FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE STUDENT LOAN SERVICING ACT AND THE STUDENT LOANS: BORROWER RIGHTS LAW
PRO 06/21

UPDATED INITIAL STATEMENT OF REASONS [Government Code Section 11346.9, Subdivision (a)(1)]

In the Initial Statement of Reasons for this rulemaking action, the Department of Financial Protection and Innovation (Department) highlighted its objectives: to include within the definition of student loans subject to the Student Loan Servicing Act (Act)[1] and the subsequent Student Loans: Borrower Rights Law[2] all education financing products used to finance a student's higher education, including income share agreements and installment contracts; and to include servicers of these products within the definition of student loan servicers subject to the Act and licensure.

The benefits anticipated from this regulatory action include protective benefits to student loan borrowers with education financing products, improving the Department's regulatory oversight of the servicer industry, and strengthening enforcement of the Act and the Student Loans: Borrower Rights Law.

The final regulations meet the Department's objectives. The Department made changes to the originally proposed rules. The Department modified the text twice to ensure the regulations were consistent with servicers' operations and businesses.

The final regulations strike a balance between protecting California student loan borrowers and avoiding an unnecessary compliance burden on servicers.

January 6, 2023 Modifications to the Text

In the January 6, 2023 modifications to the proposed rules, the Department made changes in response to comments received. The Department made all changes reasonable and necessary to better align the regulations with the facts and servicers' business operations and to protect student borrowers.

March 6, 2023 Modifications to the Text

In the March 6, 2023 modifications to the proposed rules, the Department made

[1] Fin. Code, § 28100, et seq.
[2] Civ. Code, § 1788.100 et seq.

additional reasonable and necessary changes requested by commenters. The Department strove to streamline the rules to make them clear, to accord with servicers' operational realities and to facilitate compliance.

ADDITIONAL CLARIFICATION OF NECESSITY FOR MODIFIED TEXT

The Department reiterates the necessity for each of the proposed rules included in its Initial Statement of Reasons published on September 9, 2022.

The Department adds the following additional clarification of necessity for the proposed rules listed below, which were modified in the January 6, 2023 Modified Text.[3]

Section 2032(a)(7): The amendment revises the definition of "federal student loan" to the commonly understood meaning of federal student loan and the definition used by industry: 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 amendment revises the definition of "income" by deleting, as unnecessary, the word "gross" before compensation; adding the word "wages" to the items listed as being included within compensation; and excluding passive income from the definition of income. These modifications provide a comprehensive yet concise definition and add clarity.

Section 2032(a)(13): The amendment revises the definition of income share agreement (ISA) to state that a student may agree to repay a percentage or amount (not previously included) of the student's future income, as some ISAs are structured this way. The amendment expands the list of ways that a school or income share provider may offer ISA financing, including advancing, covering, crediting, deferring, or funding, to ensure coverage within the definition; and adds express language to clarify that ISAs may be used to pay for all postsecondary educational expenses and cost of attendance, not just tuition. These changes provide accuracy and certainty.

Section 2032(a)(14): The amendment removes alternative terms for income share as they are unnecessary. The amendment also defines income share to include not just a

[3] The Department notes that Section 2032(a)(4) was modified in the January 6, 2023 proposed modified text but then, in the March 6, 2023 second modified text, changed back to the text originally proposed on September 9, 2022. Thus, the Department does not include, as moot, a discussion of the modification to Section 2032(a)(4) proposed in the January 6, 2023 modified text.

percentage of the borrower's future income but also the amount of a borrower's income payable during the ISA, to cover the different ways in which ISAs may be structured.

Section 2032(a)(15): The 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 or the term used for funding.

Section 2032(a)(16): The amendment adds "maximum payments" as a new definition in the student loan servicing regulations. Comments received confirmed that "maximum payments" is a term commonly used in ISAs. As such, the term must be defined and added as a data point required in the servicer's aggregate report. This information will increase the Department's ability to regulate ISA servicers.

Section 2032(a)(17): The amendment modifies the definition of minimum income threshold by deleting the word "annual" before "income." ISA contracts usually specify the amount of income which the borrower must make to be subject to repayment, which may or may not be the borrower's annual income. It may be based on monthly income or another period. This revision is needed to ensure minimum income threshold is reported whether or not it is calculated based on annual income.

Section 2032(a)(19): The amendment expands the definition of payment cap to state that the payment cap may be expressed as an amount or multiple of the amount funded, to cover the different ways in which ISAs may be structured. This is necessary to ensure the payment cap is reported regardless of how it is expressed.

Section 2032(a)(20): The 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 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 amendment revises the definition of qualifying payments to include that qualifying payments count toward the newly added "maximum payments," not just the payment cap and payment term, as originally written. This accords with industry facts and will provide accuracy in the data reported to the Department.

Section 2032(a)(29): The amendment revises the definition of traditional student loan to

clarify which private education loans are traditional student loans. Private education loans which are not traditional student loans fall within the definition of education financing products. This distinction is important, and this rule revision is necessary, because servicers must comply with aggregate reporting and records maintenance rules that differ depending on whether the loan is a traditional student loan or an education financing product. Clarifying which private education loans are traditional student loans clarifies which set of rules the servicer must comply with.

Section 2040(d): The original text stated that a payment was on-time if received on the due date, based on the time zone in which made. This 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 protect California borrowers and to eliminate imposing an unnecessary, costly burden on servicers tasked with monitoring payments made in various time zones. Most servicers are headquartered in time zones earlier than California's Pacific Time. Without this rule modification, a servicer could argue that a payment made online was received based on the earlier time zone in which the servicer operates. If made by a California borrower on the due date in Pacific Time but considered late if based on Eastern Time, such payment could be considered as untimely, possibly subjecting the borrower to a late fee and other negative consequences.

Section 2040.5(a): The 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 much 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 these important servicer communications.

Section 2042(b)(7): The amendment revises the information which servicers must maintain in aggregate reports for traditional student loans to provide that, in addition to the loan balance and status of each loan serviced, the total amount paid on each loan must be included. This is necessary to provide a complete status of each of borrower's individual loans, which in turn will provide a complete picture of the borrower's total debt serviced and overall financial position.

