October 28, 2022

California Department of Financial Protection and Innovation
Attn: Sandra Navarro
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Sacramento, California 95834
regulations@dbo.ca.gov

VIA ELECTRONIC EMAIL

Re: Proposed Changes to Regulations Under the Student Loan Servicing Act
PRO 06-21

Commissioner Hewlett:

The undersigned sixteen organizations, representing California borrowers, educators, and consumer advocates, submit this comment in response to the California Department of Financial Protection & Innovation's ("DFPI" or "Department") notice of proposed rulemaking to adopt new regulations and amend current regulations implementing the Student Loan Servicing Act (SLSA), Fin. Code, § 28100, et seq., and to provide additional detail and clarity to the Student Loans: Borrower Rights law (SLBR), Civ. Code, § 1788.100 et seq.[1] We appreciate the opportunity to provide feedback on these proposed regulations and the DFPI's ongoing work to protect consumers.

We applaud DFPI's proposal, which will provide much-needed clarity about the scope of the SLSA's and SLBR's applicability and consumer protections. Specifically, the DFPI's proposed rule clarifies licensees' obligation to comply with the SLBR and that servicers of income share agreements, installment contracts, and other types of private education loans must obtain a student loan servicing license from the DFPI. This will benefit student borrowers, schools, and honest lenders and servicers, to whom this proposal gives clear expectations about regulatory requirements and consumer protections for student loan servicing in California.

Background on the student debt crisis, the SLSA and SLBR, and income share agreements.

Nearly 4 million Californian borrowers owe over $146 billion in student loan debt.[2] As is true across the country, too often borrowers struggle to afford these loans. Unfortunately, multiple government investigations and private lawsuits have made clear that student loan servicers, the private companies meant to help borrowers navigate their repayment, prioritize their own profits

[1] *See* Cal. Dep't of Fin. Prot. & Innovation, Notice of Rulemaking Action, PRO 06-21 (Aug. 30, 2022).
[2] U.S. Dep't of Educ., Federal Student Aid, *Federal Student Loan Portfolio by Location* (June 30, 2022), https://studentaid.gov/sites/default/files/fsawg/datacenter/library/Portfolio-by-Location.xls.

and have exacerbated this crisis.[3] When this industry puts its own profits first, borrowers pay the price, through higher-than-necessary monthly payments, increased rates of delinquency and default, and missed opportunities for loan cancellation.

This is what prompted lawmakers to pass the SLSA in 2016, to ensure that the State could oversee the previously unregulated student loan servicing industry.[4] Through its licensing and regulatory regime, the SLSA sets basic business standards and rules of the road for student loan servicers. Shortly thereafter, however, it became clear that more consumer protections were needed to ensure borrowers were not mistreated by their servicers. Lawmakers worked with advocates to pass the SLBR in 2020, which enumerates specific protections against predatory and low-quality servicing, and which enables borrowers who have been harmed by violations of the SLBR to enforce their rights in court.[5] Together, these laws create a powerful framework that sets clear standards for industry and provides a mechanism for relief to borrowers when any industry actors fail to meet those standards.

The student loan landscape has evolved and diversified since these laws were enacted, but the risks from poor servicing remain. It is therefore essential that the protections and regulatory regime that the State has already established continue to be faithfully applied to new entrants into the industry. This is especially true of income share agreements, a type of private student loan that incorporates income-based payments. Many income share agreement providers falsely claim that these financial products are not loans,[6] and several have been investigated or sued because of their failure to comply with consumer protection laws.[7] The DFPI has appropriately and diligently maintained that California's laws relating to student loans, notably the SLSA, apply to income share agreements, and we are encouraged that through this rulemaking the Department seeks to codify and make clear this practice.

