Letter of Comment No: 108
File Reference: 1204-001

SallieMae

October 28, 2005

Mr. Robert Herz Chairman Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

File Reference No. 1204-001: Business Combinations

Re: FASB Exposure Draft, Proposed Statement of Financial Accounting Standards, "Business Combinations, a replacement of FASB Statement No. 141"

Dear Mr. Herz:

SLM Corporation ("the Company" or "Sallie Mae") appreciates the opportunity to provide you with comments on the Financial Accounting Standards Board's (the "FASB") Exposure Draft of the Proposed Statement of Financial Accounting Standards, "Business Combinations, a replacement of FASB Statement No. 141" (the "Proposed Standard"), dated June 30, 2005.

We appreciate the FASB's efforts to address concerns inherent in accounting for business combinations, particularly the limitations of the current pronouncement, FASB Statement No. 141, "Business Combinations," ("FAS 141"). However, we have concerns, as enumerated below, regarding certain concepts outlined in the Proposed Standard. We believe that certain aspects of the Proposed Standard would benefit from further clarification and the practicality of certain concepts, as proposed, should be reconsidered.

We do not support the issuance of the Proposed Standard in its current form. Key provisions of the Proposed Standard disregard the economic analysis and decision criteria considered by the acquiring company's Management Team and the Board of Directors prior to consummating a business combination. An important factor in the decision to consummate a business combination is the future operating performance of the combined entity and consideration of synergies that can be achieved. The Proposed Standard includes provisions that will result in adjustments to the income statement of the combined entities which will be unrelated to current operations and mask the performance of the combined entities.

Our detailed observations regarding the Proposed Standard are outlined below.

Definition of a Business

The Proposed Standard provides guidance to distinguish between an exchange of assets and the acquisition of a business. Although the Proposed Standard defines the three elements of a

business including inputs, processes and outputs consistent with guidance currently outlined in Emerging Issues Task Force Opinion No. 98-3, "Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business" ("EITF 98-3"), the Proposed Standard's definition of a "business" places greater emphasis on whether the set of assets is capable of being conducted and managed as a business by a willing acquirer. The capability of the "willing party" or acquirer to continue to manage and integrate the business with its own processes may be highly subjective. This judgment regarding capability would be determined by the acquirer's management team and could result in significant differences in the way companies categorize their acquisitions. The subjectivity of this determination leaves the door open for management to define its acquisitions as business combinations or asset acquisitions depending on which treatment yields the most favorable results at the time. We believe that the definition of a business should be expanded to provide more detail as to what should be considered an integrated set of activities to be conducted as a business.

Measuring the Fair Value of the Acquiree

Contingent Consideration

The Proposed Standard would require the acquirer to include the fair value of contingent consideration in the determination of the purchase price at the acquisition date. Subsequent changes to the fair value of contingent consideration would be recognized in the current period income statement.

We concur with the Proposed Standard's treatment of contingent consideration. Whether contingent consideration has been put in place to take into account differences in opinion between the seller and the buyer regarding the future performance of the acquiree or actually represents a deferred payout of the acquisition price, we believe the acquiree's management team has factored such contingent consideration into its final decisions regarding purchase price. Management's decision to consummate a business combination would have been based in larger part on projections and business models that can serve as the basis for estimating the fair value of contingent consideration at the acquisition date. We believe it is appropriate for the acquirer to include the fair value of contingent consideration in its determination of the purchase price.

However, we do not concur with the Board's conclusion that subsequent changes to the fair value of contingent consideration should be recorded as adjustments to current period earnings. If contingent consideration is part of the purchase price in a business combination, adjustments to the fair value of such consideration should be recorded as adjustments to goodwill.

Measuring and Recognizing Assets Acquired and Liabilities Assumed

Receivables (Including Loans)

The Proposed Standard would require measurement and recognition of the fair value of receivables (including Loans) with no recognition of a separate loan loss allowance. Estimates of uncollectible amounts would be incorporated in the fair value of the Loans. We concur with the Board's conclusion that Loans acquired in conjunction with a business combination should

be recorded at fair value. The fair value determination should take into account market conditions such as interest rate fluctuations. However, we believe it is important to exclude uncertainties about collection and future cash flows from the determination of fair value and alternatively establish an estimated loan loss allowance. We view the loan loss allowance as a separately identifiable liability, and we believe maintaining a separate loan loss allowance is critical to separately track and account for losses and charge-offs when they occur.

