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SallieMae

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Director of Major Projects
File Reference No. 1102-100
Financial Accounting Standards Board
401 Merritt 7
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RE: FASB Exposure Draft: Share-Based Payment, an amendment of FASB Statements No. 123 and 95

SLM Corporation ("the Company" or "Sallie Mae") appreciates the opportunity to provide you with our comments on the Financial Accounting Standards Board's (the "FASB") Exposure Draft of the Proposed Statement of Financial Accounting Standards, "*Share-Based Payment, an amendment of FASB Statements No. 123 and 95*" (the "Proposed Standard"), dated March 31, 2004. We are the nation's leading provider of education funding, managing more than $92 billion in student loans for more than seven million borrowers.

Major Concerns

We have major concerns with the Proposed Standard. First, the Proposed Standard is flawed at its foundation as it pushes shareholder dilution through a company's income statement resulting in a reduction in the net assets of the entity which has not occurred. Second, the methods proposed to measure the fair value of employee stock options and other share-based payments may be more technically flawed than any measurement criteria prescribed by the FASB to date yet the Proposed Standard creates an "illusion of precision" that will never exist.

The Proposed Standard is a poorly conceived conclusion in the pursuit of a problem. It has all the appearances of attempting to reduce the use of stock options in public companies. Many constituencies have concluded that stock options are not aligned with the best interests of the investors while cash compensation is well aligned with such interests. Critics suggest that stock options create decision making motivated by short term gain. Surely, cash compensation, which is immediate, has much poorer alignment with investor interests than stock options that have longer term vesting programs.

The implementation costs and consequences of new standards do not appear to be understood and appreciated. The Proposed Standard will require significant financial and management resources to implement and maintain this "illusion of precision" and the cost will be disproportionate to the size of the company. The smaller the company, the greater the financial burden. We are less concerned with the ability of the capital markets to digest the Proposed Standard. Companies already are required to disclose the stock option information that the markets need so a new standard is not a burning need for the capital markets. The FASB should consider the consequences of imposing another costly, complex standard of, at best, marginal utility on public companies.

Sallie Mae believes in broad-based employee ownership. At Sallie Mae, all employees receive annual option grants. We believe that our stock option plans have enabled us to attract and retain highly qualified and motivated employees whose interests are closely aligned with the interests and goals of our shareholders. Sallie Mae's executive management team and the Company's rank and file employees strongly oppose the Proposed Standard. We do not believe that an employee stock option grant constitutes an expense to the grantor company. Paragraph 8 of Concept Statement 6 defines expenses as "outflows or other using up of assets or incurrence of liabilities (or a combination of both) from delivering or producing goods, rendering services, or carrying out other activities that constitute the entity's ongoing major or central operations." There is no cash outflow, incurrence of a liability or diminution in the value of the grantor company's assets associated with employee stock option or other share-based grants. Option grants do dilute existing shareholder value by increasing the number of potential shares outstanding but there is no reduction in net asset value of the entity. The bottom line – net income remains unchanged, net assets remain unchanged, and the value is simply spread among a bigger base.

The FASB's argument in favor of expensing the fair value of employee option grants is predicated on the principle that such employee options have value to the employee, and the consideration for the options is the employee's service to the grantor company. Clearly, employee stock options have value to the employee, but the value is contingent on the performance of the grantor company's stock not on the employee's service to the grantor company.

At Sallie Mae, rank and file employees have received an option grant each year that is "time-vested" with 50 percent of the options vesting 18 months after their grant date and the remaining portion of the options vesting 36 months after their grant. Management options have been "price-vested." The Company's share price must trade at 120 percent of the option's grant price for five trading days before the options vest, but no sooner than 12 months from their date of grant. Otherwise, management options vest eight years from their grant date. Since an employee stock option can not be sold, transferred or otherwise assigned to another party, the employee can not realize cash value associated with the option until the option is exercised and the underlying stock is sold. There is no realizable economic value to the employee until the option vests and the strike price is "in the money" regardless of whether the employee has provided services to the Company. Once an employee option has vested and is "in the money," its value is a share of the Company's ownership which requires no outflow of the Company's cash or other assets.