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[3] *See*, *e.g.*, Consumer Fin. Prot. Bureau v. Navient Corp., No. 17-cv-00101, 2017 U.S. Dist. LEXIS 123825 (M.D. Pa. Aug. 4, 2017), Complaint, Pa. v. Navient Corp., No. 3:17-cv-1814-RDM (M.D. Pa. June 19, 2019), https://www.attorneygeneral.gov/wp-content/uploads/2018/01/PA-v.-Navient-Complaint-2017-10-6-Stamped-Copy.pdf (Last viewed on Aug. 3, 2021); Complaint, Cal. v. Navient Corp., No. CGC-18- 19 567732 (Cal. Oct. 16, 2018), https://oag.ca.gov/system/files/attachments/press_releases/CA%20AG%20First%20Amended%20Complaint%20-%20Navient.pdf (Last viewed on Aug. 3, 2021); Complaint, Ill. v. Navient Corp., No. 2017-CH-00761 (Ill. July 10, 2018), https://illinoisattorneygeneral.gov/pressroom/2017_01/NavientFileComplaint11817.pdf (Last viewed on Aug. 3, 2021); Complaint, Miss. v. Navient Corp., No. G2108-98203 (Miss. July 24, 2018), https://www.scribd.com/document/384612507/Navient-ComplaintFiled (Last viewed on Aug. 3, 2021); Complaint, Wash. v. Navient Corp., No. 17-2- 01115-1 SEA (Wash. Jan. 18, 2017), https://www.classaction.org/media/state-of-washington-v-navient-corporation-et-al.pdf (Last viewed on Aug. 3, 2021).

[4] A.B. 2251 (Ch. 824, Stats. 2016).

[5] A.B. 376 (Ch. 154, Stats. 2020).

[6] *See*, *e.g.*, Press Release, Consumer Fin. Prot. Bureau, *CFPB Takes Action Against Student Lender for Misleading Borrowers About Income Share Agreements* (Sept. 7, 2021), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/.

[7] *See*, *e.g.*, Complaint, Chi v. Top Applicant, Inc. et al, Case 2:21-cv-9738 (C.D. Cal. Dec. 16, 2021), https://protectborrowers.org/wp-content/uploads/2021/12/20211216-Complaint-Filed.pdf.

The DFPI's proposed regulations will clarify the SLSA's and SLBR's breadth of applicability and protections for California's student loan borrowers.

Consumers across the state can choose to finance their education in a variety of ways, ranging from federal financial assistance to private loans to payment arrangements with their school. For this reason, we applaud the DFPI's actions to clarify that servicing of all consumer credit used to finance postsecondary education requires licensure, unless exempt under the SLSA, and that licensee and non-licensee student loan servicers in California are subject to the SLBR. Specifically, the Department's clarification that servicing of education financing products requires licensure and the explicit incorporation of SLBR compliance for SLSA licensees reflect the State's and national approach to regulating these products and borrowers' experiences using them to finance their educations.

The DFPI's proposed rules make clear that student loan servicers servicing any financial products used to finance postsecondary education and associated costs of attendance must obtain a license to do so, but for certain enumerated exceptions.[8] This is accomplished through a series of proposed definitions used to describe the higher education financing landscape and includes amendments to the SLSA's reporting requirements tailored to the distinct features of the various financial products serviced by covered servicers. This comment discusses those definitions in relevant part below.

Critically, the proposal makes clear that income share agreements, installment contracts, and other "education financing products" are student loans under California law and that servicing these student loans requires compliance with the SLSA and SLBR.[9] This merely codifies the DFPI's existing approach to these products, as evidenced by its consent agreement with the income share agreement servicer Meritas Inc., in which it required the company to obtain a student loan servicing license.[10] Here, as in the Meritas matter, the DFPI is correct to construe the SLSA's applicability broadly, as a licensing and remedial statute.[11] Students, student loan borrowers, schools, and honest lenders and servicers all benefit from a level playing field and clear expectations from regulators about the rules that govern the marketplace.

The DFPI's application of California law also comports with federal law, which treats these "education financing products," including income share agreements, as student loans. The federal Truth in Lending Act defines "private education loan" as a loan that:

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[8] *See* Dept' of Fin. Prot. & Innovation, *Text of Proposed Changes to Regulations Under the Student Loan Services Act*, Cal. Code of Reg. § 2032(25) (Aug. 30, 2022) ("Proposed C.C.R.")
[9] Dep't of Fin. Prot. & Innovation, *Initial Statement of Reasons for the Adoption of Rules Under the Student Loan Servicing Act,* PRO 06-21 2 (Aug. 20, 2022) ("Initial Statement of Reasons").
[10] *In re Meritas Inc.*, Consent Order, Cal. Dep't of Fin. Srvs. & Innovation (Aug. 3, 2021), https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf.
[11] *Id.* at ¶ J.

