



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** · ACTING COMMISSIONER **Clothilde V. Hewlett**

NOTICE OF MODIFICATIONS TO PROPOSED REGULATIONS UNDER THE STUDENT LOAN SERVICING ACT

PRO 06/21

To Interested Persons:

On September 9, 2022, the Commissioner of Financial Protection and Innovation (Commissioner) published a Notice of Rulemaking Action (see California Regulatory Notice Register 2022, No. 36-Z) to adopt new regulations and amend current regulations implementing the Student Loan Servicing Act.¹ The proposed regulations also provide additional detail and clarity to the Student Loans: Borrower Rights law,² which became effective January 1, 2021.

After consideration of public comments, the Commissioner is proposing additional changes to the proposed regulations. A copy of the proposed revisions is being made available to the public in accordance with the requirements of Government Code section 11346.8, subdivision (c). The text showing modifications is attached. The originally proposed additions are shown in single underline and the originally proposed deletions are shown in single strike-out. The additional changes proposed by this notice are shown by double underlining of additions and double strike-out of deletions. The public may submit comments on the proposed changes, as described more fully below.

Government Code section 11349.4, subdivision (b), allows the public to submit comments on the proposed changes, but only on the most recently proposed changes. In accordance with Government Code sections 11346.8, subdivision (c), and 11346.9, subdivision (a)(3), the Commissioner will not respond to any comments pertaining to rules which are not the subject of these proposed modifications.

DESCRIPTION OF CHANGES

Article 1. Definitions

Section 2032(a)(4)

The proposed amendment revises “education financing products” to include private *education* loans which are not traditional loans. Private education loan is the term used in the Truth in Lending Act. Using this same term here, in conformance with federal law, provides consistency for servicers and eliminates the operational burden caused by having to follow two different definitions.

¹ Fin. Code, § 28100 et seq.

² Civ. Code, § 1788.100 et seq.

Section 2032(a)(7)

The proposed amendment revises the definition of “federal student loan” to align with the Higher Education Act and the commonly understood meaning of federal student loan: those loans which are made, insured or guaranteed under the Higher Education Act. Using this industry-standard definition provides consistency and certainty.

Section 2032(a)(12)

This proposed amendment revises the definition of “income” by deleting “gross” before compensation because the plain meaning of “income” is “compensation” and “gross compensation” would be the equivalent of “gross income” rather than “income.” The amendment also adds the word “wages” to the items listed as being included within compensation. The definition is also amended to exclude passive income from the definition of income.

Section 2032(a)(13)

The proposed amendment revises the definition of income share agreement (ISA) to accurately reflect how ISAs are structured. The amended definition clarifies that an ISA is an agreement under which a student agrees to repay the provider a percentage *or amount* from the student’s future income, as some ISAs may be structured this way. The amendments expand the list of ways that a school or income share provider may offer ISA financing, including advancing, covering, crediting, deferring, or funding. The amended definition also clarifies that ISAs may be used to pay for all postsecondary educational expenses and cost of attendance, not just tuition, by adding express language to that effect.

Section 2032(a)(14)

The proposed amendment removes alternative terms for income share as they are unnecessary. The amendment also defines income share to include not just a percentage of the borrower’s future income but also the amount of a borrower’s income payable during the ISA, to cover all repayment types.

Section 2032(a)(15)

The proposed amendment revises the definition of installment contract to list the ways in which the money to be repaid may be lent, including advanced, covered, credited, deferred or funded. This will ensure that installment contracts fall within the definition, regardless of how the contract is structured.

Section 2032(a)(16)

The proposed amendment adds “maximum payments” as a new definition in the student loan servicing regulations. The Commissioner has determined through comments and research that this is a key provision of ISAs and, therefore, a necessary data point to be included in the servicer’s aggregate report.

Section 2032(a)(19)

The proposed amendment expands the definition of payment cap to illustrate how it relates to the income share agreement.

Section 2032(a)(20)

The proposed amendment revises the definition of payment term by deleting unnecessary synonymous terms and reordering the original text to make it clearer.

Section 2032(a)(22)

The proposed amendment revises the definition of private student loan to mean a private education loan, as defined in the Truth in Lending Act. Conforming this definition with federal law provides consistency for servicers and eliminates the operational burden imposed by having to follow two different definitions.

Section 2032(a)(23)

The proposed amendment revises the definition of qualifying payments to clarify that qualifying payments count toward maximum payments (a newly added definition) in addition to counting toward the payment cap and payment term.

Section 2032(a)(29)

The proposed amendment revises the definition of traditional student loan to clarify which private student loans are traditional loans and which are education financing products. It is necessary to make this clarification as this determines the applicable aggregate reporting and records maintenance rules with which servicers must comply.

Article 5. Borrower Protections**Section 2040(d)**

The proposed amendment revises to Pacific Time the time zone in which a payment must be received to be considered an on-time payment. This change is necessary to best protect California borrowers, the goal of these regulations and authorizing statutes. Servicers operate in different time zones. Without this change, a servicer could argue that it received a payment in Eastern Time and that the borrower's payment was not on-time, possibly subjecting the borrower to a late fee and other negative consequences.

Section 2040.5(a)

The proposed amendment specifies that servicers must send required written acknowledgments of receipt and responses to qualified written requests by the preferred method of communication indicated by the borrower. If the borrower has not indicated a preferred method of communication, the revision specifies that servicers must send acknowledgments and responses by both postal mail to the last address of record and to all email addresses of record. This revision is necessary to give borrowers the greatest chance of receiving servicer acknowledgments and responses.