Section 2042(b)(8): The 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 provide a complete picture of the borrower's total debt, repayment history and where the borrower stands in the repayment process. This information will facilitate the Department's review of servicer practices.

Section 2042.65(b)(6): The 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. This information is necessary to allow the Department to review servicer practices.

Section 2042.65(c)(1): The 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." This is a conforming change to accord with the same change made to the definition of ISA.

Section 2042.65(c)(2): The 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." This is a conforming change to accord with the same change made to the definition of ISA.

Section 2042.65(c)(4): The amendment requires servicers to include in the aggregate report the borrower's income share. The original proposed text required the servicer to include the "income share percentage," "income share," or "contractual payment percentage" to accord with the definition of this term. However, the final text removes "income share percentage" and "contractual payment percentage" as unnecessary and simply defines "income share." The amendment to this subsection makes the same change to the required reporting item as is made to the definition of income share, to accord with the change to the definition.

Section 2042.65(c)(6): The amendment requires servicers to include in the aggregate report for each ISA serviced the "minimum threshold." The original text required servicers to include the "minimum threshold or payment floor." Payment floor is included in the definition of minimum threshold as an alternative term meaning the same thing as minimum threshold. The final text removes "or payment floor." It is unnecessary to provide the synonymous term in this subsection.

Section 2042.65(c)(7): The amendment requires servicers to include the payment cap. The original text required servicers to include "payment cap or payment ceiling." Payment ceiling is included in the definition of payment cap as an alternative term meaning the same thing as payment cap. The final text removes "or payment ceiling." It is unnecessary to provide the synonymous term in this subsection.

Section 2042.65(c)(8): The amendment changes the required reporting item from "payment window or maximum payment term" to "payment term." The definition of "payment term" in the final text removes synonymous terms included in the original text. The change to this subsection is necessary to conform to the definitional change.

Section 2042.65(c)(9): The amendment adds "maximum payments" as a data point servicers must include in the aggregate report. Maximum payments was not a defined term in the original text, nor included as a required data point in the aggregate report. Based on comments submitted, the Department identified that maximum payments of ISAs is information that is needed for the Department to examine servicers of ISAs.

Section 2042.65(c)(11): The 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. This is necessary to provide a complete, clear picture of the repayment status of the borrower's ISA and the borrower's financial picture.

Section 2042.65(d)(1): The 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." This is a conforming change to reflect the same change made to the definition of installment contract.

Section 2042.65(d)(2): The 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." This is a conforming change to accord with the same change made to the definition of installment contract.

Section 2042.65(e)(1): The amendment applies to education financing products which are not ISAs or installment contracts. The 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." This change reflects the various ways education financing products can be funded.

Section 2042.65(e)(2): The 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." This change reflects the various ways education financing products can be funded.

Section 2042.75(a): The 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 change is necessary to allow examiners to conduct the entire examination at one servicer location, eliminating unnecessary burden on the Department and expense on the servicer which would have to pay the examiner's costs to travel from one location to another.

The Department adds the following additional clarification of necessity for the proposed rules listed below, which were modified in the March 6, 2023 Modified Text.

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. This change is necessary because, as explained in some of the comments received, some ISA providers use a payment cap that is based on an APR.

Section 2032(a)(23): The 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. This change is necessary because qualifying payments do not count toward the payment term as the payment term is a fixed length of time that is not dependent on the number of qualifying payments.

Section 2040(d): The 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.

Previously, the rule required all payments made by 11:59 p.m. Pacific Time be counted as an on-time payment, even if the servicer's website includes an earlier cut off time (earlier time zone, for example) for electronic payments to be credited on the date the payment is made. 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 change is necessary to be fair and to avoid imposing an unnecessary burden and expense on servicers.

The Department adds the following additional clarification of necessity for the proposed rules listed below, which were removed or revised in the Final Regulation Text.

Section 2032(a)(26): In the Final Regulation Text, the Department removed this section, the definition of "student loan," due to possible inconsistency with the statute being interpreted.

Section 2040(d): In the Final Regulation Text, the Department removed the second paragraph proposed to be added to this section, due to possible inconsistency with the statute being interpreted.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF SEPTEMBER 9, 2022 THROUGH OCTOBER 28, 2022. [Government Code Section 11346.9, Subdivision (a)(3)]

The Department received five letters during the 45-day public comment period. The comments are summarized below, together with the Department's response.

1. Commenter: The California Association of Private Postsecondary Schools (CAPPS)

The commenter makes no specific comments about, nor request for specific edits to the text of the proposed rules. Rather, CAPPS opposes the rulemaking, arguing that installment contracts used to finance a student's higher education are not student loans.

CAPPS states that it is the is the only California association that represents private postsecondary schools in California and has more than 200 members, including proprietary, non-profit, and religious institutions.

CAPPS acknowledges that installment contracts have been widely used, for decades, by private postsecondary schools and thus especially objects to defining student loan to include installment contracts. CAPPS argues that "installment contracts," as defined in this rulemaking, are not loans but retail installment contracts, subject to another statutory scheme-the Unruh Act.[4]

CAPPS asks that, if the final rules continue to include installment contracts within the definition of student loans, requiring licensure of servicers of installment contacts, the final rules "only be applied on a going-forward basis after a reasonable transition period of not less than one year."

[4] Civ. Code, § 1801 et seq.

Response: As stated in the Initial Statement of Reasons (ISOR),[5] the Commissioner has already addressed and rejected the argument made by lenders and servicers of education financing products, including income share agreements and installment contracts, that these alternative products are not loans. The Commissioner filed this rulemaking to make her determination clear. As further noted in the ISOR, the Consumer Financial Protection Bureau has also held that income share agreements are within the definitions of "credit" and "private education loan" and subject to the Truth in Lending Act, 12 U.S.C. § 1601 et seq. and implementing Regulation Z, 12 C.F.R. Part 1026.6.

The Commissioner determined that all "education financing products" (defined in the rules as all private student loans which are not traditional student loans), regardless of the name of the product, are student loans because they do the same thing that traditional and other private student loans do: finance a student's education.

