

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

INITIAL STATEMENT OF REASONS

**ANNUAL REPORTS SUBMISSIONS
AND LABOR MARKET IDENTIFICATION DATA**

Hearing Date: No hearing has been scheduled.

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

Sections Affected: Section 74110, Division 7.5 of Title 5 of the California Code of Regulations; Amend section 74110.

Specific purpose of each adoption, amendment, or repeal:

1. Background/Problem Addressed:

The Bureau for Private Postsecondary Education (Bureau) protects students and consumers through the regulatory oversight of California’s private postsecondary educational institutions (“institutions”) pursuant to the California Private Postsecondary Education Act of 2009 (“Act” – Ed. Code, §§ 94800–94950), including conducting qualitative reviews of educational programs and operating standards. As part of that regulatory review and oversight, California Education Code (CEC) section 94934 requires all Bureau-approved institutions to submit an Annual Report each year, which must include specific information related to the educational programs offered by the institution, including program costs, graduation rates, and post-graduation job placement rates.

Existing law at Section 94934, subdivisions (a)(9) and (b) of the Act authorizes the Bureau to require “additional information deemed by the bureau to be reasonably required to ascertain compliance with this chapter,” and, “to prescribe the annual report’s format and method of delivery.”

Existing regulation at Section 74110 of Title 5 of the California Code of Regulations (5 CCR) sets forth the Bureau’s current requirements for filing and submission of the annual report required by CEC Section 94934. The regulation directs institutions submitting an Annual Report to electronically submit an online form provided on the Bureau’s website and attach a School Performance Fact Sheet, enrollment agreement,

and a school catalog, with their electronic submission of the Annual Report, per section 74110(d).

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 that collects student and labor market outcome data to help inform policymaking decisions and improve outcomes for all students throughout the state.

Since AB 1340 was enacted into law in 2019 the Bureau has been working towards implementing its requirements that the Bureau use data collected by institutions and reported to the Bureau to gather wage data about graduates and then make aggregate data available on the Bureau's website. The Bureau has upgraded its computer system, which allows for the Bureau to accept this and other annual report information electronically via an online portal. As further explained below, the online portal is necessary for the most efficient and secure method of collecting and transmitting this data to EDD and/or the CTC Data System.

The data will be collected in an online format inside the portal and submitted data will only be viewable by the individual who submitted the data and Bureau employees who are accessing the submitted data on the Department of Consumer Affairs' (DCA's) secure network. Institutions' responses will be aggregated and consolidated into one or more files to be transferred to EDD and/or CTC Data System. All aggregation and consolidation will also occur on DCA's secure network. Transfer of data to and from EDD or CTC Data System will follow industry standard security methods that ensure only the employees of EDD or the Government Operations Agency and the Bureau or DCA have access to the data transferred or received. The measures DCA, which provides general IT services to the Bureau, takes to protect personal identifying information stored on its networks includes:

- Data loss prevention software to detect sensitive data and confidential information and keep it from leaking outside DCA through email.
- Extended detection and response tools to block advanced malware, exploits, and ransomware attacks.

- Functional, security, accessibility, and performance testing of the software applications.

In compliance with Government Code section 16.5, the Bureau’s submission process through the online portal will be limited to an authorized external user who establishes a user name and password as is common to many online software applications. Prior to submission to the Bureau, an electronic signature will be collected and linked to the submission. From the point of submission to evaluation, the submitted data will not be able to be modified by the submitter to preserve the integrity of the data for the subsequent Bureau staff review. For the submission of graduate identification data as required by AB 1340, specified data shall be reported in the format of an Excel spreadsheet (.xls or .xlsx file format), text file with a semi-colon, comma, or pipe delimiter (.csv or .txt file format), and uploaded to the annual report portal.

The proposal directs institutions to submit Social Security Numbers or Tax Identification Numbers they have collected from students to the Bureau, which will then submit them to EDD for matching with individual wage data. California Civil Code section 1798.15 directs agencies to, “collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.” Nevertheless, direct data collection from individual students is not practicable in this case because CEC section 94862.6 expressly mandates that institutions collect personal information from their students and then submit the data to the Bureau.

However, these institutional reporting requirements enacted by CEC section 94892.6 are not operative until the Director of Consumer Affairs certifies that the Bureau’s information technology system has been updated and is capable of processing data as required by CEC section 94892.6(b)(5). On March 1, 2022, the Director certified that the Bureau’s information technology system has been updated and is capable of processing data as required by CEC section 94892.6 (see Underlying Data). As a result of the foregoing, the mechanism set forth in current regulation for reporting Annual Reports and supplemental documents will need to change.

The Bureau proposes to amend the Annual Report regulations to require that specified additional labor outcome data (“graduate identification data”) be reported by approved institutions as part of the Annual Report process and through an online annual reports portal designated by the Bureau. Specifically, the Bureau proposes the following amendments to Section 74110:

Add Subsection (c) -- Reporting of Graduate Identification Data

1. Add subsection (c) to require each institution to provide graduate identification data as part of its annual report to the Bureau for each student who graduated from the institution's educational programs and as specified in proposed subsections (1)-(4);
2. Add subsection (c)(1) to require provision of graduate's name and social security number (SSN) or individual taxpayer identification number (ITIN). If the graduate does not have an SSN or ITIN, the graduate's information shall be reported as "not available";
3. Add subsection (c)(2) to require provision of date of graduation;
4. Add subsection (c)(3) to require provision of the following for each educational program in which the graduate was enrolled: (A) The federal Bureau of Labor Statistic's Standard Occupation Classification (SOC) codes for which the institution has identified that the program prepares its graduates when required for the reporting of job placement rates under subdivision (i)(3) of section 74112; (B) Educational program's name; (C) Program length, as measured in clock hours or credit hours; and, (D) Type or title of degree, diploma or certificate awarded; and,
5. Add subsection (c)(4) to require provision of the amount of federal student loan debt for the graduate, if any, as reported by the institution under subdivision (g) of section 74112.

