan@mwe.com
+1 202 756 8333

December 4, 2009

U.S. Department of Education
Office of Inspector General
Boston/New York Audit Region
32 Old Slip, 26th Floor
New York, NY 10005

Attention: Kathleen Peer

Re: Excerpt from Draft Reports that Relate to Student Loan Xpress

Dear Ms. Peer:

This law firm represents Student Loan Express, Inc. ("SLX") and the CIT Group ("CIT"). We appreciate your giving us the opportunity to comment on draft language regarding SLX that the Office of Inspector General (OIG) is considering including in draft audit reports for two audits it has conducted -- *Everest Institute Compliance with Lender Inducement*, Department of Education ("DOE")-OIG/A02J0001, and *National Aviation Academy-New England Compliance with Lender Inducement*, DOE-OIG/A02J0005. The subject schools were both owned by Corinthian Colleges, Inc. (Corinthian). The language you have asked us to review (the Draft Language), as set forth in your email to Chris Dewes of November 17, 2009, is as follows:

> On March 30, 2007, Corinthian entered into two agreements with SLX that were not in accordance with HEA requirements, and constituted inducements. One of SLX's agreements included prohibited services. The other SLX agreement provided for an inducement from SLX to Corinthian to secure FFELP and that Corinthian would pay a premium to SLX on high-risk student loans.
>
> One of the agreements between Corinthian and SLX stated that SLX would assist Corinthian with the development of a Web site, and would provide Corinthian with administrative reports for each campus it owned. The agreement stated that SLX was a preferred provider of student loans originated under the Federal Family Education Loan Program (FFELP) for all Corinthian campuses. This agreement specifically states that "SLX shall assist Corinthian with the development of a website providing student loan information and assist Corinthian in establishing a link to SLX's website (including a splash page) for the purpose of [Parent Loan for Undergraduate Student] PLUS pre-approval, loan management, and Stafford loan applications." In the other agreement, SLX could temporarily terminate the agreement if the Credit Risk Subsidy Loans exceeded 15 percent of all educational loans, including loans made under the FFELP. In addition, the

agreement stated that it may be terminated immediately by SLX upon delivery of written notice to the school if the Federal cohort default rate for the school exceeded 15 percent. The agreement further stated that Corinthian shared the risk of student default with SLX by paying a premium based on the credit score of a student. The premium paid to SLX ranged from 10 to 40 percent.

The two issues raised in this excerpt relate to SLX providing website assistance to Corinthian and SLX incorporating percentage limits into its Credit Risk Subsidy Program with Corinthian. These general issues previously were raised in a Program Review Report ("PRR"), dated February 23, 2009 (PRCN 20073025002) (the "PRR"), issued by DOE to Fifth Third Bank, as Eligible Lender Trustee for SLX. Resolution of the PRR was incorporated into a Determination and Voluntary Disposition, dated March 23, 2009, between DOE, Fifth Third Bank, as ELT for SLX, SLX, and CIT Group Inc., the ultimate parent of SLX, relating to an audit report issued by DOE's Office of Inspector General, dated January 5, 2009. As summarized below and previously discussed in our response in 2008 to the OIG draft report, SLX does not believe any improper inducements have occurred. In addition, since SLX has ceased originating both government guaranteed and private student loans, we believe this issue is also moot with respect to SLX, and more importantly, fully addressed by the broad prior settlement agreements.

In the second half of 2007 and the first half of 2008, CIT evaluated each of its consumer loan programs, including the student loan programs of SLX, to determine whether consumer lending continued to be a viable business for CIT in light of changes in the capital markets occurring during that time period. Following that evaluation, CIT decided to exit all of its consumer lending programs, including both the private student loan program and the government guaranteed student loan program operated by SLX. SLX decided to terminate its private student loan program in the third quarter of 2007, and gave Corinthian notice of termination of the Credit Risk Subsidy Program in November 2007, effective February 17, 2008. Further, SLX terminated its government guaranteed student loan program at the beginning of the second quarter of 2008.

The "Website Assistance" Provided Is Not An Unlawful Or Improper Inducement

OIG's concerns regarding SLX's assistance with Corinthian's website are misplaced. SLX's website assistance to the Corinthian schools was more closely akin to an electronic equivalent of providing paper brochures to distribute student loan information to Corinthian's students. Likewise, installing a link from Corinthian's website to SLX's website was an electronic equivalent of providing the school with postage-paid envelopes for forwarding completed paper loan applications to SLX for approval. Such activities have been permissible under DOE guidance for many years.

