Department of Consumer Affairs
Bureau for Private Postsecondary Education

FINAL STATEMENT OF REASONS

Hearing Date: July 14, 2016

Subject Matter of Proposed Regulations: Student Tuition Recovery Fund

(8) Sections Affected: Amend sections 76000, 76020, 76120, 76130, 76200, 76210, 76212 and 76215

UPDATED INFORMATION

The Initial Statement of Reasons and Updated Informative Digest are included in the file. The information contained in the Initial Statement of Reasons is updated as follows:

	Location in Initial Statement of Reasons:	Updated Information:
1.	Pg. 10 (Section 76200(a)(19)	Delete "that requires" as duplicative in first sentence under "Proposed Change."
2.	Pg. 13 ("Section 76210 numbering)	Delete typo number "9."
3.	Pg. 19 (Economic Impact Assessment)	Change "interrupt" in first bullet point to "interpret."
4.	Pg. 19 ("Consideration of Alternatives")	Change language in first sentence to "would be as effective ~~or~~ and less burdensome…"

The 45-Day public comment period began May 27, 2016 and ended July 14, 2016. The Bureau for Private Postsecondary Education (Bureau) held a regulatory hearing on July 14, 2016, in Sacramento, California. The Bureau received two comments during the 45-Day comment period and no comments at the hearing. The Bureau received one late comment in writing.

The Bureau issued a 15-Day Notification of Modified Text and Document Incorporated by Reference on January 13, 2017, and the Bureau received comments from one commenter.

The Bureau issued a second 15-Day Notification of Modified Text, Modified Document Incorporated by Reference and Document Incorporated by Reference on February 7, 2017, and the Bureau did not receive any comments.

The purpose of the modifications was to improve the overall clarity, specificity, and consistency of the proposal, and in response to comments (see comments below) of the proposed regulations in the specific sections and in manners listed below:

Section 76000(c)

The modification to the definition of "economic loss" was made following the Chaptering of SB 1192, which provided a definition for "economic loss."

Section 76000(d)
The modification added language to make it clear that this benefit is extended only when "no replacement of that benefit is available from the third party payer."

Section 76000(g)
The modifications added back to the definition of "Qualifying institution" that the institution must be "approved" by the Bureau. Any institution that is subject to Article 14 of the California Private Postsecondary Education Act (Act) is one that must be approved by the Bureau in order to operate pursuant to Education Code section 94886, which states: "[e]xcept as exempted in Article 4, a person shall not …do business as a private postsecondary institution in this state without obtaining an approval to operate under this chapter." Thus, an institution that is not exempt from the STRF provisions in the Act, must be one that is approved by the Bureau, and thus the definition of "Qualifying institution" should not have removed "approved institution."

Also, the modifications provide for the inclusion of out-of-state institutions under section 94801.5 of the Code that was added by SB 1192. The statutory definition states institutions subject to Article 14, commencing with section 94923, are eligible, yet SB 1192 added a new type of institutional eligibility, namely those that are "registered" as out-of-state private postsecondary institutions, and specifically provides that these institutions comply with Article 14. Thus, SB 1192 also clarified that institutions must have some form of approval from the Bureau, either through registration, or through an approval to operate.

Accordingly, the "approved" language was restored and out-of-state registration was included.

Section 76000(l)
The modification seeks to avoid confusion by removing "total" from "total charges" in the subsection so that it means any payment for student charges, not only the "total" charges.

Section 76020
The modifications added clarity and specificity by making the language easier to read for the average person, making clear that the determination of residency is made at the time of enrollment, providing eligibility for those students who receive assistance from third-party payers, and otherwise making the regulation consistent with the statute.

Section 762000(a)
The modifications incorporate by reference two application forms. One form is in English, the other form is in Spanish, but they are the same form. As the forms have been incorporated by reference into the regulation, the enumerated list of information to be included in the application form has been deleted. Additionally, modifications were made to clarify the signing of the application under penalty of perjury.

Section 76200(b)

The modifications under subsections (1) and (2) are in response to SB 1192. Previously, the Bureau had set the time limitation for filing a STRF claim. SB 1192 set the time limitation by statute, so the modification reflects this change. The modifications to (b) are to make the regulation easier to read and understand what is needed in regards to the application and supporting documents.

Section 76200(c)
The modification removes language that was unnecessarily added.

Section 76210(a)
The modifications provide a "reasonable" standard for attempting to obtain a loan discharge and makes clear the Bureau will start processing an application, but will not complete the processing without reasonable attempts by the student. Furthermore, "attempt" was changed to "attempts" in recognition that a claimant might need to make multiple attempts for various reasons. Some of these reasons include how many loans a student has, how many loan holders might be involved, or even how difficult it is to reach a specific loan holder. Also, there are loan servicers who a student might be used to dealing with, but a discharge comes from the loan holder who must be contacted directly. Another common practice which can result in the claimant having to make multiple attempts is when a loan is sold from one holder to another. A single loan which is serviced by the loan holder may only require a singular attempt. However, in the complex world of student loans it may take multiple attempts.