Contingent Liabilities

The Proposed Standard would require companies to estimate and record the fair value of all identified contingent liabilities associated with the aquiree as of the acquisition date. Changes in the fair value of these liabilities subsequent to the acquisition date would be recognized in the current period income statement when a change in fair value is determined.

This accounting is inconsistent with the current criteria for recognition of contingent liabilities as enumerated in FASB Statement No. 5, "Accounting for Contingencies" ("FAS 5"). FAS 5 takes into consideration the probability of incurring a loss associated with a contingency as well as the reasonableness and reliability of the estimate of the potential loss. The Proposed Standard would require companies to record an estimated fair value associated with a contingency regardless of the probability of occurrence or the reasonableness and reliability of a monetary estimate associated with the contingency.

Generally, the acquirer has very little control or influence over the outcome of contingencies that exist at the acquirer to determine a reasonable estimate of the fair value of a contingency. Often, contingencies that exist at the acquisition date relate to litigation or regulatory matters, the probability of settlement and the economic impact of which is very difficult and impractical to estimate. The ultimate settlement of such contingencies will undoubtedly result in accounting gains or losses within the current period income statement under the Proposed Standard. We question whether recording such liabilities would be useful to the users of financial statements and enhance the fair presentation of the combined company's financial position given the highly subjective nature of such estimates. Current period gains and losses resulting from changes in the estimated fair value of such contingencies would not reflect the combined company's operating performance.

The Alternative View as outlined in paragraph B207 of the Proposed Standard sums up our opinion regarding the proposed treatment of contingencies. The Alternative View states: "because they (contingencies) do not represent either what the reporting entity will do or even what it may be able to do, the Board member views such measurements as artificial constructs that lack representational faithfulness with actual economic phenomenon. As such, they would seem to be of questionable relevance to users of financial statements in assisting them in predicting the future cash flows of the reporting entity."

We believe the relevance of estimating these liabilities at the acquisition date is questionable, and we urge the Board to reconsider this requirement. If, however, the Board issues a pronouncement requiring the recognition of the fair value of these potential liabilities, we encourage the Board to revise the pronouncement to require the recognition of subsequent

changes in fair value of such liabilities (which would be evident when the liability is settled) as adjustments to the purchase price not current operating profit. The inherent uncertainty in estimating the outcome of these contingencies would lead to unnecessary volatility in the acquiring company's current operating results. We do not believe it is appropriate that the results of the combined company would be impacted by matters that existed prior to the acquisition date which are generally out of the acquirer's control.

Acquisition Related Costs

The Proposed Standard includes a presumption that fair value of the acquired business should include only the consideration received by the seller. The Proposed Standard excludes acquisition related costs including finder's fees, advisory, legal, accounting valuation and other professional fees as well as the cost of issuing debt and equity instruments in conjunction with the business combination from the measurement of the purchase price. The Board believes these costs are not part of the fair value of the acquiree nor would they be considered assets separate and apart from the business combination. The proposal would require expensing these costs as incurred.

We disagree with the proposed accounting for acquisition related costs. We believe these costs are part of the purchase price as they are an incremental cost of completing an acquisition. Incurring these costs in conjunction with an acquisition is essential to identifying and evaluating the target company. Management evaluates target companies based on the return on investment that will result from the acquisition. Deal related costs are factored into the total acquisition cost presented to Management and the Board of Directors. They are an integral part of the evaluation of the return on investment associated with a potential business combination.

Additionally, this proposal is contrary to current accounting practice which generally requires capitalization of the acquisition price as well as direct costs to acquire or construct an asset including costs to prepare the asset for its intended use. There are numerous examples in Generally Accepted Accounting Principles (GAAP) which require capitalization of direct acquisition costs.

