

October 28, 2022

*Via Email to [Regulations@dbo.ca.gov](mailto:Regulations@dbo.ca.gov)*

California Department of Financial Protection and Innovation

Attn: Sandra Navarro

2101 Arena Blvd.

Sacramento, California 95834

RE: PRO 06-21

*Notice of Rulemaking Action—Student Loan Servicing Act and the Student Loans:  
Borrower Rights Law*

Dear Ms. Navarro,

The Invest in Student Advancement Alliance (ISA Alliance) appreciates the opportunity to provide comments on the rulemaking, PRO 6/21: “*Proposed Changes To Regulations Under The Student Loan Servicing Act.*” The Invest in Student Advancement Alliance is an association of education and workforce income share agreement stakeholders dedicated to creating a responsible and accountable ISA market to improve program accountability, transparency for students, and affordable access to degrees and certificates to increase lifetime earning potential.

The ISA Alliance believes in the substantial positive potential of ISA adoption and application to improve education alignment with student outcomes, equitable access, and affordability for education, workforce training, and marketable upskilling. The ISA Alliance is dedicated to the promotion of effective and responsible education ISA regulations which will allow for a vibrant and accountable community of ISA-enabled education and workforce training providers.

### Background

The market for outcome-based financing is growing, particularly for education and workforce training where students are becoming much more cost sensitive to postsecondary opportunities in considering the prospects it creates for their financial futures.<sup>1</sup> Income Share Agreements are predicated on the alignment of incentives between educational institutions and student outcomes. This occurs when institutions provide education or training upfront at no cost to the student in

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<sup>1</sup> Delisle, Jason. 2017. *Student and Parent Perspectives on Higher Education Financing*. American Enterprise Institute. January. Pg. 2.

<https://www.aei.org/wp-content/uploads/2017/01/Student-and-Parent-Perspectives-on-Higher-Education-Financing.pdf>

exchange for a student’s promise to pay a set percentage of future income over a predetermined threshold for a set number of payments, up to a payment cap. ISA-enabled students never have a balance, a fixed amount they must pay, or the potential of negative amortization.<sup>2</sup> When ISAs help students finance set tuition costs they are a financing tool and not variable tuition agreements.

Education ISAs are being utilized in a broad array of education and workforce development settings to provide improved access and affordability for high quality programs which lead to improved lifetime earning potential.

Directly applying traditional debt and credit regimes to ISAs would stifle the application of ISAs and the flexibility in their terms that has increased access to marginalized and under-resourced populations. These populations, with historic barriers to access opportunities to education and workforce training, would often benefit the most from postsecondary opportunities that increase lifetime earning potential.<sup>3</sup> ISAs are future looking and do not rely on credit scores and family wealth to underwrite educational opportunities. Students with little or no savings and low current incomes can access educational opportunities through ISAs because there is no upfront cost and the future obligation is a set percentage of future income.<sup>4</sup>

#### Clarify “Income Share Agreement” definition.

The unique characteristics of Income Share Agreements should be recognized with a definition that precludes other outcome contingent financing options. The market for outcome-based financing is growing, particularly for education and workforce training where students are becoming much more cost sensitive to postsecondary opportunities in considering the prospects it creates for their financial futures. Income Share Agreements are predicated on the alignment of incentives between educational institutions and student outcomes. This occurs when institutions provide education or training upfront at no cost to the student in exchange for a student’s promise to pay a set percentage of future income over a predetermined threshold for a set number of

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<sup>2</sup> Earley, Maria B., and Robert E. Goldenberg. 2019. Income Share Agreements: How They Work and Their Place in the Federal Regulatory Regime. Reed Smith. September.

<https://www.reedsmith.com/en/perspectives/2019/09/income-share-agreements-how-they-work-and-their-place>.

Discussing the “built-in” student protections of ISAs, “Time-based limitations, in conjunction with the payment cap and income based payment structure, creates a three-pronged structure that limits a student’s exposure in the amount it will pay to a Provider. This arrangement simultaneously provides students downside protection in the case of a loss of employment, reduction in salary, and the various hazards associated with federal student loans, such as capitalization of unpaid interest following forbearance periods or negative amortization when making income-driven payments.”

<sup>3</sup> Boatman, Angela et al. 2017. Understanding Loan Aversion in Education: Evidence from High School Seniors, Community College Students, and Adults.

