under seal

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV05-8020 MMM

UNITED STATES OF AMERICA EX REL. MICHAEL ZAHARA Plaintiff, v. SLM CORPORATION, UNITED STUDENT AID FUNDS, INC., and STUDENT ASSISTANCE CORPORATION, Defendants.	C.A. No. ____ COMPLAINT FOR VIOLATION OF FEDERAL FALSE CLAIMS ACT (31 U.S.C. §§ 3729 *et seq.*) JURY TRIAL DEMANDED **FILED IN CAMERA AND UNDER SEAL**

I. NATURE OF THE CASE

1. Through his attorneys, qui tam plaintiff and relator Michael Zahara brings this action to recover damages and civil penalties on behalf of the United States of America arising from violations of the Federal Civil False Claims Act by defendants (1) SLM Corporation (better-known as "Sallie Mae" and hereafter referred to by that name), the nation's largest lender of federally guaranteed student loans; (2) United Student Aid Funds, Inc. ("USAF"), the nation's largest student-loan guarantor; and (3) Student Assistance Corporation ("SAC"), a wholly-owned subsidiary of Sallie Mae that performs services for USAF (collectively, "defendants").

2. This Complaint alleges a pattern and practice of fraudulent conduct by defendants in connection with the nation's largest federally guaranteed student loan program, the Federal Family Education Loan Program ("FFELP"). FFELP loans are provided by private lenders, and are insured against loss by the federal government, acting through non-profit guaranty agencies.

3. Foremost among the fraudulent practices alleged herein, defendants knowingly allowed their employees and agents to falsify loan records pertaining to delinquent FFELP loans held by Sallie Mae and guaranteed by USAF. In particular, defendants' employees and agents misrepresented in tens of thousands, and possibly hundreds of thousands, of call records that the delinquent borrower had been contacted by telephone and had verbally agreed to a loan "forbearance" (i.e., temporary relief from payment) when in fact the borrower had not been contacted and had not agreed to a forbearance of the loan. The purpose of fabricating forbearances in this manner was to extend the length of the delinquent loans and prevent the loans from going into default.

4. Fabricating forbearances benefited defendants, and defrauded the federal treasury, in a number of regards. First, the forbearances increased the amount of the borrowers' debt to Sallie Mae, the lender, because interest on a FFELP loan accrues and is capitalized during a period of forbearance. This amount is ultimately paid by the federal government upon default of the borrower. Secondly, fabricating forbearances artificially lowered the aggregate default rate, calculated annually, for the loans held by Sallie Mae and for the loans guaranteed by USAF. A decrease in the respective default rates of Sallie Mae and USAF increased various federal payments to the defendants, including (1) default aversion fees paid to USAF and passed on to SAC, (2) guarantee payments to Sallie Mae, and (3) reinsurance payments to USAF.

5. As a result of the false and fraudulent statements and practices alleged herein, defendants caused the federal government to pay them hundreds of millions of dollars to which they were not entitled, all in violation of the Federal Civil False Claims Act, 31 U.S.C. §§ 3729 *et seq.* ("the FCA").

6. The FCA prohibits knowingly presenting (or causing to be presented) to the federal government a false or fraudulent claim for payment or approval. 31 U.S.C. § 3729(a)(1). It also

prohibits knowingly making or using a false or fraudulent record or statement to get a false or fraudulent claim paid or approved by the federal government. 31 U.S.C. §§ 3729(a)(2). In addition, the FCA prohibits conspiring with another person to defraud the government by getting a false or fraudulent claim allowed or paid. 31 U.S.C. §§ 3729(a)(3). Any person who violates the FCA is liable for a civil penalty of up to $11,000 for each violation, plus three times the amount of the damages sustained by the United States. 31 U.S.C. 3729(a)(7).

7. The FCA allows any person having information about false or fraudulent claims to bring an action for himself and the United States, and to share in any recovery. The FCA requires that the complaint be filed under seal for a minimum of 60 days (without service on the defendants during that time) to enable the government (a) to conduct its own investigation without the defendants' knowledge, and (b) to determine whether to join the action.

8. Based on these provisions, qui tam plaintiff and relator Michael Zahara seeks through this action to recover damages and civil penalties arising from defendants' violations of the FCA.

II. INTRODUCTION

A. The Larger Context Of This Case

9. FFELP was created by Congress in Part B of the Higher Education Act ("HEA"). Under the HEA, private lenders, such as Sallie Mae, use their own funds to make FFELP loans to students attending post-secondary schools.[1] The loans are guaranteed by the federal government, acting through non-profit guaranty agencies, such as USAF. The guaranty agencies administer the loan guarantee on behalf of the Department of Education ("ED").

[1] As used in this Complaint, the term "lender" refers both to the originating lender and any subsequent holder of the loan that acquired the loan from the originating lender. The term "lender" also refers to "loan servicers," who contract with the lender to handle activities required of the lender.

10. If a borrower defaults on a FFELP loan, the guaranty agency pays the lender the amount owed on the loan, using federal monies held in a reserve fund called the "Federal Fund." The federal government in turn "reinsures" the guaranty agency, which means that the government pays back into the Federal Fund most of the amount of the guarantee payment.

11. Because FFELP lenders do not bear the risk for losses that occur through borrower default, Congress established a system to monitor the lenders in order to ensure that they diligently handle the origination and repayment of these loans. To protect the taxpayers, the HEA (1) imposes detailed requirements on all aspects of a lender's activities with regard to FFELP loans, and (2) creates a system of independent guarantor oversight of the lenders to ensure the lenders' compliance with these requirements. The independence of the guarantor protects the interests of the taxpayers in the payment of the FFELP loan guarantee.

12. Under the HEA, the guarantor must either be a state agency or a non-profit tax-exempt organization (such as USAF) that has been approved for that role by ED. The guarantor acts as the government's loan police. If the guarantor determines that the lender did not comply with all of its obligations under the HEA, the lender forfeits its right to receive a guarantee payment upon default of the borrower.

13. In this case, the system contemplated by Congress broke down, because USAF, the guarantor, did *not* exercise independent oversight of lender Sallie Mae. Instead, *USAF hired Sallie Mae to police itself.* Specifically, with regard to the forbearance practices that are the subject of this Complaint, USAF hired defendant Student Assistance Corporation ("SAC"), a division of Sallie Mae, to perform USAF's oversight of Sallie Mae's forbearance practices. Yet SAC was the same division that was *granting* the forbearances. Thus, SAC was put in charge of policing its own forbearance practices. This set the stage for the fraudulent practices alleged in this Complaint.

14. The precise nature of the work that USAF hired SAC to perform is called "default aversion" assistance. Under the HEA, a lender is required to request "default aversion" assistance from its guaranty agency for each loan guaranteed by that agency that is between 60 days and 120 days delinquent (i.e., overdue). The guaranty agency is obligated to provide this assistance in order to attempt to prevent the delinquent loan from going into default (also called bringing the loan "current" or "curing" the delinquency).

15. USAF's hiring of SAC to perform USAF's default aversion work created a clear conflict of interest, since it placed SAC in the position of acting simultaneously on behalf of the guarantor (USAF, its client) and the lender (Sallie Mae, its parent). This conflict of interest directly violated HEA conflict of interest regulations. Those regulations provide:

> (k)(4) *Prohibition against conflicts.* If a guaranty agency contracts with an outside entity to perform any default aversion activities, that outside entity may not—
>
> (i) Hold or service the loan . . . .

34 CFR § 682.404(k)(4). Since Sallie Mae is the holder and servicer of the majority of loans guaranteed by USAF, USAF violated the above prohibition by hiring Sallie Mae's SAC to perform USAF's default aversion work.

16. In 2002, ED's Office of Inspector General ("OIG") examined the relationship between USAF and Sallie Mae and concluded in an Audit Report that USAF's hiring of SAC to perform USAF's default aversion work was indeed a conflict of interest and directly violated the above-quoted regulation. The report recommended that ED order USAF to cure the conflict.

17. Following issuance of the Audit Report, however, nothing was done to implement OIG's recommendation. As a result, USAF continues to this day its practice of hiring Sallie Mae's SAC to provide USAF's default aversion services. This case shows the *consequences* of not acting upon the OIG's recommendation.

18. Relator Michael Zahara worked at SAC between 2004 and 2005, and he witnessed first-hand a number of fraudulent practices that went undetected because SAC was acting simultaneously on behalf of the lender and the guarantor. This Complaint focuses in particular on one such practice that has a significant impact on the federal treasury: the fabrication of loan forbearances by SAC employees. SAC employees fabricated forbearances in such large numbers that, during the time period covered by this Complaint, SAC can aptly be described as a fraudulent "forbearance mill."

B. The SAC Forbearance Mill

19. "Forbearance" is the practice by which lenders grant delinquent borrowers temporary relief from their obligation to repay a loan. Forbearance is one among several debt relief options that can prevent a delinquent loan from going into default. Except in very rare circumstances, the HEA only permits lenders, not guarantors, to grant a forbearance.

20. During periods of forbearance, the law permits the lender to capitalize interest, which means that the interest that accrues during the period of forbearance is added to the principal of the loan. Since FFELP loans are essentially risk-free to Sallie Mae, any activity that increases the borrower's indebtedness, like a forbearance, ultimately increases Sallie Mae's revenue from the loan.

21. For a forbearance to be binding on the borrower, the borrower must agree to its terms. Prior to November 2002, federal regulations required that a forbearance agreement be in writing, signed by the lender and the borrower. In November 2002, ED issued new regulations that permitted the lender and borrower to agree verbally on the terms of a forbearance (referred to herein as a "verbal forbearance").

22. One risk associated with the new policy is that verbal forbearances can easily be fabricated. Employees of the lender responsible for contacting delinquent borrowers (referred to

herein as "call associates") can fabricate a verbal forbearance simply by entering a false notation in the loan records stating that on a given date the borrower was contacted by telephone and agreed to the terms of the forbearance.