DOE issued guidance permitting lenders to help schools provide student loan information to their students in its original Dear Colleague Letter on inducements, DCL 89-L-129 (Feb. 1989) (Attachment 1). There, DOE stated that it is permissible for a lender to provide a school, free of charge, with counseling materials designed to provide a borrower with more

comprehensive and detailed counseling than that required to be provided by the school. DCL 89-L-129 at 3 (Permissible Activity #6).

Subsequently, DOE approved a lender providing computer software to schools, at no cost to the schools, where the purpose of the software was "to provide students with information concerning available sources of student aid, loans from the lender, advice on applying for aid and managing personal finances to ensure repayment, a description of the consequences of default, and worksheets and sample student aid documents." The Department noted that "the software is simply the computerized equivalent of a paper student aid information brochure, and in no way enriches the school or any individual." Letter from Robert W. Evans, Director, Division of Policy Development, to Saul L. Moskowitz, Esq., dated September 10, 1992 (Attachment 2).

Finally, in the preamble to proposed regulations published in August 1999, the Department indicated that lenders may "assist in the development, production, and distribution of materials used by schools in counseling activities", and may also "develop, and offer to schools, electronic products and services, including web-based processes, that can be used to meet counseling requirements". 64 FED REG 43428 (August 10, 1999) (Attachment 3).

Each of these pronouncements from DOE applies here. The assistance provided by SLX to Corinthian in enhancing the student loan information on its website is, at bottom, assistance in providing enhanced counseling to student loan borrowers, and therefore permissible. Notwithstanding any benefit that students may have gained from access to the information on the website, they were not obligated to obtain any student loan from SLX.

SLX established a link to SLX's website on Corinthian's website (including a splash page) for the purpose of PLUS pre-approval, loan management, and Stafford loan applications. The link to SLX's website provided nothing of value to Corinthian. Rather, it simply made it easier for potential customers of SLX to apply for their Stafford loans, get their PLUS loans preapproved, and manage their loans after they received them.

In any case, establishing this link is analytically indistinguishable from a lender's providing a school with postage-paid envelopes or courier service for the purpose of transmitting FFELP applications to the lender. DOE has specifically indicated that the latter is permissible. Letter from Robert W. Evans, Director, Division of Policy Development and Member, Direct Student Loan Task Force, to Saul L. Moskowitz, Esq., dated November 8, 1993 (Attachment 4).

The Credit Risk Subsidy Program Participation Agreement Is Not An Unlawful Inducement But Exposure Encourage Proper By

The issues relating to the Credit Risk Subsidy Program Participation Agreement between Corinthian and SLX, dated as of March 30, 2007 (the CRSA), were raised previously by DOE in the PRR. DOE concluded that the CRSA should be clarified to reflect its actual intent to limit

overall risk in SLX's portfolio, but it did not find that it violated the inducements prohibition. Under the available guidelines, the CRSA was in fact in compliance with that prohibition.

In the PRR, DOE stated as follows:

Observation 4: Credit Risk Subsidy Agreements Tied to FFEL Volume

Issue:

A number of credit risk subsidy agreements between Fifth Third Bank as ELT for Student Loan Xpress and a number of schools were reviewed. Section IV(C)(I) of these agreements stipulated that the lender may terminate the agreement if:

"(I) Program Loans exceed 15% of all education loans (including both loans made under the Federal Family Education Loan Program ("FFELP") and loans not made under the FFELP) originated by Lender, SLX or any affiliate of SLX and made to or for the benefit of students attending School during any academic year (being July I though(sic) June 30);"

This portion of the credit risk subsidy agreements appears to be a "termination" clause that allows Student Loan Xpress to limit the overall risk of its private loan volume at the school. However, applying the clause to overall FFEL volume could also appear to be increasing the amount of private loan volume that a school may have available to its students.

Recommendation:

It is recommended that Fifth Third Bank modify its credit risk agreements to clearly explain that the relationship between a school's access to private loans and Fifth Third Bank's FFEL volume is to limit its financial risk.

PRR at 13-14 (emphasis supplied.)

