


ISA ALLIANCE

State of California
Department of Financial Protection and Innovation
TO: regulations@dfpi.ca.gov
CC: Charles Carriere, @dfpi.ca.gov
RE: PRO 01-21

Dear Acting Commissioner Schultz:

Thank you for the opportunity to comment on the proposed rulemaking under the California Consumer Financial Protection Law (PRO 01-21). The Invest in Student Advancement Alliance appreciates the Department's recognition in the proposed rule of the unique features of Income Share Agreements and the need for tailored reporting requirements to represent ISAs accurately and distinctly.

The ISA Alliance appreciates the recognition of ISAs unique features in the registration requirements. ISAs approach education financing distinctly from traditional debt. An Education Income Share Agreement is predicated on the concept of incentive-alignment around education outcomes. ISAs reduce the risk barriers to higher lifetime earnings by increasing access to quality education. ISAs are outcome-contingent, income-dependent obligations for a fixed percentage of future income for a limited number of payments during a limited duration of time. ISAs do not have a principal balance and the income share obligation does not grow solely based on the passage of time. Negative amortization is impossible in an ISA. In addition to these built-in protections, ISA providers have proactively included additional protections for students including minimum income thresholds, payment caps, fixed number of payments, and limited duration.

The ISA Alliance appreciates the opportunity to provide formal input and feedback in this rulemaking process. The ISA Alliance believes there are opportunities to clarify and improve the proposed rule to better align the requirements with existing regimes and provide greater clarity to ISA-enabled education providers, ISA program managers and servicers.

Definition of "Income-based Repayment" is Broad

The definition in the proposed rule for "Income-based Repayment" is exceedingly broad. The proposed definition does not sufficiently distinguish income-based loan payments from income-dependent loans or other financial obligations. The ISA Alliance urges the DFPI to narrow the definition, or if the broadness was intentional, to create an additional narrower definition which recognizes an obligation based on whether the calculation of the payment obligation includes consideration of principal and interest, or is simply a percentage of income. The current definition could be read to include hardship forbearance for a loan among other scenarios that seem unlikely to be intentionally included. The DFPI should consider adding a specific definition of "income share agreement" to further clarify this distinction.

The ISA Alliance suggests revising the definition to specifically define "Income Share Agreement."

"Income share agreement" means a consumer transaction that meets each of the following: (1) the transaction has been reduced to a writing that expressly states that it is an Income Share Agreement and is subject to these regulations; (2) the consumer's obligation to make periodic payments is contingent on their income during the period covered by such periodic payment exceeding a specified minimum amount; (3) the amount of each periodic payment that a consumer may be required to make is computed by reference to the consumer's income during the relevant payment period; and (4) only income earned during a specified payment period following the commencement of the payment period for the ISA can be subject to the ISA such that, if the consumer's income during each of the payment period covered by the ISA was less than the specified minimum amount, the ISA will end without the consumer having been required to make any payments at all.

Persons Required to Register

The ISA Alliance believes that requiring post-secondary education providers to register and pay a fee may dissuade them from offering payment plans, installment loans, or ISA programs, thereby decreasing access to education for those who cannot otherwise finance their education opportunities. Institutions subject to oversight by other California regulatory agencies and that offer institutionally originated education finance should be exempt from registration under the proposed regulation. With respect to ISAs, we believe that school-funded ISAs school-funded ISA programs should be encouraged rather than discouraged because they provide an alignment of interests between the student and the school that will be lacking from other forms of education finance, particularly where a school-funded ISA program is originated and serviced by licensed ISA servicers on behalf of the post-secondary education provider.

Exempting regulated educational institutions from registration under the proposed regulation would provide operating clarity and efficiency without reducing oversight for education providers and the education financing offered to their students. This exemption would be consistent with current law and regulation regarding other forms of education financing originated by education providers and prevent unnecessary redundancy and regulatory burden. The ISA Alliance recommends revision to the rule to make this exemption explicit.

Description of Business

Under Section 21 Registration Application the ISA Alliance has questions regarding the intent and direction of the rule as drafted. There are opportunities for additional clarity and specificity in the rule. Below are a few instances where the ISA Alliance seeks clarity in the intent of the proposed rule:

Subsection A requires a description of all products or services provided to California residents. The subsection is unclear whether it is meant to apply to services which are not directly offered to California residents but support an education provider in offering a subject product to

California residents. Does this requirement include a description of services not offered directly to residents?

Subsection B requires a schedule of charges associated with products and services provided to California residents. Does this require ISA program managers to report its charges to institutional clients or what consumer fees the servicer will allow an educational institution-client to charge to students? If the later, this seems inefficient and likely impracticable for ISA program managers because the specific charges often depend upon the specific program of the educational institution.

Subsection D requires a description of marketing to California residents. The ISA Alliance seeks clarification in this subsection as to whether the DFPI intends for this requirement to apply to marketing to educational institutions that are present in California or to marketing directed to consumers in California.

Conclusion

Thank you for the opportunity to submit input in this formal rulemaking process. The ISA Alliance welcomes the opportunity to work with the DFPI on necessary and appropriate rules for education finance products, and ISAs specifically. We look forward to the Department's feedback and invite it to use the ISA Alliance as resource.

Sincerely,



Jordan Wicker
Executive Director

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Invest in Student Advancement