23. The HEA provides a safeguard against such conduct by providing for independent guarantor oversight of the lender's forbearance practices, and forfeiture of the guarantee payment if the guarantor finds the lender in breach of its obligations under the law. But in this case the guarantor's independence was compromised because of the conflict of interest described above. USAF put SAC, the party that was granting forbearances on behalf of Sallie Mae, in charge of monitoring forbearances on behalf of USAF.

24. Given free reign over forbearances, SAC created a workplace environment that allowed, and even encouraged, its call associates to fabricate verbal forbearances on loans held by Sallie Mae and guaranteed by USAF. SAC created this environment through a combination of (i) intense pressure on call associates to prevent delinquent loans from going into default, and (ii) a deliberate absence of meaningful supervision of the calling activities of these associates.

25. SAC imposed a rigid performance quota system that required each call associate to prevent a specified dollar value of delinquent loans from going into default each month. The monthly quota was typically set at a such a high level that it pressured call associates to fabricate forbearances to achieve the quota. The quota system was enforced through discipline and termination for failure to meet the quota. SAC also used as a bonus system that brought group pressure to bear on individual call associates by making the bonus of every member of a team dependent upon each member of the team achieving the quota. The bonus system also encouraged a code of silence by giving everyone up the corporate ladder a share in the bonus of those below. In this environment, there was strong incentive to look the other way if call associates were meeting their quotas through fraudulent conduct.

26. The pressure of the quota system was combined with a deliberate look-the-other-way attitude of defendants toward the calling activities of the SAC associates. During the period covered by this Complaint, neither SAC, Sallie Mae, nor USAF required verification of a single verbal forbearance granted by SAC call associates. Furthermore, SAC's system of random monitoring of the calling activities of the associates was a sham, with call associates being tipped off in various ways on the rare occasion that their calls were monitored.

27. Many SAC associates responded to this environment by routinely fabricating forbearances on loans of delinquent borrowers, particularly borrowers that were difficult to contact. By far the most common circumstance involved chronically delinquent accounts. These loans are typically very old, the borrower contact information outdated, and there is no realistic prospect of repayment. If these were Private Credit loans, where the lender bears the risk of loss, Sallie Mae would have forced the loan into default long ago and cut its losses; but because FFELP loans are essentially risk-free to Sallie Mae, it keeps extending the loans knowing that the government is ultimately responsible for paying the loan balance when the borrower defaults.

28. The simplest way for SAC call associates to fabricate a verbal forbearance was to remain on an unanswered call for at least two minutes, so that call records, if later audited, would indicate that the associate had been on the line long enough to have had an actual conversation with the borrower. Following the bogus call, the call associate would then enter into the loan records the false statement that the borrower had been contacted and had agreed to a forbearance. Another way to fabricate a verbal forbearance was to speak with anyone who answered the phone, such as a spouse, family member, or roommate – none of whom have authority under the law to accept the terms of the forbearance – and enter into the loan records that the borrower was contacted and agreed to the forbearance.

29. Based on the conduct that he observed while working at SAC, Relator estimates that during the period covered by this Complaint, SAC employees fabricated verbal forbearances on billions of dollars worth of FFELP loans held by Sallie Mae and guaranteed by USAF. The forbearance mill finally ended in June 2005, after Relator complained so loudly and persistently that SAC management realized that it could no longer turn a blind eye toward the practice. At that point, SAC finally put in place a system requiring supervisor verification of verbal forbearances. With that simple and obvious measure – *three years in coming* – the forbearance mill was effectively shut down.

30. Management at SAC, Sallie Mae and USAF allowed the SAC forbearance mill to persist as long as it did because all three companies benefited from the practice, and company executives gained personally through generous bonus compensation tied to company performance. The practice benefited the companies, to the detriment of the federal treasury, in a number of regards, including the following:

a. Since FFELP loans are virtually risk-free to Sallie Mae, increasing the principal and interest of the loans through forbearance ultimately increased Sallie Mae's revenue from the loans – received from the borrower in repayment of the loan, or from the Federal Fund upon default of the borrower.

b. The fabricated verbal forbearances increased the default aversion fees paid to USAF by ED. These fees are paid to the guarantor for preventing a delinquent loan from going into default. By preventing loans that otherwise would have defaulted from immediately going into default, the fabricated verbal forbearances allowed USAF to receive default aversion fees to which it was not entitled.

c. Fabricating verbal forbearances allowed SAC to meet performance goals established by USAF. Under the contract between USAF and SAC, meeting these goals entitled

SAC to receive a greater share of the default aversion fees paid by the federal government to USAF.

d. Fabricating verbal forbearances lowered the cumulative default rate on loans held by Sallie Mae. Keeping the default rate low helped Sallie Mae qualify for "Exceptional Performer" designation under the HEA, which allowed it to receive guarantee payments for 100%, rather than 98%, of the unpaid principal and interest on its defaulted loans.

e. Fabricating verbal forbearances lowered the "cohort trigger default rate" on loans guaranteed by USAF. The federal reinsurance payment to guarantors goes down as the trigger default rate rises. By keeping the default rate on its loans low, USAF was able to qualify for the maximum reinsurance rate allowed by its reinsurance agreement with ED, rather than significantly lower rates that are triggered when the default rate rises.

f. Sallie Mae's cumulative default rate and USAF's trigger default rate are measures of their respective success in preventing defaults on loans that they handle. Keeping their respective default rates artificially low enhanced each company's reputation in the student loan industry and contributed to each company's ability to continually grow their FFELP business, to the ultimate detriment of the taxpayers.

III. PARTIES

A. Plaintiff/Relator

31. Plaintiff/relator Michael Zahara ("Relator") is a resident of Las Vegas, Nevada. On November 29, 2004, he was hired by Sallie Mae to work as a "Default Prevention Specialist" at the Student Assistance Corporation ("SAC"). SAC is a division within Sallie Mae's Debt Management Operations department. Relator worked at SAC's Las Vegas, Nevada call center, also known as the Western Collections Center ("WCC"). Based on knowledge he gained while working for SAC, Relator became aware of the practices by defendants that are the subject of this

Complaint. Relator's employment was terminated on August 16, 2005, in retaliation for complaining to company management and governmental authorities about the practices alleged herein. Relator brings this action for violations of the False Claims Act on behalf of himself and the United States pursuant to 31 U.S.C. § 3730(b)(1).

B. The Defendants

32. Defendant SLM Corporation, more commonly known as Sallie Mae, is a Delaware corporation operating through a number of subsidiaries.[2] References in this Complaint to "Sallie Mae" refer to SLM Corporation and its subsidiaries. Sallie Mae's corporate headquarters are located in Reston, Virginia. Sallie Mae is the largest private source of funding for education loans in the United States. It manages over $110 billion in student loans for over 9 million borrowers, including tens of thousands of borrowers in this judicial district.

33. Sallie Mae was formed in 1972 as the Student Loan Marketing Association, a federally chartered government-sponsored enterprise ("GSE"), with the goal of furthering access to higher education by acting as a secondary market for student loans. In 1997, Sallie Mae obtained congressional and shareholder approval to transform from the GSE to a private sector corporation. Sallie Mae is now a fully privatized company. Its shares are listed on the New York Stock Exchange.

34. Defendant United Student Aid Funds, Inc. ("USAF") is a non-profit, tax-exempt corporation with headquarters in Fishers, Indiana. USAF is the nation's largest guarantor of FFELP student loans. USAF guarantees FFELP loans for students and parents throughout the nation including in this judicial district. According to its 2004 Annual Report, USAF had approximately $65 billion in student loan guarantees outstanding at the end of 2004.

[2] Sallie Mae's United States subsidiaries include: Sallie Mae, Inc.; the Sallie Mae Servicing Corporation; SLM Financial Corporation; Student Assistance Corporation; Nellie Mae; Student Loan Funding Resources; Education One Group; General Revenue Corporation; Pioneer Credit Recovery, Inc.; and others.

35. Defendant Student Assistance Corporation ("SAC") is a corporation headquartered in Fishers, Indiana. SAC is a wholly-owned subsidiary of defendant Sallie Mae. SAC is a division of Sallie Mae's Debt Management Operations department. SAC provides default aversion services on a contingency fee basis for student loan guarantors. SAC's largest client is defendant USAF. SAC handles delinquent student loans of borrowers residing throughout the nation, including in this judicial district.

36. The acts and omissions of SAC and its employees described in this Complaint are attributable not only to SAC, but also to Sallie Mae and to USAF, because SAC's employees were acting as agents, employees, and/or under the direction and control of Sallie Mae and USAF when the acts and omissions occurred, and such acts and omissions were within the scope of such agency, employment, and/or direction and control. Accordingly, any reference in this Complaint to an act or omission of SAC or its employees shall be deemed to be the act of SAC and the act or omission of Sallie Mae and USAF.

IV. JURISDICTION AND VENUE

37. This Court has jurisdiction over the subject matter of this action pursuant to both 28 U.S.C. § 1331 and 31 U.S.C. § 3732, the latter of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730. Under 31 U.S.C. § 3730(e), there has been no statutorily relevant public disclosure of the "allegations or transactions" in this Complaint.

38. Personal jurisdiction and venue are proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and 31 U.S.C. § 3732(a), as one or more defendants are found in, have or had an agent or agents, have or had contacts, and transact or transacted business in this district.

V. APPLICABLE LAW

39. The Higher Education Act and its regulations cover every aspect of the life cycle of a federally guaranteed student loan, including loan originations, repayment, default prevention, collections, guarantee payments, and reinsurance payments. Pertinent provisions of the law are described below.

A. Overview of Federal Student Loan Programs

40. The federal government operates two major student loan programs to help students and their parents meet the costs of postsecondary education: the Federal Family Education Loan Program ("FFELP"), formerly known as the Guaranteed Student Loan Program, authorized by Part B of Title IV of the HEA; and the William D. Ford Direct Loan ("Direct Loan") program, authorized by Part D of Title IV of the HEA. Under both programs, the ultimate credit risk lies with the federal government. The major distinction between the two programs is that FFELP loans are provided by private sector lenders, while Direct Loans are provided directly by ED. In addition to these federal programs, private sector lenders make traditional Private Education Loans where the lender assumes the credit risk of the borrower.