Section 76210(c)
The modification adds "as permitted by law" given changes to the circumstances under which the Bureau may pay a student's loans following changes to statute by SB 1192.

Section 76210(f)
The modification makes clear that the benefit provided as part of the educational opportunity loss will only be provided once the original benefit is exhausted.

Section 76210(j)
The modification extends the period for a written appeal from 30 days to 60 days.

Section 76212
The modifications add the phrase "or administrative order" to all relevant subsections to include this type of award in addition to judgments.

Section 76215(a)
The modification adds the phrase "while enrolled" to make clear that merely being a California resident at some point in time is not sufficient.

Section 76215(b)
The modifications to this subsection, which is a required word for disclosure, is to keep the required disclosures consistent with the modifications to both the proposed regulations as well as the statutory changes resulting from SB 1192.

DOCUMENTS INCORPORATED BY REFERENCE

- Application for Student Tuition Recovery Fund (STRF App Rev. 1/17)
- Solicitud para el Fondo de recuperación de matrícula estudiantil (STRF App Rev. 2/17)

The incorporation by reference method was used because it would be impractical and cumbersome to publish two, eight page application forms (i.e., in both English and Spanish) in the California Code of Regulations (CCR). The forms are intended to assist students and Bureau staff in the Student Tuition Recovery Fund (STRF) claim process. The forms were developed to establish consistency and obtain necessary information from STRF claimants for the Bureau to determine a claimant's eligibility and amount of economic loss under the STRF. The forms are dense with questions and instructions, and are lengthy and if they were incorporated into the CCR, it would increase the size of Division 7.5 and may cause confusion to the user.

The forms were made available to the public and are posted on the Bureau's website.

LOCAL MANDATE

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING INITIAL NOTICE PERIOD OF MAY 27, 2016 THROUGH JULY 14, 2016, AND THOSE RECEIVED AT THE PUBLIC HEARING ON JULY 14, 2016.

COMMENT NO. 1 *is from Graciela Aponte-Diaz (Center for Responsible Lending), Robert Fellmeth (Children's Advocacy Institute), Suzanne Martindale (Consumers Union of the United States, Inc.), Anne Richardson (Public Counsel), Leigh Ferrin (Public Law Center), Megumi Tsutsui (Housing and Economic Rights Advocates – HERA), and Ed Howard (University of San Diego Center for Public Interest Law, University of San Diego Children's Advocacy Institute, University of San Diego Center for Veterans Legal Clinic). The commenters will be referred to collectively as "Commenters."*

COMMENT NO. 1.1: (see p.1-2) Regarding 76000's definition of "Economic loss," Commenters state that the Bureau's definition lacks clarity and is unreasonably narrow because it suggests students that have graduated from a program that later closes have automatically not suffered economic loss.

> The Bureau rejects the comment as moot. SB1192's section 94923(b) provided a definition of economic loss that the Bureau has adopted in section 76000(c). SB1192 amended section 94923 eligibility parameters to require STRF to be paid to any student who was enrolled with the 120-day period before the program was discontinued, including those that graduated, and beyond 120 days where the Bureau determines a

significant decline in the value or quality of the education happened more than 120 days before the closure.

COMMENT NO. 1.2: (see p.2) Regarding 76000's definition of "Economic loss," Commenters state that the Bureau's definition lacks clarity and is unreasonably narrow because it does not include "legal fees, attorney fees, court costs, [and] arbitration fees."

The Bureau rejects the comment as moot. SB1192 provided a definition of economic loss that the Bureau has adopted in section 76000(c). The statute states, "Economic loss does not include legal fees, attorney fees, courts costs, or arbitration fees." The Bureau is not permitted to promulgate a regulation that would be directly contradictory to a statute.

COMMENT NO. 1.3: (see p.2-3) Regarding section 76020, Commenters suggest adding automatic eligibility to students enrolled 120 days prior to a closure and eligibility for all Corinthian students enrolled on or after June 20, 2014.

The Bureau accepts these comments as consistent with SB 1192, which incorporated both of these into statutory law.

COMMENT NO. 1.4: (see p.3) Regarding section 76020, Commenters suggest allowing a written affidavit from the student as a means of proving a leave of absence.

