



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

NOTICE OF SECOND 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 proposed additional changes to the regulations, and invited public comment during a 15-day comment period. The Commissioner received comments to the modified rules. After consideration of these comments, the Commissioner is proposing additional changes to the rules. The second modified text is attached. The originally proposed changes to the current student loan servicing regulations are shown in single underline and single strike-out. Additions proposed in the modified text are shown by double underlining and deletions are shown by double strikethrough. Additions proposed in these second modifications are shown in italics and deletions are shown in italics with a strikethrough.

A copy of the proposed second modified text is being made available to the public in accordance with the requirements of Government Code section 11346.8, subdivision (c). The public may submit comments on the proposed changes. The Department must respond to any written comments regarding the second modified text in the final statement of reasons required by Government Code section 11346.9. Government Code section 11346.9, subdivision (a)(3) specifies that the Department is not required to respond to any comments not specifically directed at the changes proposed in the second modified text.

DESCRIPTION OF CHANGES

Article 1. Definitions

Section 2032(a)(4)

The proposed amendment revises “education financing products” to include private *student* loans which are not traditional loans. This is a change reverting back to

¹ Fin. Code, § 28100 et seq.

² Civ. Code, § 1788.100 et seq.

the word used in the original proposed text. This is necessary because the term “private student loan” is defined later in the rules (at section 2032 (a)(12)) but the term “private education loan” is not separately defined.

Section 2032(a)(19)

The proposed amendment adds language clarifying that the payment cap, which is the maximum amount payable under an income share agreement, may be expressed as *an APR or an amount or a multiple of the amount advanced, covered, credited, deferred, or funded, excluding charges related to default*. ISA providers that commented on the modified text stated that some ISA providers use a payment cap that is based on an APR. The amendment reflects the facts.

Section 2032(a)(23)

The proposed amendment revises the definition of qualifying payments to clarify that qualifying payments count toward maximum payments and the payment cap but not also the payment term. It is nonsensical to say that qualifying payments count toward the payment term because the payment term is a fixed length of time that is not dependent on the number of qualifying payments.

Article 5. Borrower Protections

Section 2040(d)

The proposed amendment specifies that, if a servicer has not posted a cut off time for electronic payments to be credited on the date the payment is made, a payment made by 11:59 p.m. Pacific Time (standard or daylight, as applicable) on the due date shall be credited as of that date and count as an on-time payment.

Requiring cut off times different than those posted on the servicer’s website just for California borrowers would deviate from standard current practices, would require system changes and enhancements that would be very expensive to implement and could cause confusion and operational risk to both servicers and borrowers. Limiting the exception to only those situations where the servicer has not posted the cut off time aligns with servicers’ operational capabilities and national banking standards.

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
Legal Division
Attn: Araceli Dyson
2101 Arena Blvd.
Sacramento, California 95834

Electronic Mail

Comments may be submitted electronically to regulations@dfpi.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 March 6, 2023 through March 23, 2023. **The last day to submit comments is March 23, 2023.** Comments received after March 23, 2023 will not be considered. Comments addressing rules or sections of rules that are not changed in the second 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: March 6, 2023
Sacramento, California