41. This Complaint concerns FFELP loans. There are four types of FFELP loans currently authorized under the HEA:

(1) Subsidized Federal Stafford Loans to students who demonstrate requisite financial need;

(2) Unsubsidized Federal Stafford Loans to students who either do not demonstrate financial need or who require additional loans to supplement their Subsidized Stafford Loans;

(3) Federal PLUS Loans to parents of dependent students whose estimated costs of attending school exceed other available financial aid; and

(4) Consolidation Loans, which consolidate into a single loan a borrower's obligations under various federal student loan programs.

These four types of loans will collectively be referred to herein by the umbrella term "FFELP loans."

42. FFELP loans are low-interest loans with interest caps that limit the cost to borrowers. For each type of loan, the federal government establishes by statute the interest rate to be charged to borrowers.

43. The federal government provides lenders a variety of incentives to invest private capital in FFELP student loans. For example, the government provides FFELP lenders with a loan subsidy known as a "special allowance payment." This loan subsidy ensures private lenders that they will receive, at a minimum, a specified level of return on student loans. In addition, FFELP lenders are protected against borrower default by a guarantee payment insured by the federal government. The administration of the loan guarantee is discussed in the next section below.

B. The Administration of FFELP Student Loans

44. All FFELP lenders - including the nation's largest, Sallie Mae - use their own funds to make FFELP loans to qualified borrowers. The loans are guaranteed by the federal government, which acts through intermediaries called "guaranty agencies." The guaranty agencies are either State agencies or private non-profit entities (such as USAF) that have signed an agreement with ED to perform certain administrative roles in the student loan program.

45. Guaranty agencies receive and hold specially-earmarked federal funds for the purpose of paying lender default claims and certain other program costs and expenses. ED has described the role of the guaranty agency in the student loan program in the following terms:

> In light of its role in the program and its responsibility for holding and protecting Federal funds, the guaranty agency's role is best characterized as that of a trustee holding money for the benefit of another. . . . Under these circumstances, a guaranty agency is responsible for acting as a fiduciary responsible for protecting the interests of the Department and the taxpayers in the reserve funds.

61 Fed. Reg. 49381, 49381 (Department of Education, Notice of Proposed Rule, September 19, 1996).

46. Under the HEA, guaranty agencies are required to monitor the practices of FFELP lenders to ensure that the lenders are properly originating loans and properly enforcing the repayment of loans they hold. Repayment of a FFELP loan begins six months after the student ceases to be enrolled in school at least half time. The initial six-month period before payments commence is referred to as the "grace period."

47. With a few exceptions, each FFELP loan must be scheduled for repayment over a period of not more than 10 years after repayment begins. The HEA currently requires minimum annual payments of $600, unless the borrower and the lender agree to lower payments. The HEA regulations require lenders to offer borrowers the choice of a standard, graduated, income-sensitive and extended repayment schedule.

C. Borrower Repayment Relief

48. The HEA provides various forms of repayment relief to borrowers who are having difficulty in making payments on their student loans. These provisions authorize lenders to temporarily or permanently cease the monthly repayments required under the loan's amortization schedule. These provisions include (1) deferment, (2) forbearance, and (3) loan consolidation.

1. Deferment

49. A deferment is the temporary cessation of a borrower's obligation to repay a loan because he or she meets certain specific conditions set forth in the law – such as returning to school, economic hardship, or being unemployed and seeking employment. For certain types of FFELP loans, during the deferment period the lender can defer both principal and interest, meaning that the loan balance will not increase because interest is not accruing. For other FFELP loans, the lender can defer principal only, which means that interest continues to accrue and the balance goes up during the deferment period.

2. Forbearance

50. Forbearance is the temporary cessation of the borrower's obligation to repay a loan when the borrower is behind in payments but does not qualify for a deferment. Forbearance is generally lender-discretionary, whereas deferment is automatic when the statutory conditions for deferment have been met. The borrower is always responsible for the interest that accrues during periods of forbearance; and if unpaid, the interest may be capitalized (i.e., added to the unpaid principal balance of the loan).

3. Consolidation

51. Consolidation loans are made in an amount sufficient to pay outstanding principal, unpaid interest, late charges and collection costs on all federally guaranteed student loans that the borrower selects for consolidation. The borrower can use a consolidation loan to pay off a single loan or multiple loans.

D. Delinquency And Default Prevention

52. A loan becomes delinquent the first day after a payment becomes due and is unpaid. Under the HEA, a loan that is delinquent for 270 days is considered eligible for "default." 34 CFR 682.200. Once a loan becomes delinquent, and before it goes into default, the HEA requires the lender to undertake a series of federally prescribed "due diligence" efforts to try to enforce repayment of the loan. 34 CFR § 682.411(c)-(n). The required procedures consist of telephone calls, demand letters, skip tracing procedures to locate the borrower if his or her whereabouts become unknown, and requesting default aversion assistance from the guarantor. Id.

53. The lender is required to request default aversion assistance from the guarantor between the 60th day and 120th day of delinquency. 34 CFR § 682.411(i). (Sallie Mae's practice is to request the assistance on the 60th day of delinquency.) Upon receiving a request from the lender, the guaranty agency is required to pursue default aversion efforts prescribed by federal regulation. 34 CFR § 682.404. This assistance is aimed at preventing default by the borrower.

54. A guaranty agency may contract with an outside entity to perform the required default aversion activities; however, HEA regulations prohibit the guaranty agency from hiring the entity that holds or services the loan to perform these activities:

> (k)(4) *Prohibition against conflicts.* If a guaranty agency contracts with an outside entity to perform any default aversion activities, that outside entity may not—
>
> Hold or service the loan . . . .

34 CFR § 682.404(k)(4).

55. During the time period covered by this Complaint, USAF was in continuous violation of this provision because it contracted with SAC – a division of Sallie Mae, the loan holder – to perform USAF's default aversion activities. This conflict of interest placed SAC in the position of acting on behalf of both the guarantor and the lender with regard to the same loans, and compromised the system of independent guarantor oversight contemplated by the HEA.

56. Noncompliance with the HEA conflict of interest rules is grounds for disqualifying a guarantor from receiving government reinsurance payments on default claims paid to the lender. See 34 CFR § 682.406(a)(12)(v).

E. The Consequences Of Default

57. If a loan does go into default, i.e., is delinquent for at least 270 days, the lender may submit a default claim to the guaranty agency, requesting that the guaranty agency pay the lender for the unpaid principal and accrued interest. If the guaranty agency determines that the lender has complied with all of its obligations under the HEA, the guaranty agency must pay the claim. The guaranty agency disburses the funds for the guarantee payment from a reserve fund called the "Federal Fund" that the guaranty agency holds in trust for the government.

58. The federal government reinsures the guarantee payment. This means that ED, after finding that the guaranty agency has complied with all of its obligations under the HEA,

reimburses the guaranty agency for most of the amount of the default claim that the guaranty agency paid to the lender. ED's reimbursement payment is deposited into the Federal Fund. In addition, ED pays the guaranty agency a "default aversion fee" for every loan over 60 days delinquent that the guaranty agency prevents from going into default.

59. Once a guaranty agency pays a lender's default claim, the loan is assigned to the guaranty agency and it becomes responsible for making diligent efforts to collect on the loan. Since ED reimburses a guaranty agency on default claims paid to the lender, the guaranty agency must return to ED most of the amount it collects from the borrower. As an incentive to continue to seek recovery of outstanding amounts due on loan defaults, a guarantor is permitted to retain a small portion of the revenue it collects from defaulted borrowers.

60. The HEA requires guaranty agencies to establish two funds: the Federal Fund referred to above, and an Operating Fund. The Federal Fund contains the reinsurance payments paid to the guaranty agency by ED and the insurance premiums paid to the guaranty agency by the lender, among other funds. The Federal Fund is federal property and its assets may only be used to pay default claims of the lender, and to pay the guarantor's default aversion fees. 20 USC § 1072(g). The default aversion fees, and other fees paid to the guaranty agency, are deposited into the Operating Fund. The Operating Fund is the guarantor's property and is used to support operating expenses.

61. The manner in which the guarantee payment, the reinsurance payment, and default aversion fees are calculated and paid is described below.

1. The Guarantee payment

62. For defaulted FFELP loans that were made after October 1, 1993, the guarantee payment to lenders is 98% of the unpaid principal and accrued interest on the loan. The guarantee payment, however, increases from 98 to 100% if the lender (or loan servicer) receives an

"Exceptional Performer" designation by ED. ED uses the Exceptional Performer status to encourage efforts to prevent defaults.

63. To qualify as an Exceptional Performer and receive 100% reimbursement on default claims, FFELP lenders must achieve an overall "compliance performance" rating of 97% or higher for due diligence requirements established by ED and must meet other criteria set by ED. 34 C.F.R. § 682.415. Relator is informed and believes that ED examines, among other criteria, the cumulative default rate of loans held by the lender. The cumulative default rate is the total amount of the lender's loans that are in default divided by the total amount of its loans outstanding. While Relator was working for SAC, company managers told the employees that the cut-off point for the Exceptional Performer designation was a 2% cumulative default rate, i.e., that Sallie Mae had to lower its default rate to less than 2% to receive the Exceptional Performer designation.

64. In addition to entitling the lender to receive 100% reimbursement on default claims, the Exceptional Performer designation has an additional advantage to a lender. Under FFELP program regulations, a lender designated an Exceptional Performer is also relieved from regular review for compliance with all of its due diligence obligations under the HEA.

65. The Exceptional Performer designation lasts for a one-year period or until revoked by ED. The initial one-year period and any extensions are subject to quarterly compliance audits that can result in revocation of the designation. ED may revoke the designation at any time if it "has reason to believe the lender or lender servicer may have engaged in fraud in securing its designation for exceptional performance." 34 CFR § 682.415(b)(8)(ii)(B).