Add Subsection (d) – Specific Timeframes for Reporting Graduate Identification Data

6. Add a title to subsection (d) as notice of the requirements for specific timeframes for reporting graduate identification data;
7. Adds subsection (d)(1) to prescribe the written notice required by Education Code Section 94892.6(b)(5), which shall inform the institution that the Director has certified that the Bureau's information technology system has been updated and is capable of processing the data required by that Section and that the institution has 120 days from receipt of the notice to comply with this section;
8. Adds subsection (d)(2) would require the first annual report submitted by an institution that contains the graduate identification data required to be reported to include information collected on all students who graduated from January 1, 2020 through the end of the prior calendar year. The proposal would provide that subsequent annual reports need only contain information about students who graduated in the prior calendar year;

Revise subsection (f) – add new electronic filing requirements

9. Strike the requirement for submitting an online form provided on the Bureau’s website and replace it with a requirement to submit the annual report information via the Bureau’s online annual reports portal designated on the Bureau’s website at:

www.bppe.ca.gov;

10. Strike the requirement to “attach” the School Performance Fact Sheet, the enrollment agreement, and the school catalog and replace it with a requirement to “upload” those documents, in addition to the specified graduate identification data;

11. Adds new conditions for electronic filings via the portal, including:

(A) requiring a responsible institution representative to register the institution for a user account by creating a user name, password, email address, and the institution representative’s first and last name, primary phone number, and address;

(B) requiring, as part of the annual report, that the institution provide standard reporting and contact information through the online portal, as specified;

(C) 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);

(D) requirements for providing an electronic signature for attestation under penalty of perjury;

(E) requirements for when an annual report is considered filed with the Bureau through the online portal, including receipt of an email confirming that submission has been received; and,

(F) requirements for hard copy filing of financial statements, which includes providing or mailing hard copies directly to the Bureau’s Annual Report Unit at the Bureau’s principal office.

Other Proposed Changes to Annual Reporting Requirements

In addition, the Bureau proposes to update other requirements in Section 74110 to centralize all annual reporting requirements and further specify the Bureau’s current requirements, as follows:

1. Revise subsection (a): add the words “this section, subsections (f)-(j) of section 74112, and,” to ensure all annual reporting requirements are listed in one convenient location;

2. Add new subsection (a)(7): add to the list of the requirements, submission of a blank copy of the institution’s enrollment agreement and catalog for the reporting year;

3. Revise subsection (e): add the words “of each year” to specify that the annual report is due by December 1st of each year; and,

4. Make other nonsubstantive and technical clean-up changes to add the words “of the Code” where appropriate to clarify existing statutory sections are derived from the Education Code.

A draft version of the proposed AB 1340 regulation was presented at the Bureau’s Advisory Committee Meeting on August 26, 2021. The proposal was listed on the meeting agenda and the content was discussed by committee members. There were no adverse comments made about the draft AB 1340 proposal during the public comments.

2. Anticipated benefits from regulatory action:

The changes proposed by this regulatory action will enable the Bureau to implement the legislative mandate of CEC section 94892.6 that schools collect and 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. The Assembly Floor Analysis of AB 1340, the bill that proposed CEC 94892.6, quoted supporters of the bill as saying it would, “protect students, especially veterans, low-income students, and students of color, from ineffective career training and burdensome debt. . . . [P]rotecting students from harm is vastly more effective than trying to make them whole after the harm has occurred.” (See Underlying Data, p. 2).

While CEC section 94892.6 does not require the data reported by schools to be reported in the Annual Report, doing so simplifies the reporting process and avoids creating a new, separate reporting system for data required to be reported annually.

Factual Basis/Rationale:

The changes proposed by this regulatory package are as follows:

Amend section 74110 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 74110(a):

Proposed Change: Add, “this section, subsections (f)-(j) of section 74112, and” after “the information required by” and add, “of the Code” after “sections 94929.5 and 94934”. Delete the word “and” at the end of item number 5, delete the final period at the end of

item 6, and add, “; and add subsection (a)(7) requiring “A blank copy of the institution’s enrollment agreement and the catalog for the reporting year.”

Rationale: The requirements for what institutions must submit to the Bureau in their Annual Report is governed by sections 94929, 94929.5, 94932, and 94934 of the Code and by 5 CCR section 74112 of the Bureau’s regulations. The current regulations refer to the statute, but not subsequently adopted regulations. The addition of the reference to the regulatory requirements is needed to make sure that institutions are aware of what it is they must include in their Annual Report and what the source is that defines what their Annual Report should contain.

5 CCR section 74112(f) requires, as specified by section 94934(a)(6) of the Code, institutions to include in the institution’s Annual Report the “total charges for a student to complete the program within 100% of the program length.” The institution must also disclose that there may be additional charges if the program is not completed on-time. Including this information in the Annual Report in 74110(a) will provide a means for institutional compliance with reporting requirements specified under section 74112(f).

