

**TITLE 5. EDUCATION
DIVISION 7.5. BUREAU OF PRIVATE POSTSECONDARY EDUCATION**

FINAL STATEMENT OF REASONS

Hearing Date: None.

Subject Matter of Proposed Regulations: Annual Reports Submissions and Labor Market Identification Data

Sections Affected: §74110 of Article 2, Chapter 4, Division 7.5, Title 5, California Code of Regulations.

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein has not been modified. However, the text in this proposal was modified after the initial publication to reflect the text as described in the Initial Statement of Reasons. This modification was duly noticed, and a comment period was held from May 3, 2022 to May 19, 2022. Five comments were received during the modified text comment period.

Comments received during the original 45-day comment period and the 15-day modified text comment period are described and responded to, below. No hearing was requested nor held for this rulemaking.

Justification for Request for Effective Date on Filing

The Bureau requests for this rulemaking to become effective on filing to accommodate the chronology of events necessary for usable data to be collected by the Bureau for calendar year 2022. Under existing Education Code Section 84892.6(b)(5), institutions subject to data collection have 120 days from the date the institution receive notice from the Bureau that the institution must comply. This rulemaking requires the information to be compiled and submitted with the annual report; 5 CCR 74110 currently requires the annual report to be submitted by December 1 of each calendar year. August 3, 2022 is the date 120 days prior to the December 1, 2022 submission deadline, meaning the last day the regulation could be in effect in 2022 with enough time to notice institutions to submit data is August 3, 2022. Because it is unclear whether sufficient time will remain for the Office of Administrative Law to conduct its review in time to meet the normal quarterly publication advance deadline for an effective date of July 1, 2022, the Bureau requests this regulation become effective on filing with the Secretary of State.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The Bureau is unaware of the number of potential small businesses that would be impacted by this regulatory proposal.

Economic Impact Assessment

The regulatory proposal will have the following effects:

- It will not create or eliminate any jobs within the State of California because the regulations only require information about graduates and associated educational programs already being collected to be conveyed from private postsecondary educational institutions to the Bureau, which should not cause either the creation or elimination of any jobs within California.
- It will not create new businesses or eliminate businesses in the State of California because the regulations only require private postsecondary educational institutions approved by the Bureau to convey information already being collected about graduates and associated educational programs to the Bureau, which has no known fiscal impact and should not create or eliminate any businesses in California.
- It will not affect the expansion of businesses currently doing business in the State of California because the regulations only require institutions/businesses to report information already being collected about graduates and associated educational programs to the Bureau, which has no known fiscal impact and should not affect the decision of any business to expand in California.
- The regulatory proposal benefits the health and welfare of California residents by providing the Bureau for Private Postsecondary Education with additional background information on private postsecondary educational institutions, which will enable the Bureau to post information on its website about the potential labor market outcomes from completing a postsecondary education program and the debt incurred to complete the program. This information will enable prospective students to make better choices about which program to attend.
- The regulatory proposal does not affect the state's environment because they only require private postsecondary institutions to convey information about their programs to the Bureau, which should not affect the state's environment.
- The regulatory proposal would not affect worker safety because these regulations are not relevant to the enhancement of worker safety and are to enhance the Bureau's ability to ascertain student outcomes of attending and completing educational programs offered by Bureau-approved private postsecondary educational institutions.

Fiscal Impact

It has been determined that there will be no fiscal impact from this proposal.

Anticipated Benefits of this Proposal

The changes proposed by this regulatory action will enable the Bureau to implement the legislative mandate of CEC section 94892.6 that schools annually report to the Bureau data that will allow the Bureau to obtain labor market outcomes about graduates so the Bureau can post on its website program-level and institution-level statistics regarding the earnings of graduates, as well as student debt information, subsequent to completing their programs.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal was found to 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.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected.

1. Not adopt the regulations. This alternative was rejected because it would not allow the Bureau to fulfill the legislative mandate created in CEC section 94892.6 that institutions collect and report data to the Bureau that would allow the Bureau to submit graduate identification data to EDD in order to access wage data that would allow the Bureau to post wage and debt statistics on its website to better enable prospective students make choices about the advisability of enrolling in private postsecondary education programs.
2. Allow programs to submit data by hard copy instead of electronically. This alternative was rejected because the Bureau must submit the graduate identification data it collects to the EDD in a digital format, so allowing hard copy submissions would require the Bureau to re-format the data before submission. This would not only significantly increase the workload required to process the data but would also inject a possible source of data error and security issues that could occur as the result of having staff manually input the information into the prescribed EDD digital format.

Summary of Comments Received During the 45-day Notice Period

The proposed text was made available to the public for comment from March 15, 2022, to April 29, 2022. No hearing was held on this rulemaking, nor was a hearing requested.

