

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

INITIAL STATEMENT OF REASONS

EDUCATIONAL PROGRAMS UNDER 32 HOURS IN LENGTH

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Educational programs under 32 hours.

Sections Affected: Sections 71710, 71810, Division 7.5 of Title 5 of the California Code of Regulations; Amend sections 71710 and 71810.

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, sections 94800–94950), including conducting qualitative reviews of educational programs and operating standards.

In 2021 section 94837 of the Act was amended by Senate Bill (SB) 802 (Chapter 552, Statutes of 2021) to create a statutory exemption from the definition of “educational program” for any single course, workshop, seminar, continuing education course, or other instruction that consists of 32 hours of instruction or less, where the program is not designed to lead to employment. The legislative history is silent as to the purpose for creating the exemption, or the meaning of the exception for programs leading to employment.

Regulations are needed to implement this statutory provision, as the law does not address what is meant by a program “not designed to lead to employment.” To implement this change to the statutory definition of “educational program” in section 94837 of the Code, the Bureau is proposing to add a regulatory definition of “educational program” that will provide the needed clarity to implement the legislative changes.

Adoption of the changes above means that at many institutions there will be programs offered that are subject to Bureau oversight as they meet the definition of an “educational program,” but there will be other programs not subject to Bureau oversight as they are defined as not being an educational program under the proposed regulations. This would lead to situations where students or prospective students would be unaware that they would not have certain protections when taking a course that is

not an “educational program” that they would if they took an “educational program.” To avoid confusion, the Bureau is also proposing to amend its regulations regarding institution catalogs, to specify that institutions list those programs that are defined as educational programs separately to inform students and prospective students of the potential consequences of taking a program that is defined as not being an educational program under these regulations.

2. Anticipated benefits from regulatory action:

The proposed regulatory language will interpret the legislative definition of “educational program,” as amended by SB 802, by specifying what is meant by “not designed to lead to employment.” The meaning of that phrase could be interpreted in a number of ways, and without regulatory language to clarify what the phrase means, schools could try and claim the exemption for any program under 32 hours in length, leading to confusion.

The proposed regulatory language also makes it easier for students and prospective students to be able to differentiate between programs offered at institutions when some programs are regulated by the Bureau while others are not, and to understand the consequences of taking programs that are unregulated.

Factual Basis/Rationale:

The changes proposed by this regulatory package are as follows:

1. Amend section 71710 of Article 1, of Chapter 3, of Division 7.5 of Title 5 of the California Code of Regulations:

Section 71710 - Educational Program.

Proposed Change: Add “(a)” before the first sentence of the section. Convert all the subsequent letter ordinal designators from letter designations to numerical designations, and all subsequent numerical designations to upper case letter designations.

Rationale: 5 CCR section 71710 is being amended to add an additional subdivision, so the organization of the text as it exists is being reorganized to designate the entirety of what is now section 71710 as just being subdivision (a). All subsequent subdivisions are being moved down one step to maintain the structure of the existing language, so subdivisions designated by a lower-case letter are being changed to numbers (e.g. a to 1, b to 2, etc.), and numbers are being redesignated as upper case letters (e.g. 1 to A, 2 to B). The intent is to retain the integrity of the prior language while allowing an additional subdivision to be added to section 71710.

Proposed Change: Add a new subdivision (b) to section 71710 that reads:

(b) An educational program of 32 hours or less as described in Section 94837 of the Code shall be presumed to be “designed to lead to employment” if any of the following apply:

(1) it is on the Eligible Training Provider List the Employment Development Department published on its website at www.edd.ca.gov pursuant to the Workforce Innovation and Opportunity Act (Public Law 113-128) section 122 (29 U.S. Code section 3152) and Code of Federal Regulation, Title 20, section 680.500;

(2) the institution represents that the course or module, either separately or as part of a set of related courses or modules, leads to employment or a career, either as stated by the institution to the Bureau on any application submitted to the Bureau for approval of any institution or educational program, including sections 71100, 71105, 71210, 71220, and 71390, or in any other written correspondence provided to the Bureau, or in any advertising or publication used to solicit or recruit prospective students. “Advertising” shall have the meaning set forth in section 74140;

(3) the institution represents in its course or module materials, syllabus or course outline that the educational objectives of the course or module includes preparing or fitting students in the skills and knowledge necessary to satisfy the qualifications for licensure in a specified career, occupation, vocation, job, or job title.

