

**BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing date: July 14, 2016

Subject Matter of Proposed Regulations: Student Tuition Recovery Fund

Eight (8) Sections Affected: Division 7.5 of Title 5 of the California Code of Regulations: Amend sections 76000, 76020, 76120, 76130, 76200, 76210, 76212, and 76215.

Purpose of adoption, amendment or repeal:

The Bureau for Private Postsecondary Education (Bureau) proposes to amend the Student Tuition Recovery Fund (STRF) regulations primarily to implement and clarify the statutory amendments to STRF in Senate Bill 1247, Chapter 840, Statutes of 2014 (SB 1247), including by expanding the STRF eligibility categories. The proposed regulations also provide other clarifying and necessary technical changes.

Specific Changes, Factual Basis/Rationale:

The changes proposed by this regulatory package are as follows:

(1) Amend Section 76000 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 76000(a): The new text makes technical changes, including the change of “an approved” institution to “a qualifying” institution.

Proposed Change: The proposal makes two amendments to this subsection. The first deletes the term “when the” and replaces it by creating the phrase “a person who.” The second deletes “approved” and adds “qualifying.” This also amends “an” to “a” to be grammatically correct.

Problem/Factual Basis/Rationale: The chapter uses a definition for “qualifying institution” throughout, not “approved institution.” However, the term “approved institution” is used in certain definitions. This proposal changes the phrase “approved institution” to “qualifying institution” to match terminology used in the chapter. Moreover, SB 1247 clarified that a qualifying institution for purpose of STRF eligibility was one that was not exempt from the STRF provisions in the Act, not one that was a Bureau “approved” institution, so the change is necessary for consistency with SB 1247.

The change from “when the person” to “a person who” is a technical change for clarity to identify a person who meets the definition of “California resident.” Rather than specifying the time that a student receives lessons at a California mailing address, it specifies that any person who receives such lessons at a California mailing address is a “California resident.”

Anticipated Benefit: The changes are necessary to implement SB 1247 and will add clarity to the regulations. Using the same, defined term that is consistent with SB 1247 throughout the chapter will avoid confusion, keeping all stakeholders from being confused.

Section 76000(c): The new text amends the definition of “economic loss” to match the statutory changes from SB 1247, and makes other clarifying changes.

Proposed Change: This proposal adds “all other institutional charges as defined in section 94844 of the Code,” certain “exam” fees, and “the loss of educational opportunity provided by funds paid by a third-party payer” as categories to be included as economic loss. It adds “legal fees, attorney fees, court costs, arbitration fees” as things that are not considered economic loss under this chapter. Also, it deletes certain words and phrases, namely “and”, and “[e]conomic loss shall also include,” and moves the placement of “collection costs and penalties” to clarify that they pertain to collection costs and penalties related to student loans.

Problem/Factual Basis/Rationale: SB 1247 mandates that the “bureau shall, by regulation define ‘economic loss’ and states that the regulation shall ensure that the definition includes (and excludes) various items. SB 1247 also mandates that the bureau, by regulation, establish “that a student who suffers educational opportunity losses, whose charges are paid by a third-party payer, is eligible for educational credits” under the STRF. SB 1247 also added items which are not to be considered economic loss for the purpose of STRF. The proposal brings the regulatory definition into alignment with SB 1247. It also makes changes for clarity and efficiency purposes.

Anticipated Benefit: Having the regulatory definition of economic loss comport with the statute will avoid confusion by all stakeholders, particularly students making a STRF claim.

Section 76000(d): The new subsection (d) adds a definition of “Educational opportunity loss” to implement statutory changes from SB 1247. Former sections 76000(d), 76000(e), 76000(f), 76000(g), 76000(h), 76000(i), and 76000(j), have been re-lettered to sections 76000(e), 76000(f), 76000(g), 76000(h), 76000(i), 76000(j), and 76000(k), respectively.

Proposed Change: This proposal adds a definition for “Educational opportunity loss” which is used in statute but not defined.

Problem/Factual Basis/Rationale: SB 1247 mandates that the “bureau shall establish regulations ensuring . . . that a student who suffers educational opportunity losses, whose charges are paid by a third-party payer, is eligible for educational credits under the fund.” However, the statute does not define “educational opportunity losses.” A definition is necessary for clarity in the regulations.

Anticipated Benefit: Having the regulatory definition of “educational opportunity losses” will avoid confusion by all stakeholders, particularly students making a STRF claim.

Section 76000(g): The proposed text re-letters section 76000(f) to 76000(g) and makes changes to the definition of “qualifying institution.”

Proposed Change: The proposal deletes “approved institution or an” and “section 94874.1 of the Code” from the definition of a qualifying institution for purposes of STRF eligibility.

Problem/Factual Basis/Rationale: SB 1247 mandates that the definition of what type of institution a student had to have attended to be eligible for STRF is not limited to a Bureau “approved” institution but includes a broader category, namely one that is subject to Article 14 of the Act. Therefore, it is necessary to revise the definition in the regulations to match the intent of the statute. This proposal changes the definition in the regulation to comport with the statutory definition.

Anticipated Benefit: Conflicting definitions regarding eligibility for STRF would cause confusion among stakeholders. This would make the regulations consistent with the statutory definition and remove any conflict.

Section 76000(h): The proposed text re-letters section 76000(g) to 76000(h) and makes a change to the definition of “residency program” used in this chapter.

Proposed Change: The proposal deletes the word “approved” and inserts the word “qualifying.”