The Legislature acknowledged that installment contracts are student loans when it originally enacted the Act in 2017 and excluded a subset of installment contracts from "student loan."[6] The Legislature could have chosen to exclude all installment contracts used to finance postsecondary education from the definition of student loan but did not do so. The Legislature made the reasonable determination that all products used to finance a student's postsecondary education should be supervised and regulated by the Department, the state's financial services regulator. Postsecondary education is not "goods," defined in the Unruh Act as "tangible chattels bought for use primarily for personal, family or household purposes."[7]

The final rules will become effective on January 1, 2024, in accordance with the usual timeline specified in the Administrative Procedures Act.[8] The Department does not intend to request an earlier effective date.

2. Commenter: The ISA Alliance

Comment No. 2.1: The commenter recommends using the definition of "income share

[5] Initial Statement of Reasons, p. 2: "The Commissioner has determined that, in addition to traditional student loans, all education financing products used to pay for higher education, including but not limited to income share agreements and installment contracts, are student loans covered by the Act and that servicers of these education financing products are student loan servicers covered by the Act and must be licensed." Available at <INITIAL STATEMENT OF REASONS (ca.gov)>.
[6] Fin. Code, § 28104, subd. (*l)*(2)(B).
[7] Civ. Code, § 1802.1.
[8] Gov. Code, § 11343.4, subd. (a)(1).

agreement" included in "The ISA Student Protection Act of 2022,"[9] federal legislation introduced and referred to the Committee on Finance last year in the previous Congressional term. Congress took no further action on this bill before the 117th Congressional term ended.

Response: The Department agrees in part and disagrees in part. The Department revised the definition in the modified text by adding some of the language included in the ISA Student Protection Act of 2022 definition but did not adopt the definition in its entirety, as unnecessarily complicated. Specifically, the Department added the verbs "advanced" and "credited" in acknowledgement of the ways in which an ISA may be paid out by the provider or school. The Department also expanded what is payable with ISA funds, in lieu of limiting same to "tuition" by stating that ISAs may be used to pay some or all of "postsecondary education and costs of attendance at a postsecondary institution, including but not limited to tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses." The Department's modified definition most accurately defines an income share agreement without being complicated.

Comment No. 2.2: The commenter recommends using the definition of "minimum income threshold" included in The ISA Student Protection Act of 2022.

Response: The Department declines to make the requested change as it is unnecessary. However, the Department did make one change to the definition prompted by a review of the recommended alternative definition. The Department deleted the word "annual" before "income" as repayment may be based on income over a period other than annually, as specified in the ISA.

3. Commenter: Nelson Mullins Riley & Scarborough, LLP, on behalf of Better Future Forward, Inc. and Stride Funding, Inc.

Comment No. 3.1: The commenter suggests revising the definition of income, asserting that some ISA providers define income more narrowly than the proposed definition.

Response: The Department agrees that it is necessary to modify the definition and accepted the commenter's recommendation to delete the word 'gross' before income.

[9] Available at < https://www.congress.gov/bill/117th-congress/senate-bill/4551/text?q=%7B%22search%22%3A%22S.+4551%22%7D>.

However, the Department declines to use the alternative definition in its entirety. The Department has modified the definition to specify the types of funds included in the definition and to clarify that passive income is excluded, listing examples of passive income. The definition only applies to "income" as used in the regulations. It would not negate an ISA contractual provision which specifies that certain types of active income listed in the definition are not included in the calculation upon which ISA payments are based.

Comment No. 3.2: The commenter recommends using the definition of "income share agreement" included in The ISA Student Protection Act of 2022.

Response: The Department declines to make the requested change, repeating its response to the same comment made by the ISA Alliance at comment no. 2.1 above.

Comment No. 3.3: The commenter recommends changing the term "income share percentage," "income share," or "contractual payment percentage" to the new term "payment calculation method." The commenter also recommends deleting the rest of the proposed definition and replacing it with a definition for the new term "payment calculation method."

Response: The Department agrees in part and disagrees in part. The Department agrees that the terms "income share percentage" and "contractual payment percentage" are duplicative of "income share" and unnecessary. The Department has deleted these two synonymous terms, leaving only "income share" as the defined term.

The Department declines to make the remaining changes requested by the commenter. ISAs, as the product name indicates, involve a student borrower sharing the borrower's future income with the provider as the repayment method and is a term commonly included in ISAs. Thus, it is most appropriate to define income share.

Based on other industry comments indicating that repayment may be either a percentage or amount of a borrower's future income, the Department modified the definition to add these italicized words.

Comment No. 3.4: The commenter suggests revisions to the definition of installment contract.

Response: The Department declines to make the requested changes, as unnecessary. The new sentence the commenter proposes to add at the end of the definition, stating that ISAs are "subject to those provisions applicable to an income share agreement, as opposed to those applicable to an installment contract" is evident from the definitions of

ISA and installment contract. The Department has also modified the reporting sections of these rules to specify the sections which apply to ISAs and the sections which apply to installment contracts.

Comment No. 3.5: The commenter suggests using the definition of minimum income threshold included in the ISA Student Protection Act of 2022.

Response: The Department declines to make the requested change, repeating its response to the same comment made by the ISA Alliance at comment no. 2.2 above.

Comment No. 3.6: The commenter recommends modifying the definition of payment cap to add that the cap may be expressed as a dollar value, a multiple of the amount funded or as a maximum effective annual percentage rate, excluding (in addition to charges related to default) other charges and fees due and owing under the income share agreement.

Response: The Department accepts the conceptual recommendation and modifies the definition to mean maximum amount payable under an ISA "which 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.

Comment No. 3.7: The commenter recommends deleting the defined term "payment term," "payment window," "maximum payment term" or "repayment term" and replacing it with the new term "maximum payment duration" and a new definition to define the same concept and standard ISA term.

Response: The Department agrees with deleting the synonymous terms used for payment term. These additional synonymous terms are duplicative and therefore unnecessary. The Department declines to make the additional changes requested, as unnecessarily lengthy and complicated.