In the symmetrical world of accounting where one party receives value, there must be a counterparty incurring an expense. When an employee receives a stock option or other share-based grant, the employee receives value, and in the FASB's view, the grantor company must bear an expense. We believe an employee stock option represents a contingent claim on the net equity of the grantor company. Accordingly, an employee stock option represents a potential cost to the grantor company's existing shareholders through dilution of their existing ownership interest. If an option is exercised, the economic result is not a reduction in the future earnings of the company but instead, the same earnings allocated over a larger shareholder base. Current accounting rules already enable companies to accurately and effectively account for and disclose such shareholder dilution. Accounting Principles Board Opinion No. 25, "*Accounting for Stock Issued to Employees*," ("APB No. 25"), requires recognition over the vesting period of the "intrinsic value" of an option measured at the grant date. FASB Statement of Accounting Standard ("SFAS") No. 128, "*Earnings per Share*," ("SFAS No. 128") requires disclosure of diluted earnings per share which reflects the increase in the number of shares outstanding and the reduction in earnings per share assuming that employees exercise all "in the money" options. Under the Proposed Standard's fair value method, a highly subjective estimate of the fair value of the option grant must be expensed over the vesting period resulting in recognition of the economic impact of the option grant twice – once through a charge to earnings and again through potential dilution to existing stockholders. We believe this double counting of the economic impact of employee option grants is inappropriate and misleading to the users of the financial statements.

We recognize that the FASB has rejected the argument that an employee stock option is a cost to shareholders rather than a cost to the company granting the option. SFAS No. 123, "*Accounting for Stock Based Compensation*," ("SFAS No. 123") paragraph 90 states: ". . . . employees provide services to the employer – not directly to the individual stockholders . . . . ." We reiterate, however, that employee stock options are not convertible to the grantor company's cash or other assets. Clearly, the cost associated with employee stock options does not meet Concept Statement 6's definition of an expense to the grantor company.

We are also concerned that the FASB's proposal requiring companies to expense a highly subjective estimate of the fair value of employee option grants will impact our ability to continue to offer broad-based employee stock options. Our broad-based employee stock option plans are designed to incent our management and more importantly, our rank and file employees, to work towards the goals of the Company and its shareholders to increase shareholder value. We believe that our broad-based option programs have been critical not only in attracting highly qualified employees but also in raising levels of employee morale and integrating newly acquired companies. Although Sallie Mae has not contemplated doing so, we believe the trend in Corporate America will be toward granting fewer stock options to a smaller group of select employees if grantor companies are required to reflect a subjective estimate of "compensation expense" associated with employee stock option grants in their income statements. We believe this trend will have far reaching implications to our economy impacting employee service, retention, productivity and even consumer spending.

Other Significant Concerns

Although we do not believe that employee stock option grants meet the definition of an expense, to the extent that the FASB requires Sallie Mae and other companies to recognize the estimated fair value of these options measured as of the grant date through a charge to earnings, as proposed, we have other significant concerns and we believe there are major technical flaws with the Proposed Standard that we will address in the following paragraphs. These concerns include:

- Valuation Methodology – Limitations and complexity call into question the reliability, consistency, comparability and cost of producing financial statements.
- Subjective Point in Time Estimate - Requires recognition of expense that is inconsistent with economic value and does not enable companies to adjust for actual cost.
- Tax Considerations – Changes in tax accounting model lead to inconsistency, further complexity and unnecessary cost.

Valuation Methodology

The Proposed Standard continues to prescribe the use of market-based pricing models such as Black-Scholes and the Binomial (or lattice) models to determine the fair value of employee option grants. These models are complex calculations designed to value stock options traded on the open market. They assume, inappropriately, that the options being valued are transferable, can be hedged, are short-term instruments, and carry no restrictions. Clearly, these characteristics do not apply to employee stock options. We believe, and many experts agree, that these and similar models consistently overvalue an employee stock option. Additionally, these models and the Proposed Standard require grantor companies to make assumptions regarding stock price volatility, employee behavior, and expected term of the option, among others, that will be highly subjective and difficult to validate for external auditors, the Board of Directors and other interested parties. The Proposed Standard would no longer allow grantor companies to use historical stock price volatility to value employee options. Instead, the Proposed Standard would require grantor companies to predict the impact of future events on volatility over the life of the option, which in most cases would span 10 years. Such predictions would be highly subjective and prone to manipulation and second guessing. Accordingly, we question the reliability of and Management's comfort level with making these predictions not to mention the independent accountant's ability to test and sign off on these types of highly subjective inputs.

