

March 23, 2023

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

VIA ELECTRONIC EMAIL

Re: Notice of Second Modifications to Proposed Regulations Under the Student Loan Servicing Act, PRO 06-21

Commissioner Hewlett:

The undersigned nine 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 second modifications to proposed regulations related to the Student Loan Servicing Act (SLSA) (“Notice”).¹ The Notice builds on a notice of rulemaking issued on September 9, 2022,² to which sixteen organizations submitted a comment (“Initial Comment”), and a notice of modification to proposed regulations issued on January 6, 2023,³ to which ten organizations submitted a comment (“Second Comment”). The Initial Comment and Second Comment (together, “Prior Comments”) are appended here and are incorporated into the present comment. We again appreciate the opportunity to provide feedback on these proposed regulations and the DFPI’s ongoing work to protect consumers.

The Prior Comments provides additional background about the student loan debt crisis in California and the need for increased regulation and consumer protection, and responses to the DFPI’s earlier proposed regulation and modifications. This comment focuses on the proposed second modifications and highlights some of the earlier recommendations that have not yet been incorporated into the Department’s regulations.

¹ Cal. Dep’t of Fin. Prot. & Innovation, Notice of Second Modification to Proposed Regulations Under The Student Loan Servicing Act, PRO 06-21 (Mar. 6, 2023), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-06-21-NOTICE-OF-SECOND-MODIFICATIONS.pdf?emrc=fff313> (“Notice”).

² See Cal. Dep’t of Fin. Prot. & Innovation, Notice of Rulemaking Action, PRO 06-21 (Sept. 9, 2022).

³ See Cal. Dep’t of Fin. Prot. & Innovation, Notice of Modification to Proposed Regulations Under The Student Loan Servicing Act, PRO 06-21 (Jan. 6, 2023), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/01/PRO-06-21-NOTICE-OF-MODIFICATIONS.pdf?emrc=e6e547>.

We support the amendment to the definition of “qualifying payment,” which clarifies the difference between payments made toward an ISA and the ISA’s duration, and urge the Department to reflect this distinction in ISA-reporting requirements.

The DFPI proposes revising “qualifying payment” to remove reference to the payment term,⁴ which is separately defined as the maximum amount of time for which a borrower can be obligated.⁵ This accurately reflects that, as stated by the DFPI, it would be “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.”⁶ We support this revision, which clarifies that in addition to having a maximum payment cap and maximum number of payments, there is a separate and distinct basis on which an income share agreement (“ISA”) obligation can be satisfied. Meeting either the payment cap and maximum or the payment term satisfies the debt, but the two are distinct options and should not be conflated under a shared defined term.

Having made this distinction in the regulation’s definitions, however, DFPI should do the same in its reporting requirements. ISA servicers are required to include in their aggregate education financing servicing report the payment cap, maximum payments, and number and total amount of qualifying payments made.⁷ These requirements therefore include the payment obligations and the borrower’s progress toward satisfying those obligations. Conversely, the reporting requirement only includes the payment term, but does not include reporting of the number of months that have elapsed that count toward that term, which may include months during which no payment was required.⁸ The DFPI should also require the reporting of how many months the borrower has satisfied toward the payment term.

The Department’s amendment to the definition of “payment cap” would not provide clarity and risks omitting key data points.

The DFPI proposes amending the definition of “payment cap” to allow for the maximum amount payable under an ISA to be expressed as an annual percentage rate (“APR”), in addition to as a dollar amount or multiple of the funded amount.⁹ The justification provided for this revision was that “some ISA providers use a payment cap that is based on an APR.”¹⁰

⁴ Cal. Dep’t of Fin. Prot. & Innovation, Text of Proposed Changes to Regulations Under the Student Loan Servicing Act, PRO 06-21 § 2032(a)(23) (Mar. 6, 2023), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-06-21-SECOND-MODIFIED-TEXT.pdf?emrc=6c9004> (“Proposed Regulations”).

⁵ *Id.* at § 2032(a)(20).

⁶ Notice at 2.