1. is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965; and
2. is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private education lender.[12]

The definition excludes open end consumer credit, reverse mortgage transactions, residential mortgage transactions, and other loans secured by real property or a dwelling, and includes private education loans made by educational institutions.[13] This definition applies to both income share agreements and school-based lending,[14] which the federal Consumer Financial Protection Bureau ("CFPB") has made clear in several recent instances.

Specifically, the CFPB issued a consent order in 2021 against an income share agreement provider for falsely representing that its income share agreements were not student loans and for not complying with federal requirements related to private education loans.[15] Additionally, in January of this year, the CFPB announced that it would begin to examine schools that issue credit to their students as private education lenders subject to the Bureau's supervision and federal consumer protection laws.[16] Simultaneously to releasing its first Supervisory Highlights report after this announcement, the CFPB revised its examination manual to clarify that it would rely on the statutory definition of private educational loans, referenced above, rather than the definition found in Regulation Z, that excludes certain short-term credit products offered by schools.[17] These actions and the CFPB's ongoing active supervision of this industry make clear that financial products used to finance education are student loans under federal law, and support the DFPI's determination that the servicing of these products requires compliance with the SLSA and the SLBR.

The DFPI's regulations are also consistent with the SLSA's and SLBR's legislative intents, each of which make clear that California lawmakers sought to address the student debt crisis in California,[18] and with how borrowers finance their education. Indeed, these laws' legislative

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[12] 15 U.S.C. 1650(a)(8).
[13] *Id*.
[14] *See generally*, Joanna Pearl & Brian Shearer, *Credit by Any Other Name: How Federal Consumer Financial Law Governs Income Share Agreements* (July 2020), https://protectborrowers.org/wp-content/uploads/2020/07/Pearl.Shearer_Credit-By-Any-Other-Name.pdf.
[15] *In re Better Future Forward, Inc. et al*, Consent Order, Consumer Fin. Prot. Bureau (Sept. 7, 2021), https://files.consumerfinance.gov/f/documents/cfpb_better-future-forward-inc_consent-order_2021-09.pdf.
[16] Press Release, Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau to Examine Colleges' In-House Lending Practices* (Jan. 20, 2022), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/.
[17] Consumer Fin. Prot. Bureau, *Supervisory Highlights: Student Loan Servicing Special Edition* 7 (Fall 2022), https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.
[18] *See* A.B. 2251 (Ch. 824, Stats. 2016); A.B. 376 (Ch. 154, Stats. 2020).

findings explicitly incorporate the CFPB's findings with respect to predatory or low-quality student loan servicing.[19] The CFPB's treatment of these education financing products as private education loans therefore appropriately informs the DFPI's interpretation and application of the SLSA and SLBR. Additionally, California borrowers can choose from a variety of financial products to finance their postsecondary educations, and generally make that choice based on perceived affordability, not on whether the product is legally categorized as one type of loan or another. Regardless of these choices, the SLSA and SLBR make clear that all Californians who finance their educations should be protected from improper student loan servicing.

The DFPI's proposed regulations accomplish this mandate. The proposal's effect is that borrowers throughout the state will enjoy the same consumer protections with respect to their student loan servicer no matter how they choose to finance their educations, that the State will more faithfully implement the SLSA and SLBR and supervise the industry that prompted the Legislature and Governor to pass those laws, and that industry actors will operate with more confidence as to which laws and regulations apply to them.

We applaud the DFPI's proposed regulations to improve the administration of student loan servicer oversight and accountability.

The DFPI also proposes changes that, once implemented, will help the State, borrowers, and advocates ensure industry compliance with the SLSA and SLBR. Specifically, we support the explicit requirement for SLSA licensees to comply with the SLBR, the proposed new provision to ensure borrowers always have an available address at which to serve the written notice required 45 days before bringing an action to enforce the SLBR, as required by Civ. Code, § 1788.103(d),[20] and the proposed amendment to require written confirmation of Qualified Written Requests.[21]

The SLSA and SLBR, although passed years apart, are meant to work in tandem. The former provides a regulatory regime for the student loan servicing industry, whereas the latter creates enforceable consumer protections for that same industry. Although covered student loan servicers are currently required to comply with both laws, the DFPI's proposed amendments enumerate SLBR compliance as an obligation for SLSA-covered servicers. This puts the industry on notice and avoids future uncertainty about the DFPI's supervisory expectations.