Further, the Proposed Standard would require complicated data analysis to determine the expected life of an option, regardless of whether the lattice or closed-form (Black-Scholes) model is used to value the options. The Proposed Standard's paragraph B23 requires grantor companies to analyze the exercise behavior of relatively homogenous groups of employees to determine expected life. This is a very open-ended and potentially complex requirement. Would this proposal require Sallie Mae to analyze the option exercise behavior of employee groups by our 20 different salary grades? By geographic location, which constitutes four separate zones at Sallie Mae covering our nine major metropolitan areas? By employee age? By family size? We believe the expense associated with performing this analysis, which would likely be out-sourced to one of the many vendors who have indicated an interest in performing this type of work would likely have a high price tag for the Company and benefit the vendors more than the Sallie Mae shareholders.

The Proposed Standard's failure to prescribe an option pricing model leaves the door open for grantor companies to influence their fair value estimates and the resulting charge to earnings based on the model they choose and the level of precision with which they evaluate and determine the required inputs. The Proposed Standard not only fails to prescribe an option pricing model, it also provides little or no guidance regarding key assumptions including, among others, the acceptable level of variance of stock price volatility levels for multiple expected option terms, the appropriate method of forecasting volatility, and determining the risk free interest rates for multiple expected option terms. We are also concerned that the Proposed Standard does not adequately address predicting future employee behavior when grantor companies acquire either a public or privately held company that has little or no reliable historical information regarding employee behavior.

Option values will undoubtedly differ widely between companies, and, given all of the subjectivity involved, could vary widely between similar companies. We believe it will be difficult and cumbersome for grantor companies such as Sallie Mae to validate assumptions and meet requests from external auditors, analysts, investors, and other outside parties who need to better understand the amounts recorded in our operating statement. Currently, Sallie Mae uses the Black-Scholes pricing model to value its employee option grants to meet the footnote disclosure requirements of SFAS No. 123 and SFAS No. 148, "*Accounting for Stock-Based Compensation – Transition and Disclosure*," ("SFAS No. 148"). Although we disclose this information publicly and support our assumptions, it has been our experience that rating agencies, institutional shareholder services, certain analysts, and the media run their own models using assumptions that they deem appropriate in evaluating the option cost to our shareholders. For instance, we are aware that certain analysts have used a much higher expected term to value our CEO's option grants than we do internally. We believe our external filings and proxy materials reflect an appropriate and supportable value for our CEO's option grants. The wide disparity in the value of the same options as calculated by highly sophisticated people clearly demonstrates the futility in determining an expense of any use for investors.

Mandating the use of the Black Scholes, Binomial, or similar option pricing models to value options and record a resulting charge to the income statement will result in more cost and complexity for the grantor company and less financial statement accuracy, comparability and consistency for investors and other financial statement users. Given the subjectivity and complexity inherent in valuing employee stock option grants using these types of market-based models, we question the FASB's wisdom requiring companies to record a charge to the income statement based on these highly subjective, complex, and often misleading estimates. The Proposed Standard is asking Management to predict the unpredictable, which exposes all interested parties to subsequent second guessing and could spark a litigation boom. We believe the imprecise and even questionable results of the valuation methodologies available in the market place today will undoubtedly call into question the amounts that grantor companies will record as compensation expense. We believe this situation will leave grantor companies and even their auditors vulnerable to class action lawsuits by disgruntled and confused shareholders. In short, this is a Proposed Standard that only the Trial Lawyers Association could embrace.

Subjective Point in Time Estimate

The Proposed Standard requires companies that grant employee stock options to value those options on the grant date using an option pricing model and to recognize the resulting fair value estimate through a charge to earnings over the vesting period. This treatment is troublesome as it would require companies to recognize a charge to earnings associated with an asset (the option granted to the employee) that has no realizable cash or economic value at the grant date. At the grant date, employee stock options are highly speculative instruments whose value is contingent on the performance of the grantor company, vesting periods and other contractual terms. Further, employee stock options can not be sold, transferred or assigned to another party so there is no ready market or reliable source to value the options based on third party behavior. We question why a grantor company should be required to recognize a charge to earnings when the associated asset held by the employee has no realizable value.

Additionally, the Proposed Standard does not provide for the reversal of the estimated cost of an option that either expires unexercised or whose economic value at the exercise date differs significantly from the estimated fair value on the grant date. This inability to adjust the value of the option is inconsistent with accounting convention and will ultimately misrepresent the cost attributed to the options and ultimately the impact to the grantor's capital accounts.