The Bureau disagrees. The STRF is a fund that the Bureau administers but is paid for through student fees and thus must be protected from fraud. The Bureau has experienced claimants filing for STRF following a school's closure when the student had actually withdrawn well before, not taken a leave of absence as claimed. The claimants attempt to "double-dip" by receiving refunds from the school then filing for a STRF claim after the school's closure. The Bureau has a duty to safeguard the Fund from fraud, while at the same mitigating the economic loss of students. The Bureau thoroughly investigates claims and accepts a variety of methods as evidence of a leave of absence, but a simple written statement may increase fraudulent claims.

COMMENT NO. 1.5: (see p.3) Commenters suggest removing the requirement of submitting to the Bureau an enrollment requirement from a new school when a student transfers because an enrollment agreement does not usually list transferred credits. Rather, a list of classes or units transferred should suffice.

The Bureau disagrees. The proposal requests both the enrollment agreement and a list of all classes or units transferred. The enrollment agreement is not used solely for determining transferred credit. The enrollment agreement is used to determine other portions of the claim.

COMMENT NO. 1.6: (see p.3-4) Regarding section 76200(a), commenters suggest that to make the STRF application process as simple and accessible as possible, subsections 11-20 should be modified to: remove the requirement that students prove they paid into STRF (11); allow student verification of a proof of absence through a student's written affidavit (12); remove the

requirement of an enrollment agreement if a student transfers to a new school (15); and remove the requirement for requesting loan discharges on private student loans (20).

The Bureau agrees in part and disagrees in part. The Bureau has removed all subsections in section 76200(a) and has incorporated the application by reference. The application does not require that students prove they paid into STRF. The application requests that if the student took a leave of absence, that the student attach a copy of an approved leave *or other supporting documentation*. The application asks for a copy of the new enrollment agreement and a list of classes or units transferred if there has been a transfer. The Bureau uses this information to confirm the transfer and new classes/units, but it can also be confirmed with additional or other documentation. While not in the application, the Bureau does ask the student to make reasonable attempts to have all student loans discharged in section 76210(a). The Bureau works with students to get these loans discharged, and in the Bureau's experience, private student loans have also been discharged. Where a loan is discharged, including private student loans, the STRF funds do not have to be used for that specific economic loss and would go toward additional and other losses.

COMMENT NO. 1.7: (see p.4-5) Regarding section 76200(b), commenters suggest that the period for claims to be filed should be extended to ten years for various reasons.

The Bureau rejects this comment. SB 1192 included language setting the time limit for filing a claim to four years, so the period is now set by statute.

COMMENT NO. 1.8: (see p.5) Regarding section 76210(a), commenters reiterate their objection to the requirement that students must attempt to get their loans discharged and request the section be removed or alternatively that it only apply to federal loans. They also state that the Bureau should begin processing the student's request as soon as possible.

The Bureau agrees in part and disagrees in part. The Bureau does work to begin processing all STRF requests as soon as possible. The proposal has been modified to clarify that to *complete* the processing of the claim request, students must make *reasonable attempts* to have all student loans discharged. The Bureau rejects the comment that this section should only apply to federal loans. In the Bureau's experience, some students have successfully had their private loans discharged.

COMMENT NO. 1.9: (see p.5) Regarding section 76212, commenters object to the proposed language providing "students *may* be entitled to payment" and point to Section 94923(b)(6) of the Education Code which states "bureau *shall* review the award or judgment and shall ensure the amount to be paid from the fund does not exceed the student's economic loss." Commenters want "may" changed to "shall" and believe that without the change, the regulation contradicts the statute. They also request that subsection (f) regarding additional limitations on a claim by a government agency, should be removed.

The Bureau disagrees with these comments. Section 76212 has nothing to do with claims brought by a student based on an award or judgments that the student obtains. Rather, it

only applies to claims by government agencies that obtain a judgment on behalf of students. There is no statutory conflict because the statute does not mandate that government claims are automatically eligible (or eligible at all). The statute speaks of a "student who has been awarded…," not a government agency that has been awarded a monetary award. (Ed. Code section 94923(b)(2)(G).)

COMMENT NO. 1.10: (see p.5-6) Regarding section 76215, commenters suggest several changes to the required disclosures. They disagree with the removal of the disclosure being included in the school's schedule of charges. Furthermore, they suggest that the Bureau provide its email address as part of the Bureau's contact information. Additionally, they recommend that the disclosure track the language in section 94923(b) of the Education Code, and incorporate any changes from the 2016 legislative session. Finally, they suggest a ten-year period for students to have to file a claim, rather than four years.