The proposed rules define terms used elsewhere in the rules. The terms must be defined so that servicers know the information which must be included in the aggregate reports of education financing products servicers must maintain and produce within ten days of a request by the Commissioner. If a term is defined differently in an ISA, the required information, as defined, will nonetheless be required in the aggregate report. This will allow the Department to effectively supervise and examine servicers and fulfill its statutorily mandated responsibilities.

Comment No. 3.8: The commenter recommends adding a new term, "maximum income-

based payments," to the definitions and defining it as defined in the ISA Student Protection Act of 2022.

Response: The Department agrees with the concept but declines to make the exact change requested. (As noted above, the referenced federal bill died in the last Congressional session, not having advanced further than introduction and referral to committee.) The Department has added "maximum payments" as a new definition in these rules. The Department added the definition because maximum payments is an aspect of ISAs. The Department's definition of maximum payments accords with the industry definition and commonly understood meaning. It is necessary to define maximum payments because servicers must include maximum payments in the aggregate servicing report.

Comment No. 3.9: The commenter recommends modifying the definition of qualifying payment to specify that a monthly payment must be greater than $0 to count toward the ISA payment cap or maximum payments.

Response: The Department declines to make this change as some ISAs may provide that "payments" of $0 count as qualifying payments (similar to $0 payments which count as payments in the federal student loan context). Adding the requested language would be inconsistent with how some ISAs count monthly payments.

Comment No. 3.10: The commenter recommends modifying the definition of traditional student loan with its suggested language.

Response: The Department modifies the definition of traditional student loan and includes a concept suggested by the commenter but declines to use the exact definition recommended by the commenter. The Department declines to include the last sentence in the commenter's suggested definition.[10] This sentence adds unnecessary detail and complexity to the definition.

Comment No. 3.11: The commenter recommends revising section 2040(d) to provide that payments received on or before 11:59 p.m. Pacific Time (daylight or standard, as

[10] "A traditional student loan may have a debt forgiveness feature (or excused payment mechanism) that is based upon a student's income without the traditional student loan being treated as an income share agreement."

applicable), on the date on which that payment is due, shall be credited as received on such due date and treated as an on-time payment.[11]

Response: The Department agrees with the commenter and has made the requested change but has also added that this modified rule applies only "if the licensee has not posted a cut off time [on its website for same day crediting]." If the licensee has posted cut off times, those times prevail. Previously, the rule required all payments made by 11:59 p.m. Pacific Time be counted as an on-time payment, even if the servicer's website includes an earlier cut off time (earlier time zone, for example) for electronic payments to be credited on the date the payment is made. 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 change is necessary to be fair and to avoid imposing an unnecessary burden and expense on servicers.

Comment No. 3.12: The commenter asserts that ISAs do not have "payoff amounts," as that term is commonly understood to mean in traditional lending, but, rather, an "early completion provision." The commenter recommends revising section 2042.65(b)(6) to add as a required reporting item for servicers of ISAs a description of the early completion provision.

Response: The Department agrees with the commenter and has modified the rule to state "[p]ayoff amount or, in the case of an income share agreement, a description of the early completion provision and calculated dollar amount that allows students to terminate the income share agreement." The Department's modification uses similar but not the exact language suggested by the commenter.

Comment No. 3.13: The commenter recommends modifying section 2042.65(c)(3) to add that servicers of education financing products must include in the aggregate report "borrower's income (or that portion of the borrower's income that is less than the full income) that is used by the licensee in calculating the borrower's obligations under the income share agreement." The commenter recommends adding language to several

[11] Comment No. 3.11 and the Department's Response are now moot because, in the Final Regulation Text, the Department removed the second paragraph proposed to be added to this section, due to possible inconsistency with the statute being interpreted.

defined terms included in the list of items servicers must include in their aggregate reports, which report must also be made available to the student borrower.

Response: The Department declines to make the requested changes.

The rules require certain information about the education financing products serviced so the Department can review data on the products offered and their market, in order to effectively supervise and examine servicers of education financing products. The definitions are only applicable to these rules.

The Department declines to modify the reporting requirement to require the portion of the borrower's income that is used in calculating the obligations under the income share agreement. The Department finds it will obtain the information it needs by requiring "income" as currently defined in the proposed rules.

Comment No. 3.14: The commenter recommends replacing the methodology included in section 2042.65(c)(5) to calculate ISA APRs required in servicers' aggregate reports with a new rule requiring additional data inputs and various calculations.

Response: The Department declines to make the requested change. Various stakeholders have asserted that it is difficult to calculate APRs for ISAs given the contingencies inherent in the product. The APR calculation which the Department proposes requires the input of minimal data points, making the rule relatively easy to comply with. The rule calculates APR in a way that resembles APR in traditional financing products and does not impose a burden on servicers which has not yet proven to be necessary.

Comment No. 3.15: The commenter recommends modifying section 2042.65(c)(8) to replace "payment term" as a required reporting item with "maximum payment duration," the new term and definition suggested above.

Response: The Department declines to make the requested change. The comment is moot as the Department has declined to replace the defined term "payment term" with "maximum payment duration," for the reasons stated in its response to Comment 3.7, which the Department reiterates here.

Comment No. 3.16: The commenter recommends modifying section 2042.65(c)(9) to replace "maximum payments" as a required reporting item with "maximum income-based payments," the new term and definition suggested above.

Response: The Department declines to make the requested change. The comment is moot as the Department has declined to replace the defined term “maximum payments” with “maximum income-based payments,” for the reasons stated in its response to Comment 3.8, which the Department reiterates here.

Comment No. 3.17: The commenter recommends that section 2042.75(a) be revised to authorize electronic production to the Department of required books, records, and accounts.

Response: The Department agrees with the commenter and has modified the rule, expressly providing that “books, records and accounts required for inspection by the Department may be provided electronically.”

4. Commenter: The Student Borrower Protection Center

Comment No. 4.1: The commenter recommends modifying the definition of forbearance at 2032(a)(8) to replace “will” with “may,” to state that “unpaid interest that accrues during forbearance may ~~will~~ be added to the principal balance (capitalized) of the loan(s), increasing the total amount owed by the borrower(s).” The commenter asserts that this change would accord with proposed federal rulemaking by the U.S. Department of Education.

