

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 9, 2021

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. BFI-2021-00007

*Ex Parte:* In the matter of Adopting  
Regulations Governing Qualified  
Education Loan Servicers under Chapter 26  
of Title 6.2 of the Code of Virginia

ORDER REQUESTING ADDITIONAL COMMENTS

On March 9, 2021, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to adopt regulations governing qualified education loan servicers, to be set forth in Chapter 220 of Title 10 of the Virginia Administrative Code.

The Bureau submitted the proposed regulations pursuant to Chapters 1198 and 1250 of the 2020 Virginia Acts of Assembly, which amends the Code of Virginia ("Code") by adding Chapter 26 of Title 6.2 (§ 6.2-2600 *et seq.*) of the Code ("Chapter 26"). Chapter 26 establishes a licensing and regulatory framework for qualified education loan servicers effective on July 1, 2021. The regulations implement the provisions of Chapter 26 by, among other things, establishing the amount required for the surety bond, annual reporting requirements, the procedure for documenting eligibility for automatic issuance of a license, the application and renewal process, the annual fee schedule, and procedures for submitting information to the Bureau.

The Order to Take Notice and proposed regulations were published in the *Virginia Register of Regulations* on March 29, 2021, posted on the Commission's website, and sent to certain interested persons. All interested persons were afforded the opportunity to file written

comments or request a hearing on or before April 16, 2021. Comments on the proposed regulations were filed by Virginia21; the New Virginia Majority; the Virginia Poverty Law Center; National Association of Student Loan Administrators ("NASLA"); Progress Virginia Education Fund; and Student Loan Servicing Alliance ("SLSA"). The Commission did not receive any requests for a hearing.

The Bureau considered the comments filed and responded to them in its Response to Comments ("Response"), which the Bureau filed with the Clerk of the Commission on May 17, 2021.

NOW THE COMMISSION, upon consideration of this matter,<sup>1</sup> finds that additional pleadings on the federal preemption and intergovernmental immunity issues are warranted. As the Bureau explains: (1) NASLA asserts application of Chapter 26 and the proposed regulations to Federal Guarantors is preempted by federal law, and the doctrine of intergovernmental immunity bars direct state regulation of federal contractors such as federal guarantors; and (2) SLSA asserts federal student loans are preempted from any licensing regime.<sup>2</sup>

The Commission notes, however, that neither the Bureau, nor any of the commenters, other than NASLA and SLSA, have substantively addressed the legal issues of federal preemption or intergovernmental immunity raised by NASLA and SLSA. Before ruling on these legal questions, the Commission requests the Bureau, NASLA, SLSA, and any interested person desiring so (including others that previously filed comments), to file comments further addressing these issues of federal preemption and intergovernmental immunity

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<sup>1</sup> Comments submitted by SLSA were filed on April 19, 2021, after the deadline imposed by the Order to Take Notice. However, the Commission will make a limited exception in this instance due in part to the fact that the Bureau indicated it considered and responded to all comments received and finding that such does not result in any undue prejudice.

Specifically, any such comments shall be due on or before August 16, 2021, and (not by way of exclusion) such commenters are requested to address the following questions:

- (1) Identify specifically any part(s) of the statute and/or regulations that are federally preempted. For each such part identified, explain in detail which theory of preemption applies and all reasons why the statute and/or regulation are preempted, with citations to applicable law, including caselaw. Please also address whether each part(s) identified are severable from the remainder of the statute.
- (2) Identify specifically any part(s) of the statute and/or regulations that violate the doctrine of intergovernmental immunity. For each part identified, explain in detail why the statute and/or regulation violates the doctrine of intergovernmental immunity, with citations to applicable law, including caselaw. Please also address whether the part(s) identified are severable from the remainder of the statute.
- (3) If no such part(s) of the statute and/or regulations are identified in question (1) above, explain in detail why the statute and/or regulations are not federally preempted, with citations to applicable law, including caselaw.
- (4) If no such part(s) of the statute and/or regulations are identified in question (2) above, explain in detail why the statute and/or regulations do not violate the doctrine of intergovernmental immunity, with citations to applicable law, including caselaw.
- (5) Address *Student Loan Servicing Alliance v. District of Columbia*, 351 F.Supp.3d 26 (2018) and its applicability to this case, Chapter 26 of Title 6.2 of the Code, and the proposed regulations pursuant thereto in Virginia.

Accordingly, IT IS SO ORDERED, and this matter is CONTINUED.

A COPY of this Order shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order to all those who commented in this matter and to the Commonwealth of Virginia's Office of the Attorney General.