The Bureau agrees in part and disagrees in part. The Bureau disagrees with placement of the disclosure with the schedule of charges. The school catalog is a preferable place because it is a readily available document required to be on the institution's website. A student can easily access the school catalog for the disclosure at any time. The disclosure also continues to be required in the enrollment agreement, which is the school's contract with the student. The Bureau has chosen not to include an email at this time as SB 1192 will create the Office of Student Assistance and Outreach in the future, and that office will become the primary point for STRF and assistance to students. The office may use a different email than the Bureau's general email contact information. The Bureau substantively tracks section 94923(b) of the Education Code but because it is a student disclosure and not legislation, the Bureau believes the language of the disclosure should not be exactly as stated in statute. The Bureau did modify the proposal to reflect relevant changes from the 2016 legislation of SB 1192, which included setting the time period for which students may submit a claim to four years.

***COMMENT NO. 2** is from Margaret Reiter.*

COMMENT NO. 2.1: (see p.1) Regarding section 76000(d), Ms. Reiter believes the definition provided for "education opportunity loss" only reflects future eligibility and not the loss of the student's eligibility because of a defective program.

The Bureau disagrees with the proposed language. The definition and processes being promulgated by the proposed regulations seek to provide credit to a student based on their loss of the third party payer benefit because of closure or other circumstance. Furthermore, the alternative language is less clear than the provided definition.

COMMENT NO. 2.2: (see p.1) Regarding section 76020, Ms. Reiter provides what she terms is a "technical change" of adding, "if required" to the proposed regulations regarding whether a student paid the assessment.

The Bureau disagrees. This would not be a technical change; it would substantively change the meaning. While the Bureau modified the proposal to include "or is deemed to have paid" to match the statutory language, the assessment is a requirement to STRF.

COMMENT NO. 2.3: (see p.2) Regarding section 76200(a), Ms. Reiter suggests another change to clarify the subsection to ensure that students are only stating that the student's statements are true and correct and the documents are true and correct copies.

The Bureau agrees. Most of Ms. Reiter's proposed language was incorporated in the modification to provide clarity.

COMMENT NO. 2.4: (see p.2) Regarding section 76200(a)(1), Ms. Reiter suggests another change by inserting the phrase "if any" regarding email address, and states that while email addresses are common place, not everyone has one.

The Bureau disagrees. This subsection was deleted by modification, which incorporated the entire application by reference into the regulation. The STRF application includes all contact information, but the student can provide whatever information they have.

COMMENT NO. 2.5: (see p.2-3) Regarding section 76200(a)(2), Ms. Reiter suggests another change of inserting "available" at the end of the subsection stating students do not always have the most current loan statements.

The Bureau disagrees. This subsection was deleted as the application was incorporated by reference through the modification process. The most current loan statement is often readily available to the student on the lender or servicer's website. If it is not "available," the Bureau will work with the student to obtain it or the most recent one available.

COMMENT NO. 2.6: (see p.3) Regarding sections 76200(a)(3),(4), (10), (12), and (19), Ms. Reiter provides an additional change pointing out that through the various subsections the words "proof," "evidence," and "documentation" are used interchangeably. She suggests that "evidence" should be used throughout.

While the Bureau agreed that the terms had been used interchangeably and a single term would provide for consistency, the subsections were deleted by modification as the application form was incorporated by reference. The application uses "proof" to provide consistency as "proof" is defined as "evidence sufficient to establish a thing is true." (www.dictionary.com)

COMMENT NO. 2.7: (see p.3-4) Regarding section 76200(a)(6) and (7), Ms. Reiter objects to the Bureau's practice of paying lenders directly and provides alternative language for only paying when there is documentation of full discharge or cancellation of the loan.

The Bureau disagrees. This subsection was deleted as the application was incorporated by reference through the modification process. Further, the Bureau paying lenders directly is not a change being considered by the proposed regulations. Additionally, SB 1192

provides that the Bureau may pay loans to lenders where the lenders supply a letter that the lender/servicer will no longer collect on the debt and shall report the debt as paid in full. (Ed. Code section 94923(g).)

COMMENT NO. 2.8: (see p.4) Regarding section 76200(a)(14), Ms. Reiter suggests that regulatory language should be changed to ask whether the program "was represented" to prepare a student for a licensing exam.

This issue is moot because this subsection was deleted as the application was incorporated by reference through the modification process. There is no question about licensing exams in the application.

COMMENT NO. 2.9: (see p.4) Regarding section 76200(a)(15), Ms. Reiter asserts that the language regarding the transfer of credits should be more specific and ensure that the credits transferred would be used toward an equivalent degree or diploma.

The Bureau rejects the comment. The substance of the change to this subsection was to add that an enrollment agreement from the new institution be provided as part of the application if the student transferred to another school. The comment is not germane to the proposed change.

COMMENT NO. 2.10: (see p.4-5) Regarding section 76200(a)(17), Ms. Reiter provides a correction that the "order" should be qualified by adding "arbitration award or court" order.