66. Sallie Mae received an "Exceptional Performer" designation in October 2004 (and may have received that designation on earlier occasions of which Relator is unaware). Sallie Mae has received 100% reimbursement on default claims on FFELP loans since it received the

Exceptional Performer designation, rather than the 98% reimbursement rate that would have applied had it not received the designation.

2. Reinsurance Payments.

67. When a guaranty agency has paid a lender's default claim, and the guaranty agency has complied with all of its obligations under the HEA, the guaranty agency is entitled to a reinsurance payment from the federal government to reimburse the guaranty agency for its payment to the lender. The amount of the reinsurance payment is governed by the terms of a "reinsurance agreement" between the guaranty agency and ED. The standard reinsurance agreement reiterates the requirements of the HEA and its regulations.

68. Under the HEA and its regulations, the government's reinsurance payment obligation varies depending upon the guarantor's default rate experience. ED measures the guarantor's default rate experience by calculating the guarantor's "cohort trigger default rate" for each "trigger" year (October 1 through September 30). The cohort trigger default rate is defined as the dollar amount of defaulted loans guaranteed by the guarantor during the trigger year divided by the total dollar amount of the guarantor's loans in repayment. This default rate is called the "trigger" default rate because higher default rates trigger lower federal reimbursement payments to the guarantor.

69. For loans disbursed on or after October 1, 1998, reinsurance payments cover 95% of the cost of the default claim plus certain administrative costs. This reinsurance rate is available only if the guarantor maintains an annual trigger default rate of less than 5%. If more than 5% of the guarantor's loans are in default, the reimbursement rate drops to 85%; and if default claims exceed 9% of loans in repayment status, the reimbursement rate drops to 75%. The HEA provides for slightly higher reinsurance rates for older loans. The following chart provides the reinsurance rates established by the HEA:

Loan Disbursement Date	Reinsurance Rate		
	Maximum	5% Trigger	9% Trigger
On or after October 1, 1998	95%	85%	75%
October 1, 1993 – Sept. 30, 1998	98%	88%	78%
Before October 1, 1993	100%	90%	80%

Reinsurance rates based on default-rate experience provide guarantors with strong financial incentives to prevent loan defaults.

3. Default Aversion Fees

70. The HEA provides FFELP guarantors with an additional incentive to prevent loan defaults in the form of a "default aversion fee." When a guarantor successfully prevents a borrower who has fallen 60 days or more behind in loan payments from defaulting, the guarantor is entitled to receive a default aversion fee. The fee, which is paid from the Federal Fund, is equal to 1% of unpaid principal and accrued interest on the loan brought into "current status." This fee may be paid only once per borrower, even if the same borrower subsequently falls more than 60 days behind in payments again. The fee must be rebated back to the government if the borrower subsequently defaults.

71. During the time period covered by this Complaint, all of the default aversion fees paid by the government to USAF were shared with SAC. This sharing agreement is part of SAC's contract with USAF to perform the guarantor's default aversion services. The contract provides SAC a financial incentive to prevent defaults on the loans that it services for USAF. According to the contract, USAF pays SAC a higher share of the default aversion fees when USAF's annual trigger default rate goes down. The following table provides the payment formula at selected default rates:

Trigger Default Rate	% of USAF's Default Aversion Fee Paid to SAC
5.0%	70% (minimum)
3.0%	81%
2.0%	87%
0.5%	95% (maximum)

F. Compliance With The HEA and its Regulations Is a Prerequisite To the Right Of A Lender Or Guarantor To Receive Federal Payments Under The HEA

72. A lender's right to receive payment for a default claim (paid by the guaranty agency out of the Federal Fund) is conditioned upon the lender's compliance with all applicable requirements of the HEA with respect to the loan. Likewise, the guaranty agency's right to receive a reinsurance payment from the federal government for default claims paid to the lender is conditioned upon both the lender's and the guarantor's compliance with their respective obligations under the HEA. The basic rule is stated in 34 C.F.R. § 682.406(a):

> (a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if –
>
> (1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency; . . .
>
> (3) The lender provided an accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan; . . . [and]
>
> (12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan . . . .

73. Defendants' fraudulent practices alleged herein violated the HEA and FFELP program regulations and disqualified defendants from receiving the guaranty payments, reinsurance payments, and/or default aversion fees that defendants received in connection with the affected loans. Claims by defendants for these payments constitute false and fraudulent claims for payment under the False Claims Act.

VI. THE OPERATION OF DEFENDANTS' BUSINESSES

74. In order to understand how the fraudulent practices alleged herein took place, it is necessary to understand something of how the defendants operate their respective businesses.

A. Sallie Mae's Business Operations

75. Sallie Mae manages its business through several business segments, the two largest of which are (i) the Lending Business/Loan Servicing segment and (ii) the Debt Management Operations segment (hereafter, the "Lending Division" and "DMO," respectively).

1. Sallie Mae's Lending Division

76. Sallie Mae's Lending Division is the largest holder of student loans and largest servicer of student loans in the country. It manages over $110 billion in student loans for over 9 million borrowers. Approximately 90 percent of these loans are federally guaranteed; the remainder are private education loans that are not federally guaranteed. Sallie Mae acquires its federally guaranteed student loans in one of two ways: it either originates the loans, or it buys the loans from the originating lenders on the secondary market.

77. Sallie Mae's Lending Division is in charge of all of the activities that Sallie Mae as lender is required to perform under the HEA. This includes activities related to loan origination, loan repayment, default prevention, and other activities. For purposes of this Complaint, it is important to note that the default prevention activities performed on behalf of the Lending Division are separate and distinct from the default prevention services that DMO provides to guarantors for a fee (discussed below).

78. The granting of forbearances to delinquent borrowers is one of the default prevention activities that the Lending Division is formally in charge of on behalf of Sallie Mae as lender. During the time period covered by this Complaint, however, the Lending Division permitted SAC to grant forbearances to borrowers of Sallie Mae FFELP loans. This was an extraordinary delegation of authority by the Lending Division, given that SAC is within Sallie Mae's DMO, not the Lending Division, and performs default aversion services on behalf of guarantors, not lenders. Sallie Mae is the only lender that allows its borrowers to receive

forbearances granted by SAC; every other lender requires SAC to forward forbearance requests directly to the lender.

2. Sallie Mae's Debt Management Operations

79. Sallie Mae's DMO provides debt collection and default prevention services for guarantor clients on a contingent fee basis. DMO employs over 3,500 people.

80. USAF is by far Sallie Mae's largest client for DMO services. Sallie Mae in return is USAF's largest client for loan guarantees. DMO, SAC, and USAF all have their headquarters in the same building complex in Fishers, Indiana. The interconnected relationship between Sallie Mae and USAF is discussed in greater detail in ¶¶ 87-91 below.

81. Sallie Mae's DMO subsidiaries include SAC, Pioneer Credit Recovery ("PRC"), General Revenue Corporation ("GRC"), and Arrow Financial Services ("AFS"). SAC provides default aversion services for four guarantors, by far the largest of which is USAF. GRC and PCR provide loan collections services for guarantors and ED. AFS is a debt management company that services several industries outside of student loans.

82. SAC is the DMO division where Relator worked, and where most of the activities described in this Complaint took place. SAC maintains Call Centers in Fishers, Indiana and Las Vegas, Nevada. Relator worked at the latter facility, known as the Western Collections Center (WCC). This facility was built by SAC's former parent, USA Group, and has been used continuously by SAC for many years. Sallie Mae took over the WCC in 2000 when it acquired the USA Group.

83. The Las Vegas operation of SAC reports to SAC's corporate headquarters in Fishers, Indiana. SAC headquarters reports to the DMO corporate office, which is also located in Fisher's, Indiana. As noted above, DMO shares the Fishers, Indiana office complex with USAF.

84. Relator was employed at WCC from November 2004 to August 2005. Relator's job title was Default Prevention Specialist ("DPS"). The responsibilities of a DPS consist of speaking on the telephone with delinquent borrowers in order to try to bring their delinquent accounts current. The position of DPS is referred to herein as "call associate." Approximately 225 people are employed as SAC call associates at WCC.

85. During the time period covered by this Complaint, Relator's immediate supervisor was Mike Chernich, whose position was Supervisor, also known as Team Leader. Chernich reported to Mike Bluel, the Floor Manager. Linda Robbins was also a Floor Manager. Bluel and Robbins reported to Jeff Schnell, who was in charge of SAC operations in Las Vegas. Schnell reported to Robert Meck, Chief Operating Officer of DMO and based in Fishers, Indiana. Meck reported to John F. (Jeff) Whorley, Jr., Executive Vice President of Sallie Mae in charge of its entire DMO business segment. Whorley is based in Fishers. Whorley's chief assistants in the SAC division were Charles Dotson and Michelle Beckley.

B. USAF's Business Operations

86. USAF is a tax-exempt, non-profit corporation, operating the nation's largest student loan guaranty agency under the HEA. Despite its size and importance in the student loan industry, USAF maintains only a very small staff of employees because it contracts out the majority of its operational work to Sallie Mae subsidiaries. To understand the present-day close ties between USAF and Sallie Mae, it is necessary to understand the history of their relationship.

87. As noted in ¶ 33 above, beginning in 1997, Sallie Mae began the process of transforming itself from a GSE to a private sector corporation. As part of the privatization process, Congress permitted Sallie Mae to issue student loan asset-backed securities ("securitization") in order to fund its operations through non-GSE sources. Sallie Mae's first major purchase after securitizing its loans was the acquisition of the USA Group on July 31, 2000.

At the time of this acquisition, the USA Group owned USAF (then, and now, the guarantor for Sallie Mae's student loans), SAC, and several other subsidiaries of the USA Group. While USAF was owned by the USA Group, USAF contracted out the majority of its guarantor activities to its sister USA Group companies, including SAC.

88. When Sallie Mae purchased the USA Group in 2000, Sallie Mae acquired all of the USA Group companies with the *exception* of USAF, which became an independent nonprofit company. USAF could not be included in the transaction because of the conflict of interest that would have resulted if the nation's largest student loan holder (Sallie Mae) also owned the nonprofit corporation that guaranteed the majority of its loans (USAF).