Tax Concerns

Under current IRS Rules, grantor companies take a tax deduction for compensation expense related to nonqualified employee stock options, based on the intrinsic value of the option on the exercise date. The Proposed Standard would require grantor companies to recognize compensation expense associated with employee option grants over the vesting period, resulting in a deductible temporary difference that would be recognized as a deferred tax benefit in the income statement. The Proposed Standard would require grantor companies to track such deferred tax assets on an employee-by-employee and an exercise-by-exercise basis. When the option is exercised, if the tax deduction is greater than the cumulative tax benefit recognized over the vesting period, the tax benefit related to the excess portion of the tax deduction would be charged to additional paid-in capital. If, on the other hand, the tax deduction is less than the cumulative tax benefit recognized over the vesting period, the reduction of the deferred tax asset would be recorded as additional income tax expense.

This inconsistent "true up" of the actual deduction and the cumulative deferred tax benefit recognized based on the Proposed Standard's fair value approach to compensation expense recognition highlights further the complexity and subjectivity in financial statements that will result from this proposal. We believe that the Proposed Standard's treatment of shortfalls will result in less accurate and imprecise estimates of our effective tax rate during interim reporting periods, and we strongly disagree with the Proposed Standard's requirement that grantor companies track deferred tax assets associated with option awards on an employee by employee basis. This requirement will be very cumbersome and costly and again, will provide no benefit to Sallie Mae, its shareholders or the investing public. We strongly urge the FASB to revise the requirements for tax reporting purposes to require companies to reflect differences, both positive and negative, between actual tax deductions and cumulative tax benefits recognized for financial reporting purposes as adjustments to equity rather than impact income tax expense or at a minimum, be consistent with the treatment of differences in the income statement.

We agree with the Proposed Standard's approach to deferred tax asset measurement as outlined in paragraph 43 of the Proposed Standard. This approach, which does not require grantor companies to adjust their deferred tax assets based on movements in the stock price, is preferable to the approach outlined in International Financial Reporting Standard ("IFRS") No. 2, "*Share-based Payment,*" ("IFRS No. 2") which requires remeasurement of deferred tax assets based on changes in the underlying stock price at the end of each reporting period. The approach outlined in IFRS No. 2 would require complex and cumbersome tracking of multiple option issuances and meaningless volatility in income tax expense.

We also agree with the Proposed Standard's conclusion that the deferred tax benefit results solely from a difference in measurement date (grant date for book purposes versus exercise date for tax purposes) as opposed to the International Accounting Standards Board's (the "IASB") conclusion in IFRS No. 2 that the difference between book and tax accounting for employee stock options or other share-based awards results from both a difference in measurement date and a difference in measurement basis (fair value for book purposes versus intrinsic value for tax purposes). We concur with the FASB's conclusion that fair value and intrinsic value are the same on the exercise date (or the date when the options lapse unexercised) when the deduction for tax purposes is determined. We urge the FASB to maintain this simplified approach for purposes of determining the deferred tax benefit associated with employee option grants.

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In conclusion, we would like to reiterate our opposition to the basic premise of this Proposed Standard. We believe the cost associated with employee stock options is a dilution to the existing shareholders not an expense to the grantor company. No assets of the grantor company have been used; only a reallocation of the shareholder interests. We believe the current accounting is a more sound and preferable approach to accounting for and disclosure of the impacts of employee stock option and other share-based grants. It provides readers of the financial statements with the exact same information should they choose to use it without negatively impacting earnings per share calculations with highly subjective numbers that have very little comparability across companies. Accordingly, we believe this proposal will provide no benefit to Sallie Mae's shareholders and investors. The Proposed Standard will more than likely result in more confusion and frustration for shareholders, investors and other users of our financial statements.

We strongly urge the FASB to reassess this Proposed Standard considering (1) that the cost attributed to employee stock option or other share-based grants is a dilution to the existing shareholder not an expense to the grantor company, (2) the technical flaws and inadequacies of current valuation methodologies, (3) the deficiency, complexity and inconsistency in financial statement reporting and disclosure that will undoubtedly result from this proposal, (4) the undue cost and burden this proposal places on Corporate America, and (5) the possible far reaching impacts of this proposal.

If the FASB does not rethink its current proposal and the final pronouncement requires the fair value method, we strongly urge the FASB to delay the effective date of the final pronouncement. It will be very difficult and burdensome for grantor companies to implement this new standard in the first quarter of 2005, given the expected publication date of the final standard and the highly subjective estimates required to effectively implement one of the proposed valuation techniques. Companies will need time to perform the necessary analysis and process changes to ensure they use sound, well thought-out assumptions which can be validated by external auditors and other interested parties.

Again, we appreciate the 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 703-810-7011 or Peter W. Strang, Vice President and Assistant Controller, at 703-810-7615.

Sincerely,

/s/ Robert A. Crawford

Robert A. Crawford
Senior Vice President and Controller