Rationale: Until the passage of SB 802 in 2021, the statutory definition of “educational program” was sufficient and no regulatory definition was needed. However, the ambiguity introduced by SB 802 creating a regulatory exemption for programs of 32 hours of instruction or less, and then creating an exception to that exemption for programs designed to lead to employment, makes it necessary to articulate a more precise definition of an educational program “designed to lead to employment” in regulation.

The opening sentence of the regulatory definition of “educational program” refers back to the statutory definition in section 94837 of the Code. The proposed language for section 71710(b) refers to the newly created statutory exemption from the definition of “educational program” for programs of 32 hours of instruction or fewer except when the program is designed to lead to employment and then states that such programs will be presumed to be “designed to lead to employment” if one of three criteria are met. This language is appropriately added to section 71710 because section 71710 currently

describes other criteria for 'educational programs' as defined in section 94837 of the code.

In determining what programs would be considered "designed to lead to employment," the Bureau focused on criteria that demonstrated that the specific intent of the educational program was to enhance employment opportunities, as almost any course of instruction could be seen as increasing the probability of someone finding employment. The Bureau considers it necessary to identify as many programs as possible that would qualify for the exemption to implement the legislative intent to not exempt programs designed to lead to employment from Bureau oversight even if they are under 32 hours in length. The Bureau also wants to use clear criteria so the reasons for determining that some programs are not designed to lead to employment is not subject to dispute.

As described in proposed section 71710(b)(1), any program that is on the Employment Development Division's Eligible Training Provider List, which was established in compliance with the Federal Workforce Innovation & Opportunity Act, would be aimed at persons seeking training that would enhance their employment opportunities. The list, according to the EDD website, "provides employment training resources for adults and dislocated workers" and includes, "qualified training providers who offer a wide range of educational programs, including classroom, correspondence, online, and apprenticeship programs."

As described in proposed section 71710(b)(2), an educational program will be presumed to lead to employment if the institution either makes statements to the Bureau that it is so designed, or the institution advertises or otherwise publishes it to the public as leading to employment or a career. An institution that states to the Bureau, or advertises, publicizes, or tries to solicit or recruit students that a program is leading to employment or a career, should not be able to then argue the program is exempt from oversight because they now claim it is not designed to lead to employment or a career.

The proposed language lists sections of the Bureau's regulations where an institution might make a representation that a course or module leads to employment, including section 71100 (Approval to Operate for an Institution Not Accredited), section 71105 (Application for Provisional Approval to Offer Degree Programs), section 71210 (Instruction and Degrees Offered), section 71220 (Description of Educational Program), and section 71390 (Approval to Operate and Offer Educational Programs for Accredited Institutions). Aside from these specific provisions, the proposed regulation also establishes that the presumption that a program is "designed to lead to employment" applies if the institution makes such a representation to the Bureau in any written communication or correspondence with the Bureau. Having made such a representation to the Bureau, an institution should not subsequently be able to assert the opposite, that the course should be exempt as not being designed to lead to employment.

“Advertising” is defined here as having the meaning used in the context of 5 CCR section 74140, where institutions are required to retain copies of all advertising. Section 74140 describes advertisings by type, including print, audio, video, internet, and other content types.

As described in proposed section 71710(b)(3), the next definition of an educational program presumed to be designed to lead to employment is an educational program that is designed to instruct students in the skills and knowledge necessary to satisfy the qualifications for licensure. The proposed text uses the expression, “preparing or fitting students” to be consistent with the expression “fit or prepare students for employment” as it is used in 5 CCR sections 71210(b)(7), which explains how institutions should describe their educational programs, 71475(t)(7), which describes how institutions should describe educational programs in their application for approval or renewal, and 71735(a), which describes the facilities and equipment institutions should have to meet the objectives of their educational programs. Using language that is consistent with existing language used to describe educational programs that prepare students for employment reinforces that such programs already exist and are regulated. The language in this subsection is taken from section 94847 of the Code which defines “License and Examination Preparation” courses and distinguishes courses teaching practical skills and knowledge from courses that are merely designed to prepare students for a licensure examination. There would be little reason for a student to take a course that prepares its students to be awarded a professional license unless the participant anticipated seeking employment in the field that the license qualifies him or her to perform.