5 CCR section 74112(g) requires institutions to include in the institution’s Annual Report several statistical analyses of student loan and debt levels in their federal financial aid programs, if the institution participates in them. Institutions are required to aggregate the loan information and report a) the most recent three-year cohort default rate, as reported by the United States Department of Education; b) the percentage of enrolled students receiving federal student loans; c) the average amount of federal student loan debt of those graduates who have federal student loan debt in the reporting year; and d) the percentage of graduates with federal student loans, as calculated by the institution. Including this information in the Annual Report in 74110(a) will provide a means for institutional compliance with reporting requirements specified under section 74112(g).

5 CCR section 74112(h) requires, as specified in section 94929 of the Code, that institutions report completion rates in their Annual Report, and that the report should include “each educational program, the number of students who began the program as defined in subdivision (d)(1) of this section, the number of students available for graduation, number of on-time graduates, and completion rate(s).” Institutions have the option of adding a table to include completion rate data for students completing within 150% of the published program length. Institutions using the reporting method allowed by section 94929(b) of the Code may report graduation data reported to, and calculated by, the Integrated Postsecondary Education Data System of the United States Department of Education, and completion data shall be separately reported for each program. Programs that are more than one year in length which are reporting 150% Completion Rate will provide four calendar years of data. Including this information in

the Annual Report in 74110(a) will provide a means for institutional compliance with reporting requirements specified under section 74112(h).

5 CCR section 74112(i) requires institutions to report information on job placement rates in their Annual Report, as specified in section 94929.5(a)(1) of the Code. The regulation specifies that placement data “shall be reported for the number of students who began the program as defined in subdivision (d)(1) of this section for each reported calendar year.” The regulation details the method by which an institution shall measure its placement rate. Including this information in the Annual Report in 74110(a) will provide a means for institutional compliance with reporting requirements specified under section 74112(i).

5 CCR section 74112(j) requires institutions to report information on license examination passage rates in the Annual Report, and that the information be reported as follows for each educational program: “Reporting of license examination passage rates for the Annual Report and the Performance Fact Sheet shall include, for each educational program: the number of graduates in the reported year, the number of documented graduates who passed the first available examination, number of documented graduates who failed the first available examination, the number of graduates for whom data is not available. An optional column may be added to separately report licensing examination data for graduates who take and pass the exam after failing initially. The Annual Report shall also include a description of the processes for attempting to contact those students.” Including this information in the Annual Report in 74110(a) will provide a means for institutional compliance with reporting requirements specified under section 74112(j).

Adding “of the Code” after the references to the applicable Code sections is for clarification regarding the specific legal authority referenced in the existing regulation. The current regulation is intended to reference California Education Code sections 94929.5 and 94934, but only refers to “sections 94929.5 and 94934.” 5 CCR section 70000(f) defines “Code” as referring to the California Education Code. Adding “of the Code” clarifies what part of the California Code is being referred to.

Adding a requirement that institutions include a blank copy of their enrollment agreement and a catalog for the reporting year is to make explicit that a copy of the enrollment agreement and the catalog are part of the Annual Report. The Performance Fact Sheet and school catalog are both required to be included under section 94934 of the Code; however, the statute is silent as to enrollment agreements. Enrollment agreements and the institution’s catalog are currently required to be submitted with the Annual Report in 5 CCR section 74110(d), but those items are not listed in the items that are considered “included” in the Annual Report for subsection (a). Adding the requirement that an enrollment agreement and a catalog are required by 5 CCR section

74110(a) provides clarity that those items are considered part of the Annual Report by the Bureau, and for which the Bureau will verify continued compliance with the requirements in the Act. Adding the requirement that the copy of the enrollment agreement must be “blank” avoids the potential submission of a completed enrollment agreement that may include the personal information of a student.

The changes proposed for 5 CCR section 74110(a) also clarify the source of the requirements relating to the submission of an institution’s Annual Report. While several documents are identified in the statutes and regulations as required to be submitted with an institution’s Annual Report, there is not one location where all of the documents to be submitted can be found. Having all of the requirements in one location will make it easier for institutions to submit their Annual Report with all required attachments.

Section 74110(b):

Proposed change: Add “of the Code” following the reference to section 94934 in the first sentence.

Rationale: The current regulation is intended to reference California Education Code section 94934, but only refers to “section 94934.” 5 CCR section 70000(f) defines “Code” as referring to the California Education Code. Adding “of the Code” clarifies what part of the California Code is being referred to.

References in the regulations should be consistent and precise. Specifying that the regulation is referring to section 94934 “of the Code” leaves no doubt that it is the California Education Code being cited.

Section 74110(c):

Proposed change: Add a new section 74110(c) that says,” (c) As part of its annual report to the Bureau, every institution shall provide graduate identification data for each student who graduated from the institution’s educational program(s), which shall include:

- (1) The graduate’s name and federal taxpayer identification number, which is either the graduate’s social security number (SSN) or individual taxpayer identification number (ITIN). If the graduate does not have an SSN or ITIN, the graduate’s information shall be reported as “not available”;
- (2) The date of graduation;
- (3) The following information regarding the educational program in which the graduate was enrolled:

(A) The federal Bureau of Labor Statistic’s Standard Occupation Classification (SOC) codes for which the institution has identified that the program prepares its graduates, when required for the reporting of job placement rates under subdivision (i)(3) of section 74112 of this Division;

(B) Educational program’s name;

(C) Program length, as measured in clock hours or credit hours; and,

(D) Type or title of degree, diploma or certificate awarded.

(4) The amount of federal student loan debt for the graduate, if any, as reported by the institution under subdivision (g) of section 74112 of this Division.”