Problem/Factual Basis/Rationale: The chapter uses a definition for “qualifying institution” throughout, not “approved institution.” However, the term “approved institution” is used in certain definitions. This proposal changes the phrase “approved institution” to “qualifying institution” to match terminology used in the chapter.

Anticipated Benefit: This brings clarity to all stakeholders by consistently using the same terms which are defined for this chapter.

Section 76000(i): The new subsection (i) adds a definition for “Third-party payer” to implement statutory changes from SB 1247.

Proposed Change: This proposal adds a definition for “Third-party payer” which is used and defined in statute.

Problem/Factual Basis/Rationale: SB 1247 mandates that the “bureau shall establish regulations ensuring...that a student who suffers educational opportunity losses, whose charges are paid by a third-party payer, is eligible for educational credits under the fund.” The statute defines “Third-party-payer” and for clarity purposes, it is necessary to include the statutory definition in the regulations.

Anticipated Benefit: Having the statutory definition of “third-party payer” in the regulations will avoid confusion by all stakeholders, particularly students making a STRF claim.

(2) Amend Section 76020 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 76020(a): This makes changes to the section in the regulations regarding the purpose of STRF and the broad eligibility requirements for student claims against the STRF.

Proposed Change: The proposal refers to the statute for the various conditions under which a student is eligible to make a STRF claim pursuant to the categories set forth in SB 1247, and deletes the prior list of conditions that made students eligible to make a STRF claim. It also adds an eligibility category for those students that suffer economic loss due to an institution losing its eligibility to receive third-party payer benefits. The proposal also adds language making those who had tuition and assessments paid for by third-party payers and suffered economic loss to also be eligible for STRF. It adds “economic” to specify the type of loss for which eligibility applies.

Problem/Factual Basis/Rationale: Current law and regulations are in conflict. Section 94923(b) of the Code as amended by SB 1247 provides an enumerated list of conditions under which a student may file a STRF claim. The proposed regulations replace a similar but inconsistent list in the current regulations. SB 1247 also mandates that a student whose charges were paid by a third-party payer who suffers educational opportunity losses have access to the STRF, but current regulations do not provide for that access. The proposal brings the regulations into agreement with the new statutory changes and expands the circumstances for STRF eligibility, specifically in the circumstances involving third-party payers.

Anticipated Benefit: This provides the required changes to bring the regulations in line with current law and provides clarity and guidance to help students who may be eligible for STRF recovery.

Section 76020(b): This deletes this subsection.

Proposed Change: This entire subsection is deleted.

Problem/Factual Basis/Rationale: The new statutory language, as amended by SB 1247, now allows students to be compensated with “educational credits” under the STRF for “educational opportunity losses” under conditions involving a third-party payer. This subsection currently provides that students whose total charges were paid by a third-party payer are not eligible to make a STRF claim: “A student whose total charges were paid by a third party payer is not eligible to make a claim.” Deleting this subsection will bring the regulations out of conflict with the new statutory language.

Anticipated Benefit: Current law and regulations are in conflict. This provides the required changes to bring the regulations in line with current law and provides clarity and guidance to help students who would now be eligible for STRF recovery.

(3) Amend Section 76120 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 76120(b): This deletes this subsection.

Proposed Change: This entire subsection is deleted.

Problem/Factual Basis/Rationale: The new statutory language, as amended by SB 1247, now allows students to be compensated with “educational credits” under the STRF for “educational opportunity losses” under conditions involving a third-party payer. This subsection currently provides that students whose costs are paid by a third-party payer were not to pay the STRF assessment as they were not eligible to make a STRF claim: “Unless a student has a separate agreement to repay the third party, a student whose costs are paid to the institution by third-party payer shall not pay the STRF assessment to the qualifying institution.” Deleting this subsection is consistent with the new statutory language and other proposed regulations because a third-party payer student is now eligible for STRF and the assessment must be paid by the student or on the student’s behalf.

Anticipated Benefit: This will eliminate confusion caused by the changes in third-party payer eligibility and the current regulation. This, in concert with other changes in the regulations, will provide clarity about the new STRF eligibility based on third-party payers and the loss of educational opportunity for students whose charges are paid by a third-party payer.

Section 76120(c): This deletes this subsection.

Proposed Change: The entire subsection is deleted.

Problem/Factual Basis/Rationale: The new statutory language from SB 1247 includes in section 94924(c) of the Code that the assessment is nonrefundable except when an institution provides a full refund. This makes the current regulation duplicative. It is being removed as duplicative regulations are burdensome.

Anticipated Benefit: This will remove a redundancy from the regulations since the statute now incorporates the provision. Removal of redundant regulations benefits all stakeholders by keeping the regulations less burdensome.

(4) Amend Section 76130 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 76130(a)(1): The proposal moves the original subsection (a) into new subsection (a)(1).

Proposed Change: This establishes subsection (a)(1). Its contents are those from subsection (a).

Problem/Factual Basis/Rationale: New subsection (a)(2) needs to be added. Moving the contents of subsection (a) to newly adopted subsection (a)(1) maintains the order and logic.

Anticipated Benefit: This will maintain the logic and clarity within the regulations.

Section 76130(a)(2): The proposal provides guidance regarding STRF assessments for students who have previously paid a STRF assessment that re-enroll in the same institution.

Proposed Change: The proposal provides that for a student who pays a STRF assessment, then withdraws, and later re-enrolls, the institution shall only collect assessment for any STRF amount due that is greater than the original assessment amount. The proposal also provides that the enrollment agreement shall clearly identify any prior STRF assessment paid by the student.