89. After becoming an independent company, however, USAF continued its prior business practice of contracting out to SAC and other subsidiaries of the USA Group – now owned by Sallie Mae – the vast majority of its operational work. In fact, many of the exact same people that worked for USAF under contract when it was part of USA Group continued in that same capacity after Sallie Mae took over the USA Group.

90. Of particular relevance to this Complaint is USAF's relationship with Sallie Mae's SAC. Prior to 2000, when USAF and SAC were sister companies, the two companies shared building space in the USA Group headquarters in Fishers, Indiana, and USAF paid SAC to perform all of USAF's default aversion work.

91. When Sallie Mae acquired USA Group in 2000, even though USAF was spun off as an independent company, as a practical matter nothing changed in the relationship between USAF and SAC. USAF and SAC continued to share the office complex in Fishers, Indiana (now owned by Sallie Mae), and USAF continued to hire SAC to perform all of USAF's default aversion work. But continuing this same business model *after* Sallie Mae became the owner of

SAC meant that USAF was hiring Sallie Mae to perform the guarantor's default aversion work on loans held by Sallie Mae.

92. In 2002, the OIG of ED examined this relationship in an Audit Report, and concluded that it was an "inherent conflict of interest" for USAF to hire SAC, a division of Sallie Mae, to perform USAF's default aversion work. See "United Student Aid Funds, Inc.'s Administration of the Federal Family Education Loan Program Federal and Operating Funds," Final Audit Report, ED-OIG/A05-B0033 (April 2002), at pp. 1 and 5-6. The Report concluded:

> There is an inherent conflict of interest when [the same] entity performs default aversion and . . . holds/services . . . the same loans. As a result, the potential to manipulate default aversion . . . activities is greater than it would be if a separate entity performed default aversion activities.

Id. at 1. Consistent with this conclusion, OIG recommended that USAF be ordered to cure this inherent conflict of interest. Id. at 1 and 6.

93. Following publication of the Audit Report in April 2002, nothing was done to implement the recommendation of the OIG.

94. In November 2002, in a decision unrelated to the Audit Report, ED changed its policy on FFELP loan forbearances and began allowing lenders to grant verbal forbearances. Following that decision, Sallie Mae's Lending Division permitted SAC to grant verbal forbearances on behalf of the Lending Division. As noted above, this was a highly unorthodox delegation of authority, since SAC is strictly a guarantor servicing unit and performs no other work on behalf of lenders. (Sallie Mae is the only lender that allowed SAC to grant forbearances; every other lender required SAC to refer a request for forbearance directly to the lender.)

95. The end result was that SAC had complete control over forbearances – granting them on behalf of Sallie Mae, and monitoring them on behalf of USAF. This blatant conflict of interest goes a long way in explaining how SAC could get away with the fraudulent forbearance mill for as long as it did.

VII. THE FABRICATION OF VERBAL FORBEARANCES AT SAC

A. Defendants Implemented Policies And Procedures That Pressured SAC Employees To Fabricate Forbearances

96. When Relator began working for SAC in 2004, he discovered that call associates at SAC were routinely fabricating verbal forbearances on the delinquent accounts that they handled. This fraudulent practice was largely the consequence of policies and procedures put in place by SAC management, and condoned by Sallie Mae (SAC's parent) and USAF (SAC's largest client). These policies and procedures included: (i) a quota system that put tremendous pressure on employees to prevent loans from going into default in order to save their jobs; (ii) a bonus system that put group pressure on each individual to achieve the quota and that encouraged a code of silence about fraudulent conduct, and (iii) a deliberate absence of meaningful supervision or monitoring of the granting of verbal forbearances by the call associates that allowed them to fabricate these forbearances with impunity.

97. SAC utilizes a quota system that requires each call associate to bring current a specified dollar value of delinquent loans each month. SAC sets the quotas at levels necessary to maintain a low default rate on loans held by Sallie Mae and guaranteed by USAF. Defendants have a financial incentive to keep these rates low. See ¶¶ 30, 170. Also, executives benefit personally by receiving large bonuses tied to bringing down the default rate.

98. SAC establishes its quotas based upon the "team" to which the associate is assigned. Each team typically consists of 10 to 15 call associates. The teams are assigned to work on specific types of delinquent loans. For example, one team may be assigned to work on recently-delinquent loans (i.e., between 60 and 120 days delinquent); another team assigned to loans close to the default deadline of 270 days delinquent; another team assigned to high value loans, etc.

99. In Relator's experience, the quota was always set at a level that was very difficult for even the most experienced and diligent call associates to reach. On teams to which Relator was assigned, the monthly quota for each team member was typically in the range of $1.5 to 2 million in delinquent loans that had to be brought current each month.

100. SAC enforced the quota by imposing a strict "three strikes and you're out" policy. A call associate that did not meet the quota in one month received a preliminary disciplinary action ("PDA") letter in the associate's file. After receiving three PDA's, the associate was fired, regardless of whether the associate's conduct had been exemplary in all other respects.

101. Even if a call associate exceeded the quota by a substantial margin one month and barely missed reaching quota the next month, that did not matter—any month under quota was one strike and provoked a PDA letter in the associate's file. This policy placed tremendous pressure on employees to meet the quota in order to hold onto their jobs.

102. SAC reinforced this pressure through its bonus system. SAC paid call associates a modest hourly wage – typically in the $10 to $15 per hour range – and in addition offered bonuses for achieving the monthly quota. The bonus would typically be between 20 and 25% of the call associate's monthly salary. During most of the time period covered by this Complaint, *every* member of the call associate's team had to achieve the quota in order for any team member to receive the bonus. In other words, if 14 members of a 15-person team met the quota, but one team member did not, the entire team lost its bonus. When a team lost its bonus, this also reduced the bonus of the Team Leader, the Floor Manager, and every above them in the corporate hierarchy. See ¶ 105 below.

103. Even if certain team members exceeded their quota in excess of the amount that others under-performed, the team still lost its bonus. There were also periods when the bonus was

computed on a quarterly basis, and if a call associate missed the quota in one of those three months, the entire team lost three months of bonus.

104. In this environment, if one or two team members were at risk of not meeting the quota in a given time period and letting the entire team down, the group pressure on them to do anything possible to reach the quota was extremely intense. Moreover, there was no incentive for any team member to report cheating by another team member, since the success of the team rested upon every team member reaching the quota. In the Spring of 2005, SAC finally ended the practice of awarding individual bonuses based upon the performance of every member of the team. For several years before it ended, however, this policy pressured SAC call associates to do whatever they could to meet their quota and earn a bonus for themselves and their teammates.

105. The bonus system had another ingenious way of encouraging a code of silence. Everyone up the corporate ladder shared in the bonus of those below. For example, the bonus of the SAC Supervisors, also called Team Leaders, was based upon a percentage of the bonus received by the call associates in the teams under them. The Floor Managers above the Team Leaders received a percentage of the Team Leaders' bonuses, and a percentage of the call associates' bonuses. This continued up the corporate ladder to the top managers. Thus, everyone in the hierarchy benefited financially when the call associates met their quota. In this setting, there was strong incentive to look the other way if call associates were meeting their quotas through fraudulent conduct.

106. SAC call associates were also eligible for another type of bonus. All Sallie Mae employees of whatever rank are given 500 shares of company stock (valued at $26,000 at current prices) once a year, usually in October. The stocks vest, i.e., become redeemable, one year after the grant date (this was changed to 18 months in 2005) provided the employee is still working for Sallie Mae at that time. Because of the three-strikes policy, however, it was difficult for call

associates to hold onto their job until the shares vested – the average length of employment of a call associate was less than six months.

107. Those call associates who succeeded in holding onto their job for several months desperately wanted to hold onto their job through a year of employment, so that they would receive the 500 shares. Yet the majority of these associates, like the majority of all call associates, were typically close to the edge of being fired, having already received one or two PDA's. Having the 500 shares dangling in front of them only a month or two away, yet knowing that a single additional month of failure to achieve the quota would mean losing their job, created another source of tremendous pressure and incentive to do anything necessary to achieve the quota.

108. In addition to structuring the disciplinary and bonus system to exert maximum pressure on the call associates to meet the quota, SAC also offered a series of "contests" with valuable prizes – such as gift cards (sometimes as high as $2,500.00), entertainment systems, free trips, etc. – for meeting specific performance goals. These performance goals were typically related to bringing down the default rate on Sallie Mae loans guaranteed by USAF. Relator estimates that during the time period covered by this Complaint, SAC awarded hundreds of thousands of dollars in incentives and prizes to SAC call associates and supervisors for meeting short-term goals.

B. How Call Associates Fabricated Verbal Forbearances

109. All loans that Sallie Mae holds, whether Sallie Mae originated the loan or acquired it on the secondary market, are entered into Sallie Mae's computer system called the CLASS system.

110. On a daily basis Sallie Mae's Lending Division notifies USAF of the loans in CLASS that are guaranteed by USAF and that have become 60 days delinquent. The Lending Division requests the guarantor's default aversion assistance with regard to these loans. Because

USAF hires SAC to provide these services, USAF sends to SAC headquarters in Fishers, Indiana the delinquent loan information that USAF receives from Sallie Mae, as well as from USAF's other lender-clients. SAC loads this information into a computer software program called the Borrow Pursuit System (BPS).

111. SAC headquarters uses BPS to manage the daily work of the call associates at SAC's call centers in Fishers and in Las Vegas. SAC headquarters selects the loans that are to be worked each day by each team. SAC selects the loans based on a variety of criteria, such as the number of days delinquent or the dollar amount of the loan. The daily workload delivered by SAC into BPS is called the daily "campaign." A "campaign" can also extend beyond a single day.

112. BPS uses the Avaya Predictive Dialing System, which is an automated dialing system. When a call associate finishes a call, the Avaya system automatically dials the next phone number on the list until someone answers the phone on the receiving end of the call. When the call is answered, the associate is connected to the call, and the associate's computer automatically displays the borrower's loan history from the CLASS system.