The DFPI's proposed amendment related to designating a location for service of process is important because there are student loan servicers subject to the SLBR that are not required to be licensed by the SLSA, such as banks, and for which finding a location at which they can be served may prove difficult. The proposed regulation would require those servicers to file an

[19] *See*, *e.g.*, Stats. 2020, Ch. 154, sec. 1(4) (A.B. 376).
[20] Proposed C.C.R. § 2033.75.
[21] *Id.* at § 2040.5(a).

address with the DFPI at which they receive service, and for those that do not file, would deem as a location for proper service either their filed designated central location pursuant to Code of Civil Procedure § 684.115, or, for those servicers who have no such filing, each branch location. This will lower procedural barriers to enforcement of the SLBR, thereby ensuring borrowers' protections are maintained.

The proposed amendment to require servicers to make the required confirmation of a Qualified Written Request in writing reflects both findings from the DFPI's examinations, during which examiners found these confirmations were sometimes made verbally, and the reality that too often borrowers feel like their requests for help are left unanswered. This new requirement will create a paper trail to ensure compliance and ease borrower anxiety.

Finally, we support the DFPI's proposals that reflect the agency's experience administering the SLSA for several years and are intended to clarify the licensure and supervisory process. Specifically, the DFPI's proposals to waive fingerprinting requirements for certain licensee applicants who have not resided in the United States for at least ten years,[22] to permit a "startup" to file a statement of condition in lieu of audited financial statements when applying for a license,[23] and to require a designated email address for licensees.[24] These are reasonable amendments that are informed by the DFPI's work to date and that do not pose a risk to consumers.

We urge the DFPI to make certain revisions to its proposed amendments to ensure that the regulations accurately reflect student loan servicer practices and borrowers' experiences.

Although we support the DFPI's proposed regulations, we write to offer technical edits that we believe would achieve the Department's goals better and ensure the student loan servicing market is adequately reflected.

Sec. 2032: Definitions

The DFPI's proposed regulations include new and revised defined terms to clarify requirements for servicers of various types of financial products used to pay for education. As the DFPI reviews comments and develops its final regulations, we urge it to be mindful of relevant terms across various California and federal consumer protection and education statutes, and to ensure consistency whenever possible and whenever doing so would maximize consumer wellbeing. To that end, we propose the following revisions to the DFPI's current proposed definitions:

[22] *Id.* at § 2033.5(a)(3)(B).
[23] *Id.* at § 2033.5(a)(4).
[24] *Id.* at § 2033.5(e).

1. The DFPI's existing definition of "forbearance" specifies that "unpaid interest that accrues during forbearance will be added to the principal balance (capitalized) of the loan(s), increasing the total amount owed by the borrower(s)."[25] This term is only used in one provision of the regulations, relating to customer service standards for federal student loan servicer representatives.[26] **We propose revising this definition to note that interest "may" be capitalized**. This reflects proposed rulemaking by the U.S. Department of Education to end forbearance capitalization in certain instances.[27] If this federal proposal is incorporated into the U.S. Department of Education's final rule, the DFPI's definition of forbearance will be out of sync with federal practice.
2. The DFPI's proposed definition of "income share agreement" or "ISA" specifies that the student agrees to pay a "fixed percentage" of their future income for the payment term.[28] Although most income share agreement providers do use a fixed percentage in their contracts, income share agreements as a financial product do not require a fixed percentage. **We therefore recommend revising the proposed definition to specify that the student agrees to pay a "predetermined percentage" of their future income**, which could include a variable rate.
3. The DFPI's proposed definition of "installment contract" focuses on repayment of a "amount advanced" by a postsecondary institution.[29] Where a school is also the lender, the private student loan may take the form of a deferment of payment, rather than an advancement or actual transfer of funds. This is reflected in existing California law, which defines retail installment sales and retail installment contracts as involving deferred payments.[30] **We therefore recommend revising the proposed definition to include instances of deferred payment, in addition to "amounts advanced," and to ensure the definition conforms with existing California law.** If the DFPI incorporates this suggestion, it should incorporate the same revision in proposed sections 2042.65(d)(1)-(2) and (e)(1)-(2), which discuss reporting for servicers of amounts advanced and the date of the amount advanced.