Problem/Factual Basis/Rationale: Neither the Act, nor the current regulations provide guidance for the circumstance of a re-enrolling student who has already paid a STRF assessment. Institutions did not know whether to collect a STRF assessment from a re-enrolling student, or how much to collect. This proposal states what assessment may be collected in that situation, and mandates that the enrollment agreement reflect any prior assessments paid by the student.

Anticipated Benefit: This benefits students and institutions by providing guidance on how to handle the STRF assessment for a student who is re-enrolling at the same qualifying institution after already paying the STRF assessment.

Section 76130(b): This deletes reference to the version of a specific form.

Proposed Change: This deletes the reference to a specific revision (i.e., “Rev. 2/10) for the STRF Assessment Reporting Form.

Problem/Factual Basis/Rationale: This form can be altered based on changes to the STRF assessment being charged, which requires only a “file and print” regulation change. However, a change in the assessment being charged also requires that the form be revised to change the amount of the assessment. Removing the reference to the specific revision will avoid any confusion as to the proper form. Additionally, this form is sent directly to the institutions, which also prevents any confusion as the form is created and distributed solely by the Bureau.

Anticipated Benefit: This provides the Bureau with the necessary flexibility to alter specific information, such as the amount of the current assessment, provided on the form without going through the entire rulemaking process. Yet, the general information required by the form is provided by the regulations. Furthermore, removing the reference to a specific version of the form helps keep the clarity of the regulation for all stakeholders.

Section 76130(b)(4): This deletes redundant language.

Proposed Change: The proposal deletes a sentence which is repeated word for word in the next sentence of the same regulation.

Problem/Factual Basis/Rationale: The current regulations contain the same exact sentence twice. This deletes an obvious error.

Anticipated Benefit: This removes the redundancy and helps keep the clarity of the regulations for all stakeholders.

(5) Amend Section 76200 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 76200(a): This deletes the reference to an old version of a specific form.

Proposed Change: This deletes the reference to the “STRF App Rev. 2/10” version of the Student Tuition Recovery Fund Application Form.

Problem/Factual Basis/Rationale: The current regulations contain “(STRF App Rev. 2/10)” after reference to the “Student Tuition Recovery Fund Application Form.” Because the STRF eligibility categories and statute has and could change in the statute, clarity of the regulations is jeopardized by referencing an outdated revision of the application form. This proposal deletes the version reference and instead identifies the form by name.

Anticipated Benefit: This removes reference to an outdated version of the form and helps keep the clarity of the regulations for all stakeholders.

Section 76200(a)(2): This adds additional information that must be submitted by the student filing a STRF claim.

Proposed Change: The proposal adds language requiring that a student provide the most current loan statement if any portion of the total charges were paid from the proceeds of the loan.

Problem/Factual Basis/Rationale: This information is necessary for the Bureau to evaluate a claim of economic loss related to student loans. It shows the current loan amount if the loan has not been discharged and indicates how much the student has already paid on the loan which may also be economic loss depending on the circumstances.

Anticipated Benefit: This benefits students and the Bureau by providing guidance on the information the Bureau needs to process a STRF claim for a student where any portion of the total charges were paid by the proceeds of a loan. The most current information allows the Bureau to act on claims more quickly which allows the student to recover the economic loss in a shorter period of time.

Section 76200(a)(6): This adds a requirement that must be submitted by the student filing a STRF claim.

Proposed Change: The proposal adds language requiring that a student provide a signature with the student’s authorization to allow the Bureau to negotiate with any loan holder.

Problem/Factual Basis/Rationale: This signature is necessary to substantiate a student’s authorization to allow the Bureau to negotiate with any loan holder on the student’s behalf. Without a signature from the student or borrower, the Bureau cannot negotiate on their behalf to reduce the loan obligation. The ability of the Bureau to negotiate a reduced loan settlement, if not a full discharge, lowers the amounts paid out by the Fund which is paid into by students.

Anticipated Benefit: This benefits students and the Bureau by providing clarity on what is required for a valid “authorization” for the Bureau to negotiate with any loan holder on the student’s behalf. Additionally, the Bureau’s ability to reduce loans or have them discharged means less student money paid toward these loans, which benefits students by allowing the Bureau to keep the assessment charged to students at the lowest rate possible.

Section 76200(a)(11): This deletes the requirement for students to provide proof they paid a STRF assessment. It replaces it with a requirement that students must provide whether they have “received reimbursement or forgiveness from any source related to the economic loss.”

Proposed Change: The proposal deletes the language requiring the students to provide proof of paying the STRF assessment. The proposal adds language that when making a STRF claim a student must provide information about whether the student has been reimbursed or given forgiveness from any source related to the economic loss.

Problem/Factual Basis/Rationale: New statutory language as amended by SB 1247 provides in section 94923(c) of the Code that a student who cannot prove payment into the STRF with assessments may otherwise be eligible for STRF recovery if the student has paid tuition equal or greater to the required assessment. Moreover, some institutions do not provide students with their enrollment agreements that show the student’s STRF assessments. Accordingly, removing the requirement to show “proof” that a student paid into the STRF is consistent with the new statutory language and protects students who might have paid into the STRF but cannot show “proof” through an enrollment agreement. Furthermore, current regulations do not require that a student disclose whether the student has been reimbursed or given forgiveness from any source related to their claimed economic loss, which may allow a student to recover twice, once from another source and then from STRF. The proposal addresses these issues.