Rationale: These regulations permit the Bureau to implement the requirements of CEC section 94892.6 by specifying the graduate identification data to be collected and reported by institutions and informing them on the method to report the data to the Bureau. CEC section 94892.6 establishes the requirement for institutions to collect and report data to the Bureau; these regulations specify what data is to be collected and how it is to be reported to the Bureau.

CEC section 94934 requires institutions to submit an Annual Report to the Bureau that must contain specified information. CEC section 94934(a)(9) states that the Annual Report required to be submitted by institutions shall include “Additional information deemed by the bureau to be reasonably required to ascertain compliance with this chapter.”

CEC section 94892.6(a) requires institutions approved to operate by the Bureau to collect specified student identification data from all graduates after January 1, 2020. To ascertain that institutions are collecting the information required by CEC section 94892.6(a), the Bureau is adding that information to the information already required to be included in the institution’s Annual Report. Requiring this information to be included in the Annual Report is the only reasonable and least restrictive way the Bureau can ascertain compliance with CEC section 94892.6(a). Combining all annual reporting requirements into a single report avoids multiple annual reporting obligations for institutions and facilitates compliance by tying new data element reporting to a familiar reporting obligation (as the institutions already have to submit much of this annual report information to the Bureau in its online form).

The information collected by institutions as required by CEC section 94892.6(a) is also required to be reported to the Bureau under CEC section 94892.6(b). The goal of AB 1340 in requiring schools to report graduate identification data to the Bureau was to provide more information to prospective students so they could choose the most cost-

effective career paths. The Senate Business, Professions and Economic Development Committee analysis for AB 1340 noted that options for comparing post-graduation salaries existed for public institutions such as community colleges, the California State University system, and the University of California, but not for private postsecondary institutions and this bill “provides BPPE [with] the tools to establish a similar system.” While there are already requirements for schools to report graduate wage data, the Senate Education Committee analysis states that “this bill adds an additional layer for which employment data may be verified and ensure a certain caliber of accuracy.”

The first part of the proposed regulation establishes the data that institutions must collect and report to be in compliance with CEC section 94892.6(a)(1)(A). The requirement in CEC section 94862.6(a)(1)(A)(i) for institutions to collect “Individual identifying information for each graduate of the institution sufficient to match to wage data from the EDD pursuant to section 1095 of the Unemployment Insurance Code” is met by requiring institutions to collect the student’s name and either the student’s social security number (SSN) or individual taxpayer identification number (ITIN). Discussions with educational segments already submitting student identifying data to the EDD to receive wage information, including the University of California system and the California State University system, indicated that these were the only types of identifying data they submitted to EDD in order to match individuals with their wage data. Students that do not have an SSN or ITIN need to be reported with the identifying number listed as “not available” to make sure all students are being reported and schools are not failing to report students with poor wage histories by deleting their personal information.

The next item to be reported is the student’s date of graduation. The graduation date is needed as CEC section 94892.6(b)(4) specifies that the data is to be used to report on wage data for students two years and five years after their graduation; therefore, the graduation date must be specified.

The requirement in CEC section 94892.6(a)(1)(A)(ii) that institutions collect data on, “The program the graduate was enrolled in” is met by requiring institutions to report the student’s program as specified by the Standard Occupational Classification (SOC) code for which the institution has identified that the program prepares its graduates, the program name, and the program length, as defined in clock hours or credit hours.

The SOC code is the federal system used by the Bureau of Labor Statistics for classifying workers into occupational categories. SOC codes are not specifically mentioned in CEC section 94892.6, but CEC section 94892.6(a)(1)(B) authorizes the Bureau to collect from institutions, “Other information determined by the bureau to be warranted for the purpose of inclusion in the Cradle-to-Career Data System established pursuant to Article 2 (commencing with Section 10860) of Chapter 8.5 of Part 7 of Division 1 of Title 1.”

The SOC code for the positions each institution’s educational programs prepares students for should be known by the institution under the regulatory requirements for calculating job placement rates under section 74112(i)(3) of this Division, which states, “If the institution makes any claim related to preparing students for a job or regarding job placement, the list required by section 94910(f)(2) of the Code shall identify the employment positions by using the Detailed Occupation or six-digit level of the Standard Occupational Classification codes.” Section 94910(f)(2) requires that an institution’s Performance Fact Sheet must contain, “A statement informing the reader of where he or she may obtain from the institution a list of the employment positions determined to be within the field for which a student received education and training for the calculation of job placement rates as required by subdivision (b).” Institutions that do not already collect SOC codes for their educational programs can find the appropriate code at the Bureau of Labor Statistics website at https://www.bls.gov/oes/current/oes_stru.htm. Collecting the SOC code information is needed to produce data that will allow prospective students to compare the wage outcomes of professions that similar programs prepare students for, as envisioned by AB 1340.

The program name and program length are needed both to correctly identify the program and to allow students to compare the wage outcomes of programs that are similar but require a different total number of credit hours, clock hours, or other increments for completion. The type or title of degree, diploma or certificate awarded needs to be reported as some programs might offer more than one type of degree in the same program, for example a bachelor’s degree and a master’s degree, and the Bureau needs to report the wage data that is associated with the degree, diploma or certificate program the graduate graduated from (see definitions for these terms in the Act at CEC sections 94830 and 94832).