113. The objective of the call associate on every call is to receive a "promise" from the borrower. A "promise" is any action or agreement by the borrower that, if kept, will bring a loan out of delinquency. For purposes of the monthly quota, a call associate is credited with the entire value of the outstanding principal and interest on a delinquent loan whenever the associate records in the BPS system a "promise" from the borrower.

114. Once a call associate records a promise in the BPS system, the loan is temporarily taken out of delinquency status. The loan is placed in a holding status for two to 14 days to give time for the promise to be kept. If the promise is not kept, the loan is delivered back into BPS in 14 days, and the amount of the loan that was previously credited to the call associate who scored the promise is deducted from that associate's tally of promises kept.

115. By far the easiest way to record a "promise kept" is through a verbal forbearance, since it does not require any follow-up action by the borrower. A verbal forbearance is considered a promise kept as soon as the call associate enters a notation into the computer system, and sends a confirming email to SAC headquarters, stating that the borrower was contacted and verbally agreed to the terms of the forbearance. Other methods to bring a loan current require some type of action by the borrower, such as payment of money, or signing and returning a written agreement. Although Sallie Mae sends a confirming letter to the borrower within 30 days of granting a verbal forbearance (as required by federal regulations), even if the letter is returned as undelivered, the verbal forbearance is still considered a promise kept and remains in effect.

116. When a verbal forbearance is recorded in the CLASS system, the delinquent loan is taken out of delinquency status, and the call associate is given credit for the full amount of the borrower's loan. For example, if the principal and accrued interest total $40,000, the associate receives credit for $40,000 in cured accounts toward the monthly quota.

117. By far the most common circumstance where call associates fabricated verbal forbearances involved chronically delinquent accounts. Many borrowers use forbearance only once or twice and get back on the track of repayment. Chronically delinquent borrowers, in contrast, have typically received several years of deferments followed by several years of forbearance (often up to the maximum five years of forbearance allowed by Sallie Mae), with no indication of any intention to repay the loan. If these were Private Credit loans, Sallie Mae would have forced the loan into default long ago; but because FFELP loans are essentially risk-free, Sallie Mae keeps extending the loan knowing that the government is ultimately responsible for paying the loan balance when the borrower defaults.

118. These chronically delinquent loans are typically very old, and the borrower contact information outdated, which makes it very difficult to reach these borrowers on the phone. The

pattern and practice of many call associates working on these loans was to fabricate a verbal forbearance if the borrower could not be reached on the phone. By examining the loan history in the CLASS system, the call associate could see all previous grants of forbearance. Sallie Mae typically grants forbearances for one year at a time, up to a maximum of five years. If the loan history showed that the borrower had not already received the maximum of five years of forbearance, the call associate recognized that the borrower was a candidate for a verbal forbearance.

119. The simplest way to fabricate a verbal forbearance was to remain on a call that was never answered to make it appear as if the associate were live on the line with the borrower. According to audit criteria formulated by SAC, the minimum amount of time necessary to process a verbal forbearance is two minutes; therefore, the call associate would stay on the silent line for at least two minutes. In this way, the associate was confident that the fabrication would not be discovered in the rare event that a post-call audit was conducted.

120. Another way to fabricate a verbal forbearance was to speak with anyone who answered the phone, such as a spouse, family member, or roommate – none of whom have authority under the law to accept the terms of the forbearance – and enter into BPS that the borrower was contacted and agreed to the forbearance.

121. During the time period covered by this Complaint, SAC had no system in place to prevent or detect fabricated verbal forbearances, even though such a system would have been very easy to implement. All that is necessary is a policy that requires the call associate to raise his or her hand when a borrower on the phone wants to agree to a verbal forbearance. The supervisor on the floor of the call center can then pick up an extension and listen in on the call to verify that the borrower is on the line and is agreeable to the terms of the forbearance.

122. In fact, this is precisely the system that SAC put into place on or about June 28, 2005 after Relator repeatedly complained about the practice of fabricating verbal forbearances, and SAC management realized that it could no longer continue to ignore the practice. Once SAC instituted this system of supervisor verification, the SAC forbearance mill was effectively shut down. But for three years, between November 2002 and June 28, 2005, Relator is informed and believes that not a single verbal forbearance by a SAC call associate was verified. This is in stark contrast to the practice of Sallie Mae's DMO companies that handle Private Credit Loans, such as PRC and GRC. These companies follow a longstanding policy requiring supervisor verification of every verbal forbearance.

123. The system of "random monitoring" of calls at SAC was also a sham. The Las Vegas call center had one Quality Assurance employee and three DMO compliance employees, who were responsible for monitoring the calls of more than 450 call associates (consisting of call associates at SAC, GRC, and PRC – the three Sallie Mae companies that share the Las Vegas call center). The monitoring system was a sham because every call associate knew when his or her call was being monitored, since there was a distinct echo and feedback on the call when monitoring was taking place.

124. This problem could easily have been corrected with improved technology, but SAC preferred the status quo, which allowed call associates to be tipped off whenever their calls were being monitored. Furthermore, on the rare occasion that clients or government officials came into the SAC call centers to perform a random audit of the calling activity, the SAC supervisors would alert the call associates in advance so that they could be on their best behavior.

125. The fact that many call associates were routinely fabricating verbal forbearances was known, or at best deliberately ignored, by SAC management. Evidence of the practice was apparent to anyone who cared to look for it. For example, all SAC call associates are provided

activity reports on a daily basis showing, among other information, the quantity and value of loans each associate brought current during the time period of the report. These reports showed that some of the top-performing call associates were curing loans at rates virtually impossible to achieve.

126. One example is the reported activity of call associate E.B. on Saturday, May 28th, 2005.[3] E.B. was notorious for achieving results so far above average as to strain credulity. Saturday is a half-day, four-hour work day. Call associates are paid overtime if they work on Saturday, and the loans they are given to work on are the oldest and most difficult ones, typically involving borrowers that call associates have unsuccessfully attempted to contact on numerous previous occasions.

127. In Relator's experience, on a typical Saturday, a call associate would be lucky to reach more than 1 borrower per hour. On that Saturday, E.B. reported *32 promises kept in four hours* on a Saturday morning. Everyone knew that E.B. could achieve these numbers only by falsifying the call records to make it appear that the borrowers had been contacted and agreed to a verbal forbearance.

128. When Relator examined the records of some of the borrowers that supposedly agreed to verbal forbearances on E.B.'s calls, Relator saw that E.B. provided no information whatsoever concerning the borrower contact – no updated contact information, nor any information concerning the circumstances of the borrower justifying a forbearance. This was the typical pattern of the fabricators – just a simple notation that the borrower agreed to a verbal forbearance, with no additional information.

129. SAC policy required call associates to note in the BPS system any pertinent information concerning the borrower learned during the contact; however, the company never

[3] The full name of call associates referred to herein by initials will be provided as necessary.

enforced this requirement. Relator saw many chronically delinquent loans in the CLASS system where verbal forbearances were granted without a single piece of new information entered into the system, other than the simple notation, "Forbearance granted by SAC contact, expires...." One would expect that addresses and phone numbers would be updated on the dates the forbearance activity occurred, or some indication of the circumstances justifying a forbearance grant. But the correspondence histories of these loans were remarkably absent any new or updated information at all.

130. Some call associates, like E.B. and others, abused the practice of fabricating verbal forbearances worse than others. The very smartest of the cheaters knew not to over-do their own performances, which would call attention to themselves. Since the bonus did not graduate upward and was always a fixed amount, there was no incentive to overachieve. But some of the associates could not resist the temptation to outperform their colleagues. This was also encouraged by SAC management, which offered "contests" where the highest achievers won valuable prizes. See ¶ 108 above. The highest-performing call associates reported truly unbelievable cure numbers – without updating any borrower contact information in their call notes.

131. For even the best call associates (the honest ones, that is), the average cure rate was in the range of $10,000 to $15,000 per hour worked. Yet the activity reports showed that some associates were scoring an astonishing $85,000 in loans brought current per hour, *every hour they worked*, in a given month! Everyone knew this was impossible, but management chose to look the other way. Nothing was said or done about it because all bonuses, all the way up the corporate ladder, were predicated on these numbers.

132. Evidence of the fabricated verbal forbearances can also be seen in the default rates reported by Sallie Mae before and after verbal forbearances were allowed in 2002. In a submission to the Securities and Exchange Commission on July 12, 2004, Sallie Mae reported the

"cumulative default rate" on its loans for the period 1995 through 2003. Although the submission does not define precisely how this rate was calculated, it shows a dramatic decline in Sallie Mae's default rate immediately after verbal forbearances were allowed. According to the submission, Sallie Mae's loan default rate went from a high of 7.22% in 2000 to a low of 0.10% by the end of 2003 (the first full year after verbal forbearances were allowed). A default rate of .10% indicates almost no defaults in Sallie Mae's loans. This would be consistent with the observation of Relator that SAC associates were using fabricated verbal forbearances to cure virtually every past-due loan that could not be cured in a legitimate manner.

133. An independent guarantor monitoring the forbearance practices of Sallie Mae would never have allowed this forbearance mill. But USAF abdicated its statutory role of independent oversight of Sallie Mae by hiring SAC to act on USAF's behalf, which meant that SAC was placed in charge of granting forbearances (on behalf of Sallie Mae's Lending Division) and policing the granting of forbearances (on behalf of USAF) all at the same time. This conflict of interest allowed SAC to get away with the forbearance mill for as long as it did.

134. Relator is informed and believes that between November 2002 and June 28, 2005, USAF never questioned a single verbal forbearance grant by SAC, never required any verification of verbal forbearances, and never denied a guarantee payment based upon SAC's forbearance practices. Nothing within USAF's systems prevented the constant extension of these delinquent loans, most of which would have defaulted years ago, if not for the forbearance grants. With every grant of forbearance, the principal and interest grew on the delinquent loans, ultimately to be paid by the taxpayer.