<u>Sec. 2040.5: Qualified Written Requests</u>

The DFPI's proposed amendment to its regulations related to Qualified Written Requests would require servicers to provide written acknowledgements of receipt and responses to borrowers. However, practitioners have experienced that servicers do not always retain these communications and that some servicers' responses, particularly upon receiving the pre-litigation notice required by Civ. Code 1788.103(d)(1), are boilerplate. **We recommend that the DFPI**

[25] *Id.* at § 2032(a)(8).
[26] *Id.* at § 2041(a)(1).
[27] *See* U.S. Dep't of Educ., *Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program*, 87 Fed. Reg. 41878 (July 13, 2022).
[28] Proposed C.C.R. § 2032(13).
[29] *Id.* at § 2032(15).
[30] Cal. Civ. Code § 1802.5-6.

clarify that pre-litigation notices are Qualified Written Requests that require timely responses and that servicers must maintain all communications sent in response to Qualified Written Requests.

Sec. 2042.5: Student Loan Servicing Records–Traditional Student Loans

We applaud the DFPI's proposal to remove the limitation on which documents servicers must maintain to only those that the servicer "has received or has access to."[31] As the Department notes, servicers generally have access to these documents, and so they should be maintained and made available for examination.[32]

However, we disagree with the DFPI's assertion that the SLSA and SLBR do not necessitate servicers to maintain loan applications, and therefore oppose its proposed deletion of that obligation from the regulations for "traditional loans" and its omission of them for "education financing products."[33] To the extent that servicers have access to the documents, **we recommend that the DFPI require them to be included in individual loan servicing records**. These documents can be critical pieces of evidence for consumers whose student loans are the result of fraud, either by their school or as the victim of identity theft. These documents can help students assert defenses to repayment of both federal and private student loans, but they can be difficult to obtain. They are also relevant to oversight of the servicing industry, as servicers are likely to field any initial inquiry or complaint by a consumer related to a loan that was fraudulently originated, and the DFPI should be able to review any due diligence by the servicer in response to such a complaint. It is worth noting, too, that often loan applications are included as the first page of the loan note. Therefore, to the extent that servicers can access and obtain loan applications, the DFPI should require them to do so, which would thereby make them available to borrowers upon request. This should be reflected in both sections 2042.5(b) and 2042.75(b).

Sec. 2042.65: Aggregate Loan Servicing Report–Education Financing Products

As discussed above, we applaud the DFPI's past and present work to make clear that a variety of financial products used to pay for postsecondary education in California are private student loans covered by the SLSA and SLBR. We also applaud and support the DFPI's proposal for specific reporting requirements for different student loan types. In furtherance of that goal, we offer the following comments to the proposed Aggregate Student Loan Servicing Report requirements for servicers of education financing products:

1. The DFPI proposes that all servicers of education financing products should include in their aggregate loan servicing report a payoff amount for each education financing

[31] Proposed C.C.R. at § 2042.5(b).
[32] Initial Statement of Reasons at 12.
[33] *Id*.; Proposed C.C.R. §§ 2042.5(b), 2042.75(b).

product serviced.[34] "Payoff amount" is not defined in the regulations. **We therefore urge the DFPI to clarify what this term include**s. This is likely most relevant for income share agreements, which often charge consumers the payment cap for early payoff, as opposed to requiring payment of the remaining financed amount and finance charge. Such a practice is considered a prohibited prepayment penalty under the federal Truth in Lending Act for private education loans.[35] Requiring servicers to clearly state the payoff amount will facilitate the DFPI's examination for Truth in Lending Act violations, as well as for other unlawful, unfair, and deceptive acts and practices.