The Bureau agreed. While the subsection was ultimately deleted during the modification process, the application, which was incorporated by reference, refers to these as final awards or judgments.

COMMENT NO. 2.11: (see p.5) Regarding section 76200(a)(19), Ms. Reiter suggests a change that the words "reasonably necessary" be inserted to qualify "all other documents." Ms. Reiter notes that the Bureau could not make an unreasonable request, but provides the suggestion for clarity.

The comment is moot. This newly proposed subsection was deleted when the application form was incorporated by reference during modification.

COMMENT NO. 2.12: (see p.5) Regarding section 76200(a)(20), Ms. Reiter suggests that attempting to obtain a discharge from some lenders is fruitless and that some private loans have no basis on which a student can claim a discharge. Ms. Reiter also asserts that her alternative language would not see a student denied because of the lack of a response to a student's request.

The Bureau disagrees. As with all other subsections under 76200(a), they were deleted when the proposal was modified to incorporate the application form by reference. However, the attempt, whether successful or not, is all the Bureau requests. Modified language provides that the Bureau will not complete the claim processing until reasonable

attempts are made. There are no specified requirements for responses from the lender or servicer.

COMMENT NO. 2.13: (see p.5-6) Regarding section 76200(b), Ms. Reiter provides language requiring the Bureau to assist students in completing an application where an application is incomplete or requires the Bureau to refer students to another organization for assistance.

The Bureau rejects the comment. The Bureau does assist students in completing applications. Regardless, the only change to this portion of the subsection was to separate it from the language setting the time limits for submitting an application. No changes were made to the actual language of this subsection. Therefore, the comment is not germane to the proposed change. Additionally, SB 1192 creates the Office of Student Assistance and Outreach (OSAR). One of the tasks set for OSAR by the statute is to assist students filing a STRF claim.

COMMENT NO. 2.14: (see p.6) Regarding section 76200(b)(1) and (2), similar to previous commenters (above), Ms. Reiter suggests that the time limit for submitting a STRF claim is too short. Ms. Reiter suggests a five year period for submitting a claim.

The Bureau rejects the comment. As noted previously, SB 1192 now provides the time limits for submitting a STRF claim, namely, 4 years.

COMMENT NO. 2.15: (see p.6) Regarding section 76200(c), Ms. Reiter provides a change to insert "reasonably needed" twice into the proposal.

The Bureau disagreed. Adding the language is duplicative and unnecessary. The additional information or supporting documentation is to "supplement the aforementioned requests."

COMMENT NO. 2.16: (see p.6-7) Regarding section 76210(a), similar to previous commenters (above), Ms. Reiter objects to requiring students to attempt to seek a discharge of student loans and reiterates her position that this should be limited to only those loans that allow for such discharges.

The Bureau agrees in part and disagrees in part. The Bureau only requires the attempt, not a successful conclusion, or even a written response from the lender or servicer. The Bureau does begin processing applications, thus the final modification clarifies that reasonable attempts must be made by the student before the Bureau completes the processing of the application.

COMMENT NO. 2.17: (see p.7) Regarding section 76210(b), Ms. Reiter repeats her objection from comment 2.7 and provides alternative language in line with her objections.

The Bureau disagrees. The Bureau paying lenders directly is not a change being considered by the proposed regulations. Additionally, SB 1192 provides that the Bureau may pay loans to lenders where the lenders supply a letter that the lender/servicer will no

longer collect on the debt and shall report the debt as paid in full. (Ed. Code section 94923(g).)

COMMENT NO. 2.18: (see p.7-8) Regarding section 76210(d), Ms. Reiter suggests a change, stating the proposed language "is very loose." Ms. Reiter believes "the Bureau is under strict requirements not to reduce or limit the types of circumstances that qualify a student for STRF."

The Bureau disagrees. The language is not in any way related to the types of circumstances that qualify a student for STRF. Rather, the language ensures the integrity of the STRF by ensuring that there is no "double" recovery. For example, a student's economic loss was already provided by STRF and the student reapplies for STRF for the same economic loss; or the student's economic loss is recovered through cancellation of student loans, but the claim requests the full amount of the student's cancelled student loans. In other words, this regulation ensures that the claim is limited to the actual economic loss (economic loss minus any recovered economic loss to equal the student's actual economic loss).

COMMENT NO. 2.19: (see p.8) Regarding section 76210(e), Ms. Reiter asserts that "the Bureau does not have authority to make its own value judgments" about the value of the education before the school closes, except as provided for regarding the decline of the quality of education. She states that this particular subsection should be deleted.

The Bureau rejects the comment. The only changes to the subsection in question are to re-letter to maintain the order and proper reference within the regulations; no substantive changes were proposed, thus the comment is not germane.