C. SAC's Policy Changes In June 2005 Demonstrate That The Problem of Fabricated Forbearances Was Real

135. Although SAC call associates were routinely fabricating verbal forbearances, no one complained or tried to stop it. This was because everyone benefited from it, from top to

bottom. Relator broke the code of silence within the company in May 2005. Relator at first complained about the practice to his immediate supervisor, and when the supervisor did not address his concerns, Relator brought the matter to the attention of SAC's Corporate Compliance Officer.

136. Relator's initial complaint to his supervisor and then to Corporate Compliance was prompted by the fact that Relator, who did not participate in the practice of fabricating forbearances, had received a PDA in April for not meeting his monthly quota. Relator complained about the unfairness of a policy that disciplined employees for handling accounts honestly and conscientiously, and awarded bonuses and prizes to employees that were engaging in fraudulent conduct.

137. SAC management at first ignored and then tried to silence Relator's complaints in various ways. These actions included, variously, instructing him to not concern himself with matters outside of his own specific job function, disciplining him, suspending him, and harassing him. See ¶¶ 163-68. When that that did not succeed in silencing Relator, management shifted its strategy and began to embark on a strategy to create deniability should the fraudulent forbearance practices be publicly exposed.

138. The first step management took to create deniability was to distribute to all SAC employees a memorandum written by Jeff Schnell, director of SAC Las Vegas, on June 21, 2005. In the memorandum, Schnell warned employees that it was strictly against company policy to falsify information in BPS concerning a borrower contact. The memorandum also instructed call associates to "document your accounts thoroughly and accurately, so when somebody reviews the account there is no doubt as to what took place." The only problem with this memorandum, that said all the right things, was that it came three years too late. For three years, the company had

looked the other way as call associates routinely granted verbal forbearances without providing *any* details of the supposed contact with the borrower.

139. One week later, on June 28, 2005, SAC changed its policy on verbal forbearances and required a supervisor to come on the call and verify the verbal forbearance. This change was an implicit admission that the problem Relator had identified – widespread fabrication of verbal forbearances – was real.

140. After this change in policy, the number of loans brought current by call associates fell dramatically, providing further evidence of the problem Relator had identified. For example, the overall Activity Report for a two-week period in May 2005 (i.e., shortly before the change in policy) showed a total of 18,676 promises kept, for a total of $241 million in cured loans; a comparable period in July (shortly after the policy change) showed only 8,483 promises kept, for a total of $117 million in satisfied loan – a dramatic decline that is largely attributable to requiring verification of verbal forbearances.

141. The cure numbers reported by call associates who were notorious abusers of the verbal forbearance system show the most dramatic decline after the new policy went into effect. For example, one such call associate reported $2,590,000 in cured loans in the two week period in May, and this fell over 80% to $419,946 in the comparable period in July after supervisor verification was in place. There are many other similar examples in the SAC activity reports.

142. Default rates for 2005 have not yet been published, but based on the above, Relator is informed and believes that the default rates reported by Sallie Mae and USAF in 2005 will increase significantly over the 2004 rates, due largely to the elimination of fabricated verbal forbearances after June 28, 2005, as well as the fact that many borrowers have by now exhausted their maximum five years of forbearance and no other options remain.

D. Defendants Defraud The Federal Treasury Through A Number Of Other Improper Practices

143. In addition to the practices described above, defendants engage in a number of other practices that defraud the federal treasury. These practices include but are not limited to the following:

1. Violation of Due Diligence Requirements For Loan Originations

144. The HEA requires a FFELP lender to exercise due diligence in originating loans to ensure that the lender has a reasonable basis to believe that the borrower will be able to repay the loan and that the lender has accurate identifying information for the borrower in order to locate the borrower to enforce repayment. Based on his experience working on delinquent loan accounts at SAC, Relator is informed and believes that Sallie Mae failed to exercise minimal due diligence on large numbers of FFELP loans that it originated.

145. The safeguard provided by the HEA against negligent loan originations is oversight of the lender by an independent guarantor; and forfeiture of the guarantee payment if the guarantor finds that the lender did not exercise due diligence in the loan origination. However, as alleged above, USAF does not exercise independent oversight of Sallie Mae's lending practices. Relator is informed and believes that USAF never denies a guarantee payment for negligence in the loan origination. The net result is that, from Sallie Mae's point of view, FFELP loans are risk-free lending.

146. On its Private Credit loans, for which Sallie Mae bears the credit risk, Sallie Mae is extremely diligent in its loan originations. On these loans, in addition to verifying all borrower identifying information, Sallie Mae typically requires co-signers, co-borrowers, endorsers, references, and employer contact information. Sallie Mae did not exercise this degree of diligence on its federally guaranteed loans. Relator worked on many FFELP loans with obviously incomplete or inaccurate borrower contact information, including loans issued to borrowers who were deceased at the time the loan was disbursed, borrowers with bogus contact information,

borrowers whose social security numbers did not match the borrower information, and other problems that would have been discovered with minimal due diligence. When these loans default, the taxpayer foots the bill.

2. Pattern And Practice Of Improper Conduct Involving Consolidation Loans

147. Sallie Mae engaged in a number of improper practices involving consolidation loans.

148. First, Relator saw many accounts in the CLASS system in which Sallie Mae had provided a consolidation loan to a delinquent FFELP borrower in circumstances where there was no realistic prospect that the borrower would repay the loan. Many of these borrower had already used up the maximum number of deferments and five full years of forbearance, without a single payment being made or any indication of borrower intent to repay the loan. This is a violation of the lender's due diligence obligation on loan originations. A prudent lender would not provide a loan in these circumstances; yet Sallie Mae did so, knowing that its guarantor, USAF, would never reject the guarantee payment for violation of the lender's due diligence obligations, no matter how irresponsible the lending decision.

149. Second, Sallie Mae gained consolidation loan business by misappropriating confidential information belonging to USAF. Sallie Mae designed, built and maintains the USAF website under a fee-for-service agreement. Sallie Mae included in the site design the ability to link to Sallie Mae's computer system any borrower consolidation request sent to USAF, even if the borrower's primary lender is a company other than Sallie Mae. The only requirement to gain this link is that the borrower have at least one dollar in Sallie Mae loans, and an aggregate loan amount of $5,000. If the borrower has multiple loans from multiple lenders, and one of those loans is a Sallie Mae loan, the borrower is directly linked to the Sallie Mae website to the exclusion of USAF's other lender-clients. In 2005, Sallie Mae boasted publicly to analysts and investors that it

had secured more than two billion dollars worth of federal consolidation loan business from its competitors. The above scheme explains how it did so.

150. Third, Sallie Mae gained consolidation business by taking improper advantage of USAF's relationship with SAC, which performs USAF's default aversion work. Each SAC associate has a Sallie Mae email address that ends in "@salliemae.com." Even though SAC works exclusively on behalf of guarantors, and therefore should be lender-neutral, Sallie Mae deliberately did not create a sub-group of email addresses for its SAC employees that removed the Sallie Mae brand name. Thus, when the SAC associate, performing default aversion services for USAF, sent an email to a borrower of another lender-client of USAF, such as Citibank or Wells Fargo Bank, the borrower saw a "@salliemae.com" email originator. This gave the borrowers the impression that their student loan was connected to Sallie Mae. This led many borrowers to contact Sallie Mae, which allowed Sallie Mae to steer these borrowers to Sallie Mae for consolidation loans.

151. On several occasions, Relator spoke to delinquent borrowers who stated that their delinquent loans had been consolidated without their knowledge or consent. Based on the pattern and practice of conduct described in this Complaint, Relator is informed and believes that some percentage of these consolidation loans may have been fabricated by Sallie Mae employees. One way in which consolidated loans can be fabricated is by falsifying borrower signatures through the on-line signature option of Sallie Mae systems.

152. The federal government bears the risk of loss if the borrower defaults on these consolidation loans.

3. Deliberate Delay In Billing Borrowers

153. As a matter of policy, Sallie Mae does not generate a paper mailed billing until 120 days after a FFELP loan payment is due, unless the customer specifically requests a paper bill. Sallie Mae encourages its borrowers to use on-line payment methods instead.

154. Not sending a timely paper bill has the greatest impact on PLUS and Consolidation loans which go into repayment immediately. Many of these borrowers, unaware that payment has become due, do not make a timely payment, and the loan becomes delinquent. This generates fee income for Sallie Mae because USAF pays Sallie Mae's SAC a fee to provide default aversion services for loans over 60 days delinquent. These newly delinquent loans are relatively easy to bring current – generally through repayment or forbearance – which generates additional income in the form of accrued interest, as well as default aversion fees paid to USAF (and passed on to SAC) from the Federal Fund.

4. Improper Crediting Of Payments

155. During the period of a federal deferment or a forbearance, the borrower is relieved from payment obligations on the loan. If a borrower makes a payment during this period of time, the HEA requires the lender to credit the payment first against the interest that has accrued during the period of the deferment or forbearance, with the remainder credited to reduce the principal balance.

156. Based on his examination of delinquent accounts in the CLASS system, Relator is informed and believes that Sallie Mae does not credit the payments in the required manner. For example, if the borrower makes a payment equivalent to one month's installment, instead of crediting this against interest, Sallie Mae credits it as a regular monthly installment and extends the forbearance or deferment period forward by one month. This extends the interest that accumulates, which is capitalized during periods of forbearance. The net effect of this practice is

to increase the borrower's indebtedness, which is ultimately paid by the government if the borrower defaults.

5. Hiding Old Loans That Should Have Defaulted

157. As noted above, a FFELP loan is eligible for default when it has been delinquent for 270 days. FFELP program regulations require the lender in most circumstances to file a default claim with the guaranty agency within 90 days after the loan is eligible for default. If the lender fails to comply with this requirement, the guarantee payment to the lender and the reinsurance payment to the guarantor may be forfeited.

158. While employed at SAC, Relator worked on many Sallie Mae loans guaranteed by USAF that were delinquent well beyond 360 days, without Sallie Mae filing a default claim with USAF. During most of the spring of 2005, for example, Relator was regularly working on accounts that were in excess of 500 days delinquent. These loans appear in the BPS system with no explanation for why they are there, and with no contact attempts made in months. Call associates refer to these accounts as having come into the system from "limbo" or "la-la land." The one common denominator in all of these very old loans is that they should have defaulted in the previous trigger year, and were somehow withheld and brought into the current trigger year.