The Bureau has elected not to change the proposed regulation based on the comments received. The Bureau's summary of and responses to the comments received are presented below.

Comment 1: Matt Roman, April 15, 2022

Matt Roman from Niemela, Pappas & Associates emailed and asked several questions about the implementation of the proposed regulation. The substantive text of the email is below:

While the proposed regulations mandate how the institution will submit data, it does not explain how the Bureau plans to match data reported by institutions to labor data available through the state’s Employment Development Department (EDD). We understand the concept is to match the Social Security Number (SSN) of each reported graduate against wage data matching that SSN in the California EDD’s records; however, the proposed regulations do not indicate how data elements will be reconciled.

For example, how will the Bureau handle the following situations:

- 1. The SSN reported does not match anyone in the EDD wage data. Will that graduate be removed from the calculation completely?*
- 2. The SSN reflects \$0 earnings in the EDD data. Will there be any follow-up to determine if that graduate actually worked, perhaps outside the state?*
- 3. A graduate relocates into, or out of, California during a reporting year. Will EDD data capture earnings both in and outside of California?*

In any of the circumstances noted above, a lack of data, or reliance on incomplete information, may materially skew the results the Bureau plans to publish. Additionally, the proposed regulation provide no opportunity for an institution to challenge or correct the calculations that the Bureau will publish prior to publication.

Bureau Reply: The Bureau considers these questions outside the scope of the proposed regulation, which only revises the process by which institutions submit Annual Reports to the Bureau and updates the data that is to be included with those Annual Reports. However, the Bureau is aware of the importance of these “next step” issues and is committed to providing a public forum to receive stakeholder input on how the data being collected will be processed and reported on its website.

Comment 2: John Carreon, April 21, 2022

John Carreon of Concorde Career Colleges submitted written comments to the Bureau on April 21. The comments noted that the proposed regulation “does not explain how the Bureau plans to match data reported by institution to labor data available through the state’s Employment Development Department.” The comments asked the same questions as posed by Mr. Roman:

For example, how will the Bureau handle the following situations:

- 1. The SSN reported does not match anyone in the EDD wage data. Will that graduate be removed from the calculation completely?*

2. *The SSN reflects \$0 earnings in the EDD data. Will there be any follow-up to determine if that graduate actually worked, perhaps outside the state?*
3. *A graduate relocates into, or out of, California during a reporting year. Will EDD data capture earnings both in and outside of California?*

In any of the circumstances noted above, a lack of data, or reliance on incomplete information, may materially skew the results the Bureau plans to publish. Additionally, the proposed regulation provide no opportunity for an institution to challenge or correct the calculations that the Bureau will publish prior to publication.

John Carreon also suggests that “the Bureau consider augmenting the proposal to provide additional guidance on how the data will be treated and calculated, as well as providing a method for data corrections to ensure the information published is accurate and useful.”

Bureau Reply: As with the above comments, the Bureau considers these questions outside the scope of the proposed regulation, which only revises the process by which institutions submit Annual Reports to the Bureau and updating the data that is to be included with those Annual Reports. However, the Bureau is aware of the importance of these “next step” issues and is committed to providing a public forum to receive stakeholder input on how the data being collected will be processed and reported on its website. Whether these efforts require additional rulemaking will be determined at a later date. Regardless, because the Bureau is presently determining the best methods for data collection, the Bureau does not believe augmenting or changing the existing rulemaking proposal is appropriate.

Summary of Comments Received During the 15-day Notice Period

The proposed text was made available to the public for comment from May 3, 2022, to May 19, 2022. No hearing was held on this rulemaking, nor was a hearing requested.

The Bureau has elected not to change the proposed regulation based on the comments received. The Bureau’s summary of and responses to the comments received are presented below.

Comment 3: Sandy Kappas, Hypnosis Motivation Institute, May 4, 2022

Sandy Kappas submitted an email comment to the Bureau on May, 4, 2022 as follows:

Our school strongly disagrees with the proposed change to provide BPPE with private student information such as their social security number. The Bureau has not even provided a reasonable explanation as to the necessity of this information being provided.

In this day and age with identity theft running rampant, the Bureau is asking for an excel spreadsheet with this information for what purpose? Names of graduates is not a problem, but social security numbers are.

As a school we have only used the last 4 digits of a students social in our database just for the purpose of security for our students. This was recommended by our insurance company and accrediting agency.

Our Financial Aid Department keeps students' social security records in a secure local area only available to FA personnel.

What is the Bureau thinking???

Bureau Reply: The Bureau has considered and rejects this comment as it is unrelated to the modified proposed text. In addition, California Education Code 94892.6 already requires institutions to maintain and report graduate identification information sufficient for matching with EDD, which includes SSNs.