2. Amend section 71810 of Article 2, of Chapter 3, of Division 7.5 of Title 5 of the California Code of Regulations:

Section 71810 - Catalog.

Proposed Change: Add to 5 CCR section 71810 a new subdivision (c) that reads:

“(c) Institutions that include one or more courses in its catalog that do not meet the definition of educational program in section 94837 of the Code must include a list of the programs to which the provisions of the Private Postsecondary Act apply, to be provided after the following disclosure:

“This catalog includes programs that are subject to state laws and others that are not. Certain rights and protections outlined in this catalog, including but not limited to student refund rights, cancellation rights, and STRF eligibility, apply only to the following state-approved programs:”.

Rationale: Now that there is an exemption to the definition of “educational programs” for courses of less than 32 hours in length that are not designed to lead to employment, students and prospective students may not be aware that if they enroll in certain

courses that are now not defined as an educational program, they will not be covered by many of the protections offered by the Private Postsecondary Education Act of 2009. Protections that are not available to students in courses that are not an “educational program” include the right to a refund under CEC sections 94919(c), 94919(d), and 94920(d), the right to cancel their enrollment under CEC sections 94919(b) and 94920(a), and the ability to recover lost tuition through the Student Tuition Recovery Fund if the institution should close suddenly under CEC sections 94923 *et. seq.*

To inform students and prospective students that the Bureau’s protections may not apply to courses that are now excluded from the definition of an “educational program,” is necessary because it advises them of some of the differences between enrolling in courses regulated by the Bureau and enrolling in those that are not. To have institutions put a message in their catalog is the most efficient method of communicating with an institution’s students and prospective students as it is widely available and students and prospective students are aware it contains information about an institution’s courses.

The proposed language to be added to 5 CCR section 71810 would require schools that offer both educational programs regulated by the Bureau and courses that are now exempt from Bureau oversight to post a notice in their catalog explaining that not all of the courses offered by the institution are subject to Bureau oversight, the consequences of a course not being subject to Bureau oversight, followed by a list of all of the courses offered that are subject to the Bureau’s authority.

With the list of classes that are subject to Bureau oversight, students and prospective students can check to see if the course or program they are considering enrolling in is one of those that are included in the definition of “educational program” and therefore subject to Bureau oversight, or, if it is not, whether the lack of oversight would affect their decision to enroll.

The required disclosure is drafted to assure that the disclosure is within the Bureau’s authority to mandate, as the Bureau will no longer be able to exercise any authority over programs exempted by the terms of this proposed regulation, and therefore the Bureau could not require institutions to list any programs that they offer that are exempt. The disclosure lists the rights students have that are protected by Bureau oversight that, in the experience of the Bureau, are the most commonly exercised by students. A complete list of all student rights protected by the Bureau would be too voluminous to include.

Changes to the Note for Section 71810

Proposed Change: Add “94837,” to the list of statutory references in “Reference.”

Rationale: Section 71810 now incorporates language from section 94837 of the Code in the notice being required to be posted in an institution’s catalog. Therefore, “94837” needs to be added to the list of statutory references for section 71810.

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

1. Public Law 113-128, HR 803 of the 113th Congress, the “Workforce Innovation and Opportunity Act,” at <https://www.congress.gov/113/bills/hr803/BILLS-113hr803enr.pdf>.
2. SB 802 (Roth, Chapter 552, Statutes of 2021)
3. Minutes from discussion of Educational Programs Under 32 Hours proposal at February 23, 2022 Advisory Committee meeting, found at https://www.bppe.ca.gov/about_us/meetings/materials/20220517_acm.pdf, at pages 13 and 15.

Business Impact

The proposed regulation eliminates the requirement for approximately 4,057 educational programs at 250 educational institutions to submit information on certain programs under 32 hours in length in their Annual Reports.

According to these institutions, each report requires approximately 7 hours of workload with total cost of \$350 per report, which results in total costs savings of approximately \$1.42 million per year and up to \$14.2 million over a ten-year period.

Additionally, these institutions will no longer pay annual institution fees of approximately \$17,100 per year and up to \$171,000 over a ten-year period.