159. One way to hide the irregularities in the handling of these loans is to bring the loan current – for example, through a forbearance or through a consolidation loan. Once the loan is brought current, the preceding period of delinquency is considered cured, and any irregularities in the handling of the loan are buried away deep in the history of the loan. Relator is informed and believes that USAF never refuses to honor a default claim because of irregularities in the history of the loan.

6. Moving FFELP Loans to the Direct Loan Program

160. Relator is informed and believes that one option Sallie Mae uses to prevent delinquent FFELP loans from going into default is to encourage the borrower to move their FFELP loans to the Direct Loan program. The Direct Loan program provides loans directly from ED. Relator is informed and believes that Sallie Mae tries to use this option when the borrower has used up the maximum periods of deferment and forbearance and has no other options available. These are loans that Sallie Mae has extended well beyond the point at which a prudent lender would do so, solely for the purpose of maximizing the borrower's indebtedness. To the extent Sallie Mae is successful in moving these loans to the Direct Loan program, the taxpayer foots the bill for Sallie Mae's improper conduct.

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161. The practices outlined above are meant to be illustrative and not exhaustive of the practices of defendants that defrauded the federal treasury. Based on the pattern and practice of fraudulent conduct identified in this Complaint, Relator is informed and believes that defendants engaged in numerous other fraudulent practices in addition to those discussed above. As these practices are further identified during discovery in this case, Relator will seek to amend this Complaint accordingly.

VIII. SALLIE MAE DISCIPLINED AND ULTIMATELY DISCHARGED RELATOR IN RETALIATION FOR CONDUCT PROTECTED BY THE FCA

162. Relator began working for SAC in November 2004. After only a few weeks of working there, he became aware of the fraudulent practices alleged in this Complaint. Relator first brought the practices to the attention of the Securities and Exchange Commission ("SEC") on or about March 15, 2005. One purpose for Relator's communications with the SEC was to inform the agency of Sallie Mae practices that affected the accuracy of representations made by Sallie Mae in public filings with the SEC. Thereafter, Relator had several follow-up communications with the SEC concerning the practices alleged herein.

163. In early May 2005, Relator was called into the office of his Supervisor to discuss the fact that Relator had received a PDA in April for not achieving his monthly quota. This was Relator's second PDA, having received one the month before for not achieving the March quota. Relator complained to his supervisor about the unfairness of a policy that disciplined him for handling accounts honestly and conscientiously, and awarded bonuses and prizes to employees that were lying and cheating to meet the quota. The supervisor did not address his complaints and warned Relator that he would be fired if he received another PDA.

164. Following that meeting, Relator wrote an email to SAC's Human Resources Department ("HR"), in which Relator complained about improper practices at SAC. HR forwarded the email to Corporate Compliance. Relator met with the Corporate Compliance Officer on May 16, 2005, and explained in detail many of the allegations in this Complaint. Among other information, Relator explained that certain employees were routinely fabricating verbal forbearances. As an example, Relator pointed to the cure numbers reported by one particular employee, F.B., who was abusing the practice worse than others.

165. Relator is informed and believes that someone in either HR or Corporate Compliance notified F.B. of the allegations, since on the very next day, F.B. filed with HR a sexual harassment complaint against Relator. The complaint was entirely baseless and never pursued. Nevertheless, when HR received the complaint, Relator was immediately suspended for three days with pay—to Relator's knowledge, it is unprecedented to suspend a call associate *with pay*. Relator interpreted the action as a warning that he risked greater retaliation if he continued to press his complaints about employees fabricating forbearances.

166. After Relator returned to work following his three-day suspension, Relator was subjected to various forms of harassment within the office. Relator, however, refused to be intimidated into silence. Relator continued to press his complaints, both with the Corporate

Compliance Officer and with SAC management. The Compliance Officer and SAC management instructed Relator in various ways that he should not concern himself with matters outside of his own area of responsibility, but Relator pressed on with his complaints. When SAC realized that Relator would not be silenced, and that the practices might ultimately be exposed to the public, SAC shifted its strategy and ultimately introduced a system of supervisor verification of verbal forbearances. See ¶¶ 137-39 above.

167. By early July 2005, Relator had lost confidence in the integrity of SAC management. In early July 2005, Relator contacted the Government Accounting Office ("GAO") and informed GAO of many of the allegations contained in this Complaint. In the ensuing weeks, Relator had several communications with the GAO, in which Relator responded to specific requests for information from the GAO.

168. SAC terminated Relator's employment on August 16, 2005, immediately following SAC's learning that Relator had provided information to the GAO. The specific reason given for the termination was that Relator had provided information to the GAO that Relator had transferred from Sallie Mae's computer system to Relator's personal email without authorization. Relator is informed and believes that this reason for termination was a pretext for the real reasons that SAC fired Relator, viz., to retaliate against him for shining light on the practices alleged herein, and to punish him for providing information concerning these practices to the Government.

IX. DAMAGE TO THE TREASURY

169. As noted in the Applicable Law section above, if a lender or a guaranty agency does not comply with all of its due diligence obligations under the HEA, the guarantee payment on a default to a lender or a reinsurance payment to a guarantor may be forfeited. See ¶ 72 above. The fraudulent practices alleged in this complaint constituted a serious breach of the due diligence

obligations of Sallie Mae and USAF and require forfeiture of every guarantee payment or reinsurance payment received by them on the affected loans.

170. In addition, the practice of fabricating verbal forbearances caused specific damage to the Treasury in at least the following regards:

a. Fabricated verbal forbearances extended loans that should have defaulted and increased the amount ultimately paid by the federal government upon later default of the loan.

b. Fabricated verbal forbearances increased the default aversion fees paid to USAF by ED by preventing loans that otherwise would have defaulted from immediately going into default.

c. Fabricated verbal forbearances allowed SAC to meet performance goals established by USAF that entitled SAC to receive a greater share of the default aversion fees paid by the federal government to USAF.

d. Fabricated verbal forbearances lowered the cumulative default rate on loans held by Sallie Mae and increased federal guarantee payments tied to the default rate.

e. Fabricated verbal forbearances lowered USAF's cohort trigger default rate and increased federal reinsurance payments tied to that default rate.

COUNT I
False Claims Act
31 U.S.C. § 3729(a)(1)

171. Relator realleges and incorporates by reference the allegations in paragraphs 1- 170 of this Complaint.

172. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, as amended.

173. Through the acts described above, defendants and their agents, employees and co-conspirators have knowingly presented or caused to be presented to the United States Government false or fraudulent claims for payment or approval.

174. As a result of these false claims, the United States has been damaged and continues to be damaged, in an amount to be determined at trial.

COUNT II
False Claims Act
31 U.S.C. § 3729(a)(2)

175. Relator realleges and incorporates by reference the allegations in paragraphs 1- 170 of this Complaint.

176. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, as amended.

177. Through the acts described above, defendants and their agents, employees and co-conspirators have knowingly made, used and caused to be made and used false records and statements to get false or fraudulent claims for services paid or approved by United States Government.

178. As a result of these false claims, the United States has been damaged and continues to be damaged, in an amount to be determined at trial.

COUNT III
False Claims Act
31 U.S.C. § 3729(a)(3)

179. Relator realleges and incorporates by reference the allegations in paragraphs 1-170 of this Complaint.

180. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, as amended.

181. Through the acts described above, defendants Sallie Mae, USAF, SAC, and their agents and employees, conspired with each other and with others to defraud the United States by inducing the United States to pay or approve false or fraudulent claims. Defendants also took

substantial steps in furtherance of the conspiracy, inter alia, by making fraudulent representations, by preparing fraudulent records and by failing to disclose material facts.

182. As a result of these false or fraudulent claims, the United States has been damaged and continues to be damaged in an amount to be determined at trial.

COUNT IV
False Claims Act – Employment Discrimination
31 U.S.C. § 3730(h)

183. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 -170 of this Complaint.

184. This is a claim for damages under the Federal False Claims Act, 31 U.S.C. §3730(h).

185. Through the acts described above and otherwise, defendants discriminated against Relator in the terms and conditions of his employment at SAC by, among other things, disciplining, suspending, harassing, and ultimately firing him. Defendants took these actions in part to retaliate against Relator for shining light on the practices alleged herein, in part to silence him, and in part to punish him for providing information concerning the practices alleged herein to the Government.

186. Based on the forgoing, defendants discriminated against Relator in his employment at SAC because of lawful acts done by him in furtherance of actions protected by the False Claims Act, in violation of 31 U.S.C. § 3730(h).

PRAYER FOR RELIEF

WHEREFORE, Relator prays for judgment against the defendants as follows:

1. that defendants cease and desist from violating 31 U.S.C. §3729 *et seq.*;

2. that this Court enter judgment against defendants in an amount equal to three times the amount of damages the United States has sustained because of defendants' actions,

plus a civil penalty of not less than $5,500 and not more than $11,000 for each violation of 31 U.S.C. §3729;

3. that Relator be awarded the maximum amount allowed pursuant to §3730(d) of the False Claims Act;

4. that Relator be awarded all costs of this action, including attorneys' fees and expenses;

5. that the Court enter judgment against defendants as a result of their actions in violation of 31 U.S.C. § 3730(h) as well as all relief necessary to make Relator whole, including reinstatement with the same seniority status Relator would have had but for the discrimination, not less than two times the amount of back pay, interest on back pay, and compensation for any special damages sustained as a result of defendants' employment discrimination, including litigation costs and reasonable attorneys' fees; and

6. that the United States and Relator be granted all such other relief as the Court deems just and proper.

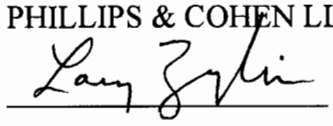
REQUEST FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands a trial by jury.

Dated: November 8, 2005

Respectfully submitted,

PHILLIPS & COHEN LLP

By: 

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