Article 6. Examinations, Books and Records

Section 2042(b)(7)

The proposed amendment revises this data point which servicers must maintain in aggregate reports for traditional student loans to clarify that, in addition to the loan balance and status of each loan serviced, the total amount paid on each loan must be included. This will provide a complete picture of borrower's individual loans.

Section 2042(b)(8)

The proposed amendment clarifies that servicers must include in aggregate reports the cumulative balance of all loans serviced for each borrower and the cumulative amount paid by the borrower. This information will facilitate the Department's review of servicer practices.

Section 2042.65(b)(6)

The proposed amendment provides an alternative to "payoff" that is applicable to ISAs. The amount the student will be required to pay to the ISA provider in the future is unknowable. As such, there is no payoff under an ISA, as that term is commonly understood in traditional lending. However, many ISAs do contain an "early completion" provision which allows the borrower to extinguish all future obligations. The amendment makes clear ISA providers should provide this information.

Section 2042.65(c)(1)

The proposed amendment requires servicers to include in the required aggregate report the date the ISA was advanced, covered, credited, deferred or funded. "Advanced," "covered," "credited" and "deferred" have been added to "funded" in recognition of the various ways in which ISAs may be structured and money thereunder may be lent. This change is to conform with the same change made in other revised rules.

Section 2042.65(c)(2)

The proposed amendment requires servicers to include in the required aggregate report the ISA amount advanced, covered, credited, deferred or funded. "Advanced," "covered," "credited" and "deferred" have been added to "funded," in recognition of the various ways in which ISAs may be structured and money thereunder may be lent. This change is to conform with the same change made in other revised rules.

Section 2042.65(c)(4)

The proposed amendment is a conforming change to accord with the same change made to the definition of income share.

Section 2042.65(c)(6)

The proposed amendment is a conforming change to accord with the change made to the definition of minimum threshold.

Section 2042.65(c)(7)

The proposed amendment is a conforming change to accord with the change made to the definition of payment cap.

Section 2042.65(c)(8)

The proposed amendment is a conforming change to accord with the change made to the definition of payment term.

Section 2042.65(c)(9)

The proposed amendment is a conforming change to accord with the newly added definition of maximum payments.

Section 2042.65(c)(11)

The proposed amendment revises the original text to require not just the number of qualifying payments made but also the total amount of such qualifying payments paid.

Section 2042.65(d)(1)

The proposed amendment requires servicers of installment contracts to include in the mandatory aggregate report the date the installment contract was advanced, covered, credited, deferred or funded. "Advanced," "covered," "credited" and "deferred" have been added to "funded," in recognition of the various ways in which installment contracts may be structured and money thereunder may be lent. This change is to conform with the change made in other revised rules.

Section 2042.65(d)(2)

The proposed amendment requires servicers of installment contracts to include in the aggregate report the amount advanced, covered, credited, deferred or funded. Advanced, covered, credited and deferred have been added to funded, in recognition of the various ways in which installment contracts may be structured and money thereunder may be lent. This change is to conform with the change made in other proposed revised rules.

Section 2042.65(e)(1)

The proposed amendment applies to education financing products which are not ISAs or installment contracts. The proposed amendment requires servicers to include in the required aggregate report the date such education financing product was advanced, covered, credited, deferred or funded. "Advanced," "covered," "credited" and "deferred" have been added to "funded," in recognition of the various ways in which education financing products may be structured and money thereunder may be lent. This change is to conform with the change made in other proposed revised rules.

Section 2042.65(e)(2)

The proposed amendment requires servicers of education financing products which are not ISAs or installment contracts to include in the required aggregate report the amount advanced, covered, credited, deferred or funded. “Advanced,” “covered,” “credited” and “deferred” have been added to “funded,” in recognition of the various ways in which education financing products may be structured and money thereunder may be lent. This change is to conform with the change made in other proposed revised rules.

Section 2042.75(a)

The proposed amendment clarifies that servicers may maintain records electronically but that paper records produced for inspection must be made available at a servicer location designated by the Department. This is to allow examiners to conduct the entire examination at one servicer location.

The Initial Statement of Reasons containing information upon which the proposal is based is available on the Department of Financial Protection and Innovation’s website at www.dfpi.ca.gov and from the Legal Division of the Department of Financial Protection and Innovation. As required by the Administrative Procedure Act, the Legal Division maintains a rulemaking file containing all the information upon which the proposal is based. The rulemaking file is available for public inspection during regular business hours.

15-DAY COMMENT PERIOD

Where to Submit Comments

Any interested person may submit written comments to the proposed additional changes by written communication addressed as follows, by any of these means:

Postal Mail

Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Blvd.
Sacramento, California 95834

Electronic Mail

Comments may be submitted electronically to regulations@dbo.ca.gov. Please identify the comments as PRO 06-21 in the subject line. Please also send a copy to Senior Counsel Mary Tomé at mary.tome@dfpi.ca.gov.

Comments will be received from January 6, 2023 through January 26, 2023. **The last day to submit comments is January 26, 2023.** Comments received after January 26, 2023 will not be considered. Comments may only address changes proposed in this

modification. Comments addressing rules or sections of rules that are not changed in the modified text will not be considered.

The proposed additions to the Commissioner's rules in the text accompanying this notice are not yet effective and will not be effective until approved by the Office of Administrative Law and filed with the California Secretary of State in accordance with Government Code section 11349.3. Questions regarding the content of this notice may be directed to Mary Tomé at mary.tome@dfpi.ca.gov.

Dated: January 6, 2023
Sacramento, California