On March 20, 2009, DOE and SLX entered into a Determination and Voluntary Disposition (DVD) (Attachment 5) that, among other things, resolved "all issues raised by the OIG audit and PRR insofar as the OIG audit and PRR address claims or potential claims regarding the anti-inducement provisions ... that the Department has or may have against ... SLX... ("the Resolved Claims"). DVD §§ I.B. The covered time period of the Resolved Claims is "from July 1, 2004 to June 30, 2007." DVD §§ I.D. Since the issues OIG has raised regarding the CRSA were previously raised by the PRR and SLX's agreement with Corinthian was entered into within the time period covered by the DVD, all issues DOE may have relating to the CRSA and inducements have been resolved.

Moreover, the PRR itself demonstrates that DOE did not believe the 15% termination provision cited in the Draft Language was in violation of the inducements prohibition. The PRR recognized that it was appropriate for SLX to "limit its financial risk" under the CRSA by setting a limit on its lending thereunder as a percentage of its total lending at Corinthian schools, *even though that total included FFELP loans*. PRR at 14.

Lastly, even if DOE had not waived its rights as to the CRSA; and even if it had not already found that it did not violate the inducements prohibition; the CRSA is, in fact, in compliance with that prohibition.

DOE has not provided definitive guidance on inducements in the context of private loans, which has been a longstanding issue in the FFELP community. In August 2003, OIG recommended that DOE "[p]rovide guidance on the growing market for private loans by clarifying the application of the anti-inducement provision to private loans...." Alert Memorandum dated August 1, 2003, from Cathy H. Lewis, Assistant Inspector General, Evaluation, Inspection and Management Services, to Sally Stroup, Assistant Secretary, Office of Postsecondary Education (the "Alert Memorandum") (Attachment 6). However, DOE repeatedly stated that it preferred that the industry "self-regulate" in this area.

In late 2004, in response to DOE's request that the industry "self-regulate", various associations representing FFELP program stakeholders developed and issued the "Guidelines for FFELP Industry Practices" (the "Guidelines")(Attachment 7). The Guidelines were endorsed by the three (3) major associations representing FFELP lenders, holders, and guarantors -- the Consumer Bankers Association (CBA), the Education Finance Council (EFC), and the National Council of Higher Education Loan Programs (NCHELP). At no time, to our knowledge, has anyone at DOE ever suggested that the Guidelines failed to accurately interpret the inducements statute or regulations. Thus, on the issue of private loans and FFELP inducements, the Guidelines stand as the only source of guidance available to FFELP participants.

The Guidelines address inducements in the context of private loans as follows:

> Lenders, guarantors, servicers, secondary markets, and their related organizations should not offer, directly or indirectly, nor should institutions or their related organizations request or accept private loan products *in exchange for a specified dollar amount of FFEL loan or guarantee volume, a percentage of FFEL loan or guarantee volume, or FFEL exclusivity*. Notwithstanding the above, institutions may choose a single preferred lender or a single preferred FFEL service provider. Guidelines at ¶4 (emphasis supplied).

Nothing in the private loan provisions of the CRSA runs afoul of this guidance. Corinthian did not promise to provide SLX with a specified dollar amount of FFEL loans, a specified percentage of the school's FFEL loan volume, or FFEL exclusivity. The Guidelines do not prohibit a lender from limiting its volume of one type of private loan at a school to a percentage of total loan volume of the school, including FFELP loans. Nor do they proscribe the use of an FFELP default rate as a criterion for a lender's determination as to whether to terminate

private lending at a school. Nor do they address at all a school's sharing of default risk on private loans with the lender. Moreover, all three (3) provisions are indicative of prudent lending practices. Accordingly, we believe OIG has no basis to conclude that the private loan provisions of the CRSA violated the HEA or the regulations. We believe such a conclusion would not withstand legal scrutiny for application of any penalty.

Summary

Based on prior discussions with DOE and with OIG, we recognize that our interpretation of the inducements statute and regulations may differ from the current interpretation of DOE and OIG. However, SLX developed its programs in consultation with experienced industry counsel and in the context of the guidance that was available from DOE at the time. SLX believes it made a good faith effort to comply with that guidance. We also note that the issues raised in your draft audit report for Corinthian were resolved with respect to SLX and CIT when CIT entered into the DVD with DOE in March 2009. Further, SLX has long since terminated both our private student loan and our FFELP programs, so any remedial action would be ineffective. SLX also questions whether it is appropriate to use program reviews and audits to provide guidance on program parameters, rather than using the existing regulatory processes that were established for such purposes.