COMMENT NO. 2.20: (see p.8-9) Regarding section 76210(g), Ms. Reiter states that she believes the Bureau has overstepped its authority. She believes that teach out programs are no better than the closed program. She provides alternative language.

The Bureau rejects the comment. The only change to the subsection in question was to re-letter it to maintain the sequence. No substantive changes were proposed. Therefore, the comment is not germane.

COMMENT NO. 2.21: (see p.9) Regarding section 76210(h), Ms. Reiter reiterates her previous comment about the amounts that can be offset.

The Bureau rejects the comment. The only change to the subsection in question was to re-letter it to maintain the sequence. No substantive changes were proposed. Therefore, the comment is not germane.

COMMENT NO. 2.22: (see p.9) Regarding section 76210(i) [and (j)], Ms. Reiter claims the section fails to provide adequate procedural rights and that claimant's should have 45 calendar days, not 30 days to file a written appeal to the denial or reduction of the claim.

The Bureau rejects the comment related to notice, appeal rights, and processes as the only change to subsection (i) was to re-letter it to maintain the logical sequence. Accordingly, the comment is not germane. Regarding subsection (j), the Bureau agreed with the commenter and modified the subsection to double the amount of time for the student to appeal its decision from 30 days to 60 days; 15 days more than that proposed by the commenter. The Bureau agreed that 30 days was too short of a time to allow students to file a written appeal, as students may need time to receive the notice, to gather evidence and materials, obtain consultation, and/or draft a written appeal, and this could require more time than 30 days and may require more than 45 days. The Bureau decided 60 days would be appropriate so ensure that the student is given adequate time to conduct any tasks he or she believes is necessary before filing an appeal with the Bureau without burdening the Bureau with pending appealable decisions for longer than necessary.

COMMENT NO. 2.23: (see p.9-10) Regarding section 76212, Ms. Reiter states the section in question needs numerous changes and provides alternative language.

The Bureau agrees in part and disagrees in part. The Bureau agrees that with the change to "administrative order" as providing additional specificity and clarity as to the type of orders involved. However, the Bureau disagreed with the remaining suggestions. The provision is not meant to pay a government agency so that it can distribute funds among the students, but to allow the Bureau to pay students directly based on a government agency's judgment against a school.

COMMENT NO. 2.24: (see p.10-11) Regarding section 76215, Ms. Reiter states, "the disclosure language is dense and unlikely to adequately inform students of the STRF provisions." She provides a few alterations based on her previous comments.

The Bureau agrees in part and disagrees in part. The Bureau modified the proposal to reflect the changes that affect portions of the disclosure, including those from and for consistency with SB 1192.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING FIRST MODIFICATION NOTICE PERIOD OF JANUARY 14, 2017 THROUGH JANUARY 29, 2017.

COMMENT NO. 3.1: (see p.2) Regarding section 76200(a), Legal Aid Foundation of Los Angeles (LAFLA) states their objection to the use of the words "of originals" after "true and correct copies" and provides an alternative of true and correct copies "of the documents in his/her possession."

The Bureau disagrees. It is important for the student to attest that they are providing copies of original documents (i.e., copies of documents not created for purposes of the STRF claim). The student can provide copies *of copies* of an original document that the school has provided to the student, but the purpose of "original" is to distinguish from a copy of a fake or created document for defrauding the STRF. The Bureau has experienced fraudulent claims submitted with copies of fake documents. "Original" is

meant to refer to the originally created real document. A copy of a document in the possession of a student is not a strong enough attestation since a fraudulent claimant may have created a false document and have it in his or her possession.

COMMENT NO. 3.2: (see p.2-3) Regarding section 76200(b) and (c), LAFLA states that the Bureau has not adequately delineated what documents must be submitted to complete the application, either initially or in response to a Bureau request. LAFLA suggests changes to the language to provide that only documents that are "reasonably necessary" should be provided instead of "sufficient," and to require the Bureau to assist the applicant in providing a completed application, including by the Bureau directly requesting the documents from sources other than the student.

The Bureau disagrees. The Bureau provides a reasonably comprehensive list of documents to be included as part of the application form which is now incorporated by reference. However, there must be some flexibility. The Bureau does assist the applicant when necessary and under SB 1192, an office is created just for that purpose. However, by having some flexibility with regard to the documentation, the Bureau is better able to help support the student's claim. The Bureau prefers a "sufficiency" standard for the student to provide documentation it has or can reasonably obtain, but the standard is similar in meaning to "reasonably necessary." It is a fact that SB 1192 does require OSAR to provide individualized assistance to students filling out a STRF claim form. Therefore, a regulation to the affect would be duplicative. Additionally, these regulations provide the substance for what is required to process a STRF claim, not the assistance to be provided by the Bureau. There is nothing in the regulation that suggests the Bureau will not obtain information or supporting documents from other sources if the Bureau has access to them, to investigate claims or to assist the student to support a STRF claim.