2. The DFPI proposes requiring servicers of income share agreements to include in their aggregate loan servicing report both a funded date and funded amount for each income share agreement serviced.[36] We wish to call to the Department's attention two points that at the very least necessitate scrutiny of these reported numbers, and may also prompt further guidance or clarification as to how they should be reported. First, some income share agreement providers claim that no funds are advanced in their transactions—that there is no principal amount that must be repaid—and that there is therefore no funded amount. Implicit to this argument is that there is no tuition cash price that the income share agreement is being used to finance. Second, postsecondary educational institutions that are also income share agreement providers may inflate their tuition cash price to match the payment cap or other high repayment amount in order to lower their APR.[37] With this in mind, **the DFPI should ensure its examination procedures include steps to probe responses to these report items, and should consider defining "funded amount" to incorporate reporting of the cash price of the tuition the income share agreement was used to finance.**
3. The DFPI proposes requiring servicers of income share agreements to include in their aggregate loan servicing report the borrower's income for each income share agreement serviced.[38] Although the proposed regulations include a definition of "income,"[39] they do not specify what point in time this income should reflect. **We recommend clarifying that the reported income should be the most recent income used to calculate a borrower's monthly payment**.

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[34] Proposed C.C.R. § 2042.65(b)(6).
[35] 15 U.S.C. 1650(e).
[36] Proposed C.C.R. § 2042.65(c)(1)-(2).
[37] For example, the coding bootcamp [redacted] previously offered borrowers the option of paying $30,000 in tuition fees up front or financing those fees through an ISA that had a $30,000 maximum payment cap. In that case, [redacted] ISA could be thought of as not involving a finance charge, as borrowers could only ever pay up to exactly the amount financed (that is, the $30,000 value of their tuition). *See* [redacted]. Any bootcamp that sets its own tuition and offers its own ISA could structure its ISA as not involving a finance charge by following [redacted] example (that is, by setting the cost of tuition at an arbitrarily high number and then setting the ISA's maximum repayment cap at that same number), regardless of how enormously expensive the underlying ISA may be.
[38] Proposed C.C.R. § 2042.65(c)(3).
[39] *Id.* at § 2032(a)(12).

4. Although we applaud the DFPI's proposal to require servicers of income share agreements to include in their aggregate loan servicing report APRs, calculated using the minimum annual income above which payments are required and at increments of $10,000 thereafter,[40] we are concerned that the current requirement would allow servicers to omit the highest APR income share agreements, and also may cause confusion for servicers. Specifically, the proposed regulation requires reporting by increments of $10,000 "up to the annual income where the maximum number of monthly payments results in the maximum amount payable."[41] This would allow servicers to omit high incomes that would result in payment of the maximum amount in fewer months than the maximum time allowed, which would result in the highest APRs. **We recommend revising this provision to provide that the servicer must report incomes in increments that *exceed* the amount wherein the maximum number of months would result in reaching the payment cap, *and* require that servicers use as a time frame for calculating APR the shorter of either the amount of time it would take to reach the payment cap for a given income or the maximum payment term**.
5. With respect to the same APR reporting requirements, the regulations do not require servicers to report an effective APR for the time of reporting; rather, the regulations merely require the table of all possible APRs discussed above. **We recommend requiring servicers to include the present effective APR**. **We further recommend the DFPI require servicers include a narrative explanation of how they applied the APR methodology set forth in Regulation Z**, which they are required to use per the proposed definition of APR.[42] This will be particularly important in understanding how servicers are calculating the APRs they report, given the potential fluctuations in income share agreement repayment amounts.
6. The DFPI proposes requiring servicers of income share agreements to include in their aggregate loan servicing to report the number of required payments for each income share agreement serviced.[43] **We recommend the DFPI clarify this requirement**, as arguably no payments are "required" for consumers whose income is sufficiently low, and as the DFPI separately requires reporting of the maximum payment term.[44] To the extent the Department seeks the number of payments above 0 dollars required to extinguish the repayment obligation, it should state that.
7. The DFPI proposes requiring servicers of income share agreements to include in their aggregate loan servicing report the monthly payment amount for each income share agreement serviced.[45] However, this does not specify whether the reported amount should be the current amount at the time of reporting, an average of past monthly payment

[40] *Id. at* § 2042.65(c)(5).
[41] *Id.*
[42] *Id.* at § 2032(a)(2).
[43] *Id.* at § 2042.65(c)(9).
[44] *Id.* at § 2042.65(c)(8).
[45] *Id*. at § 2042.65(c)(10).

amounts, or some other figure. Given the potential for fluctuations in monthly income share agreement payments, **we recommend that the DFPI require reporting of both the current and average monthly payment amounts**.

Additional amendments would strengthen the DFPI's oversight of student loan servicers in California.