Response: The Department agrees with the recommended change and has modified the definition of forbearance, making the change. This modification recognizes that servicers may choose not to capitalize accrued interest, which is much more favorable to student borrowers.

Comment No. 4.2: The commenter recommends modifying the definition of income share agreement to state that the student agrees to pay a “predetermined percentage,” rather than a “fixed percentage” of their future income.

Response: The Department agrees that the word fixed should be deleted and has made that change in the modified definition of income share agreement. The Department declines to make the recommended change to substitute “predetermined” for “fixed.” Rather, the Department has modified the definition to state that an ISA is an agreement under which the student agrees to pay “a percentage or amount” of the student’s future income. Other industry commenters recommended adding “or amount,” asserting that some ISAs require a specified amount, rather than a percentage of borrower’s future income. It is necessary to modify the definition to accord with the varied ways in which

ISAs are written in order capture ISAs within the definition regardless of how they are structured.

Comment No. 4.3: The commenter recommends modifying the definition of installment contract to include instances of deferred payment, recognizing that, when a school is the lender, the school may defer payment rather than advance funds. The commenter also recommends that the Department make conforming changes to the related reporting requirements in sections 2042.65(d)(1)-(2) and (e)(1)-(2).

Response: The Department agrees with the recommendation and has modified the definition to state, "amount advanced, covered, credited, deferred or funded." This change is necessary to capture installment contracts within the definition regardless of how they are structured.

Comment No. 4.4: The commenter recommends modifying section 2040.5 to require servicers to treat pre-litigation notices required under the Student Loans: Borrower Rights Law at Civil Code section 1788.103(d)(1) as Qualified Written Requests.

Response: The Department declines to make the requested change. The pre-litigation notices referenced by commenter are not included within the definition of Qualified Written Request in the Student Loans: Borrower Rights Law.[12] Rather, Civil Code section 1788.103(d)(1) requires a borrower to send this notice as one of the conditions precedent to filing a civil action against a servicer.

The Department does not have the authority to make the requested change; it would require an amendment to current law. Only the California Legislature has the authority to make the requested change.

Comment No. 4.5: The commenter recommends reinsertion of loan applications to the list of loan servicing records servicers must maintain for each borrower. The proposed rules remove loan applications from the list.

Response: The Department declines to make the requested change. Department examiners have learned, after five years of examining student loan servicers, that it is not necessary to review loan applications, which relate to lending practices, not servicing practices, in order to effectively regulate and supervise servicers. While the Department removed the requirement to maintain loan applications, the Department made mandatory the requirement to maintain many other documents deemed necessary, based on the

[12] Civ. Code, § 1788.100, subd. (o).

Department's experience, to effectively supervise and regulate servicers. These changes strike a balance between protecting student borrowers and eliminating unnecessary regulatory burden on servicers.

Comment No. 4.6: The commenter recommends defining "payoff amount," which is required for education financing products, especially with reference to ISAs.

Response: The Department agrees with the commenter and has defined payoff amount to include "in the case of an income share agreement, a description of the early completion provision and calculated dollar amount that allows students to terminate the income share agreement," as noted in the Response to Comment 3.12 above.

Comment No. 4.7: The commenter recommends modifying the funded amount and funded date required in the aggregate servicer report to counter arguments by some ISA providers that no funds are advanced in their transactions and that there is no funded amount. The commenter also recommends requiring reporting a tuition cash price, arguing that some schools which are income share agreement providers may inflate their tuition cash price.

Response: The Department agrees in part and disagrees in part. As stated in its Response to Comment 2.1, the Department modified sections 2042.65(c)(1) and (2) to require ISA servicers to include in the aggregate report the amount advanced, covered, credited, deferred, or funded and the date thereof. The Department made similar, conforming changes to the definitions of ISA and installment contract and throughout the proposed rules.

The Department declines to require servicers to report a cash tuition price for the school attended. The Department has not determined this data is necessary. The Department may propose new rules if it later determines that this information is necessary.

Comment No. 4.8: The commenter recommends modifying section 2042.65(c)(3) to specify that the income which servicers must include in the aggregate report for ISAs "should be the most recent income used to calculate a borrower's monthly payment."

Response: The Department declines to make the requested change as it is unnecessary. Section 2042.65(a) requires servicers to maintain a "*current,* aggregate report of education financing products it services and…produce it within ten (10) days of a request by the Commissioner." (Emphasis added.) A current report must be based on current information, which would include borrower's income upon which the monthly payments

included in the report are based. The requested language would be duplicative and unnecessary.

Comment No. 4.9: The commenter recommends several modifications to the APR reporting requirement for ISAs at section 2042.65(c)(5) to: require servicers to 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; to include the present effective APR; and to require a narrative explanation of how the servicer applied the APR methodology set forth in Regulation Z, which servicers are required to use under the proposed definition of APR.

Response: The Department declines to make the requested changes because it has not determined that the burden they impose on servicers is necessary. The proposed APR reporting requirement strikes a balance between student borrower protection and effective regulatory supervision.

Comment 4.10: The commenter recommends clarifying section 2042.65(c)(9), which, in the originally proposed rule, required reporting the number of required payments for ISAs, to accord with the requirement to report the maximum payment term. “To the extent the Department seeks the number of payments above 0 dollars required to extinguish the repayment obligation, it should state that.”

Response: The Department agrees with the conceptual recommendation. Specifically, the Department modified the rule to require “maximum payments” instead of the “number of required payments” and added a definition of maximum payments. These changes are necessary to provide the Department more useful data regarding ISAs.

Comment 4.11: The commenter recommends revising section 2042.65(c)(10), which requires ISA servicers to include borrowers’ “monthly payments” in aggregate reports, to require reporting both the current and average monthly payment amounts.

Response: The Department declines to make the requested change. Requiring the average monthly payment would impose an additional burden on servicers without adding any proven benefit to borrowers or facilitating more effective supervision by the Department.

Additional comment 4.12: The commenter recommends adding definitions of “postsecondary education” and “cost of attendance at a postsecondary institution.”

Response: The Department is not required to respond to this comment as it does not relate to a specific proposed rule. However, the Department responds as follows: The Department declines to make the additional changes recommended. Postsecondary education is commonly understood to mean education after high school. The Student Loan Servicing Act has been in effect for over six years. There has been no indication that the term is unclear or misunderstood by student borrowers or student loan servicers.