The requirement in CEC section 94892.6(a)(1)(A)(iii) that institutions collect data on the “graduate’s student loan debt information reported under subdivision (g) of section 74112 of Title 5 of the California Code of Regulations, if that information applies to the student” is met by requiring institutions to report “the amount of student loan debt for those graduates with federal student loan debt.” Subdivision (g) of section 74112 contains requirements that institutions submit aggregated student debt data for students at an institution. Having institutions report the student-level student debt information used to calculate the aggregate data enables the Bureau to fulfill the requirement in CEC section 94892.6(b)(3) to report statistics on student earnings and debt information, by institution and by program, on the Bureau’s website.

Under CEC section 94950, the authority for these and other Bureau regulations will exist until January 1, 2023, as the Bureau is scheduled to sunset on that date. If the Bureau’s sunset provision is extended on or before that date, and section CEC section

94892.6 is not extended or if substantively amended, the Bureau plans to initiate a rulemaking to further amend this text as appropriate.

Section 74110(d)(1):

Proposed change: Add a new section 5 CCR section 74110(d)(1) that says:

“(d) Specific Timeframes for Reporting Graduate Identification Data: (1) The written notice required by Section 94892.6(b)(5) of the Code shall inform the institution that the Director has certified that the Bureau’s information technology system has been updated and is capable of processing the data required by that Section and that the institution has 120 days from receipt of the notice to comply with this section.”

Rationale: Section 94892.6(b) of the Code requires institutions to report information collected under section 94892.6(a) to the Bureau annually in a format and on a schedule determined by the Bureau. The Bureau has determined that the most efficient way to have institutions submit this information on an annual basis is to have them report it at the same time and using the same process as they file their Annual Report.

All institutions must file an Annual Report by December 1st of each year, per existing CCR section 74110(c)(being moved to (e) by this regulatory proposal). The content of the Annual Report is specified in 5 CCR section 74110(a). The California Education Code requires that the Annual Report be accompanied by the School Performance Fact Sheet (section 94934(a)(4)), and the school’s catalog (section 94934(a)(5)), and the Bureau’s regulations already require that an institution’s Annual Report be submitted with not only the School Performance Fact Sheet and the catalog but also with the institution’s financial statements (5 CCR section 74110(b)) and the institution’s enrollment agreement (5 CCR section 74110(d)). The submission includes the report itself, the School Performance Fact Sheet, enrollment agreement, financial statements, and catalog. To comply with CEC section 94892.6(b)(1) requirement that graduate identification data be submitted by schools annually, the graduate identification data is being added to the list of requirements to be reported in the Annual Report by proposed section 74110(c) above.

The proposed regulatory language at (d)(1) implements the language in section 94892.6(b)(5) of the Code, which requires institution’s to be in compliance within 120 days of receiving the notice from the Bureau. The proposed language for section 74110(d)(1) defines the contents of the written notice provided under section 94892.6(b) of the Code as including the information that the Director has certified the Bureau’s computer system as capable of processing the data as required by the statute, and to inform the institution that it has 120 days from receipt of the notice to comply with this section. This will assure that an institution has adequate notice to prepare for collection and compliance with these new requirements, and has a clear understanding of when compliance is required.

This proposal also ensures that institutions are aware that they are obligated to report graduate identification data collected under section 94892.6 of the Code to the Bureau, and that the obligation starts after the institution receives notice that the Director has certified the Bureau's computer system is upgraded and capable of processing the data. It also is necessary to help ensure that the Bureau provides adequate notice to institutions of the Director's decision to institutions, and of the timetable for compliance with the reporting requirement.

Section 74110(d)(2):

Proposed Change: Add a new section 5 CCR section 74110(d)(2) that says:

“(2) The first annual report submitted by an institution that contains the graduate identification data required to be reported in subsection (c) shall include information collected on all students who graduated from January 1, 2020 through the end of the prior calendar year. Subsequent annual reports containing graduate identification data filed by an institution shall include information about students who graduated in the prior calendar year only.”

The purpose of section 74110(d)(2) is to specify what data collected by institutions is to be reported in the first submission of the data to the Bureau, and what should be reported in subsequent submissions.

Rationale: The proposed language in section 74110(d)(2) is needed to clarify what data is required to be reported with the first submission of data to the Bureau, and what data is required to be reported in each annual submission thereafter. Institutions were required by section 94892.6(a) of the Code to begin collecting and retaining graduate identification data beginning on January 1, 2020. The language in 74110(d)(2) specifies that in their first submission, institutions should report the data they have collected from January 1, 2020, through the end of the prior calendar year, which for 2022 would be December 31, 2021.

The second sentence in 74110(d)(2) establishes that future submissions of the graduate identification data will include the data for a single calendar year, namely the prior calendar year. The statute requires annual submission of the graduate identification data, so it is reasonable to have each submission include the data for one calendar year, although the first year's submission must include data from the beginning of the collection process. This clarification of the subsequent years' reporting requirements also helps ensure that there is no excess or cumulative data reporting requirement inadvertently imposed on institutions.

Section 74110(e):

Proposed change: Renumber current paragraph section 74110(c) as 74110(e). Add words, “of each year.” After “An institution shall file its annual report by December 1st.”

Rationale: Current subsection 74110(c) is being re-lettered as (e) in order to incorporate the two newly added subsections above.

Adding the phrase “of each year” after the date “December 1st” clarifies that the annual report is to be submitted annually by the same date and not just once.

Renumbering the subsection as (e) makes the provisions appear in logical sequence, given the addition of the two prior subsections. Specifying that annual reports are due on December 1st “of each year” makes it clearer that the reports are due every year and not just once.

Section 74110(f):

Proposed changes: Current 5 CCR section 74110(d) is being renumbered as (f) in order to incorporate the two newly added subsections above.

