

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.:
	)	
SALLIE MAE, INC., now known as	)	
NAVIENT SOLUTIONS, INC.,	)	
SLM DE CORPORATION, now known as	)	
NAVIENT DE CORPORATION, and	)	
SALLIE MAE BANK,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

The United States of America alleges as follows:

**INTRODUCTION**

1. The United States brings this action against three entities (hereinafter collectively referred to as "Defendants") -- Sallie Mae, Inc., now known as Navient Solutions, Inc. (hereinafter "Navient Solutions, Inc."), SLM DE Corporation, now known as Navient DE Corporation (hereinafter "Navient DE Corporation"), and Defendant Sallie Mae Bank -- for violating the rights of approximately 60,000 servicemembers protected by the Servicemembers Civil Relief Act (hereinafter "SCRA"), 50 U.S.C. App. §§ 501-597b. This action to enforce the SCRA is brought to redress the SCRA violations that Defendants engaged in from November 28, 2005 through the time of the filing of this Complaint.

2. The United States alleges two types of SCRA violations: (1) Defendants failed to provide servicemembers the 6% interest rate to which they were entitled under the SCRA; and

(2) some of the Defendants obtained default judgments against servicemembers without complying with the procedures set out by the SCRA.

3. The SCRA violations in this case involve four types of student loans (hereinafter collectively "Covered Loans"): (1) private education loans (hereinafter "Private Loans"); (2) Direct Department of Education Student Loans (hereinafter "Direct ED Loans"); (3) student loans originated under the Federal Family Education Loan Program (hereinafter "FFELP") owned by the Department of Education (hereinafter "FFELP ED Loans"); and (4) student loans originated under the FFELP not owned by the Department of Education (hereinafter "FFELP COM Loans").

#### **NATURE OF ACTION**

4. This action is brought by the United States to enforce the provisions of the Servicemembers Civil Relief Act (hereinafter "SCRA"), 50 U.S.C. App. §§ 501-597b.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. App. § 597(a).

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c)(2) because Defendants Navient Solutions, Inc. and Navient DE Corporation are Delaware corporations that conduct business in Delaware, and because Defendant Sallie Mae Bank provides, funds, and owns student loans taken out by borrowers who reside in Delaware.

#### **DEFENDANTS**

7. Defendant Navient Solutions, Inc. is a Delaware corporation that services Covered Loans owned by Navient Corporation and/or its subsidiaries, as well as Covered Loans owned by other entities, including Defendant Sallie Mae Bank.

8. Defendant Navient DE Corporation is a Delaware corporation that performs delinquency collections for Covered Loans owned by SLM Corporation and its subsidiaries, as well as Covered Loans owned by other entities.

9. Defendant Sallie Mae Bank is a Utah state-chartered industrial bank that provides, funds, and owns education loans nationwide. Defendant Sallie Mae Bank's portfolio includes Private Loans and FFELP COM Loans, including Private Loans and FFELP COM Loans taken out by borrowers who reside in Delaware.

### **FACTUAL ALLEGATIONS**

10. Defendants Navient Solutions, Inc. and Navient DE Corporation have been responsible for granting interest rate reductions upon receipt of notice and military orders from servicemembers protected by the SCRA (hereinafter "SCRA-protected servicemembers") with Private Loans since at least November 28, 2005, and from SCRA-protected servicemembers with Direct ED Loans, FFELP ED Loans, and/or FFELP COM Loans since August 14, 2008.

11. From at least November 28, 2005, Defendants Navient Solutions, Inc. and Navient DE Corporation have been responsible for obtaining default judgments against SCRA-protected servicemembers with Private Loans.

12. Defendant Sallie Mae Bank contracted with Defendants Navient Solutions, Inc. and Navient DE Corporation to provide services involving all Private Loans owned by Sallie Mae Bank since at least November 28, 2005, and services involving all FFELP Com Loans owned by Sallie Mae Bank since August 14, 2008. These services have included, but have not been limited to, granting interest rate reductions upon receipt of notice and military orders from SCRA-protected servicemembers.

13. An independent consultant conducted an audit of the Defendants that identified active duty servicemembers who, between November 28, 2005, and December 31, 2013, (1) had

pre-service student loans serviced or owned by Defendants with interest rates over 6% and (2) were given a military identification code in Defendants' computer systems. That audit revealed that only about 7% of those active duty servicemembers received the full 6% interest rate cap to which they were entitled under the SCRA. The other 93% of these servicemembers continued to be charged interest at a rate over 6%, despite the fact that the majority of them, in addition to having a military identification code in Defendants' computer systems, also submitted to the Defendants one or more military documents and/or a separate notice of SCRA eligibility.

14. Of the servicemembers who had pre-service loans with interest rates above 6% and had military codes in Defendants' computer systems and did not receive the full 6% benefit, about 80% had Private Loans or FFELP COM Loans, 8% had Direct ED Loans or FFELP ED Loans, and 12% had more than one type of loan. Over 40% of these servicemembers who did not receive the full 6% benefit were charged at least \$166 above the 6% interest rate cap, with about 23% being charged over \$500 in excess interest charges.

15. The independent consultant retained to conduct an audit of Defendants found that, between January 1, 2008, and December 31, 2012, Navient Solutions, Inc. and Navient DE Corporation obtained default judgments against at least five SCRA-protected borrowers without filing affidavits of military service and showing necessary facts to support the affidavits, as required by 50 U.S.C. App. § 521.