Anticipated Benefit: For the students, this benefits them because they may be eligible for STRF even if they cannot prove payment of the assessment. Experience has shown that many students do not understand the documents they receive when enrolling, including the document referencing the STRF assessment. Eliminating that a student must show “proof” of payment of the STRF assessment will make it easier for students when making a STRF claim. Moreover, the Bureau and other students that pay into the STRF benefit from requiring students making a STRF claim to reveal if the student has received relief through reimbursement or forgiveness from another source. STRF is to mitigate loss, not unjustly enrich a student at the expense of the student-funded STRF by paying for a “loss” the student has already received a reimbursement for elsewhere. As students pay the assessment, paying only valid claims benefits all of them by ensuring the integrity of the STRF, and keeping assessments down.

Section 76200(a)(14): This adds a requirement that must be submitted by the student filing a STRF claim.

Proposed Change: The proposal adds language requiring that a student provide the license exam title if they answer yes to the question of whether the course of study or portion completed prepared the student to take a state or national licensure exam.

Problem/Factual Basis/Rationale: This information is necessary for the Bureau to evaluate a claim of economic loss. The Bureau's experience and interactions with other agencies allows for a more in depth examination to ascertain whether a student's course of study was intended to prepare the student to take a specific exam. It is essential to know the particular exam to ascertain whether the courses completed were intended to prepare a student for the exam. The Bureau's experience and interaction with other agencies who give these exams allows the Bureau to make a more in depth examination of the facts. A student who has taken courses intended to be in preparation for an exam may be relevant to the economic loss evaluation.

Anticipated Benefit: This benefits students and the Bureau by providing guidance on the information the Bureau needs to process a STRF claim for a student where the course of study prepared the student to take a licensure exam.

Section 76200(a)(15): This adds a requirement that must be submitted by the student filing a STRF claim.

Proposed Change: The proposal adds language requiring that if a student transferred to another school, a copy of the enrollment agreement with the new school shall be provided to the Bureau.

Problem/Factual Basis/Rationale: This information is necessary for the Bureau to evaluate a claim of economic loss. While a list of classes or units which are transferred helps to determine the economic loss, an enrollment agreement can show other information such as courses being waived or whether the new enrollment is actually part of a teach-out program. The new costs, courses, and other information found in an enrollment agreement can be relevant in the Bureau's determination of the actual economic loss. Furthermore, an enrollment agreement may also reveal additional economic loss such as double charges for materials.

Anticipated Benefit: This benefits students and the Bureau by providing guidance on the information the Bureau needs to process a STRF claim for a student that has transferred to a new school. It further assists the Bureau in determining the exact amount of economic loss suffered by a student. A student unjustly enriched by receiving more than the actual loss takes money from the Fund which is paid into by other students, thus potentially raising the assessment on future students. It is vital that the Bureau have as much accurate information as possible to better establish the economic loss and provide a precise payout that mitigates the student's loss.

Section 76200(a)(16): This adds a requirement that a student filing a claim must disclose if any portion of the total charges were paid by a third-party payer, the name of the third-party payer and proof of payment.

Proposed Change: The proposal adds language requiring that a student provide information if any of the total charges were paid by a third-party payer, including the name of the third party payer and proof of payment.

Problem/Factual Basis/Rationale: The new SB 1247 statutory language provides that students who have part or all of their charges paid by a third-party payer are eligible to file a STRF claim if they have suffered educational opportunity losses. Prior to SB 1247, student charges paid by a

third-party payer were not eligible under STRF. This provides the framework for students who suffer such educational opportunity losses to file STRF claims and the information that the Bureau will need to evaluate such claims.

Anticipated Benefit: Students benefit from this proposal as they now can have a method of recovering the loss of the educational opportunity. The Bureau and students benefit having basic procedures to prove the validity of the claim.

Section 76200(a)(17): This adds a requirement that must be submitted by the student filing a STRF claim.

Proposed Change: The proposal adds language requiring a student that has been awarded restitution, a refund, or other monetary award by an arbitrator or court, to provide the Bureau with a copy of the order.

Problem/Factual Basis/Rationale: This information is necessary for the Bureau to evaluate a claim of economic loss related to STRF eligibility based on an arbitrator or court order. It also provides necessary proof that the award has been granted by a proper authority. This also provides required proof of the potential award amount.

Anticipated Benefit: This benefits students and the Bureau by providing guidance on the information the Bureau needs to process a STRF claim for a student that is claiming STRF eligibility based on an order by a court or arbitrator.

Section 76200(a)(18): This adds a requirement that must be submitted by the student filing a STRF claim.

Proposed Change: The proposal adds language requiring that a student submit evidence to the Bureau that substantiates enrollment, such as an enrollment agreement or a transcript.

Problem/Factual Basis/Rationale: This information is necessary for the Bureau to evaluate a claim of economic loss. This evidence is vital in proving that the student actually was a student and is eligible to receive any claim whatsoever.

Anticipated Benefit: This benefits students and the Bureau by providing guidance on the information the Bureau needs to process a STRF claim for a student. Furthermore, it benefits students and the Bureau by establishing the basic validity of the claim (claimant was a student) thereby preventing payments on fraudulent claims.

Section 76200(a)(19): This adds a requirement that must be submitted by the student filing a STRF claim.