This section is being amended to address the change in filing method being implemented by the Bureau, where instead of completing an online form, institutions are directed to use an online portal. The current language is amended to add the word “Bureau” to describe where institutions can find the access point and deletes “form provided” and replaces it with “annual reports portal designated” and further defines the Bureau’s website by adding, “at www.bppe.ca.gov” after the phrase “the Bureau’s website.” The language is amended to replace “attaching” with “uploading” in the directions for submitting attachments.

Rationale: Current 5 CCR section 74110(d) (subdivision changed to a new (f)) is also being amended to provide greater detail on the method of submitting an Annual Report, by specifying the Bureau’s website as the location of the online portal to use for submission, describing how an institution will establish a secure submission process by obtaining a user name, password, email address, and the name and contact information of an institutional representative. Language is also added to inform institutions that Annual Reports must be submitted as directed by Education Code section 94934 and the Bureau’s regulations at 5 CCR Division 7.5, Chapter 4, Article 2. This is necessary to assure that all institutions have the information they need to register with the Bureau to submit an Annual Report as required by statute, and the provisions of what to submit as required by the Education Code and the Bureau’s regulations.

The word “Bureau” is being put in front of the word “online” and after the word “online” “form provided” is replaced by “annual reports portal designated” to inform institutions

that the submission process begins by going to the Bureau’s recently developed online portal which is described in the Background. Institutions are also being informed that the location of the portal is the Bureau’s website, now specifically designated at www.bppe.ca.gov.

The word “attaching” is being replaced by “uploading” in order to more accurately describe the technical submission process, which no longer asks schools to attach a document to a document being submitted, but instead requires them to upload their documents through the portal.

The list of documents to be submitted with the annual report is being augmented by adding “the graduate identification data required by this section” in order to inform schools of the new statutory requirement that they submit this information to the Bureau on an annual basis, and that they are required to submit the data with their annual report submission. As outlined above, the statutory requirement that this data be submitted to the Bureau is established by section 94892.6(b) of the Code.

The changes in the first paragraph of amended subsection (f) of 74110 make it clear to institutions that the annual report submission process has changed from attaching documents to an online form to submitting document by uploading them through an online portal. Institutions are required to submit annual reports to the Bureau, and it is important that they understand the technical details involved. This section also adds “graduate identification data” to the list of materials to be submitted in an annual report, and it is important that institutions be aware of how they should submit this data to the Bureau on an annual basis.

74110(f)(1)

Proposed change: At the end of the first paragraph of 74110(f) the following language is added: “The following conditions relate to such electronic filings:” The first condition related to making the annual report electronic filing, denoted as 74110(f)(1), is, “Institutions submitting their annual report submission shall first have a responsible institution representative register the institution for a user account by creating a user name, password, email address, and the institution representative’s first and last name, primary phone number, and address.”

The purpose of 74110(f)(1) is to inform institutions of the necessity of opening an account and setting up certain parameters prior to submitting an annual report through the new Bureau portal, which is a change from the previous process as explained in the Background/Problem Addressed section above.

Rationale: The proposed language adds several conditions that are necessary to establish the new portal submission process. The first is that institutions that plan to

submit an annual report are required to first have a responsible institution representative set up an account with the Bureau and create a user name, password, email address, and the representative's first and last name, primary phone number, and address.

When setting up a secured account, it is standard to have the user create a user name and password to make sure unauthorized persons cannot access the account. This allows the Bureau to hold the institution responsible for any information submitted through the portal and liable for any consequences. The contact information is necessary to contact the representative if there is any suspicious activity with the institution's account and to confirm the identity of the institution and its representative as set forth in the Bureau's records for the institution. An email address is necessary in order to inform the institution that its annual report has been received, as required by 74110(f)(5) below.

74110(f)(2)

Proposed change: Add the following language to 74110(f)(2): " As part of the annual report, the institution shall provide standard reporting and contact information through the online portal, including: (A) the report year, (B) institution's approval code, (C) institution's name, (D) institution's physical address, (E) the form of business organization of the institution (sole proprietorship, for-profit corporation, non-profit corporation, or limited liability company (LLC)), (F) a statement whether the institution is current on its annual fees; and, (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."

Rationale: The purpose of the amended 74110(f)(2) is to make sure institutions know all of the information required to be submitted under the new reporting requirements by using the online portal. Converting from the previous process to the portal requires institutions to submit additional identifying information that was not necessary under the previous, less technical, submission process.

As annual reports are now coming to the Bureau through an online portal, it is necessary to make sure the Bureau knows exactly who it is who is making the submission. Having institutions report the annual report year is necessary to distinguish the report being submitted from other annual reports submitted by the institution, either in the past or in the future. The institution's approval code is needed to distinguish the institution from other institutions that might have a similar name, and to verify that the institution is approved by the Bureau to operate in California. The institution's name and physical address are necessary to verify the institution's physical presence versus a Post Office box; also, institutions can have multiple campuses, separate administrative facilities and mailing addresses, and the Bureau needs to know how to contact the

responsible persons at an institution. Further, having a current physical address is necessary to serve legal process, such as subpoenas, which require personal service on the institution.

It is necessary for the Bureau to know the form of the business organization because different business forms have different people responsible for the operation of the business, and the Bureau needs to be certain that it is dealing with responsible parties. Also, having information on the business form helps ensure that the institution has not changed its business identity without approval by the Bureau. This helps ensure compliance with the licensing requirements of the Act and would therefore discourage businesses with dubious or even fraudulent backgrounds from reorganizing and operating under a false identity.