Comment 4: Lisa Lee, Hoss Lee Academy, Inc., May 8, 2022

The Bureau received an email comment from Lisa Lee on May 8, 2022 as follows:

What timeframe will the BPPE be pulling graduates' wage information from the EDD following graduation? This is in reference to the below information –

CEC 94892.6 as added by Assembly Bill (AB) 1340 (Chiu, Chapter 519, Statutes of 2019) requires all institutions approved to operate by the Bureau to collect and annually report labor market outcome data for students who have graduated on or after January 1, 2020, in order for the Bureau to submit the data to the Employment Development Department (EDD) which will use the data to match the students with subsequent wage data for posting on the Bureau's website. Section 94892.6(b)(2)(B) also requires the Bureau to report this data to the Cradle-to-Career Data System (CTC Data System), a statewide computer data infrastructure operated by the Government Operations Agency.

Bureau Reply: The Bureau has considered and rejects this comment as it is unrelated to the modified proposed text. However, CEC 94892.6(b)(4) specifies that data “shall, at a minimum, provide data relating to graduates at two years and at five years after their graduation.”

Comment 5: Beth Barclay, Palmer College of Chiropractic West, May 16, 2022

Beth Barclay submitted a written comment to the Bureau on May 16, 2022 as follows:

Palmer College of Chiropractic West... is concerned about the recent changes proposed to the annual reports.

To ask each institution to submit every graduate's name, social security number, and the amount of debt he/she holds is an invasion of privacy. Including the social security numbers represents an enormous risk for students.

The Bureau is asking institutions to submit this data via an uploaded Excel file. How will we know that the system in place can securely hold the data? Will this data only be viewed at the Bureau office, or will others beyond the Bureau have access to the data? Will personnel working from home have access to the data?

Should the Bureau have a data breach, is there a plan in place to deal with the fallout? We assume it would be the Bureau's responsibility to alert students to a data breach.

These are just a few of the questions that should be addressed before implementing this plan.

Bureau Reply: The Bureau has considered and rejects this comment as it is unrelated to the modified proposed text. Note that the security aspects of the proposed system, including how data will be submitted, stored, protected, and accessed, were discussed at length in the Initial Statement of Reasons.

Comment 6: John Carreon, Concorde Career Colleges, May 17, 2022

The Bureau received an email comment from John Carreon on May 17, 2022 expressing concerns that Concorde's previous comment had not been addressed.

Bureau Reply: The Bureau has considered and rejects this comment as it is unrelated to the modified proposed text as well as for the reasons specified above under the 45-Day comment period as it relates to "Comment 2" received on April 21, 2022.

Comment 7: Steve Watkins, Unitek, May 19, 2022

The Bureau received an email comment from Steve Watkins on May 19, 2022, as follows:

My comment is related to proposed changes to the Reporting of Graduate Identification Data, and specifically this item:

- requiring the graduate identification data to be reported in an Excel spreadsheet (.xls or .xlsx file format), text file with a semi-colon, comma, or pipe delimiter (.csv or .txt file format);

I am glad the Bureau recognizes that uploading a file is much more time-efficient than manually entering the required data, and am requesting the Bureau consider implementing such an upload process for the existing requirement of reporting data on clinical sites used in certain programs (e.g. Medical Assisting externship sites, Nursing clinical sites). Currently the Bureau's website requires

manually entering line-by-line information for what can be hundreds of sites, and this information already exists natively as a spreadsheet in most institutions. This is a massive burden, which could be eliminated by allowing that data to be uploaded in a single file, as is proposed for the new “graduate identification data”.

Bureau Reply: The Bureau has considered and rejects this comment as it is unrelated to the modified proposed text. While this is not related to the current proposal, the Bureau appreciates input on possible future changes to the submission process.

Correction to Initial Statement of Reasons

The Initial Statement of Reasons for this rulemaking was published with an erroneous description of text added to proposed section 74110(f)(2)(G) as follows:

“(G) the institution’s website address, or if the institution does not maintain an internet website, the institution may leave the space where such information is requested blank.”

The rationale for this addition also erroneously described the language as requiring “that the institution... leave the space blank if they do not have a website.” The proposed text as published contained the following text added at proposed subdivision (f)(2)(G):

(G) the institution’s website address, or notice that it does not maintain an internet website if it does not do so.

The description and rationale should have matched the text as published; the intention of the Bureau was to require institutions filling out an annual report to insert a notice that the institution does not maintain an internet website so as to clearly communicate to the Bureau that one does not exist. A statement to this effect in the annual report indicates that the requirement was considered and responded to by the institution.