<https://news.vanderbilt.edu/2017/04/07/fears-about-college-debt-varies-by-subgroup-study-finds/>.

<sup>4</sup> Consumer Financial Protection Bureau. 2021. Report of the CFPB Education Loan Ombudsman. October. Pg. 58. [https://files.consumerfinance.gov/f/documents/cfpb\\_education-loan-ombudsman-annual-report\\_2021.pdf](https://files.consumerfinance.gov/f/documents/cfpb_education-loan-ombudsman-annual-report_2021.pdf).

payments, up to a payment cap. ISA-enabled students never have a balance, a fixed amount they must pay, or the potential of negative amortization. Not all outcome-based financing products can claim the same. **The definition in this proposed rule should be revised to clearly define this unique financial instrument.**

We recommend adopting the definition proposed in introduced federal legislation:

*Section 2032(a)(13)—Proposed Language:* “Income share agreement” or “ISA” means an agreement between a student and a school or a student and an income share provider under which ~~the student agrees to pay a fixed percentage of the student’s future income for the payment term, in exchange for waiving or covering the cost of some or all of the student’s tuition; (i) a school or income share provider credits or advances funding to the student (or to the school, on the student’s behalf) to finance a postsecondary education and costs of attendance at a postsecondary institution; (ii) the student is obligated to may payments to the school or income share agreement provider in the future calculated based upon and determined by the student’s income; and (iii) there is payment term after which after which the student’s obligation is complete regardless of the amount paid by student to the income share provider or school (as long as the student has paid any prior amounts due).~~<sup>5</sup>

Similarly, the definition of “minimum income threshold” should reflect the payment structure and operation of the ISA obligation better by revising the definition as it is below:

*Section 2032(a)(16)—Proposed Language:* “Minimum income threshold,” “minimum threshold,” “payment floor” or “floor” means ~~the amount of annual income specified in an income share agreement below which a borrower is not required to make payments~~ a fixed dollar amount that is the minimum income per payment period that a student is required to earn before the student is required to make a payment on an income share agreement for such payment period.<sup>6</sup>

#### Annual Percentage Rate (APR) Calculations Confuse the Terms of ISAs

The ISA Alliance supports protections for students to ensure the amount they pay is reasonably limited to the value of the education received. We believe that ISAs should be regulated on their own terms with specific limitations as to income percentages, length of payment term, and minimum income amounts. ISA obligations are a fixed percentage of earned income.

Understanding that imputed APR disclosures are currently required by the U.S. Consumer Financial Protection Bureau (CFPB), we do not oppose the calculation of APR at the delineated income levels proposed in the rule while we continue to work with the CFPB to create clear and

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<sup>5</sup> This definition is substantially similar to the definition adopted by Senators Young (R-IN), Warner (D-VA), Rubio (R-FL), and Coons (D-DE) in the *ISA Student Protection Act of 2022*, <https://www.congress.gov/117/bills/s4551/BILLS-117s4551is.pdf>.

<sup>6</sup> *Id.*

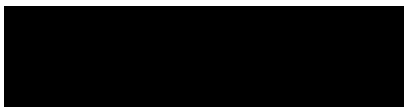
transparent disclosures for education ISAs. **Imputed APR calculations confuse ISA terms with traditional loan product terms and are not a satisfactory affordability indicator or comparison tool between these disparate financial tools.**

Continued development of these disclosures is critical to clearly contrast ISA terms from traditional loans. The contingent nature of the payment obligation under an ISA means that there is a very real likelihood of nonpayment without any recourse to the consumer. This contingency creates both significant extra value to the consumer in the form of “downside” protection, and increased risk to the ISA provider of not collecting some or all of the amounts financed. ISA providers should be permitted to offer these terms of reciprocal value for the additional risk providers assume and consumers should be enabled to access ISAs with this downside protection.

### Conclusion

Thank you for the opportunity to share the ISA Alliance positions on the “*Proposed Changes To Regulations Under The Student Loan Servicing Act.*” We hope that it is the beginning of effort that will lead to well-tailored policies to create transparency and accountability in ISA-enabled education. Please consider the ISA Alliance a resource on all matters related to Income Share Agreements. We look forward to continuing the discussion to develop a robust and accountable ISA-enabled education market to improve access, affordability, and alignment between students and schools.

Sincerely,



Jordan Wicker  
Executive Director  
Invest in Student Advancement Alliance

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Invest in Student Advancement