#### **SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS**

16. Defendants Navient Solutions, Inc. and Navient DE Corporation violated Section 527 of the SCRA, 50 U.S.C. App. § 527, when, from at least November 28, 2005, with respect to Private Loans, and from August 14, 2008, with respect to Direct ED Loans, FFELP ED Loans, and FFELP COM Loans, they engaged in a pattern or practice of:

- a. failing to lower interest rates to 6% per year after receiving written notice and qualifying active duty military orders from SCRA-protected servicemembers;
- b. failing to make acceptable efforts to obtain qualifying active duty military documents from servicemembers who requested benefits, but did not provide qualifying military documents; and
- c. failing to notify servicemembers that they might be eligible for SCRA benefits when they provided their military documents to Defendants for purposes other than seeking the 6% interest rate.

17. Defendants Navient Solutions, Inc. and Navient DE Corporation engaged in a pattern or practice of violating Section 521 of the SCRA, 50 U.S.C. App. § 521, or engaged in violations of Section 521 of the SCRA, 50 U.S.C. App. § 521 that raise an issue of significant public importance, when, from at least November 28, 2005, they obtained default judgments against SCRA-protected borrowers with Private Loans without filing affidavits of military service and showing necessary facts to support the affidavits.

18. Defendant Sallie Mae Bank violated Section 527 of the SCRA, 50 U.S.C. App. § 527, when, from at least November 28, 2005, for Private Loans, and August 14, 2008, for FFELP COM Loans, it allowed student loan servicers with which it contracted to engage in a pattern or practice of:

- a. failing to lower interest rates to 6% per year after receiving written notice and qualifying active duty military orders from SCRA-protected servicemembers;

- b. failing to make acceptable efforts to obtain qualifying active duty military documents from servicemembers who requested benefits, but did not provide qualifying military documents; and
- c. failing to notify servicemembers that they might be eligible for SCRA benefits when they provided their military documents to Defendants for purposes other than seeking the 6% interest rate.

19. The servicemembers who were charged interest in excess of 6% per year in violation of Section 527 of the SCRA, 50 U.S.C. App. § 527, are aggrieved persons and have suffered damages as a result of Defendants' conduct.

20. The servicemembers against whom Defendants Navient Solutions, Inc. and Navient DE Corporation obtained improper default judgments in violation of Section 521 of the SCRA, 50 U.S.C. App. § 521, are aggrieved persons and have suffered damages as a result of Defendant Navient Solutions, Inc. and Navient DE Corporation's conduct.

21. Defendants' conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

#### **PRAYER FOR RELIEF**

WHEREFORE, the United States prays that the Court enter an ORDER:

1. Declaring that Defendants' conduct violated the SCRA;
2. Enjoining Defendants, their officers, employees, agents, representatives, assigns, successors-in-interest, and all other persons and entities in active concert or participation with them from:
  - a. charging interest at a rate in excess of 6% per year on the then-outstanding balance (including any previously capitalized interest) of any Covered Loan(s) taken out while a borrower was not on

military service, where the borrower subsequently enters into military service, and where the borrower is eligible for benefits under Section 527 of the SCRA, 50 U.S.C. app. § 527;

- b. misinforming any servicemember about the SCRA protections and benefits available under Section 527 of the SCRA, 50 U.S.C. app. § 527, or otherwise discouraging any servicemember from invoking SCRA protection pursuant to Section 527 of the SCRA, 50 U.S.C. app. § 527, on any Covered Loan(s) taken out while not on military service;
- c. failing to provide information about the SCRA benefits available under Section 527 of the SCRA, 50 U.S.C. app. § 527, to any servicemember who inquires about receiving a military deferment or military forbearance;
- d. seeking any default judgment with respect to any Private Loan without first checking their files, including all customer service notes and the Department of Defense Manpower Data Center database (“DMDC”), to determine whether an individual against whom Defendants intend 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 SCRA-protected servicemember’s military orders, if available;
- e. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each identifiable victim of Defendants’ illegal conduct to the position he or she would have been in but for that illegal conduct; and

f. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any illegal conduct in the future and to eliminate, to the extent practicable, the effects of Defendants' illegal conduct;

3. Awarding appropriate monetary damages to each identifiable victim of Defendants' violations of the SCRA; and

4. Assessing civil penalties against Defendants in order to vindicate the public interest pursuant to 50 U.S.C. App. § 597(b)(3).

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The United States further prays for such additional relief as the interests of justice may require.

ERIC H. HOLDER, JR.  
Attorney General

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District of Delaware  
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JS 44 (Rev 12/12)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

#### I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

For Plaintiff United States of America: Elizabeth A. Singer, Director, U.S. Attorneys' Fair Housing Program and Tanya Ilona Kirwan, MD Bar, Trial Attorney, U.S. Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, 950 Pennsylvania Avenue, N.W. - NWB, 7th Floor, Washington, D.C. 20530, Tel: 202-514-4713

#### DEFENDANTS

Sallie Mae, Inc., now known as Navient Solutions, Inc., SLM DE Corporation, now known as Navient DE Corporation, and Sallie Mae Bank

County of Residence of First Listed Defendant New Castle County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

#### Attorneys (If Known)

For Defendants Sallie Mae, Inc., now known as Navient Solutions, Inc., and SLM DE Corporation, now known as Navient DE Corporation: Kirk D. Jensen, Jeffrey P. Naimon, and Sasha Leonhardt, Buckley Sandler LLP, 1250 24th Street, N.W., Suite 700, Washington, D.C. 20037, Tel: 202-349-8000. For Defendant Sallie Mae Bank: Margaret E. Tabyar, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Tel: 212-450-4379

#### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

#### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

#### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

#### V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

#### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).  
50 U.S.C. App. §§ 501-597b

Brief description of cause

Failure to confer upon servicemembers protections and benefits provided by the Servicemembers Civil Relief Act

#### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint.  
JURY DEMAND:  Yes  No

#### VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
05/13/2014

SIGNATURE OF ATTORNEY OF RECORD

*Tanya Ilona Kirwan*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_