⁷ Proposed Regulations at §§ 2042.65(c)(7), 2042.65(c)(9), 2042.65(c)(11).

⁸ *Id.* at § 2042.65(c)(8).

⁹ *Id.* at § 2032(a)(19).

¹⁰ Notice at 2.

Permitting servicers to report payment caps as an APR risks overcomplicating a simple reporting item and is unnecessary. The payment cap should clearly state the maximum dollar amount that a borrower could be expected to pay. Allowing payment cap reporting as a multiple requires only a simple calculation to arrive at that maximum dollar amount. The APR reporting, however, requires an understanding of how that number was calculated, which per the regulations is dictated by federal Regulation Z,¹¹ and increases the risk that the actual payment cap will be obscured or difficult to calculate.

Further, allowing servicers to report the payment cap as an APR is duplicative, as the APR is already an independent reporting item.¹² The proposed revision could result in the APR being reported twice and puts the onus on the Department to translate the APR into a dollar figure before it can be used for any review or comparison. We therefore urge the DFPI to remove this proposed revision.

We urge the DFPI to consider additional items that were raised in the Prior Comments and that have not been included in the proposed modifications.

Although the Department incorporated many of the recommendations made in the Prior Comments into its proposed modifications, several suggestions are not included and have not been addressed in the accompanying notice of proposed modifications. We therefore call the Department's attention to these remaining items and urge it to consider their inclusion in the final regulations.

Specifically, as discussed in more detail in the appended Initial Comment, we encourage the Department to consider the following:

- 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.¹³
- Require loan applications to be included in individual loan servicing records.¹⁴
- Clarify that the reported income in the aggregate loan servicing report for income share agreements should be the most recent income used to calculate a borrower's monthly payment.¹⁵
- Revise the requirement for income share agreement servicers to include APRs in their aggregate loan servicing report to ensure that the highest possible APRs are included.¹⁶

¹¹ Proposed Regulations at § 2032(a)(2).

¹² See *id.* at § 2042.65(c)(5).

¹³ See Initial Comment at 7.

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 10.

- Require servicers to report effective APRs and a narrative of how they calculate APRs in compliance with the Truth in Lending Act.¹⁷
- Require income share agreement servicers to include in their aggregate loan servicing report the reporting of both the current and average monthly payment amounts.¹⁸
- Conform the definition of “cost of attendance” to the definition under the federal Higher Education Act.¹⁹
- Specify that licensee surety bond requirements reflect that aggregate payment cap for income share agreement portfolios.²⁰

In addition to these specific proposals, we call to the Department’s attention the Prior Comments’ recommendation that it ensure examination procedures include steps to screen for whether income share agreement providers and schools inflate their tuition cash price in order to issue high-cost income share agreements with low APRs.²¹ We also again urge the DFPI to work closely with other California agencies, namely the Department of Justice and the Bureau for Private Postsecondary Education, as these agencies can be strong partners in overseeing schools, servicers, and lenders.

Conclusion

The DFPI’s proposed modified regulations will put all student loan servicers on notice of their obligations under the SLSA and the Student Loans Borrower Rights Law, 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. 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
Center for Responsible Lending
Housing and Economic Rights Advocates
Legal Aid Foundation of Los Angeles
NextGen California
Public Counsel
Student Debt Crisis Center

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 11.

²⁰ *Id.* at 12.

²¹ *Id.* at 9.

The Institute for College Access and Success
Young Invincibles

Please contact Winston Berkman-Breen, Deputy Advocacy Director and Policy Counsel at the Student Borrower Protection Center, at [REDACTED], if you have any questions or would like to discuss this comment further.

Appendix I

Comment to
the Department of Financial Protection & Innovation
Regarding Proposed Changes to Regulations Under the SLSA
PRO 06-21
October 28, 2022

“Initial Comment”

Appendix II

Comment to
the Department of Financial Protection & Innovation
Regarding Proposed Modifications to Proposed Regulations Under the SLSA
PRO 06-21
January 26, 2023

“Second Comment”