The Bureau needs a statement from the institution as to whether it is current on its annual fees as required by CEC section 94930, so that the institution will acknowledge if it is in arrears, and possibly encourage them to correct the deficit. It also acts as a reminder to the institution and the Bureau to follow up on any delinquent payments an institution might have.

The final condition under this subsection is that the institution provide its website address, and that they leave the space blank if they do not have a website. An institution's website address is asked for in the application for approval under 5 CCR section 71390(c)(1), or if it has filed for Exempt Status, under 5 CCR section 71395(b)(1). Also, institutions are required to post their annual report on their website under section 94913(a)(5) of the Code, and having the institution's website address here makes it easier for the Bureau to check the website in order to assure compliance.

74110(f)(3)

Proposed change: Paragraph 3 of the new subsection (f) provides the format for institutions to provide the graduate identification data, in the format of “an Excel spreadsheet (.xls or .xlsx file format), text file with a semi-colon, comma, or pipe delimiter (.csv or .txt file format).”

Rationale: This is necessary as the data must be reported in this format to allow the Bureau to submit the data to EDD in a format they can use to match the identification information with the wage data of the graduates. If the data were submitted in a different format, the Bureau would have to convert the data to a spreadsheet format, which would increase the Bureau's workload and introduce the probability of introducing errors into the data or raise security concerns with multiple copies of highly personal information being made and maintained during the conversion process.

The previous annual report submission process was far less sophisticated and allowed institutions to submit documents to the Bureau regardless of format. The graduate identification data must be submitted using a very specific format in order to allow the Bureau to submit the data to the EDD in the format required by EDD that allows it to effectively process it. Institutions must be made aware of the more specific requirements for submitting this data under the new online portal submission process.

Finally, this format is a common and widely available format that should be easy for institutions to use to meet the Bureau’s compliance requirements.

74110(f)(4)

Proposed changes: Adds new language to 74110(f)(4): “Electronic Signature: When a signature is required by the particular instructions of any filing to be made through the online portal, including any attestation under penalty of perjury as required by Section 94934 of the Code, a responsible institutional representative of the institution shall affix their electronic signature to the filing by typing their name in the appropriate field and submitting the filing via the Bureau’s online portal. Submission of a filing in this manner shall constitute evidence of legal signature by any individual whose name is typed on the filing.”

Rationale: The new annual report submission process is more technologically advanced than the prior system, which allowed institutions to download a document that contained a copy of the wet signature of the individual responsible for submitting the annual report. The new process requires access to a portal to submit the required information and the uploading of an electronic document, and therefore must rely on an electronic signature.

Electronic signatures are authorized under California Government Code section 16.5. The proposed language sets out the process for the submission of an annual report and that, under section 94934(a) of the Code, “an institution shall submit an annual report to the bureau, under penalty of perjury, signed by a responsible corporate officer.” The signature required by section 94934(a) of the Code is now being done through an electronic signature, using the signature of the institutional representative defined in proposed section 74110(f)(1).

Under section 1633.9 of the Uniform Electronic Transaction Act (UETA -- Civil Code sections 1633.1-1633.17), “An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.” This standard is met here as the security procedures established in 74110(f)(1) above, including the establishment of a user name and password, provides

a security procedure to assure that only the person with authority to access the portal could submit an annual report.

As the submission of an annual report requires a legally valid signature, the new process of submitting an annual report via the Bureau' online portal requires that this be met by the use of an electronic signature. The purpose of 74110(f)(4) is to inform institutions submitting their annual report of the signature requirement, to restate that the signature is required under section 94934 of the Code, and then to explain that the requirement is met if the responsible party with the institution types their name into the appropriate field and then submits the annual report. The process outlined here for signing the document is also a widely used and recognized method for signing a document electronically and therefore would be easy for the institutional representative to understand and use.

The statement that "submission of a filing in this manner shall constitute evidence of legal signature by any individual whose name is typed on the filing," is needed to provide notice of the legal effect of signing the document electronically, in accordance with UETA and section 1633.7 of the Civil Code, which states that: "(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form," and "(d) If a law requires a signature, an electronic signature satisfies the law..."

74110(f)(5)

Proposed change: Add a new section 74110(f)(5) which reads: "(5) When considered filed with the Bureau: Solely for purposes of a filing made through the online portal an annual report is considered filed when all information required by this section has been submitted by the institution and the institution has received an email to the email address associated with their filing that their submission has been received by the Bureau. Receipt of this email does not constitute confirmation that the information submitted complies with the requirements of this section."

Rationale: The purpose of 74110(f)(5) is to inform institutions that under the new annual report submission process they will have their submission acknowledged by an email from the Bureau, and that receipt of the confirmation email concludes the process. Given the change to a format that requires the submission of electronic documents via an online portal, institutions need to be assured that their submission of their Annual Report has been successful and provided with an email they can use as proof that the Bureau told them that filing was successful.

The change in the submission process, from completing an online form to now making an electronic upload via a portal, requires that the process by which institutions are informed that they have successfully submitted their annual report also needs to

change. Unlike documents mailed to the Bureau (see Evidence Code section 641 AKA the “mailbox rule”), there is no legal presumption created when a document is electronically received via the portal. It is therefore important that an institution receive an acknowledgment that their submission has been received and is in a format that is readable and usable so that an institution may be assured that its submission has been received, and if not, that it is on notice that it should follow up with the Bureau to ensure receipt.