Proposed Change: The proposal adds language requiring that requires a student submitting a STRF claim to provide proof of economic loss, such as copies of receipts, promissory notes or loan documents, and other documents to substantiate the student's recoverable expenses.

Problem/Factual Basis/Rationale: This information is absolutely necessary for the Bureau to evaluate a claim of economic loss. The required information is the foundation upon which the potential amount of a claim is based. Without this proof, the Bureau would have no idea what the actual dollar amount of the student's economic loss.

Anticipated Benefit: This benefits students and the Bureau by providing guidance on the information the Bureau needs to process a STRF claim for a student that claims he or she has suffered economic loss. This also establishes the basis of the economic loss suffered by the student.

Section 76200(a)(20): This adds a requirement that must be submitted by the student filing a STRF claim.

Proposed Change: The proposal adds language requiring that if an application for STRF includes student loan(s) as part of the claim, the student shall provide the Bureau with the response by the loan holder(s) to the student's request to have the student loan discharged.

Problem/Factual Basis/Rationale: This information is necessary for the Bureau to evaluate a claim of economic loss. If a loan can simply be discharged as is often the case in situations involving a closed school, the student may be able to mitigate their own economic loss by taking the initial step of requesting a discharge of any loans. Additionally, lenders may not deal with the Bureau. While lending programs guaranteed by the US Department of Education have worked with the Bureau cooperatively in such circumstances, private lenders originating private loans do not always cooperate with the Bureau. However, these lenders must make responses to requests by the student.

Anticipated Benefit: This benefits students and the Bureau by providing guidance on the information the Bureau needs to process a STRF claim for a student that has student loan(s) as part of the claim. This also benefits students and the Bureau by speeding up the process of evaluating and acting upon a STRF claim. For students, it can provide a payout on their claim more quickly. For the Bureau, it takes less time and resources to process the claim allowing the Bureau to handle more claims in a timely and efficient manner.

Section 76200(b)(1): This adds subsection (b)(1) which includes information regarding how long students have to file a STRF claim following the closure of an institution.

Proposed Change: The proposal adds subsection (b)(1) and splits off language from the current subsection (b), which provides for the amount of time a student has to file a STRF claim based on the closure of an institution. The proposal adds the introductory phrase, "For closure of an institution, the application must be received" and adds "from the date of closure" after the "or a maximum of four (4) years."

Problem/Factual Basis/Rationale: Currently, institutional closure is the singular condition for determining the cut-off date for which a student can file a STRF claim; specifically, two years from the date of closure notice or four years if no notice was received. SB 1247 added additional STRF eligibility conditions that do not require a school to close, such as a program

discontinuation or a refund award ordered by the Bureau. Accordingly, this proposal separates the cut-off period to file a STRF claim based on the type of eligibility.

Anticipated Benefit: This benefits both students and the Bureau by clearly delineating how long students have to file a STRF claim based on institutional closure.

Section 76200(b)(2): This adds subsection (b)(2) which provides for how long students have to file a STRF claim based on conditions other than institutional closure.

Proposed Change: The proposal adds subsection (b)(2) which provides the maximum amount of time a student has to file a STRF claim based on discontinuation of a program, refund award ordered by the Bureau, failure to pay or reimburse loan proceeds, or an award ordered by an arbitrator or a court for a violation of the Act. Applications must be received within two years of the specified event.

Problem/Factual Basis/Rationale: New statutory language from SB 1247 adds new conditions for students to be eligible for making a STRF claim. The new statutory language does not provide any limitation for how long a student may take to file a STRF claim under these new eligibilities. The proposal provides that time limitation. Two years is the current time limit for filing a STRF claim after notice of an institutional closure. A student will have notice of any award or program discontinuance, refund awarded by the Bureau, or a failure to pay or reimburse loan proceeds, so a two-year time limit for filing a STRF claim after such notice is appropriate and consistent with the current standard.

Anticipated Benefit: This benefits both students and the Bureau by providing a clear time limit that a student has to file a STRF claim under certain new eligibilities.

Section 76200(c): This deletes this subsection.

Proposed Change: This entire subsection is deleted.

Problem/Factual Basis/Rationale: The new statutory language as amended by SB 1247 allows students to be compensated under STRF for “loss of educational opportunity” under conditions involving a third-party payer. This subsection currently provides that students whose charges are paid by a third party payer are not eligible to make a STRF claim. Deleting this subsection will bring the regulations out of conflict with the new statutory language.

Anticipated Benefit: This will eliminate confusion caused by the contradiction between the Act and the regulations. This, in concert with other changes in the regulations, will provide clarity about the new eligibility based on third party payers and the loss of educational opportunity.

Section 76200(c): This re-letters the subsection and adds clarification language.

Proposed Change: The proposal re-letters subsection (d) to subsection (c). Additionally, it adds the language “to supplement the aforementioned requirements” to the subsection.

Problem/Factual Basis/Rationale: Subsection (c) is removed. Re-lettering maintains the order and logic of the regulations. Students do not always have all the required documents for filing a STRF claim, whether because the student lost the documentation or the institution never provided the student with the documentation or even a combination of both. This proposal provides for the Bureau to obtain and use supplemental information or documentation when investigating a claim.

Anticipated Benefit: Re-lettering the subsection maintains the logic and clarity of the regulation, which is to everyone's benefit. It benefits the student to allow the Bureau to collect supplemental information and documentation in lieu of the requirements. This allows the Bureau the flexibility to still conduct an investigation of the claim and to verify the claim when not all the required documentation and information is available.