Although our client has ceased originating both government guaranteed and private student loans, it remains committed to servicing the loans on the books without disruption to the borrowers, and it looks forward to working with you to accomplish that goal. If you have any further questions, please contact us at your convenience.

Very truly yours,

Stephen M. Ryan

Attachment C

MEMORANDUM

DATE: May 14, 2010

TO: Keith West
Assistant Inspector General for Audit
Office of Inspector General

FROM: William J. Taggart
Chief Operating Officer
Federal Student Aid

SUBJECT: Response to Draft Alert Memorandum, "Lender Agreements between Sallie Mae and Student Loan Xpress and Corinthian Colleges, Inc., Contained Inducements," Control Number ED-OIG/L02K0001

Thank you for providing us with an opportunity to address the concerns that came to your attention during the Office of Inspector General's (OIG) recent audit of lender agreements between two lenders, Sallie Mae, Inc. (SLM) and Student Loan Xpress, Inc. (SLX) and Corinthian Colleges, Inc. (Corinthian).

The OIG Draft Alert Memorandum identifies three possible inducement violations: 1.) a private loan agreement between SLM and Corinthian that offered parents of Corinthian students inducements to borrow PLUS loans with SLM. 2.) a private loan agreement between SLX and Corinthian that tied Corinthian students' access to alternative private loans to the Federal Family Education Loan Program (FFELP) loan volume and the Federal cohort default rate and 3.) another private loan agreement between SLX and Corinthian in which SLX would provide Corinthian with assistance in the development of a Web site and administrative reports. The Draft Alert Memorandum indicates that you would refer these issues to my office for further review and, as appropriate, action under Subpart G of 34 C.F.R. Part 682.

Although Federal Student Aid (FSA) agrees that these agreements need further review and appropriate action, we do not agree with the draft recommendation that FSA take action against SLM and SLX under Subpart G of 34 C.F.R. Part 682 if we conclude that either party violated the prohibition on improper inducements. FSA does not believe

that Subpart G (limitation, suspension or termination of participation) provides an appropriate sanction in this situation. As of July 1, 2010, no new loans will be made under the FFEL Program. Accordingly, a limitation, suspension or termination of future participation would have very little effect. FSA believes that if it is determined that these agreements violated the prohibition on improper inducements that an assessment of liabilities or the initiation of a fine action would be a more appropriate sanction. We request that the OIG consider this alternative when it issues its final alert memorandum.

Since November 2006, FSA has conducted numerous school and lender reviews and has issued reports on the results of those reviews. On November 1, 2007, the Department promulgated rules that incorporate specific requirements for lenders on prohibited inducements, requirements that went into effect on July 1, 2008. The Department also provided extensive training on the new regulatory and statutory requirements at the 2007 and 2008 fall conferences.

In the attachment to this memorandum, I respond to each of your suggestions in greater detail.

Thank you once again for the opportunity to respond to your concerns.

cc: Daniel P. Schultz, Regional Inspector General for Audit, Office of Inspector General
Marge White, Audit Liaison Officer, Federal Student Aid
Janie Funkhouser, Audit Liaison Officer, Office of Postsecondary Education
Harold Jenkins, Assistant General Counsel Office of the General Counsel, Division of Postsecondary Education

OIG Alert Memorandum ED-OIG/L02K0001

ATTACHMENT

Recommendation 1: Take appropriate action regarding SLM's inducement violation under Subpart G of 34 C.F.R. Part 682.

FSA Response: FSA will review the private loan agreement between SLM and Corinthian to determine if the agreement violated the prohibition on offering inducements. If this is found to be the case FSA will take appropriate action.

Recommendation 2: Determine if the SLX Credit Risk Subsidy Program agreement and Web site service agreement issues were resolved by the Determination and Voluntary Disposition, dated March 23, 2009, and take appropriate corrective action for any issue not resolved by the Determination and Voluntary Disposition, under Subpart G of 34 C.F.R Part 682.

FSA Response: FSA will review the SLX Credit Risk Subsidy Program agreement and Web Site service agreement issues to determine if they are resolved under the Determination and Voluntary Disposition. If this is found not to be the case, FSA will review each agreement and take appropriate action.