The proposed language under 74110(f)(5) creates a process for informing institutions that their Annual Report has been successfully filed by telling institutions that upon receipt of their Annual Report they should receive an email from the Bureau letting them know that their submission has been successful. However, successful filing of the Annual Report does not confirm that the Annual Report meets all of the legal criteria necessary for the Annual Report to be in compliance with all relevant laws and regulations. The notice informs the institution that they need take no further action to file an Annual Report, and they must wait to see if the Bureau raises any compliance issues upon the Annual Report being analyzed.

74110(f)(6)

Proposed change: Add a new section 74110(f)(6) that reads: “The financial statements referenced in subsection (b,) which are not permitted to be filed via the Bureau’s online portal, shall be filed by providing or mailing hard copies directly to the Bureau’s Annual Report Unit at the mailing address of the principal office of the Bureau as provided in section 70020.”

Rationale: The purpose of 74110(f)(6) is to inform institution as to the method of submitting the hard copies of their financial statements to the Bureau, as they cannot be submitted through the online portal that has been established to submit the rest of their annual report.

The provisions of 74110(b), above, require that institutions use a separate method of submitting financial documents with their annual report. 74110(b) states, “the institution shall have annual financial statements prepared for the institution’s prior fiscal year and signed under penalty of perjury and shall submit a hard copy under separate cover of such statements in conjunction with its annual report.” Because of the sensitivity of financial documents, the Bureau is not changing the method of submitting these documents to the new online portal, even with the security measures adopted in 74110(a).

This proposed language simply instructs institutions to submit the hard copy of the financial documents to the Bureau by mailing the documents to the Bureau’s Annual Reports Unit at the address for the Bureau laid out in 5 CCR section 70020. It is

necessary to give institutions instructions on how to submit the portion of the annual report that is not to be submitted electronically and directing them to mail the documents to the Bureau's official address is the most effective means of submitting hard copies of materials.

Note:

Proposed change: Add code sections to the code sections referenced so it reads as follows: "Reference: Sections 94892.6, 94929.5, 94929.7, 94932, 94934 and 94941, Education Code; Sections 1633.2, 1633.7, and 1633.9, Civil Code; Section 16.5, Government Code.

Rationale: The new language added to 74110 now includes additional statutory references. Education Code section 94892.6 is the code section that added graduate identification data to what schools must submit to the data, and that data is being added to the annual report submission. Sections 1633.2, 1633.7, and 1633.9 of the Civil Code all deal with the definition of "electronic signature" under the Uniform Electronic Transaction Act, which are now referenced because the new online portal requires an electronic signature. Similarly, section 16.5 of the Government Code also provides a definition of a "digital signature" for submitting documents to a public entity.

The purpose of adding these code sections to the Reference section of the regulation is to have a complete list of code sections referenced by the regulation, either explicitly or implicitly. Section 94892.6 of the Education Code requires institutions to submit "graduate identification data" to the Bureau, which is now added to the annual report requirement. Sections of the Uniform Electronic Transaction Act that define electronic signature are now included and is the Government Code section authorizing digital signatures on documents submitted to a public entity.

Underlying Data (Technical, Theoretical, and/or Empirical Studies, Reports or Documents)

1. Agenda, Bureau for Private Postsecondary Education Advisory Committee meeting, August 26, 2021, at page 2, at https://www.bppe.ca.gov/about_us/meetings/materials/20211103_acm.pdf.
2. Issue Memorandum from Deborah Cochrane, Bureau Chief, to Advisory Committee members regarding Labor Market Outcomes on BPPE Website, in meeting materials for August 26, 2021 Advisory Committee meeting, pages 61-62, at https://www.bppe.ca.gov/about_us/meetings/materials/20210826acm.pdf.
3. Assembly Floor Analysis of AB 1340 dated September 6, 2019.

4. Senate Business, Professions and Economic Development Committee Analysis for AB 1340 dated July 1, 2019.
5. Senate Education Committee Analysis for AB 1340 dated July 10, 2019.
6. Certification from the Director of the Department of Consumer Affairs Regarding the Bureau for Private Postsecondary Education's Information Technology System Readiness, dated March 1, 2022.

Business Impact

The Bureau has made the initial determination that the proposed regulations will not have a statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts:

Existing law requires private postsecondary educational institutions to annually submit the graduate identification data and other annual report information required by this section, including individually identifiable information for each graduate, taxpayer identification data (SSN or ITIN), Standard Occupational Code classifications by program, and the graduate's student loan debt information. This proposal requests some additional data elements to be included related to an individual's name, program and date of graduation to aid in its reporting required by EDD. This information is already maintained by institutions and is used to complete the current annual reporting requirements generally by category and as listed in section 74110. The additional documents and/or information added to the existing reporting requirements in section 74110 would not add additional cost to the institutions because the institutions are being asked to submit data they already have in a report they are already required to submit, and include attachments in a format (Excel) that is widely used and available to the industry.

Economic Impact/Assessment analysis

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.

Specific Technologies or Equipment

This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons. The regulation will require institutions to submit data via a computer to the Bureau electronically through the Bureau’s on-line portal. The portal will direct the institution to submit the information in a format that will assure that the Bureau can use the data in the most efficient manner. Data reported under proposed section 74110(c) will initially have to be submitted in a spreadsheet format that uses Microsoft Excel. This is necessary because the data will have to be compiled by the Bureau and then submitted to EDD in a format that allows EDD to match the submitted personal identification data

with wage data for those individuals, requiring the submitted data to be in a uniform format.

Consideration of Alternatives

These proposed regulations require institutions to include in their Annual Report information that would assist the Bureau in its ability to protect California students. Including this information in a yearly report that is already required is the most efficient way of gathering the information.

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.