Costs of attendance also has a commonly understood meaning and is referenced in the statutory definition of student loan.[13] The statutory definition lists examples of costs of attendance, as "including, but not limited to, tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses." The proposed rules include the same list within the definition of income share agreement.

Additional comment 4.13: The commenter recommends requiring servicers to include in their aggregate loan servicing reports the amount that a borrower has paid to date on each student loan.

Response: The Department is not required to respond to this comment as it does not relate to a specific proposed rule. However, the Department agrees with this additional comment. The Department has modified sections 2042(b)(7) and (8) to require servicers of traditional student loans to include the total amount paid for each loan and the cumulative amount paid by each borrower. The Department has modified section 2042.65(b)(11) to require servicers of ISAs to include the number and total amount of qualifying payments made.

Additional comment 4.14: The commenter recommends amending current section 2039(c)(2) to specify that servicers of income share agreements must post a surety bond based on "the aggregate payment cap of their income share agreements portfolio and not the aggregate of the funded amount of payments made….."

Response: The Department is not required to respond to this comment as it does not relate to a specific proposed rule. However, the Department responds as follows: The Department declines to make this change. The surety bond amount is based on the licensee's annual report filed by March 15 of each year, based on year-end numbers from the preceding year.[14]

[13] Fin. Code, § 28104, subd. (l)(1); Civ. Code § 1733.100, subd. (q)(1).
[14] Fin. Code, §§ 28142 and 28146.

5. Commenter: The Student Loan Servicing Alliance (SLSA)

Comment No. 5.1: The commenter makes a general comment about section 2042.65(c)(5) but suggests no specific edits. The commenter states that it understands that APRs "are helpful for borrowers making comparable choices *before* taking out a loan" but recommends against a definition that involves recalculating APR after origination, "as future APR recalculations are no longer a calculation that can be consistently compared because the revised APR calculation is a function of the term of the loan and other borrower statuses or decisions to use or not use contractual flexibilities, unlike most other credit products."

Response: There is nothing for the Department to accept or decline, as SLSA does not request any specific edits. The Department notes, however, that APR is required to be reported to the Department by servicers during the servicing of the loan because this information will provide insight into the product and allow the Commissioner to determine its impact on consumers and whether legislative action should be sought to prevent abuse.

Comment No. 5.2: The commenter suggests defining private student loan as including private education loans, as defined in Regulation Z, 12 C.F.R. Part 1026, and education financing products as defined in the proposed rules.

Response: The Department agrees in part with the concept but disagrees with the wording of the proposed edits. The Department agrees that it is preferable to conform state and federal rules as much as possible for consistency, to avoid confusion or varying interpretations of different rules, and to eliminate the burden on servicers of having to comply with two different definitions. For these reasons, the Department has modified the definition of private student loan to include private education loans, as defined in the Truth in Lending Act (TILA), at 15 U.S.C. § 1650(a)(8), rather than in Regulation Z. The Department has chosen the statutory definition, which is the same definition adopted by the CFPB in its Consent Order with Better Future Forward,[15] clarifying that ISAs are within the TILA definition of private education loan. The Department adopts the TILA definition to capture all ISAs within the definition of private education loan, as opposed to the Regulation Z definition, which is narrower.

[15] 2021-CFPB-0005, In the Matter of Better Future Forward, Inc., et al., pp. 12-13, <https://files.consumerfinance.gov/f/documents/cfpb_better-future-forward-inc_consent-order_2021-09.pdf> (as of June 22, 2023).

Comment No. 5.3: The commenter suggests defining federal student loan as "loans made, insured or guaranteed under Title IV of the Higher Education Act, as amended, 20 U.S.C. § 1070, et seq." as that is the meaning commonly understood by all.

Response: The Department agrees with commenter and has modified the rule as requested.

Comment No. 5.4: The commenter asks to define education financing products to include only ISAs and installment contracts.

Response: The Department declines to make the requested change because limiting the definition to only two product types would fail to capture other education financing products. Modifying the definition as the Department has done (*see* following paragraph) protects student borrowers and aligns with the Act, the Commissioner's finding in the Meratas, Inc. Consent Order (Order)[16] and the purpose of these regulations. The Act defines student loan as "*any loan* made solely for use to finance a postsecondary education and costs of attendance at a postsecondary institution"[17] and expressly excludes only a handful of very specific types of credit such as residential mortgages. As the Order notes, "[t]he Act focuses on the purpose for which financing is used, not in strict accordance with the labels or titles attached to a financing agreement, which might otherwise allow a financer to dictate regulatory protections."

The Department modifies the definition of education financing products to be private student loans which are not traditional student loans. This definition is necessary to capture innovative business models that are not ISAs or installment contracts. The Department modified the definition of private student loans, using the comprehensive definition in TILA rather than the more limiting definition in Regulation Z. The Department also modified the definition of traditional student loans.

Comment No. 5.5: The commenter requests changing the definition of student loan to include "private education loans, federal education loans, and education financing products," using the underlying requested changed definitions.

Response: The Department declines to make the requested changes. The Department has declined to make the requested changes to the definitions of private student loan and education financing products, as explained above. "Student loan" should not be redefined

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[16] <California Department of Financial Protection and Innovation-Consent Order> (as of July 24, 2023) "As a licensing and remedial statute, the SLSA should be construed broadly to effectuate its purposes."
[17] Fin. Code, § 28104, subd. (*l*).

to include "private education loans, federal education loans, and education financing products" because those loans are already encompassed by the "federal student loans" and "private student loans," which are in the current definition of student loan.

Comment No. 5.6: The commenter requests changing the definition of traditional student loan to include federal student loans and "private education loans," as defined more restrictively in Regulation Z.

Response: The Department declines to make the requested change because using the underlying broad definition of private education loan, as defined in TILA, best protects student borrowers. The Department further modified the definition of traditional student loan to include federal student loans or private education loans "which use promissory notes and loan agreements to evidence the loan and provide for the repayment of a principal balance with a fixed or variable interest rate." This definition best reflects the commonly understood meaning of a "traditional student loan" while also capturing, within the definition of private education loans under TILA, all other education financing products. This is necessary to protect all student borrowers, regardless of the name of the product used to finance his or her education.