COMMENT NO. 3.3: (see p.3-4) Regarding section 76210(a), LAFLA continues to object to the requirement that students must attempt to obtain a discharge of loans. Commenter suggests that this requirement only apply to federal student loans, and that applying for a discharge (rather than receiving a response), should be sufficient.

The Bureau agrees in part and disagrees in part. The Bureau's experiences show a wide range of responses from lenders and servicers. While some private lenders may be uncooperative, others are not. Furthermore, the Bureau makes clear through the modification that it will begin processing the claim regardless of a request to discharge, but that it will not complete the processing of a claim without reasonable attempts by the student to get the loan discharged. This eliminates any requirement that there be a response from the lender or servicer. With limited resources, each student who successfully obtains a discharge through their own efforts eases the burden and allows the Bureau to use its resources efficiently in processing these claims.

COMMENT NO. 3.4: (see p.4-5) Regarding section 76212, LAFLA states that "may" should be changed to "shall" and provides specifically that "[t]he statute is clear that students covered by an uncollectable judgment or order are entitled to payment from the Fund for their economic losses." LAFLA believes that without the change, the regulation contradicts the statute.

The Bureau again disagrees with these comments. Section 76212 has nothing to do with claims brought by a student based on an award or judgments that the student obtains. Rather, it only applies to claims by government agencies that obtain a judgment on behalf of students. There is no statutory conflict because the statute does not mandate that government claims are automatically eligible (or eligible at all). The statute speaks of a "student who has been awarded…," not a government agency that has been awarded a monetary award. (Ed. Code section 94923(b)(2)(G).)

COMMENT NO. 3.5: (see p.4-5) Regarding section 76212(c), LAFLA objects to the two-year time limit to bring a claim based upon a judgment obtained by a governmental entity. LAFLA asserts that this is in direct conflict with the statute following the chaptering of SB 1192, which generally sets a four-year time limit.

The Bureau disagrees. While SB 1192 does set a general 4 year time limit for "a student seeking reimbursement from the [STRF]" (Ed. Code section 94923(h)), there is no requirement that a four year time limit apply to claims submitted by government agencies. Thus providing for a 2 year time limit after a final judgment for a government agency claim is appropriate as generally it's the final judgment that is required to be submitted (as opposed to a student's claim requiring all types of receipts and supporting documentation), and is not contradictory to statute.

COMMENT NO. 3.6: (see p.4-5) Regarding 76212(c), LAFLA proposes an amendment to add "applicant" to this subsection based on their assertion that "students are still eligible for relief under the statute."

The Bureau disagrees. As stated previously (Comment No. 3.4), Section 76212 is specific to claims brought by a government entity on a student's behalf. It does not, not is it intended, address a direct student action. A student's ability to collect based on a judgment is covered elsewhere in the regulations.

COMMENT NO. 3.7: (see p.5) Regarding the STRF application, Instructions (Page 1), LAFLA suggests adding, "as defined on Page 4 of this Application" to the instruction page for qualifying event.

The Bureau agrees.

COMMENT NO. 3.8: (see p.6) Regarding the STRF application, Instructions (Page 1), LAFLA also suggested adding contact information regarding OSAR to the application.

The Bureau disagreed. While OSAR will begin July 1, 2017, at this time, it does not exist, and thus the contact information for OSAR is unknown.

COMMENT NO. 3.9: (see p.6) Regarding the STRF application, Section Numbers (Pages 2 through 7), LAFLA suggests numbering each primary section to make the application easier to use and create materials such as self-help. A suggestion was provided.

The Bureau agrees. The Bureau has also added gray shading to every other section.

COMMENT NO. 3.10: (see p.6) Regarding the STRF application, INSTITUTION Section (Page 2), LAFLA suggests that students might become confused when providing "name," "address," and "telephone number" under the INSTITUION heading and suggests that "institution" be added to make it clear what specific information should be provided.

The Bureau agrees.

COMMENT NO. 3.11: (see p.6-7) Regarding the STRF application, Leave of Absence Question (Top of Page 3), LAFLA believes that students should be allowed to submit a written affidavit as proof of a leave of absence.

The Bureau disagrees. The STRF is a fund that the Bureau administers but is paid for through student fees and thus must be protected from fraud. The Bureau has experienced claimants filing for STRF following a school's closure when the student had actually withdrawn well before, not taken a leave of absence as claimed. The claimants attempt to "double-dip" by receiving refunds for a withdrawal, then filing for a STRF claim after the school's closure. The Bureau has a duty to safeguard the STRF from fraud, while at the same mitigating the economic loss of students. The Bureau thoroughly investigates claims and accepts a variety of methods as evidence of a leave of absence, but a simple written statement by the student may increase fraudulent claims.