In addition to the changes to the regulations that it proposed and that are discussed above, we urge the DFPI to consider additional changes, discussed below. We believe that these additional amendments are needed to clarify expectations for industry actors and to ensure California borrowers benefit from the SLSA's and SLBR's full protections.

Sec. 2032: Definitions

Much of the DFPI's existing and proposed regulations turn on whether a student loan was used to finance a "postsecondary education" and "cost of attendance at a postsecondary institution," however neither of those terms are defined by the SLSA, SLBR, or regulations. Given the prevalence of student lending to attend non-credential programs, such as tech bootcamps, **we recommend defining these terms to reflect the breadth of educational programs for which Californians may seek student loan financing**. This includes traditional colleges, universities, and vocational programs, as well as bootcamps, alternative education providers, and online distance learning. The definition should include programs that require accreditation and that do not require accreditation. **We also recommend that the definition of "cost of attendance" conform to how that term is defined by the federal Higher Education Act**, both to ensure consistency and to prevent schools from inflating their costs of attendance beyond what are covered by federal law.[46]

Secs. 2042(b) and 2042.65(b): Aggregate Student Loan Servicing Reports

The DFPI does not propose requiring servicers to include in their aggregate loan servicing report the amount that a borrower has paid to date on each student loan. **We recommend that the DFPI require reporting of the total aggregate amount that has been paid toward each student loan.** The SLSA empowers the DFPI to broadly supervise the student loan servicing industry, and to request data and reports in the furtherance of that supervision.[47] Total payments is one important data point that the Department can use in its oversight work, particularly in terms of understanding borrowers' long-term experience with income share agreements as a type of private student loan.

[46] *See*, *e.g.*, 20 U.S.C. § 1087ll
[47] Cal. Fin. Code § 28146.

Sec. 2039(c)(2): Surety Bond

Although the DFPI does not propose amendments to the licensee surety bond requirements found in California Code of Regulations § 2039, we recommend that the Department specify how servicers of "education financing products" comply with this requirement. Specifically, the regulation requires licensees to post a surety bond in the minimum of $25,000, and to post a bond of $50,000, $75,000, or $100,000, if the dollar amount of student loans serviced by the licensee for the preceding year exceeds $50,000,000, $100,000,000, and $250,000,000, respectively.[48] For servicers of income share agreements in particular, **the DFPI should specify that this dollar amount should reflect the aggregate payment cap of their income share agreements portfolio**, and not the aggregate of the funded amount of payments made. These surety bonds are, in part, intended to provide for "losses or damages incurred by borrowers as the result of a licensee's noncompliance" with the SLSA.[49] Given the risk to borrowers that poor servicing could result in income share agreement creditors demanding the income share agreement payment cap in full, income share agreement servicers' bonds should be calculated using dollar amounts that reflect these payment caps.

Conclusion

Although the student debt crisis is far from over in California—and policymakers, advocates, and borrowers continue to fight for additional protections—the DFPI's proposed regulations will put all student loan servicers on notice of their obligations under the SLSA and the SLBR, giving honest actors a clear set of expectations and assuring borrowers that the State is working in their interest. These existing authorities and rights, when applied to all servicers, provide a critical set of protections for student loan borrowers with respect to their loan servicers. In addition to the recommendations made above, we urge the DFPI to work closely with other California agencies, namely the Department of Justice and the Bureau for Private Postsecondary Schools, and these agencies can be strong partners in overseeing schools, servicers, and lenders. Finally, we applaud the DFPI for the work it has done to date in reigning in the servicing industry and for proposing these additional regulations.

Sincerely,

Student Borrower Protection Center
California Asset Building Coalition
Center for Consumer Law & Economic Justice, Berkeley Law
Center for Responsible Lending
Consumer Federation of California

[48] C.C.R. § 2039(c)(2).
[49] Cal. Fin. Code § 28142.

Consumer Reports
Housing and Economic Rights Advocates
Legal Aid Foundation of Los Angeles
National Consumer Law Center
NextGen California
Public Counsel
Public Good Law Center
Student Debt Crisis Center
The Institute for College Access and Success (TICAS)
Western Center on Law and Poverty
Young Invincibles

Please contact Winston Berkman-Breen, Deputy Advocacy Director and Policy Counsel, at winston@protectborrowers.org, if you have any questions or would like to discuss this comment further.