Comment No. 5.7: The commenter asks to modify section 2040(d) to state that, if the licensee has not posted a cut off time by when payments must be made to be credited on that day, a payment received on or before 11:59 p.m. *in the time zone in which the borrower is known to reside* will be credited as having been made on such date and treated as an on time payment. (Emphasis added.) The commenter asserts that "[s]ervicers are generally national providers and…work with borrowers across the country. They also have their centers of operations in various locations around the country…[T]his means that they have historically had systems designed to operate on one standard for payment time cutoffs, which can vary but is always specific and disclosed. (….) To not allow the reasonably and properly disclosed terms of … the policy clearly disclosed on their website that aligns with their operational capabilities …to be the appropriate guide and protection for borrowers will be challenging and costly to implement."[18]

Response: The Department agrees that the commenter's reasons for requesting the change are reasonable but declines to make the requested change as unnecessarily burdensome on servicers and the Department.

[18] Comment No. 5.7 and the Department's Response are now moot because, in the Final Regulation Text, the Department removed the second paragraph proposed to be added to this section, due to possible inconsistency with the statute being interpreted.

The Department has modified this subsection to state that, if a licensee has not posted the cut-off time for payments to be credited that day, the payment will be considered made on that day if made by 11:59 p.m. Pacific Time. This provides the desired uniformity in those cases where servicers have not posted their payment crediting policy and is reasonable given that this rule implements California laws, has the greatest nexus to California, and will best protect California student borrowers.

Comment 5.8: The commenter asks to edit section 2040.5 to add that required responses to Qualified Written Requests must *be sent by the preferred method of communication indicated by the borrower (email, or regular mail through the United States Postal Service).*

Response: The Department agrees with the commenter and has made the requested change. The Department further modified the rule to capture those situations in which the borrower has not indicated a preferred method of communication, adding as a last sentence: "If the borrower has not indicated a preferred method of communication, the servicer shall send the acknowledgment of receipt and responses to Qualified Written Requests by regular mail, through the United States Postal Service, to the borrower's last known mailing address on record and to all email address(es) the servicer has on record for the borrower." This additional modification is necessary to use all options to try to ensure that borrowers receive communications from their servicer.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF JANUARY 6, 2023 THROUGH JANUARY 26, 2023 [Government Code Section 11346.9, Subdivision (a)(3)]

The Department received five comments during this 15-day public comment period.

1. Commenter: Better Future Forward, Inc., Jobs for the Future, Stride Funding Inc. and Social Finance, Inc. (collective comment letter)

Comment No. 1.1: The commenter asks to clarify that the use of private education loan within the definition of education financing product means private education loan as defined in TILA.

Response: The Department agrees with the commenter. The Department revised the definition of education financing product to mean all private *student* loans which are not traditional student loans. The definition of private student loan specifies that private

student loan means “a private education loan, as defined in the Truth in Lending Act, at 15 U.S.C. 1650(a)(8).”

Comment No. 1.2: The commenter asks to revise the definition of “income” and offers two alternative definitions: a general definition without any itemization of the types of income included within the definition, and a second definition which itemizes the types of income included and also excludes passive income.

Response: The Department declines to use the first alternative definition. Its lack of specificity creates questions as to what categories of income are included and whether passive income is excluded. The Department agrees with the concept, but not the specific wording of the second alternative definition, and that it is helpful to clarify that passive income is excluded. The commenter’s definition of passive income is too general, making it unclear and open to interpretation. The Department modified the definition to specify that passive income is excluded and listed examples of passive income, providing clarity.
Comment No. 1.3: The commenter asserts that the definition of income share agreement “fails to explicitly state that the payment is contingent on income” and suggests using an alternative phrase within the definition of income share agreement to make this point.

Response: The Department declines to make this change. The current definition is clear as written and sufficiently states that payment is contingent on income by providing that “the student agrees to pay a *percentage or amount of the student’s future income*….” (emphasis added).

Comment No. 1.4: The commenter suggests adding that payment cap may be expressed as an APR, asserting that “[s]ome ISA providers use a cap that is based on an APR. We would suggest that the definition states explicitly that a payment cap can be expressed as an APR cap as these can provide material student protections.”

Response: The Department agrees with the comment and has made the requested change to the definition.

Comment No. 1.5: The commenter asks to add the following at the end of the current definition of payment term: “after which the student’s obligation is complete regardless of the amount paid by student to the income share agreement provider or school (as long as the student has paid any prior amounts due).”

Response: The Department declines to make this change. The definition is clear as written, providing that “payment term” means “the payment window or *maximum period of repayment obligations* under an income share agreement or other written agreement

evidencing an education financing product." (Emphasis added.) It is unnecessary to add the requested language.

Comment 1.6: The commenter makes no suggested edit to section 2043(a). Rather, the commenter asks for clarification of the meaning of "contract" and "contract and delivery schedules" referenced in this subsection.

Response: The Department is not required to respond to this comment as the comment does not address any proposed amendments to the rule. Therefore, the Department declines to modify this rule.

2. Commenter: Nelson, Mullins, Riley & Scarborough, LLP

The Department makes no response, as commenter made no comments on specific rules. Rather, commenter submitted the letter to clarify its comment letter on the original proposed text, submitted on October 28, 2022, to "ensure that nothing…included in the initial letter, particularly the footnote, is misconstrued or misunderstood."

3. Commenter: The Student Borrower Protection Center

Comment No. 3.1: The commenter recommends "eliminating the term "qualifying payment" and instead requiring servicers to report on the progress made toward the "payment term," "maximum payments," and "payment cap" separately.

Response: The Department declines to make the requested change.

The Department has modified the definitions of qualifying payment, payment term, maximum payments, and payment cap to accord with their commonly understood meanings within the industry. Section 2042.65(c)(11) requires ISA servicers to report the number and total amount of qualifying payments made. Borrowers can determine the progress they have made toward the payment term, maximum payments and payment cap from a review of their records. Requiring servicers to calculate and transfer these additional items into aggregate reports imposes an unnecessary burden on servicers, without enhancing the Department's supervision of servicers.