As the leading provider of education funding in the United States, an important part of Sallie Mae's core business involves the origination and acquisition of student loans. Sallie Mae accounts for these loans in accordance with FASB Statement No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases," ("FAS 91"). FAS 91, paragraph 5 requires capitalization of direct loan origination costs including incremental direct costs to originate the loan as well as activities performed by the lender including evaluating prospective borrower's financial condition, negotiating terms preparing loan documents and other activities. These costs are deferred and recognized as a reduction of the loan's level yield. Accordingly, our net investment in an individual loan includes the unpaid loan principal, accrued interest receivable as well as unamortized direct costs and unamortized borrower fees, premium or discount.

For constructed assets, FASB Statement No. 34, "Capitalization of Interest Cost," ("FAS 34"), paragraph 40 states: "On the premise that the historical cost of acquiring an asset should include

all costs necessarily incurred to bring it to the condition and location necessary for its intended use, the Board concluded that, in principle, the cost incurred in financing expenditures for an asset during a required construction or development period is itself a part of the asset's historical acquisition cost."

Current accounting requires capitalization of acquisition related costs associated with the purchase or construction of a single asset or group of assets but the Proposed Standard would require companies to expense incremental costs related to the acquisition of assets in a business combination. In both circumstances, the acquisition related costs are essential to the acquisition of assets that will be used in the ongoing operations of the business. We believe these acquisition or deal related costs should be capitalized as part of the purchase price regardless of whether the acquisition is an acquisition of an individual asset or group of assets or a business combination.

Restructuring Costs

Consistent with the proposed treatment of acquisition related costs, the Proposed Standard would limit the recognition of liabilities associated with costs to restructure or exit activities to costs that meet the criteria in FASB Statement No. 146 "Accounting for Costs Associated with Exit or Disposal Activities" ("FAS 146").

We disagree with this proposed treatment as costs associated with restructuring the acquiree or disposing of certain of its assets are generally necessary to achieve synergies contemplated when Management and the Board of Directors make their decision to acquire the target. Costs associated with these synergies are factored into the total acquisition cost presented to Management and the Board of Directors. They are a key factor in determining the expected return on investment. Achieving contemplated synergies would be critical to meeting contemplated returns on investment and maximizing the value of the business combination.

If restructuring costs are contemplated in the investment decision presented to Management and the Board of Directors for approval, these costs are a fundamental part of the determination of purchase price. Accordingly, we believe the resulting restructuring costs should be capitalized as a component of the purchase price. If there is no restructuring plan contemplated as of the acquisition date, the costs could not have been incorporated into the purchase decision. Accordingly, we believe these restructuring costs should be expensed as incurred.

Measurement Period

The Proposed Standard assumes the recognition of "provisional" fair values for the assets acquired and liabilities assumed at the acquisition date. Adjustments to the acquisition accounting could be made for a reasonable period of time after the acquisition date as the acquirer becomes aware of new information which changes the recorded fair values. Any adjustments to the "provisional" amounts during the measurement period would require restatement of amounts disclosed in prior reporting periods.

Although acquisitions are recorded based on the best estimates and information available as of the acquisition date, it is inevitable that these initial estimates would be revised. Acquirers generally engage external appraisers to determine the fair values of assets acquired, particularly intangible assets, and liabilities assumed in conjunction with a business combination. Appraisals are generally obtained within a reasonable period of time after the acquisition date but they are generally not available at or immediately after the acquisition closes. Accordingly, "provisional" amounts are adjusted to reflect better measures of fair value obtained from external appraisers. It is inconceivable that these changes in estimates should result in restatement of amounts reported in prior periods.

Financial statements are based, in large part, on estimates. Under existing GAAP, changes in estimates are treated prospectively, and we believe that changes to "provisional" fair values within a reasonable time after a business combination should also be treated prospectively. We believe the one year timeframe historically used as the measurement period for determination of goodwill should continue to be employed to capture prospective revisions to the fair value of a business combination and the allocation of the purchase price. Restatement of previously reported fair values will result in confusion for the users of the financial statements and may expose the acquirer to unnecessary business risk.

We appreciate this opportunity to comment on this Proposed Standard. Thank you for considering our views. If you would like to discuss this letter in greater detail, please contact me at 703-984-6412 or Peter W. Strang, Vice President and Assistant Controller, at 703-984-5645.

Sincerely,

/s/ Robert A. Crawford

Robert A. Crawford Senior Vice President and Controller