Total costs savings are projected as follows:

Bureau for Private Postsecondary Education Educational Programs Under 32 Hours (Economic Impact - Cost Savings)													
Registration Type	Programs	Savings	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Educational Program < 32 Hours	4,057	\$350	\$1,419,950	\$1,419,950	\$1,419,950	\$1,419,950	\$1,419,950	\$1,419,950	\$1,419,950	\$1,419,950	\$1,419,950	\$1,419,950	\$14,199,500
Educational Program < 32 Hours	4	\$2,500	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$100,000
Institution	19	Various	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$71,000
Total Savings:			\$1,419,950	\$14,199,500									

Economic Impact/Assessment analysis

The regulatory proposal will have the following effects:

- It will not eliminate any jobs within the State of California because the regulations allow programs under 32 hours in length that are not designed to lead to

employment to be exempted from oversight, which will reduce business costs. There might be a small creation of jobs as there might be growth in such programs now that they are no longer regulated.

- It will not create new businesses or eliminate businesses in the State of California because the regulations allow programs under 32 hours in length that are not designed to lead to employment to be exempted from oversight. Only about 250 businesses in California offer these types of programs, and the reduced regulation should not be enough to encourage the growth of additional businesses.
- It will not affect the expansion of businesses currently doing business in the State of California because the regulations allow programs under 32 hours in length that are not designed to lead to employment to be exempted from oversight. The reduced regulatory requirement would save businesses on average \$350 per year per program, which probably is not enough to encourage significant expansion of businesses in the state.
- The regulatory proposal benefits the health and welfare of California residents by eliminating regulatory requirements by allowing programs under 32 hours in length that are not designed to lead to employment to be exempted from oversight, allowing institutions to operate as intended by the legislature.
- The regulatory proposal does not affect the state's environment because it allows programs under 32 hours in length that are not designed to lead to employment to be exempted from oversight, 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 conform the Bureau's regulations to statutory language.

Specific Technologies or Equipment

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

Consideration of Alternatives

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 is necessary to interpret the terms of the statutory language adopted by the legislation in order to promote clarity for the reader.

2. Adopt regulations with a broader definition of “designed to lead to employment.” This alternative was rejected in favor of the proposed list of factors causing a program to be considered “designed to lead to employment,” which consists of easily verified criteria that create a bright line for determining eligibility. Broadening the definition would introduce vague criteria that would be difficult to administer.

Duplication or Conflict with Federal Regulations

None.

Fiscal Impact Estimates

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Costs: The Bureau estimates 4,057 educational programs would be exempt under this proposal. These programs would no longer be required to report information, as specified, which is included in the educational institution’s Annual Reports submitted to the Bureau each year.

The Bureau indicates each submission of information requires approximately 90 seconds per report for staff to process, which would result in cost savings of approximately \$2.25 per report or \$9,128 in year-one of implementation and up to \$104,645 over a ten-year period as follows:

Bureau for Private Postsecondary Education Educational Programs Under 32 Hours (Fiscal Impact - Workload Savings)													
Registration Type	Programs	Savings Per	Years Ongoing**										Total
			1	2	3	4	5	6	7	8	9	10	
*SSA - Workload (90 seconds)	4,057	\$2.25	\$9,128	\$9,402	\$9,684	\$9,975	\$10,274	\$10,582	\$10,900	\$11,227	\$11,563	\$11,910	\$104,645
Total Savings:			\$9,128	\$9,402	\$9,684	\$9,975	\$10,274	\$10,582	\$10,900	\$11,227	\$11,563	\$11,910	\$104,645

*SSA - Staff Services Analyst (\$90 per hour - includes distributed administration)
 **3 percent projected growth ongoing

Revenues: The regulations are projected to result in a decrease of approximately \$17,100 per year in annual institution fee revenues and up to \$171,000 over a ten-year period.

The Bureau indicates four educational institutions will be completely exempt for the Bureau’s oversight. These four schools currently pay \$2,500 each per year in annual institutions fees or \$10,000 total.

The Bureau further indicates 19 programs operating in other educational institutions would be exempt, which would result in approximately \$7,100 lower annual institution fees collected from these institutions.

Total revenues are projected to decrease as follows:

Bureau for Private Postsecondary Education Educational Programs Under 32 Hours (Fiscal Impact - Revenue Loss)													
Registration Type	Programs	Savings	Years Ongoing										Total
			1	2	3	4	5	6	7	8	9	10	
Educational Program < 32 Hours	4	\$2,500	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$100,000
Institution	19	Various	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$7,100	\$71,000
Total Revenues (loss):			\$17,100	\$171,000									

The regulations do not result in costs or savings in federal funding to the state.