4. Commenter: The Student Loan Servicing Alliance

Comment No. 4.1: The commenter again requests that, if a servicer has not posted its cutoff times for payments to be credited on the day made, the payment will be considered

as an on-time payment if made by 11:59 p.m. in the time zone in which the borrower resides.

Response: The Department declines to make the requested change, for the reasons stated in its Response to Comment No. 5.7.

5. Commenter: George Uberti, California resident and consumer advocate

Comment No. 5.1: The commenter objects to the removal of the word “waiving” from the original definition of income share agreement.

Response: The Department declines to make the requested change. An ISA is a loan product, meaning funds were transferred in some way and must be repaid. The current definition reflects this without use of the word “waiving.”

Comment No. 5.2: The commenter objects to deleting “subject to the floor and the cap” from the definition of income share.

Response: The Department declines to reinsert the deleted words. They are unnecessary. The floor and cap are provisions which may be separately accounted for in the ISA contract and need not be reflected in the definition of “income share.”

Comment No. 5.3: The commenter objects to the deletion of annual before income in the definition at section 2032(a)(17) of “minimum income threshold,” “minimum threshold,” “payment floor” or “floor.”

Response: The Department declines to reinsert annual before income. To do so may render the definition of “minimum income threshold,” “minimum threshold,” “payment floor” or “floor” inaccurate. These terms are defined in section 2032(a)(17) to mean “the amount of income specified in an income share agreement below which a borrower is not required to make payments.” This ISA contractual provision controls. This amount may be based on annual income or some other measure of time.

Comment No. 5.4: The commenter objects to the change to section 2042.75(a) from allowing licensees to designate the licensed location at which the Department may examine books and records to specifying that the Department shall designate such location.

Response: The Department declines to change the modified rule. This change is necessary. Under the original rule, licensees could have designated more than one licensed location, meaning examiners would have to travel among various licensed locations to view all records. In giving the Department the right to designate where it wishes to inspect such records, the Department can designate one location. This will save examiner time and energy and will also save servicers money, as servicers are responsible for paying all costs of examination,[19] which are higher if examiners are required to travel among various locations. The modified rule also authorizes licensees to submit required books, records and accounts electronically, which will also save time and resources for both licensees and the Department.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF MARCH 6, 2023 THROUGH MARCH 23, 2023 [Government Code Section 11346.9, Subdivision (a)(3)]

The Department received two comments during this 15-day comment period.

1. Commenter: Navient Solutions, LLC

Comment No. 1.1: The commenter asks to change the method by which servicers may send acknowledgments and responses to Qualified Written Requests to "the same method by which the servicer received the Qualified Written Request from the borrower."

Response: The Department declines to make the requested change. Under the Student Loans: Borrower Rights Law,[20] a Qualified Request is an inbound telephone call.[21] Qualified Requests must be treated as Qualified Written Requests and responded to in the same manner as a Qualified Written Request.[22] Servicers must "acknowledge[ing] receipt of the request within 10 business days and within 30 business days, provide information relating to the request and, if applicable, either the action the student loan servicer will take to correct the account or an explanation for the position that the borrower's account is correct."[23] This is to ensure that there is a written record of what has transpired between the servicer and borrower, which is necessary for DFPI to assess if the servicer is complying with the law.

[19] Fin. Code, § 28152, subd. (c)
[20] Civ. Code, § 1788.100, et seq.
[21] Civ. Code, § 1788.100(n)
[22] Civ. Code, § 1788.102(i).
[23] Civ. Code, § 1788.102(t)(1).

If the requested change was accepted, servicers could respond to “Qualified Requests,” originated by a phone call, with a phone call. In addition to being in contravention of the statutory requirement, the consequence of this would be no written record of the servicer’s response to the student borrower.

2. Commenter: Student Borrower Protection Center

Comment No. 2.1: The commenter recommends modifying section 2042.65(c)(8) to require servicers to report, in addition to the payment term, “the number of months that have elapsed that count toward [the payment] term, which may include months during which no payment was required.”

Response: The Department declines to make the requested change. The borrower may review the borrower’s own records to calculate the number of months. The requested change would not help or enhance the Department's supervision of ISA servicers. It would impose an unnecessary regulatory burden on servicers.

Comment No. 2.2: The commenter recommends removing the revision to the definition of payment cap which states that payment cap may be expressed as an APR. The commenter asserts that “the payment cap should clearly state the maximum dollar amount that a borrower could be expected to pay. (…) The proposed revision …puts the onus on the Department to translate the APR into a dollar figure before it can be used for any review or comparison.”

Response: The Department declines to make the requested change. The Department made this change in response to a request from ISA providers who represented that some ISAs are written this way. To remove APR from the definition would ignore industry facts. Data on ISAs which express payment caps as an APR will help the Department regulate the industry.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES [Government Code Section 11346.9, Subdivision (a)(5)]

The Commissioner has determined that no small business, within the meaning of Government Code section 11342.610, subdivision (b), conducts student loan servicing.

Therefore, no alternatives would lessen the impact of the proposed regulations on small businesses.

ALTERNATIVES DETERMINATION [Government Code Section 11346.9, Subdivision (a)(4)]

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The regulations adopted by the Department are to clarify that all education financing products used to finance a student's higher education, including income share agreements and installment contracts, are student loans subject to the Student Loan Servicing Act and the Student Loans: Borrower Rights Law. The proposed rules also clarify that servicers of these products are also subject to the Student Loan Servicing Act and the Student Loans: Borrower Rights Law and must be licensed. The rules include and define terms specific to these products and industry and are necessary to implement the Department's determination. The proposed regulations are the only provisions that clarify this determination, define such terms and ensure the Department will maintain prudential oversight of student loan servicers. Except as set forth and discussed in the summary and responses to comments, no other alternative has been proposed or otherwise brought to the Department's attention that is equally effective.

LOCAL MANDATE DETERMINATION [Government Code Section 11346.9, Subdivision (a)(2)]

The Commissioner has determined that the adoption of these regulations does not impose a mandate on local agencies or school districts.