(6) Amend Section 76210 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 76210: Various subsections are re-lettered because of the proposed addition of subsections (a) and (f). These are technical changes to maintain logic and clarity in the regulation:

1. Re-letter subsection 76210(a) as subsection 76210 (b)
2. Re-letter subsection 76210(b) as subsection 76210 (c)
3. Re-letter subsection 76210 (c) as subsection 76210 (d)
4. Re-letter subsection 76210 (d) as subsection 76210(e)
5. Re-letter subsection 76210(e) as subsection 76210(g)
6. Re-letter subsection 76210 (f) as subsection 76210(h)
7. Re-letter subsection 76210(g) as subsection 76210(i)
8. Re-letter subsection 76210(h) as subsection 76210(j)
- 9.

Section 76210(a): This adds a new subsection which provides that students with loans attempt to obtain a discharge prior to the Bureau's processing of a STRF application.

Proposed Change: The proposal adds the requirement that students seeking reimbursement under the Fund who have loans as a part of the claim shall attempt to obtain a loan discharge directly from the loan holder before the Bureau can process the student's application.

Problem/Factual Basis/Rationale: The Bureau's experience has shown that many students are not aware that they can seek a discharge of their loans for reasons such as a school closure. Additionally, not all lenders are willing to recognize the Bureau as a representative of the student. First seeking a discharge is an important step which can alter the application or even the need for a student to make an application for a STRF claim, saving both the student and the Bureau significant time. A loan discharge may not eliminate a student's economic loss, but a claim in which this request has been first made by the student to the lender can be processed more quickly, which speeds up payment on proper claims.

Anticipated Benefit: Students benefit from knowing exactly what is required to process a STRF claim application including the student's responsibilities before actually filing a claim. This can further benefit the student in that their loan(s) may be discharged before the STRF claim,

removing the burden of the student loans more quickly than it would be through the STRF claim application process. It benefits the Bureau by lessening the draw on resources to process STRF claims should the loan be discharged in advance.

Section 76210(d): This changes the verb tense in one sentence and adds a clarifying phrase.

Proposed Change: The proposal deletes “was” and replaces it with “is.” Additionally, it adds the language “or for” to the subsection.

Problem/Factual Basis/Rationale: The first change is grammatical. Regarding the second change, the regulations allow claims to be brought on behalf of students. However, under current regulations, a STRF claim cannot be paid out without a social security number or a taxpayer identification number. This provides that claims brought on behalf of students “or for” students is also subject to this restriction.

Anticipated Benefit: Both changes bring clarity to the regulations. The first is a grammatical change. The second makes clear that claims paid for students still require that the student has either of these required numbers.

Section 76210(e): This changes the reference to a specific subsection.

Proposed Change: The proposal changes the reference from subsection (c) to subsection (d).

Problem/Factual Basis/Rationale: The addition of two new subsections under section 76210 has required that all the subsections be re-lettered. This subsection contains a reference to another subsection. Without the change, the reference would be to the wrong subsection.

Anticipated Benefit: This benefits all stakeholders by maintaining the clarity and logic of the regulations.

Section 76210(f): This adds this new subsection for the new third-party payer process.

Proposed Change: The proposal adds that students who have their charges paid by a third-party payer, who suffer a loss of educational opportunity, can have the portion paid by the third-party payer paid to a subsequent institution upon evidence of a new enrollment agreement by STRF, but only up to the amount paid by the third-party payer. However, the new institution must also be eligible to receive the same third party benefit as the original institution or program.

Problem/Factual Basis/Rationale: Currently, the regulations make all loss based on third party payers ineligible for STRF. SB 1247 reversed this policy and made a student who suffers “educational opportunity losses” whose charges were paid by a third party payer, eligible for education credits under the STRF. However, there is no guidance for how these newly eligible claims should be handled and what restrictions may apply. This provides the guidance and framework for the new eligibility.

Anticipated Benefit: This provides guidance for both the students and the Bureau in handling the new loss of educational opportunity based upon third party payers. This makes students eligible and provides the basic framework, both the maximum that may be provided and how it may be provided, and the restrictions on it.

Section 76210(g)(1): This is a grammatical change.

Proposed Change: This changes “losses are” to “loss is.”

Problem/Factual Basis/Rationale: This is a grammatical change for subject/verb agreement.

Anticipated Benefit: This is a grammatical change which is for clarity.

(7) Amend Section 76212 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 76212:

This makes clarifying changes to provide that STRF claims brought by a government agency on behalf of students, if accepted, will be paid directly to the students.

Proposed Change: The introductory proposal deletes “that law enforcement agency” and “shall” and replaces it with “the student(s) for which the judgment was obtained may.”

Problem/Factual Basis/Rationale: Under the current regulations, STRF claims may be filed by a government agency on behalf of students. The proposal clarifies that the Bureau’s payment of such claims is subject to certain conditions, by changing “shall” to “may.” It also clarifies that any STRF payments would be paid directly to students, and not to the government agency bringing the claim on behalf of the students. It is not the intent of the STRF statute or this section of the regulation that a government agency be paid STRF funds. STRF funds are meant to mitigate a student’s economic loss and are not to pay attorney’s fees or other fees expended by a government agency. However, the regulation is not clear because in section (e) it refers to the “total amount paid to each student” but in the introductory text it refers to a payment to “that law enforcement agency.” . This provides that a claim paid from STRF under this section is paid directly to the student(s). This also ensures that the beneficiary of the claim (i.e., the student, not the government agency) actually receives the payment.