COMMENT NO. 3.12: (see p.7) Regarding the STRF application, Units Earned (Page 3), LAFLA believes that many students do not know how many units they have earned. Therefore, LAFLA suggests allowing students to include a copy of their transcript and suggested some language.

The Bureau agrees, and the application states, "if you do not know, you may provide a copy of your transcript."

COMMENT NO. 3.13: (see p.7-8) Regarding the STRF application, Award or Judgment (Pages 3 and 4), LAFLA comments that it is sometimes futile to attempt to collect a judgment, states that judgments or orders granted to a government agency shall always be paid, and should be listed as an eligibility category on page 4 of the application suggested edits and additional language for page 4 of the application.

The Bureau disagrees with these comments. The statute does not mandate that government claims be automatically eligible (or eligible at all). The statute speaks of a "*student who has been awarded*…," not a government agency that has been awarded a monetary award against an institution. (Ed. Code section 94923(b)(2)(G).)

COMMENT NO. 3.14: (see p.8) Regarding the STRF application, Subsequent Institution (Pages 3), LAFLA suggests that "subsequent institution" should be added to the fields to avoid

confusion. Additionally, LAFLA suggested adding an instruction that if the section did not apply, for the student to skip to the next section.

The Bureau agrees and amended the application.

COMMENT NO. 3.15: (see p.8) Regarding the STRF application, Economic Loss, LAFLA states that the financial calculations that are required are complex. Therefore, they recommend either including a sample with the application or posting a completed sample on the website.

The Bureau disagrees. The modified application provides systematic instruction and calculation. Furthermore, assisting students in filling out these claims will become the purview of OSAR beginning July 1, 2017. It is best to allow this new office the choice of what it believes will be most helpful for students filling out this application.

COMMENT NO. 3.16: (see p.8) Regarding the STRF application, Supporting Documentation Cannot be Provided, LAFLA supports the modification of the application that provides for students to explain why they cannot provide the requested documentation. However, they also suggest students should be directed to the website or other contact information so the students can learn how to obtain needed documentation.

The Bureau disagrees. As previously stated, OSAR will be handling all matters pertaining to STRF including assisting students in filling out their claims, which will include how to obtain the necessary documentation. At this time, OSAR has not been created so there is no contact information to provide.

COMMENT NO. 3.17: (see p.9) Regarding the STRF application, "Language Access," LAFLA recommends that the application be made available in Spanish and other threshold languages.

The Bureau agrees in part and disagrees in part. In the Bureau's experience handling STRF, there is strong evidence for a need for a Spanish language version of the application, but no other languages.

NO COMMENTS RECEIVED DURING SECOND MODIFICATION NOTICE PERIOD OF FEBRUARY 8, 2017 THROUGH FEBRUARY 23, 2017.

The Bureau did not receive any comments on the modifications.

TECHNICAL CHANGE EXPLANATION

1) When subsection (d) was added to section 76000, all subsections after were re-letter to maintain the proper order. However, this was not reflected through proper formatting in the proposed language. The Order of Adoption reflects the proper formatting of striking through the old subsection and underlining the new subsection, i.e. ~~(d)~~(e). This is only a technical change for subsection delegation.

2) In section 76215(a), the "(STRF)" should not have parenthesis. They should have been removed with the deleted language "Student Tuition Recovery Fund." The removal of the parenthesis in the Order of Adoption does not make a substantive change, but rather, a technical correction of punctuation.

3) During the first modification, there is a typo in section 76215(b). At the end of the added language, the period was omitted. This is a typo. It has been corrected in the Order of Adoption.

4) Grammatical change was made to capitalize "r" in "Code of Federal Regulations" in section 76020(a).

5) In section 76200(a), changed the publication date of the Spanish language version of the form to the accurate date of 2/17, and specified that one was the English form and one the Spanish.

6) Grammatical change was made to remove the capital "A" from "application" in section 76200(a).

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Bureau that would lessen any adverse economic impact on small business. See, Summary and Response to Comments, *supra*.

ALTERNATIVES DETERMINATION

The Bureau 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 purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by the Bureau are the only regulatory provisions identified by the Bureau that accomplish the goal of protecting consumers of private postsecondary education services by ensuring that those eligible to receive disbursements from the Student Tuition Recovery Fund receive the appropriate disbursement to cover the economic loss suffered by the student, while protecting the Fund from fraudulent claims. Except as set forth and discussed in summary and responses to comment, no other alternatives have been proposed or otherwise brought to the Bureau's attention.