Anticipated Benefit: The proposal clarifies claims by government agencies on behalf of students, which benefits all stakeholders, particularly a government agency filing a claim on behalf of students as the agency can now be clear as to who will be paid under the claim and under what conditions.

Section 76212(a): This amends the text to clarify that a claim by a government agency on behalf of a student must be based on a judgment against a STRF qualifying institution that is now closed.

Proposed Change: The proposal deletes the word “qualified” and adds the phrase “a qualifying institution” to the text.

Problem/Factual Basis/Rationale: The term “qualified” is not clearly defined; however, the term “qualifying institution” is specifically defined in section 76000 for this chapter of the regulations. This definition is based on the provisions set out in SB 1247, which helps to assure that the regulatory definition is in accord with the statute.

Anticipated Benefit: Using the specific term that is defined in the regulations benefits all stakeholders by providing clarity so all stakeholders are clear as to which institutions are being referred to in the regulations.

Section 76212(c): This makes clarifying changes to specify who is filing a claim under this section.

Proposed Change: The proposal amends the subsection to specify that the Bureau, Attorney General, or other law enforcement agency are the entities that would file the STRF claim under this section.

Problem/Factual Basis/Rationale: This helps to avoid confusion in this section by repeating from the opening language that is the Bureau, the Attorney General, or other law enforcement agency that may file a claim on behalf of student(s). Previously, the text only stated that a claim be filed within two years of the judgment, and could be misunderstood to mean that that a student had to also file the claim. The proposal clarifies that the filing on behalf of student(s) is by the Bureau, the Attorney General or another law enforcement agency.

Anticipated Benefit: The proposal clarifies claims by government agencies on behalf of students, which benefits all stakeholders, particularly a government agency filing a claim on behalf of students as the agency can now be clear that the student does not have to file an additional STRF claim.

Section 76121(d): This makes changes to clarify that the claim brought by a government agency must indicate the amount of the judgment to be paid to each student.

Proposed Change: The proposal amends the subsection to provide that the claim must indicate the amount of the judgment allocable to each student. This slightly amends the previous language that that stated: “A claim indicating the total amount of the judgment allocable to each student is filed.”.

Problem/Factual Basis/Rationale: The issue is clarity. The claim should indicate how much of the judgment is being claimed for each student. The use of the term “total” in “total amount of the judgment” is not clear. The judgment may be a lump sum, so this proposal requires that the government agency filing the claim on behalf of the student specify how much of that sum is allocable to each student for which the claim is being made.

Anticipated Benefit: This provides clarity for all parties, particularly government agency who should know that any claim brought by them on behalf of students based on a judgment should clearly indicate the amount of the judgment that is allocable to each student.

Section 76212 (e): This change clarifies that the total amount each student can receive is limited to the student's economic loss.

Proposed Change: The proposal adds language that the total amount paid to each student does not exceed the total amount of the student's economic loss, as defined in Section 76000, less the amount of any prior payment from STRF for related economic loss. It deletes the ambiguous language that the total amount paid to the student shall not exceed the amount that the student would have been entitled to receive if the student had obtained a judgment for the amount allocable to the student.

Problem/Factual Basis/Rationale: The central issue is clarity. The original language appeared to be comparing the maximum amount paid to each student as that which would be allocable had the student obtained the judgment. However, the law in Section 94923(b)(6) provides that a claim based on a judgment award is still limited to the actual economic loss suffered by that student. The new language makes clear that the total amount paid to each student does not exceed the student's economic loss and ensures that the amount considers any amount reflects any prior amount that the student may have already received from a prior STRF claim for the same economic loss. In other words, the student cannot obtain a double recovery (one for a claim brought by the student and another for a claim brought by a government agency on the student's behalf).

Anticipated Benefit: This provides clarity for all parties, particularly students who should know that any claim brought on their behalf by a government agency is limited to the student's actual economic loss, and that they cannot obtain a double recovery for the same economic loss.

Section 76212(f): This adds a new subsection which provides limits on claims.

Proposed Change: This proposal provides that a claim is subject to the additional limitations and rights set forth by section 76210.

Problem/Factual Basis/Rationale: The purpose of STRF is to mitigate the economic loss of students. Section 76210 sets forth the policies the procedures regarding student claims, payments and denials, including that the amount of the payment for any claim is measured by the student's economic loss. Accordingly, this proposal is necessary to clarify that when a student is paid from STRF based on a claim filed by a government agency on behalf of the student, the same policies and procedures related to other claims will apply.

Anticipated Benefit: This benefits all stakeholders by assuring that the primary purpose of STRF is consistent for all student claims, including one brought by a government agency on behalf of the student.

(8) Amend Section 76215 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 76215(a): This makes changes to the required disclosure about the STRF assessment to appear in the enrollment agreement and school catalog.

Proposed Change: The proposal makes numerous changes (deletions and additions) to the disclosure which is required to be included on both the enrollment agreement and the school catalog regarding the STRF program. Specifically, it adds that the disclosure must be included in the school catalog, and makes revision to the language to the disclosure itself.

Problem/Factual Basis/Rationale: SB 1247 made significant changes to the STRF program, including the conditions for eligibility. Current regulations regarding the required disclosures to students do not reflect the new language and in some circumstances such as the third-party payer disclosure are in direct conflict with the new statutory language. The proposed changes to this portion of the required disclosure reflect both the new statutory language and are consistent with the other proposed changes to the regulations.

Anticipated Benefit: This benefits all stakeholders by providing clear guidance regarding the required disclosure. The disclosure benefits students by making the disclosure clear and up to date with the new statutory language and regulations. Likewise, a specific disclosure benefits institutions by clearly providing the exact language necessary to comply with the regulations.

Section 76215(b): This makes changes to the required disclosure to students regarding their eligibility for STRF to appear in the school catalog.

Proposed Change: The proposal makes numerous changes (deletions and additions) to the disclosure which is required to be in the school catalog regarding STRF eligibility for students, including the deadlines to apply for STRF, and the importance for students to keep certain records. This disclosure is to appear directly under the disclosure from subsection (a).

Problem/Factual Basis/Rationale: SB 1247 made significant changes to the STRF program, including conditions of eligibility. Current regulations do not reflect the new language and in some circumstances are in direct conflict with the new statutory language. The proposed changes to this portion of the required disclosure reflect the new statutory and regulatory conditions of eligibility, the deadlines for filing a STRF claim, and the importance of keeping pertinent records.

Anticipated Benefit: This benefits all stakeholders by providing clear guidance regarding the required disclosure. The disclosure benefits students by making the disclosure clear and up to date with the new statutory language and regulations. Likewise, a specific disclosure benefits institutions by clearly providing the exact language necessary to comply with the regulations.

Underlying Data

None

Business Impact

The Bureau has determined that there are no costs directly associated with this regulatory proposal. The STRF assessment, which is currently set at \$0 per \$1000 of institutional charges, is collected from students by the institutions and then remitted quarterly to the Bureau. STRF exists to mitigate economic loss suffered by students under various circumstances, most commonly the closure of the institution. These regulations clarify and provide guidance to the eligibility and how STRF claims are filed. Neither the statute nor this proposal makes any changes to the actual assessment to be collected.

Economic Impact Assessment

The regulatory proposal will have the following effect:

- It will not create or eliminate jobs within the State of California because STRF is imposed on students to benefit students. The proposal makes no changes to the actual assessment; rather the regulations are to clarify and interrupt the statutory requirements.
- It will not create new businesses or eliminate existing businesses within the State of California because STRF is a student assessment to benefit students. The proposal clarifies and makes specific the circumstances under which students are able to collect from the Fund to reflect current law.
- It will not affect the expansion of businesses currently doing business within the State of California because STRF is a student assessment to benefit students. The proposal clarifies and makes specific the circumstances under which students are able to collect from the Fund to reflect current law.
- The regulatory proposal would benefit California consumers by clarifying and providing guidelines for students who need to file a STRF claim, which is to help mitigate economic loss suffered by students under certain circumstances.
- The regulatory proposal does not affect the state's environment because these are regulations to provide guidance for STRF and students who are eligible to file a STRF claim.
- The regulatory proposal does not affect worker safety because these are regulations to provide guidance for STRF and students who are eligible to file a STRF claim.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Considerations of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be effective or less burdensome to

affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

1. One alternative is to do nothing. However, if the Bureau did not adopt and amend regulations in this area, the regulations and statute would be in conflict causing undue confusion and frustration, particularly for students. Additionally, the Bureau would be remiss in its duty as the statute requires the Bureau to adopt regulations related to STRF.
2. Alternatives were considered regarding how to provide for the “educational opportunity losses” suffered by students whose charges are paid by a third-party payer, as set forth in Section 94923(d) of the Code. These are charges paid not from the student, but paid by another on behalf of the student, also known as a third-party payer. An alternative was simply to make a refund as if the student had paid the charges. However, this would compensate the student with money that the student did not spend. The payment made on behalf of the student is often a grant. While it is to benefit the student, it is not something that comes out of the student’s pocket. Providing a cash refund student for a charge that the student did not actually pay unjustly enriches the student. The STRF is provided to mitigate a student’s economic loss. Additionally, certain programs, such as the Cal Grant, must be approved by the third-party payer; they provide the benefit only under certain circumstances to approved schools and programs. Allowing a student to take cash and pay charges at an unapproved school would be counter to the purpose of the grant program and would again unjustly enrich a student who would be using funds which originated from a third-party to pay charges at an institution the third-party would not have originally made payment to in the first place. STRF is to make students whole when they have been financially damaged through no fault of their own. This is similar to the remedies in a breach of contract. The foundation is to make the party whole, as if they had not been damaged, not to provide the party with a benefit above and beyond with the damage caused.
3. One alternative is to state all the potential conditions under which a student may file a STRF claim in the regulations, rather than refer in the regulations back to section 94923(b) of the Code. Section 94923(b) of the Code provides an enumerated list of conditions under which a student may file a STRF claim, and includes the language “and any other students deemed appropriate.” Accordingly, the enumerated list in the statute is not a comprehensive list of what might make a student eligible for a STRF claim. The list of conditions in the regulations had to be removed, at least in part, because they were inconsistent with the statutory list. Yet incorporating an enumerated list into the regulations would limit eligibility to just those circumstances contained on the list and other others, even though the statute states that STRF should be available to “any other students deemed appropriate.” Rather than amending the old list, the list is removed and replaced with the statutory subsection. This is important for two reasons. One, should the legislature in the future choose to amend the list contained in section 94923(b), it will automatically be incorporated into the regulations which refer back to that very

subsection. Two, it incorporates the important open ended language to deal with unforeseen circumstances, “any other students deemed appropriate.”